

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

State of Ohio,

Plaintiff,

VS.

Defendant.

Case No.

**COPY NOT
FOR FILING**

TRANSCRIPT OF PROCEEDINGS
BETH J. RED BIRD

APPEARANCES:

Ms. Jennifer Rausch and Mr. Steve Taylor,
Assistant Prosecuting Attorneys

On behalf of the State of Ohio.

Ms. Shayla L. Werner, Mr. Donald Shartzter and Mr.
Kevin Mulrane, Attorneys at Law

On behalf of the Defendant.

BE IT REMEMBERED, that on the hearing of the above-entitled cause at the July Term, 2009 of the Common Pleas Court of Franklin County, Ohio, before the Honorable Guy L. Reece II, Judge, the following proceedings were had, to wit:

BETH J. RED BIRD

called by the Defendant on direct examination
being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MS. WERNER:

Q. Ms. Red Bird, where did you attend school?

A. Most recently I was in a masters's program
at Ohio State.

Q. So you have achieved your Master's Degree,
correct?

A. Yeah. In about a week.

Q. And what is your area of study?

A. My primary focus is family resource
management. It's a subset of economics. We
discuss how family members make economic
decisions, spend purchasing, employment-based
decisions, housing decisions.

I also have academic specialties in survey
research and methodology and statistical analysis.

Q. And are you continuing your studies
further?

A. Yes.

Q. And where will you be doing that?

A. Well, I move in about two weeks to northern

1 California. I will be seeking a Ph.D. from
2 Stanford University in sociological research
3 methods and residential mobility.

4 Q. Do you have any personal interest in this
5 case?

6 A. No.

7 Q. What other educational and personal
8 experience do you have that may qualify you to
9 conduct statistical analysis?

10 A. Well, since 2005, I worked with the Ohio
11 CDC Association. It's Community Development
12 Corporation Associations. They are the primary
13 nonprofit outlets for housing funds that get
14 funneled through either the federal funding
15 sources or state funding sources. Within that job
16 I managed about \$4.5 million in housing-based
17 funding.

18 In addition, I conducted housing-based
19 research for the US Department of Health and Human
20 Services and for the Ohio State Department of
21 Development. I worked that job up until about a
22 year ago when I left to pursue a teaching and
23 research associateship at OSU in residential
24 mobility.

25 Q. So is this the same experience that would

1 also qualify you to form conclusions about
2 residential properties and economic conditions?

3 A. Yes.

4 Q. And did you prepare a study assessing
5 housing availability under Ohio sex offender
6 residency restrictions?

7 A. Yes.

8 Q. What was the -- was this report subject to
9 review by someone other than the Franklin County
10 public defender's office?

11 A. Yes. As is fairly typical in academia, the
12 report is overseen by several consultants. In
13 this particular incident it received review by two
14 statistical consultants, a professor of survey
15 sampling of US Department of Statistics and the
16 head of the US Statistics Consulting at OSU.

17 Q. Can you kind of describe that review
18 process?

19 A. Basically, the analyses included therein
20 are somewhat complicated and complex. So the
21 review process goes over my data, my analysis, my
22 conclusions to ensure that not only are all of my
23 methods appropriate but my conclusions are
24 accurate.

25 Q. Can you briefly summarize what the report

1 is about or the conclusions in this study?

2 A. That's a big question. All right. Well,
3 the question posed to me was how restrictive in
4 terms of housing availability are current Ohio
5 residency restrictions. And so in order to
6 determine that, what I needed to know was where
7 sex offenders live. And it's a big question. So
8 the first thing I did was I took data from the
9 county auditor's office here in Franklin County in
10 order to determine how many residences existed in
11 the county. There are approximately half a
12 million parcels contained in this county. A
13 parcel is any sort of land division. They can be
14 residential, such as single-family homes,
15 multi-family homes, apartment, condominiums, et
16 cetera. They can be nonresidential. They can be
17 industrial parks, retail stores, et cetera.

18 I took a stratified random sample from that
19 half a million Franklin County parcels and
20 examined them to determine how many of that sample
21 violated current residency restrictions.

22 If you want specific statistics, I'm going
23 to have to think really hard. But in general, I
24 figured about 14 percent of the county is
25 nonresidential.

1 Q. Okay.

2 A. And that approximately 50 percent of
3 residential parcels are unavailable. They reside
4 within one thousand feet of a restricted area.
5 And so combined together those two factors make it
6 about 65 percent, or about two-thirds of the
7 county is uninhabitable to sex offenders.

8 The second -- there's about four parts of
9 the study. The second portion of the study was to
10 determine how realistic the understanding of that
11 65 percent is. And so I took all registered sex
12 offenders within Franklin County through the
13 sheriff's registration database and I determined
14 their addresses and then I determined the economic
15 and geographic, demographic data that exists
16 within the census tract wherein they reside.

17 So, for instance, I can tell based on where
18 an offender is registered what kind of
19 neighborhood do they live in, do they live in an
20 affluent neighborhood, a poor neighborhood, et
21 cetera.

22 I found several facts that mirror other
23 studies that had been done throughout the nation
24 of similar effect. I found that about 70 of the
25 Franklin County sex offenders are homeless. I

1 found that the vast majority of them reside in
2 less affluent neighborhoods. Both areas of medium
3 income and areas of poverty are significant for
4 recidivism rates. In general, they're poor. I
5 found that only about 30 percent of Franklin
6 County registered sex offenders are employed
7 within the county.

8 So based on the economic data I was able to
9 glean from their registered addresses, I said how
10 much of the county is restricted in the areas
11 where offenders can afford to reside.

12 Let's say here that -- well, the data
13 showed they're poor, so let's see what kind of
14 housing is available in poor areas. And the
15 answer was honestly quite starking.

16 Firstly, property in poor areas is
17 substantially more restrictive than property in
18 more affluent areas. Only about 20 percent of
19 units are available in areas with poverty above
20 the median. So that's a substantial change from
21 35 percent.

22 I also found that this trend was consistent
23 across types of housing. Offenders tend to reside
24 in places where they can rent. They don't own.
25 Obviously most likely economic factor. And that

1 apartments and multi-family homes are far more
2 restrictive and more likely to reside near a
3 school or another restricted buffer zone than
4 single-family homes.

5 The final part of my study looked at the
6 offenders who are currently in violation of
7 residential restriction requirements. About
8 one-third of Franklin County offenders are in
9 violation, which is a similar number to other
10 studies that were conducted in Florida, Minnesota
11 and Nebraska.

12 Of that one-third, I found that economic
13 factors played a substantial role in whether or
14 not an offender would violate. So poor offenders
15 were more likely to violate residential
16 restrictions than more affluent offenders.

17 Now, as the purpose of residency
18 restrictions are extensively to protect children
19 and keep offenders from having access to children,
20 I looked at census tract information on the number
21 of homes with children in the area. And I
22 actually found something quite amazing, which is
23 the less likely there are to be children in the
24 area, the more likely the offender is to reside
25 there. In other words, offenders are not residing

1 in areas where children live. This was
2 interesting and trends that continued across even
3 the offenders who violated residency restrictions.

4 Some of the early research coming out of
5 the 1970s that Doctor Taylor testified to earlier
6 suggest that offenders who are in violation of
7 residency restrictions are most likely hunting
8 their victims. And what my research shows is this
9 is indeed not the case. Those that are in
10 violation of residency restrictions are nowhere
11 near children. So that's a mouthful but that's
12 what my study did.

13 Q. Now, you've mentioned one source that you
14 used in conducting this survey, that being the
15 auditor's website, or the Franklin County auditor,
16 is there any other type of information that you
17 consulted with prior to conducting your study?

18 A. Yes. The goal of the study was to
19 determine how restrictive housing is for
20 offenders, not to determine an accurate census of
21 housing within the county. And so I wanted to use
22 the same processes utilized by the Franklin County
23 sheriff in making their determination. And so I
24 used both the auditor's website and the Franklin
25 County sheriff's database to determine when an

1 offender or a parcel violated the buffer zone.

2 The sheriff have a database where you enter
3 an address and the little star pops up on the map
4 and a little thousand foot ring pops up and it
5 shows the schools in vicinity and it tells you if
6 any of those are in violation of the thousand foot
7 restriction. So those are the processes I used.

8 Q. Now, were you able to consult with any
9 other reports or statistical analysis regarding
10 the accessibility of housing to people designated
11 as sexually oriented offenders?

12 A. Yes. As Doctor Taylor mentioned earlier,
13 there's a substantial amount of research out there
14 that discusses what researchers like myself like
15 to call the collateral damage of things, like
16 residency restrictions and registration.
17 Basically, we find that when residency
18 restrictions or registration are in place,
19 offenders have a much harder time reintegrating
20 into society and avoiding the kind of risk factors
21 that we think cause recidivism.

22 For example, residency restrictions often
23 force offenders to move away from their homes or
24 make it difficult for them to find homes. They
25 sometimes force families apart. They sometimes

1 turn community against offenders. These are all
2 the kinds of things that in the recidivism
3 research is emphasized as important if an offender
4 is not to recidivise. In other words, by
5 disturbing the family unit and taking away the
6 family support we may, in fact, be making our
7 communities less safe.

8 Q. Now, are there any reports out there that
9 are in direct conflict with what you have in your
10 report?

11 A. In discussion to the residency
12 instructions, there is one study that I mentioned
13 previously that came out of the 1970s that found
14 offenders were violating residency restrictions
15 and concluded that they must be doing so to hunt
16 their victims. So no data was presented in that.
17 It was a suggestion to refer to the research; as
18 we as researchers determine if that was the case.
19 My research demonstrates that is not the case.

20 Other than that, the residency restriction
21 research is almost universally on the side of
22 residency restrictions provide no community
23 benefit and instead cause harm to both the
24 community at large and offenders and their
25 families in general.

1 Q. Okay. Now we've briefly -- or you briefly
2 talked about the homelessness and how the level of
3 one's income will affect where they live. Can you
4 briefly discuss some of the economic factors that
5 relate to residency restriction.

6 A. Sure. And actually as a researcher, I
7 found this to be fascinating. When I was looking
8 at the income factors and the idea that children
9 reside in these homes, I wanted to control for
10 items that I thought related to that. Microsoft
11 has a population density. You know in inner city
12 areas, more people reside in apartments, more
13 people reside in multi-family homes. We have
14 higher population density, which means more
15 children, which means more schools, not to mention
16 land is cheap and more schools get built there.

17 What I found is that's actually not the
18 case. The population has nothing to do with these
19 economic factors or anything to do with the number
20 of children in homes. That indicates to me that
21 offender's housing is based largely on their
22 economic circumstance. And there's substantial
23 literature out there that the idea that being a
24 registered sex offender and having community
25 notification and registration requirements hurt

1 sex offenders substantially.

2 Let me give you an example. Okay. Take
3 Mr. [REDACTED]. He lives with his parents. And you
4 discussed the idea that he might some day want to
5 move out of his parents' home.

6 Q. Right.

7 A. Which I'm feeling him there. I left when I
8 was 18. I presume all of us can appreciate the
9 idea of leaving one's parents' home.

10 But lets say he wants to move out of his
11 parents' home. Let's say like most young people
12 starting out in their career his income is not as
13 high as somebody who is mid-career. He's going to
14 have more economic burden. He just makes less
15 money. Young people who make less money tend to
16 live in areas where things cost less and they tend
17 to rent and not own.

18 Based on that, Mr. [REDACTED] is going to have
19 an incredibly hard time to find a place to live.
20 Now, if he was already affluent, if he had plenty
21 of money and already owned a home, his life would
22 be substantially easier. But solely based on his
23 age and the fact that he's starting out only about
24 20 percent of the county is open to him. If he
25 wants to live anywhere near the center of the city

1 where most of the jobs are, or if he doesn't have
2 a car or reliable transportation and he needs to
3 live near public transportation, his options are
4 limited further. His economic situation will make
5 a substantial impact on where he can live. I find
6 the whole situation to be somewhat disturbing.

7 One of my larger expertises is residential
8 mobility is a concept that as a society we are
9 stratified. There are people who have more and
10 there are people who have less. The idea that
11 this law takes people who have less and forces
12 them into poorer areas and forces them into having
13 even less causes me quite a bit of concern both as
14 a researcher who understands how GINI impact the
15 macroeconomic situation and as a citizen. I find
16 it very concerning that all the evidence suggests
17 that what we do with residency restrictions is we
18 force offenders into poor areas. And poor areas
19 have more crime and areas with more crime increase
20 recidivism.

21 Q. Now, Ms. Red Bird, you had mentioned
22 earlier about limited accessibility to employment.
23 Are there other limitations that will be imposed
24 in your studies like looking at, let's say,
25 hospitals or other types of resources that we all

1 take for granted?

2 A. Oh, absolutely. I mean, my study took that
3 random sample of about almost 1,900 parcels in the
4 county. And in that we turned up a few random
5 things. For example, we turned up a couple of
6 nursing homes, a couple of hotels that turned up
7 in the sample by random coincidence. In those
8 instances they were off limits, too. Which means
9 if Mr. [REDACTED] ever needs to be admitted to a
10 hospital for a long period of time or he ever
11 needs nursing home care for any of the mental
12 illnesses that he's discussed, his options on
13 where he can get care are limited. Which we all
14 know how insurance works. If insurance tells you
15 you can only go to A, B, or C and A, B, or C are
16 off limits, then Mr. [REDACTED] suddenly has a health
17 problem as well as a housing problem.

18 I also find political implications herein
19 to be somewhat disturbing.

20 MR. TAYLOR: Objection. Relevance.

21 THE COURT: Overruled.

22 A. I'm talking about Mr. [REDACTED]'s political --

23 THE COURT: Overruled.

24 You can answer.

25 A. Okay. Thank you.

1 For instance, if he wants to choose to live
2 in an area that he feels represents his political
3 views on city and local politics, I think we all
4 know that local areas have as much politics and
5 different cites of citation law. If he ever
6 chooses to live in a place where he is more
7 representative of people of his particular age and
8 sociodemographic variables he's going to live in
9 an area where he can't find housing. If Mr.

10 [REDACTED] wants to move to a young area where college
11 students are, he's kinds of out of luck, which
12 means he doesn't get represented by the kind of
13 local representation that college students tend to
14 elect. And suddenly, I think he's in an area of
15 town that doesn't necessarily represent his
16 interests as a young person.

17 Q. Ms. Red Bird, earlier today we had
18 testimony presented about recidivism rates and
19 percentages. And it seems like there was a little
20 bit confusion with that. Based on your experience
21 and statistics, can you provide a detailed
22 explanation of how recidivism rates and
23 percentages are determined?

24 A. Yes.

25 MR. TAYLOR: Objection.

1 THE COURT: Overruled.

2 A. Recidivism is a rate that represents a
3 group number. We say as a group a certain subset
4 of offenders based on whatever characteristics we
5 want to define as have a certain recidivism rate;
6 i.e., if it's a five percent recidivism rate, five
7 out of a hundred offenders in that group committed
8 a re-offense.

9 I think where the confusion came earlier is
10 what Doctor Taylor was saying first off which is
11 that there's a billion and a half ways to
12 characterize offenders and that is very difficult
13 to take a study over here that classifies them as
14 felony -- I don't know how you guys label
15 felonies -- but Tier I, II and III and compare
16 that recidivism rate to Minnesota that
17 characterizes them by age of the victim or race of
18 the victim, race of the offender. The number of
19 factors that can be considered here are extensive.
20 This was very difficult to compare one group of
21 offenders to another group of offenders and see
22 who recidivises more.

23 When it comes to Mr. [REDACTED], he doesn't
24 have a rate of recidivism. He's an individual.
25 He will recidivise or he won't. It's not that he

1 has a five percent chance of recidivising. We
2 can't take that broad five percent which is a
3 macro statistic based on sample of the population
4 and apply it in the micro to one person. It's
5 illogical fallacy. It doesn't work.

6 When we talk about does a group ever have a
7 zero percent recidivism rate, you're asking to
8 make a transition of science that was done on the
9 macro level to the micro incident. It doesn't
10 work.

11 MS. WERNER: Thank you. No further
12 questions at this time.

13 THE COURT: You may cross.

14 MR. TAYLOR: Thank you, Your Honor.

15 - - -

16 CROSS-EXAMINATION

17 BY MR. TAYLOR:

18 Q. Ms. Red Bird, as I understand your
19 testimony, you're coming down squarely on the side
20 of the public and have no interest in learning
21 about sex offenders in the community.

22 A. I don't understand.

23 Q. Well, my question is, is you seem to think
24 that sex offenders are best off if the community
25 is ignorant of the conviction.

1 A. I studied the affect of residency
2 restrictions on neighborhoods and communities. I
3 don't have an opinion.

4 Q. Well, you found it disturbing that the
5 regulation is working the way it is.

6 Now, Mr. [REDACTED], his current residence is
7 not subject to the thousand foot restriction, is
8 it?

9 A. I don't believe so.

10 Q. He's living in a place where he can
11 continue to live apparently?

12 A. I don't know. I've never googled his
13 house. But he said it was, so I believe him.

14 Q. And you heard his testimony, correct?

15 A. Yes. He said it wasn't --

16 Q. He has no present plans to move?

17 A. All right.

18 Q. So he's within at least the 20 percent you
19 say that's available to him already?

20 A. I think you're misunderstanding. I don't
21 know anything about Mr. [REDACTED]'s current home. I
22 imagine that if you all told him he can live there
23 because it doesn't violate a thousand foot
24 restriction, I'm going to go with you on that.

25 Mr. [REDACTED]'s home does not necessarily fall

1 within the economic census tracts that I
2 discussed. I don't know where his home is. So if
3 you want specific restriction information on the
4 neighborhood in which he resides, I'm going to
5 have to go read my report and pull up that exact
6 census tract. I don't know where he lives. So I
7 can't say anything about his specific home.

8 Q. Okay. And you just studied Franklin
9 County; is that correct?

10 A. That is correct.

11 Q. Didn't study other counties adjoining
12 Franklin County?

13 A. No.

14 Q. And when did you do your studies?

15 A. It was concluded in March of this year.

16 Q. Actually the thousand foot restriction had
17 been in effect for school since 2003; is that
18 correct?

19 A. I don't know when various restrictions were
20 enacted in 2003.

21 Q. You don't know when it went into effect?

22 A. No.

23 Q. Do you know what changes Senate Bill 10
24 made to the thousand foot restriction?

25 A. No.

1 Q. Okay. Is there any guarantee that if the
2 thousand foot restriction didn't apply that the
3 defendant could be able to get the apartment or
4 the home in the 50 percent of residential parcels
5 that's unavailable?

6 A. I'm a scientist. I don't guarantee
7 anything.

8 Q. So the homeowner, the current homeowner,
9 the current landlord could ask him about sex
10 offense conviction; isn't that correct?

11 A. I'm not a landlord. I don't know what they
12 do.

13 Q. So technically this 50 percent number may
14 not really mean much because a substantial
15 percentage of that could relate to landlords and
16 homeowners --

17 A. No.

18 Q. -- who aren't willing to sell or rent to a
19 sex offenders?

20 A. No. I'm sorry. You misunderstand. The
21 20 percent that is available to him is what's
22 available to him under current law. It has
23 nothing to do with whether or not a homeowner is
24 willing to sell or whether or not a landlord is
25 willing to lease.

1 If you look at it from that respect you
2 would find that I would at least assume that some
3 landlords are unwilling to lease based on criminal
4 conviction. And so he would have even less than
5 20 percent available.

6 Q. You said 50 percent of the county, of the
7 residential units in the county are subject to
8 this thousand foot restriction.

9 A. Correct.

10 Q. And then you used economics or the income
11 level or socioeconomic level to conclude that in
12 reality only 20 percent of the residential units
13 are available to sex offenders?

14 A. Rephrase in layman's terms, yes, that's
15 what I do.

16 Q. Now, 50 percent is available --

17 A. Yes.

18 Q. -- to sex offenders?

19 A. Yes.

20 Q. It's only when you put in the economic or
21 socioeconomic factors that you talked about --

22 A. Yes.

23 Q. -- that it goes down to 20 percent?

24 A. Yes.

25 Q. And my contention and my question to you

1 is, is that there's nothing that says that the
2 50 percent that's unavailable to the defendant
3 under the law would be available otherwise because
4 you made no determination of the availability of
5 renting or owning a home in that 50 percent to sex
6 offenders because landlords and homeowners can ask
7 the offender, are you a sex offender and make
8 judgments on their own? You made no allowance for
9 that?

10 A. I didn't study that. I studied how
11 available housing is under current law. I didn't
12 survey homeowners or renters or anybody to
13 determine how they screen their clients.

14 Q. And the 70 sex offenders you found they
15 were homeless, they are not limited to residential
16 areas, are they?

17 A. Residential and nonresidential refers to
18 land usage. It's zoning that is used by the
19 auditors's website. I don't think people get
20 zoned. So no.

21 Q. That's what I'm saying. The homeless
22 people are not limited to something zoned
23 residential because they can go find a park bench
24 somewhere and sleep on it?

25 A. It's my understanding that the sheriff's

1 office then makes them reregister their address
2 every day. And if they don't have an address,
3 they are required --

4 Q. What's your basis for?

5 A. To register the corner on which they sleep.

6 Q. What's your basis for that comment?

7 A. The sheriff office policy memo that came
8 out.

9 Q. Do you have that memo?

10 A. I don't have anything.

11 Q. Okay. Currently one-third of sex offenders
12 are in violation?

13 A. Correct.

14 Q. But two-thirds of sex offenders are not in
15 violation. They've managed to find residences; is
16 that correct?

17 A. 100 percent minus a third is two-thirds.

18 Q. And you have no basis to conclude the
19 defendant is currently in violation?

20 A. I don't have a basis to conclude anything
21 about his home. I don't know where he lives.

22 Q. You've made the statement that sex
23 offenders have a harder time reintegrating into
24 the community --

25 A. Right.

1 Q. -- because of residential restrictions; is
2 that correct?

3 A. Yes.

4 Q. Again, isn't the real problem with
5 reintegrating the fact that they stand convicted
6 of a sex offense conviction?

7 A. Actually, no. And there are studies out
8 there that have done an excellent job of weeding
9 out the difference in sex that takes place on
10 offenders reintegrating based on (A), they have an
11 offense in general. I mean, if you're coming out
12 of prison and you've been there for a while, we
13 can expect that life is not going to be as smooth
14 for you as if you say you weren't.

15 (B) having a sex offense. And there is
16 some evidence to indicate that simply having a sex
17 offense is taboo enough to cause different
18 restrictions on reintegration than regular
19 offenses.

20 But then (3), residency restrictions. And
21 there is evidence to indicate that residency
22 restrictions on their own, even aside the other
23 factors, create problems with community stability,
24 family support and reentry.

25 Q. Because it notifies the public of where the

1 defendant is living?

2 A. I was under the impression residency
3 restrictions were about a thousand feet and not
4 about community notification.

5 Q. Well, I think it's both because they have
6 to register their thousand foot restricted
7 residence, too. But, in any event -- and you see
8 no community benefit to the residential
9 restriction?

10 A. My concern is the evidence that is coming
11 out now that actually suggests we make our
12 communities less safe via these laws.

13 Q. And you did your study again after the
14 residency restriction went into effect?

15 A. I believe what you're asking is whether or
16 not cause/effect analysis was conducted in my
17 report. And the answer is the information is not
18 longitudinal in nature. It is in effect a
19 single-point-in-time study of current residency
20 restrictions. As such, no cause/effect
21 conclusions are presented in my data.

22 Q. So that if the offenders are living in
23 neighborhoods that have less children in them --
24 and I think that's your testimony?

25 A. Yes.

1 Q. That could be because they're following the
2 residential restriction in living in a
3 neighborhood that's not adjoining a school?

4 A. Except that I found the same pattern
5 amongst offenders that were in violation of the
6 residency restriction indicating that the
7 restriction is independent of their choice of
8 housing.

9 MR. TAYLOR: No further questions, Your
10 Honor.

11 THE COURT: Thank you.

12 Further questions, counsel?

13 MS WERNER: Yes, Your Honor.

14 - - -

15 REDIRECT EXAMINATION

16 BY MS. WERNER:

17 Q. Ms. Red Bird, do you have a law degree?

18 A. No.

19 Q. Are you a scholar in Chapter 2950?

20 A. I don't know what that means.

21 Q. 2950 is the registration requirements. Did
22 you need to consult with that in order to conduct
23 your analysis in this report?

24 A. As I stated, I wanted to use the same
25 procedures used by the sheriff's office in making

1 a determination about whether or not the
2 defendant, an offender will be removed or evicted
3 from a property. I honestly don't care about past
4 or present statute. I'm a not a legal scholar.

5 Q. Okay. So your expertise is in terms of
6 housing and numbers, correct?

7 A. Correct.

8 Q. That will be a correct assessment?

9 A. Yes.

10 Q. Okay. I think that we do have some
11 confusion with one of the percentages that you
12 told us earlier.

13 A. All right.

14 Q. There's been some discussion of 50 percent
15 which is off limits. Can you please define what
16 is this 50 percent? Does that also include
17 nonresidential areas? Does that also include
18 commercial areas?

19 A. Okay. 50 percent of residential parcels in
20 the county are not within violation of a thousand
21 foot buffer zone.

22 ■ Okay. So that is the starting point. We
23 then must examine that 50 percent to determine
24 what characteristics exist within that 50 percent
25 if we're to learn anything. And it's what

1 scientist use. We take something and break it
2 down into its parts. That 50 percent then is
3 skewed across the income distribution. Areas
4 where people are richer have a lot more than
5 50 percent available. Places where incomes are
6 poorer have a lot fewer. In the instance of
7 poverty, 20 percent only is available. This is
8 not a question of whether or not a landlord will
9 rent to anybody. This is solely a question of how
10 does this law impact an offender's residential
11 choice location. That's it.

12 Now, I would presume, as I suggested
13 earlier, that some landlords are going to turn you
14 down if you've got a conviction. But I'm also
15 going to presume that as the prosecution stated,
16 two-thirds of them had found places and the bulk
17 of those places are apartments and multi-family
18 homes. So I'm going to presume based on that fact
19 that there are landlords that will rent.

20 But those are the only two assumptions we
21 can make. My data does not survey landlords. So
22 I cannot tell you how that 20 percent breaks down
23 into willing to rent and not willing to rent.

24 MS WERNER: Thank you.

25 THE COURT: Anything further?

1 MR. TAYLOR: Just a couple more questions.

2 - - -

3 RECROSS-EXAMINATION

4 BY MR. TAYLOR:

5 Q. Who hired you to do the study?

6 A. Nobody.

7 Q. You just did it on your own?

8 A. I got asked a question. I didn't get paid.

9 Q. Who asked you the question?

10 A. The public defender's office.

11 Q. What information did they give you to give
12 you the framework to do the study?

13 MS WERNER: Your Honor, asked and answered
14 already. Objection.

15 THE COURT: She can answer it again. She's
16 not doing a bad job of answering questions.

17 THE WITNESS: I'm kind of mouthy.

18 THE COURT: No. You've done fine.

19 A. They didn't give me any information. They
20 asked the question: How do current residency
21 restrictions affect housing availability for sex
22 offenders.

23 BY MR. TAYLOR:

24 Q. So you didn't know what the law provided,
25 correct?

1 A. They didn't give me what the law provided.

2 Q. Exactly. And you didn't know when the law
3 went into effect; is that correct?

4 A. No. You're presuming that because the
5 public defender's didn't give it to me I couldn't
6 look it up on my own.

7 Q. You have already just said you don't know
8 what RC Chapter 2950 means?

9 A. I don't know your code numbers. I'm
10 dyslexic and that's a lot of numbers. I do know
11 when Senate Bill 10 took effect and what it says.
12 I just don't know your numbers.

13 Q. Okay. So you do know the content of the
14 residency restriction after all?

15 A. Thousand foot, school, child care, daycare.

16 Q. Okay. And you didn't know when the school
17 restriction went into effect. You already
18 testified to that. Isn't that correct?

19 A. Sure. It was January last year I think.
20 Could have been July. So, no, I clearly don't
21 know.

22 MR. TAYLOR: Okay. Thank you.

23 THE WITNESS: It's in my report if you want
24 to read it.

25 MR. TAYLOR: No further questions, Your

1 Honor.

2 MS WERNER: I do have a further question.

3 - - -

4 FURTHER REDIRECT EXAMINATION

5 BY MS. WERNER:

6 Q. Now, in coming up with your numbers and
7 research that you've done, is there any way that
8 the date of its enactment would change your
9 numbers? Would that have an affect on the
10 percentages that you've come up with?

11 A. You're asking me if my data is wrong, would
12 that change my conclusions?

13 Q. No, no, no. What I'm asking is, let's say
14 that this was enacted in 2000 as opposed to 2008,
15 would that change your numbers since you did your
16 study based on the conditions in 2008?

17 A. No. My conclusions are about current
18 residency restrictions and current registered
19 offenders. When the law took effect has no place
20 in my discussion.

21 I will tell you this, though, I'm currently
22 working on getting the data dating back to a year
23 after Megan's Law was implemented and a year after
24 basic Ohio registration was implemented to see if
25 we can demonstrate a time/causation effect on how

1 residency restrictions rise into poor areas.

2 Q. Okay. One more.

3 You stated that you wouldn't be able to
4 give any type of opinion as to where he's
5 currently living just off the top of your head?

6 A. Uh-huh.

7 Q. Do you have -- is that information
8 documented anywhere?

9 A. Yeah. It's in my report.

10 Q. If I were to give you a copy of that, would
11 that refresh your recollection to give the Court
12 any indication as to his current living
13 conditions?

14 A. Yeah. Sure.

15 MS. WERNER: Can I have permission to
16 approach?

17 MR. TAYLOR: You just going to show her the
18 whole report?

19 BY MS. WERNER:

20 Q. Now, he has stated his address earlier and
21 the zip code of that being 43119.

22 A. Okay.

23 MR. TAYLOR: Objection. I don't believe he
24 gave a zip code, Your Honor.

25 THE COURT: Okay. He didn't give it.

1 What's the zip code anyway? If it's 43119 -- go
2 ahead and look, Ms. Red Bird.

3 THE WITNESS: Okay. Thanks.

4 A. 43119 you'll see on page 14 contains
5 approximately 8,300 parcels out of the total found
6 in the county. Of that I sampled 37. And then I
7 give you strata weights for anybody who finds
8 strata weighting to be fascinating. 43119, if you
9 look on the map on page 15, seems to be out west.
10 It seems to be a mildly small area. So I would
11 conclude from this map that he's not in city
12 center. He's in an area with less population
13 density. What city did he say he was in?

14 BY MS. WERNER:

15 Q. I believe he said he was in Galloway.

16 A. Okay. So I think based on the city, I
17 don't know that much about Franklin County
18 geography, but I think that's bordering on a rural
19 county. I don't know that the census defines any
20 zip code in the county as truly rural. According
21 to this, there are 21 offenders currently
22 registered in that county, page 17.

23 THE COURT: In Galloway or --

24 A. In the zip code, sorry, in 43119. His zip
25 code falls about the average in terms of the

1 number of offenders per capita.

2 Okay. If we look on page -- I'll find it.
3 It's long. I told you I'm wordy. Okay. If you
4 look on page 29 we can see the income data for his
5 area. His area seems to be somewhat poor but not
6 as poor as some inner city -- I'm sorry. That's
7 the wrong zip code. The area median income for
8 43119 is above the county's median and their
9 poverty rate is below the county median. Their
10 rent and home values are also above the county
11 median and the number of homes with children are
12 substantially above the county median. So I would
13 conclude from that, that area is more affluent
14 than average and has more families with children
15 than average.

16 MS. WERNER: Thank you, Ms. Red Bird. I
17 have no further questions at this time.

18 THE COURT: All right. Anything?

19 MR. TAYLOR: Nothing further, Your Honor.

20 THE COURT: All right. Thank you, ma'am,
21 you may step down. Thank you very much.

22 Anything else?

23 MS WERNER: No further witnesses, Your
24 Honor.

25 THE COURT: Okay. Anything on behalf of

1 the State?

2 MR. TAYLOR: Your Honor, I think we need to
3 have the Defense specify what constitutional
4 challenges they're raising. Maybe we can knock
5 those out of the box right away.

6 THE COURT: All right.

7 MR. TAYLOR: The thousand foot restriction
8 obviously is not ripe for determination. He
9 doesn't reside within a thousand feet of a
10 prohibited area and no present plans. It's just
11 this vague cloud of he might move. And the cases
12 are clear that that doesn't make the issue a
13 constitutional challenge for the residential
14 restriction ripe for constitutional review above
15 and beyond the problems of this being a criminal
16 court proceeding and not a declaratory judgment
17 action or eviction action.

18 THE COURT: All right.

19 MR. TAYLOR: But I haven't heard what
20 constitutional challenges are being even raised at
21 this point.

22 THE COURT: Counsel.

23 MS WERNER: Your Honor, we are prepared to
24 raise the argument that this is excessive
25 punishment in violation of the Eighth Amendment as

1 applied to Mr. [REDACTED] and how this constitutes as
2 cruel and unusual punishment and also how this is
3 a violation of substantive due process.

4 I did have a brief chance to look over the
5 case in which I believe Mr. Taylor is relying on
6 in stating that the residency restriction issue is
7 not ripe for adjudication at this time.

8 However, the case he presented with us
9 earlier can be distinguished from Mr. [REDACTED] in
10 that the defendant in that case was incarcerated;
11 whereas, Mr. [REDACTED] is out of jail and this
12 residency restriction attaches to him as of now.

13 THE COURT: All right.

14 MR. TAYLOR: Your Honor, if I may, the
15 *State ex rel. O'Brien versus Heimlich* rejects the
16 substantive due process challenge to the residency
17 restriction. The cruel and unusual punishment
18 challenge -- well, I mean you have to look at
19 *Gilfillan*. *Gilfillan* addresses some of the
20 constitutional issues and recognizes that Senate
21 Bill 10 is not punitive at all to begin with. But
22 even under cruel and unusual punishment challenge
23 they'd have to show it's grossly disproportionate
24 to the offense. And I haven't quite heard
25 anything that shows it's grossly disproportionate

1 to the offense to have someone that victimized a
2 14-year old girl multiple times to have them
3 register and reverify twice a year and those
4 issues. So I don't even think these are in the
5 ballpark, for the Court of Appeals has already
6 rejected the substantive due process to the
7 residency restriction. I think the same analysis
8 would apply to the registration requirements
9 generally. Thank you.

10 THE COURT: All right. Anything further?

11 MS WERNER: Your Honor, in looking at the
12 cases that Mr. Taylor has provided us with this
13 morning, while *Christian* held in a split decision
14 that general facial constitutional challenge to
15 sex offender registration is not appropriate at
16 sentencing, there's been no decision regarding,
17 and as applied to the constitutional argument.
18 There's no basis to say that sentencing is not an
19 appropriate time to discuss the constitutionality
20 of Senate Bill 10 as applied in this particular
21 situation to Mr. [REDACTED] in his unique situation.

22 THE COURT: All right. You know, I think I
23 understand the nature of your argument with
24 respect to Mr. [REDACTED] and I fully comprehend and
25 appreciate the testimony that's been presented by

1 your witnesses here today.

2 But in reviewing the law, Senate Bill 10
3 and the nature of the act itself, it basically, as
4 I stated earlier, removes from the trial court the
5 ability to make any determination with respect to
6 the application of that law. It merely states the
7 net effect of the law is that when a person is
8 either -- when a person is convicted of the
9 offense based upon the nature of the offense, the
10 trial court loses the ability to make any
11 determination as to what the application of the
12 reporting requirements are and the registration
13 requirements are. It's determined by the nature
14 of the conviction or the plea.

15 And it merely states that in an instance
16 such as this one, when Mr. [REDACTED] entered a plea
17 to an offense that carries with it the requirement
18 that he be classified as a Tier II offender, this
19 Court does not, at least I don't see it -- and I
20 may agree with the testimony that was presented
21 about the ramifications of the law and what it
22 does to individuals and what it does to the
23 community, that still is not something that I as a
24 trial court judge in the instance that we are in
25 today, at least through my assessment of the law,

1 have the ability to do anything about it with
2 respect to whether it should apply or should not
3 apply. That's been pretty much taken out of my
4 hands with respect to does it apply to him or
5 should it not be applied to him.

6 I agree and I think for the purpose of your
7 desire, his desire to pursue this further, I think
8 affording you the opportunity to present the
9 testimony that you've presented, I don't know what
10 the outcome of it will be, but from the
11 perspective of what I have to do here today and
12 what I'm required to do under the law is that I
13 think I am required to deny your request and to
14 proceed to sentencing and also to make a
15 determination of what tier he falls in and proceed
16 from there. With respect to this particular case
17 and the testimony that I've heard which applies,
18 not only I think to this case, but probably to a
19 number of other cases -- and I'm not saying that
20 in all cases it's appropriate to hear additional
21 information, but I guess I have some concerns
22 about how certain matters are handled. And that's
23 something that I have a concern with and I
24 expressed my concerns. And I also realize that
25 there are some limits to some of the things that I

1 can do. And when I have the ability to do
2 otherwise, I will do otherwise. When I don't have
3 that ability, it's futile and useless for me to
4 try to do other than what I am required to do and
5 can do under the law.

6 I do feel that the testimony that I've
7 heard here today, it's relevant. I think some of
8 the testimony that I've heard here today,
9 certainly if I were a legislature and was in any
10 position to make decisions about what the law
11 should be and how certain matters should be
12 handled, then I would be in a different position
13 to make a decision with respect to what the law
14 should be. But as long as the legislature has
15 enacted this law and it's been adopted and it is
16 the law, then as a Judge when I step up and hold
17 my hand up, I have to follow the law. And in this
18 case I have to follow the law.

19 Therefore, the Court will deny your request
20 and we'll either proceed today or we will proceed
21 when Mr. Shartzler is available. That's entirely
22 up to you all. You can make that decision.

23 MS WERNER: Just one moment, Your Honor.

24 MR. MULRANE: Your Honor, may we approach
25 the bench, please?

1 THE COURT: You may.

2 - - -

3 Thereupon, Court and counsel confer at the
4 bench out of the hearing of the jury off the
5 record.

6 - - -

7 MS. WERNER: Your Honor, can we be official
8 on the record and move to submit Beth Red Bird's
9 report into evidence?

10 THE COURT: By all means.

11 MS WERNER: Okay. Thank you.

12 THE COURT: Any objections on behalf of the
13 State?

14 MR. TAYLOR: Yes, Your Honor. We object
15 for all the reasons that were stated.

16 THE COURT: For what?

17 MR. TAYLOR: We object for all the reasons
18 we stated earlier that the court lacks
19 jurisdiction to consider evidence of
20 constitutionality.

21 THE COURT: We took her testimony, correct?

22 MR. TAYLOR: We did. And I got an
23 objection on the record to everything. So I'm
24 objecting again to make sure.

25 THE COURT: The report will be accepted and

1 be able to become a part of the record. I mean,
2 it only goes to her testimony and she did submit
3 testimony from the record itself. It will be made
4 a part of the record.

5 Anything else?

6 MS WERNER: Nothing further, Your Honor.

7 THE COURT: Thank you. We'll meet. You
8 all get a date from Carla and we'll have
9 sentencing at that time.

10 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true, correct, and partial transcript to the best of my ability of the proceedings in this matter of July 7, 2009, taken by me and transcribed from my stenographic notes.

**COPY NOT
FOR FILING**

Carla D. Manahan
Assistant Court Reporter