

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ASSOCIATION TO PRESERVE AND)
PROTECT LOCAL LIVELIHOODS, *et al.*)

Plaintiffs,)

PENOBSCOT BAY AND RIVER PILOTS)
ASSOCIATION,)

Plaintiff-Intervenor,)

v.)

Civil Action No. 1:22-cv-416-LEW

TOWN OF BAR HARBOR, a municipal)
corporation of the State of Maine,)

Defendant,)

CHARLES SIDMAN,)

Defendant-Intervenor.)

**PLAINTIFFS’ REPLY TO DEFENDANT-INTERVENOR’S OPPOSITION TO MOTION
TO EXCLUDE REBUTTAL EXPERT WITNESS CHARLES SIDMAN**

The Plaintiffs, Association to Preserve and Protect Local Livelihoods (“APPLL”) and Plaintiffs B.H. Piers, L.L.C, Golden Anchor, L.C., Delray Explorer Hull 495, L.L.C., Delray Explorer Hull 493, L.L.C., and Acadia Explorer Hull 492, L.L.C. (the “Pier-Tender Plaintiffs”) (collectively, “the Plaintiffs”) hereby submit their Reply to Defendant-Intervenor’s Opposition to Exclude the expert witness, Defendant-Intervenor himself, Charles Sidman, under Fed. R.Evid. 702.

I. BACKGROUND

Pending before the Court is Plaintiffs’ Motion to Exclude Charles Sidman as a rebuttal expert. *See* ECF 125. In his Response (ECF 136), Defendant-Intervenor Sidman has narrowed

the topics on which he offers himself as a rebuttal expert and has demonstrated that he fails to meet Rule 702 standards for this role.

II. ARGUMENT

A. Charles Sidman has narrowed his rebuttal expert designation.

To begin with, Mr. Sidman has acknowledged, as he must, that he has designated himself solely as a rebuttal witness. *See* ECF 136 at 2. With only Todd Gabe, Ph.D. having been designated as an expert, Mr. Sidman's status as a rebuttal expert was necessarily dependent on Dr. Gabe's reports and findings. This being so, in his Response, Mr. Sidman has dramatically narrowed the scope of the topics as to which he proposes to offer his own expert testimony. He is now limiting his proposed expert testimony to "rebu[ting] Plaintiff's designated expert witness Mr. Todd Gabe to the extent admissible, as to the economic benefits and pedestrian impacts of cruise ship passengers visiting Bar Harbor." *Id.* at 2. Mr. Sidman has, therefore, eliminated the seven rebuttal expert topics listed in the "'Substance of Facts and Opinions" section of his rebuttal expert designation. *See* ECF 125-1 at 1 (Ex. A (Sidman Rebuttal Expert Designation)); *see also*, ECF 125, at 5-7. Even so limited, Mr. Sidman fails as a rebuttal witness.

B. Mr. Sidman lacks the qualification to offer an expert rebuttal opinion on Dr. Gabe's methodologies and findings.

Notably, it bears emphasis that Defendants have not challenged Dr. Gabe as an expert witness. His qualifications to offer expert testimony are not at issue. Instead, Mr. Sidman offers himself "to directly rebut Gabe's methodologies and conclusions." ECF 136 at 2-4. Mr. Sidman rests his expert credentials, **for this rebuttal testimony**, on his Bachelor's Degree from Harvard University as well as his Masters Degree and a Ph.D. in biochemistry and immunology from the same institution. *Id.* at 4. In addition, Mr. Sidman relies on his M.B.A. in business

management, a long-held professorship in “molecular genetics, biochemistry, and microbiology” to bolster his expert credential.

Dr. Gabe holds a Ph.D. in agricultural, environmental and development economics, which he obtained in 1999. Gabe Deposition Tr. at 8, attached hereto as Exhibit A. He has been a professor of economics at the University of Maine since 1999. *Id.* at 6. His expertise in economics lies more particularly within the application of econometrics and regression analysis. *See, e.g., Id.* at 119, 181. He has a further specialty in the field of regional economics. *Id.* at 216-217. Indeed, in one publication of experts in that subspecialty, he is listed 58th in the world in that field. *Id.*, 210-211.

Dr. Gabe’s article—“Measurement and analysis of neighborhood congestion: Evidence from sidewalk pedestrian traffic and walking speeds”—published in the June 2020 edition of “Growth and Change”, was published only after having been peer-reviewed. *Id.* at 206; *see also*, ECF 136-7, at 1-20.

Rule 702 authorizes expert testimony “in the form of an opinion”, if that testimony would “help” the trier of fact. Fed.R.Evid. 702. A witness who is qualified by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise, if: 1) the expert’s “scientific, technical or other specialized knowledge” must first ensure that that opinion will, in fact, “help” the trier of fact to understand the evidence or to determine a fact in issue; 2) the testimony must be based on “sufficient facts or data”; 3) the testimony must be “the product of reliable principles and methods”; and, 4) the expert must have “reliably applied [those] principles and methods” to the facts of the case. *Id.*

Rule 702 works in tandem with Rule 703 which provides that an expert may base an opinion on “facts and data” of which the expert is made aware, but that an opinion so based will

be admissible if “experts in the particular field would reasonably rely on those kinds of facts or data. Fed.R.Evid. 703. When measured against these standards, Mr. Sidman’s status as a would-be rebuttal expert to Dr. Gabe falls well short of the mark.

First, by his own admission, Mr. Sidman is not an economist. Sidman Deposition Tr. at 33 (6/06/2023), attached hereto as Exhibit B. Second, even though he is not an economist, Mr. Sidman acknowledges that Dr. Gabe’s methods and the means by which he reached his conclusions are accepted within the field of economics. *Id.* at 31-33. He also acknowledges that the “statistical models” (as he terms them, on which he believes Dr. Gabe relied are also generally accepted in the field of economics. *See, id.* at 37-41. Although conceding that Dr. Gabe’s methods and the statistical models on which he relied are acceptable within the field of economics, Mr. Sidman testified that he, himself, did “not need to” evaluate the statistical models that Dr. Gabe employed because “[m]y comments are the general applicability and use of models in general in toto. The specific ones [those employed by Dr. Gabe] are not a high priority here.” *Id.* at 42.

Indeed, Mr. Sidman made it clear that his criticism of Dr. Gabe, the methodologies he employed, and the conclusions that he reached, stemmed not so much from any particular failing on Dr. Gabe’s part but, rather, his general contempt for economics as an academic discipline. Although Mr. Sidman left open the possibility that some scholarly work in the field of economics might reach the standards he, Mr. Sidman, would require, it. In Mr. Sidman’s view, economics is a “soft” science which indulged “a whole bunch of assumptions” and which failed to measure up to the “hard sciences.” *Id.* at 30-31. In other words, in general, as a field of academic study, economics is just not up to Mr. Sidman’s standards as a medical researcher.

Third, although Mr. Sidman declared himself prepared to offer expert criticism of Dr. Gabe's pedestrian flow study—an assessment that was based on Dr. Gabe's structured observation of pedestrian flow pattern evaluations over 66 days in a 365 day period—he acknowledged that he, himself, had “never touched the subject” of evaluating the “pedestrian level of service in any location.” *Id.* at 179. Nor had he done any reading into this field. *Id.* at 180-181.

C. Mr. Sidman did not review or evaluate the sources underlying certain of Dr. Gabe's reports and articles.

Despite lacking the qualifications of an economist, Mr. Sidman's grasp of the subject was so comprehensive that he was able to reject the sufficiency of several of Dr. Gabe's works without having read them or evaluating the underlying sources or data. *Id.* at 221-225, 228-230, 233-235. But Mr. Sidman did not stop here, he denigrated the recognition that Dr. Gabe had received in his field. Contending that “a great deal was made Dr. Gabe being in the Top 100 in his economic subfield of scholars ranked by publications”, Mr. Sidman then disparaged that recognition as “a counting scheme” resulting from Dr. Gabe's works having appeared in “journals of low relevance and impact” enabling economists like Dr. Gabe who “have a whole lot of garbage” to gain recognition as “No. 56 in a Top 100 listing of participants in a given academic field.” *Id.* at 63-64.

D. Mr. Sidman should be excluded as a Rebuttal Expert Witness

The designation of experts as “rebuttal” witnesses is governed by Federal Rule of Civil Procedure 26(a)(2)(D)(ii) which authorizes such an expert when that expert's opinion “is intended solely to contradict or rebut evidence on the same subject matter identified by another party.” The role of a rebuttal expert is narrow: “A rebuttal opinion must directly address the subject matter of the opposing expert opinion and may not introduce new arguments or theories.”

Phenix Mutual Fire Insurance Co. v. Stanley Convergent Security Solutions, Inc., 2013 WL 3932528 (d. N.H. 2013), citing, *Glass Dimensions, Inc. v. State Street Bank & Trust Co.*, 290 F.R.D. 11 (D. Mass. 2013) and *Hellmann-Blumberg v. University of Pacific*, 2013 WL 3242699, at *2 (E.D. Cal. July 8, 2013).

When boiled down to its bare essentials, Mr. Sidman's expert opinion is nothing more than a series of debating points—such as the sufficiency of the data Dr. Gabe collected, the completeness and reliability of his analysis, and, the basis for the conclusions that he reached. Such questions could serve as the basis for Defendants' cross-examination of Dr. Gabe. However, through the many-sided Mr. Sidman self-designation as an expert, Defendant-Intervenor seeks to elevate those points into the realm of expert opinion. This should not be permitted because Mr. Sidman lacks the proper qualifications to testify to Dr. Gabe's methods and conclusions.

The requirement imposed by these rules that there be some equivalency in the field of the primary expert witness and the rebuttal expert is required by Rule 702 and Rule 703 of the Federal Rules of Evidence for good compelling reasons. This requirement not only ensures the rebuttal expert's critique will be relevant; it also ensures that, when subject to cross-examination, the rebuttal expert will, at least, acknowledge and remain within the boundaries of the primary expert's field. Without that, as Mr. Sidman's testimony amply demonstrated, the rebuttal expert becomes unmoored and can accept or reject any aspect of the primary expert's opinions and the bases for them without having to endorse any of the basic principles fundamental to the field—in this case, the field of economics.

The standards set by Rules 702 and 703 of the Federal Rules of Evidence are clear. Defendant Sidman had advance notice both as to Dr. Gabe's area of expertise, the reports he

produced, and, the findings therein. Mr. Sidman had every opportunity to find an economist who, within the ambit of this field, might have offered informed and relevant comment on Dr. Gabe’s process and findings. Mr. Sidman chose another course—he chose to anoint himself a protean expert possessed of an all-purpose scientific method, of which he, himself, is the unquestioned master, and, against which the whole “soft” field of economics, including Dr. Gabe’s studies, must yield.

There is no role under Rules 702 and 703 for such a “rebuttal” expert. Mr. Sidman should be excluded from assuming such a role in the trial of this case.

Dated this 23rd day of June, 2023.

Respectfully submitted,

/s/ Timothy Woodcock

Timothy C. Woodcock, Bar #1663
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2023, I caused the foregoing document to be served upon all counsel of record via email.

/s/ Timothy Woodcock

UNITED STATES DISTRICT
DISTRICT OF MAINE

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TOWN OF BAR HARBOR, a municipal)	
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Defendant,)	
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CHARLES SIDMAN,)	
)	
Defendant-Intervenor)	

ZOOM DEPOSITION OF: Todd Gabe, Ph.D.

BEFORE: Lisa Fitzgerald, Notary Public, via Zoom on
May 23, 2023 beginning at 9:07 a.m.

Maine Court Reporting Services
60 Starlight Drive
Brewer, Maine 04412
207-989-3264
Lisa@MeCRS.com

1 (This deposition was taken before Lisa Fitzgerald,
2 Notary Public, on May 23, 2023 beginning at 9:07 a.m.)

3 * * * * *

4 (The deponent was administered the oath by the
5 Notary Public.)

6 * * * * *

7 Todd Gabe, Ph.D., called, after having been duly sworn on his
8 oath deposes and says as follows:

9 EXAMINATION

10 BY MR. PAPAZIAN:

11 Q. Hi, Dr. Gabe. I'm Bobby Papazian. I'm with Curtis
12 Thaxter. I represent the defendant-intervenor, Charles
13 Sidman, in this case. This is -- this deposition is my
14 chance to ask you the questions.

15 Could you state your name for the record?

16 A. Todd Michael Gabe.

17 Q. Okay. So I'm going to ask you some questions. If you
18 don't understand the questions, I would prefer that you
19 don't answer. Let me know that you don't understand and
20 give me an opportunity to repeat or rephrase the
21 questions.

22 I'll do my best to make it understandable to you.

23 A. Fine.

24 Q. If you do answer the question, I'll assume that you
25 understood the question that I posed.

1 undergraduate degrees from Furman University.

2 Q. What are those degrees in?

3 A. At Furman, I was a double major in economics and Asian
4 studies. At the University of Minnesota, my master's
5 was in applied economics. At Ohio State University I
6 got a master's in economics, and at Ohio State
7 University I got a Ph.D. -- and this is a mouthful --
8 agricultural environmental and development economics,
9 they called it AED economics just to keep it short.

10 Q. Okay. Can you describe your work history?

11 A. I've worked at the University of Maine since 1999. It
12 was my academic job. Before that I was a research
13 assistant at Ohio State. That's just part of being a
14 graduate student.

15 Q. When did you graduate with your Ph.D.?

16 A. 1999.

17 Q. Okay. And then you went straight into teaching at the
18 University of Maine?

19 A. Yeah, I started here in 1999, at the University of
20 Maine.

21 Q. Have you ever taken breaks in between?

22 A. You get a sabbatical. I don't know if that constitutes
23 a break.

24 Q. What did you do during your sabbatical?

25 A. Research.

1 Harbor Place, how did you factor in the decrease of
2 concentration of people as you walked further away from
3 Harbor Place?

4 A. Oh, that's done in the regression analysis. So it
5 didn't matter where I was at in town when we were
6 counting the number of pedestrians, it was the same
7 method.

8 So whether you were walking close to Harbor Place
9 or whether you were walking closer to Havana or whether
10 you were walking closer to Hannaford, it was the same
11 type of data collection.

12 Q. But your conclusion was that the further you get away
13 from Harbor Place, the less concentration of people;
14 correct?

15 A. Yes, and that's through the regression analysis. So I
16 took the 2,000 -- let me make sure I get the right
17 number here. I took the 2,031 observations of the
18 number of people you encounter on the sidewalk, and I
19 used that in a regression model, and one of the
20 variables that was in the regression model was distance
21 away from Harbor Place. So that's how you estimate the
22 effect of distance from Harbor Place on the number of
23 people you encounter.

24 Q. But in a given observation, if you're starting at
25 Harbor Place and you were walking toward Havana for

1 collecting the data and doing the regression analysis.

2 So regression analysis is part of what you do in a
3 econometrics.

4 Q. Okay.

5 A. Econometrics is a field of economics that applies the
6 tools of statistics to the study of economics.

7 My sister got a Ph.D. in psychology, and she took a
8 class called -- I think it was called psychometrics, so
9 econometrics is just a broad field in economics, and
10 doing regression analysis is the most common tool that
11 you would cover in econometrics.

12 Q. Okay. And just, again, a 30,000-foot overview, what is
13 a regression analysis?

14 A. It's a way to statistically isolate the effect that one
15 variable has on another available.

16 Q. Thank you. I appreciate that. I'm going to jump around
17 a lot because I'm going to be covering topics that
18 Attorney Papazian may have touched on and I'll have some
19 follow-up questions, so bear with me.

20 I know there was discussion that you had
21 communications and attended cruise ship committee
22 meetings.

23 Have you ever attended any Bar Harbor council
24 meetings?

25 A. Yes, I was invited to one.

1 Now, is that a -- is that a peer-reviewed -- is
2 Growth and Change a peer-reviewed publication?

3 A. Oh, yeah, of course. Yes.

4 Q. Explain to me what that means to you?

5 A. It means that you submit the journal article, now it's
6 done online, it used to be done by mail, and it goes to
7 an editor who sends the paper out for peer review, so
8 you don't know the identify of the person that's
9 reading -- that's reviewing the paper. And then a few
10 months later, you get your referee comments that come
11 back.

12 Q. And is the idea of that in part to filter out articles
13 that may be unreliable or unsupported and the like?

14 A. Yeah, I mean -- yeah.

15 Q. So part of the peer-review process would be a review of
16 the methodology that was employed?

17 A. They review the whole paper, yes.

18 Q. Soup to nuts including the methodology?

19 A. Yes.

20 Q. Would it be your friends that reviewed it or who would
21 review it?

22 A. Whoever would be selected by the editor. Most editors
23 would send it to just whoever they thought would be a
24 good expert to review it.

25 Q. And it's true, isn't it, sir, that the Growth and Change

1 way.

2 Q. So that's something you would use -- econometrics is
3 something you would use every step of the way in
4 pursuing your field of specialized study, which is
5 economics; isn't that right?

6 A. Yes.

7 Q. But that's not something that you would expect anybody
8 to be familiar with; isn't that so?

9 A. Correct, yes.

10 Q. There was a suggestion earlier in this deposition that
11 you might not be an expert with respect to the subject
12 matter of Exhibit 7; do you recall that, sir?

13 A. Umm.

14 Q. I'm not asking if you take umbrage. I'm just asking if
15 you recall the suggestion?

16 A. Yes.

17 Q. Do you agree with that suggestion?

18 A. No.

19 Q. In fact, you've got years and years and years of
20 experience in this field; is that right, sir?

21 A. I don't know if this is appropriate, but there was a
22 study that came out in 2016 that did a ranking of
23 scholars in regional science, and this is a worldwide
24 list, if you will, and I was -- I was -- I figured on
25 this list as one of the top scholars in the world in

1 regional science.

2 Q. Where did you figure on that, Professor Gabe?

3 A. You had to ask. There are several different rankings --
4 if I can find it here -- 58th worldwide, and this is
5 for -- this is rankings for the top 100 authors by
6 number of publications in what they call the ten core
7 regional science journals.

8 And those journals are Annals of Regional Science,
9 Growth and Change, so published in something like Growth
10 and Change is considered a core regional science
11 journal.

12 Of course, that publication was not counted in
13 these rankings, because these rankings came out
14 before -- before that article.

15 Q. So you were ranked 58th in the world before the ranking,
16 before the publication --

17 A. Before that publication. International Regional Science
18 Review, Journal of Economic Geography, Journal of
19 Regional Science, Papers in Regional Science, Regional
20 Science and Urban Economics Regional Studies, and the
21 Review of Regional Studies.

22 So if you look at my vitae, you'll see papers in
23 multiple, you know, across these different journals,
24 and, again, these are considered the -- what do they
25 call them -- the ten core regional science journals, and

1 Q. Conclusions?

2 A. Yeah, analysis and results.

3 Q. Are you prepared to explain your analysis and the
4 results of your analysis to the court at trial?

5 A. Yes.

6 MR. KINGSTON: I pass the witness.

7 MR. WOODCOCK: Dr. Gabe, I just have a couple of
8 questions for you.

9 THE WITNESS: Sure.

10 EXAMINATION

11 BY MR. WOODCOCK:

12 Q. You've discussed your ranking under the heading of
13 regional science?

14 A. Yes.

15 Q. What is regional science?

16 A. Regional science is a multi-disciplinary field that
17 includes geographers, economists. I do, like, State and
18 locate economic studies. So we go to regional science
19 meetings.

20 This particular list focused on a handful of
21 journals that would be considered sort of the core of
22 the field of regional science.

23 Q. So the work -- first let me ask you. With respect to
24 the studies and reports that you've reviewed today that
25 you've prepared and you've testified about today, do all

1 of those fall under the broad heading of regional
2 science?

3 A. The one article -- let me go through all -- so the
4 Growth and Change article on sidewalk congestion, that
5 is considered one of the core journals.

6 So, again, if they were to -- if somebody were to
7 do this study today, this article would be counted
8 towards my ranking.

9 Also, the paper in the Review of Regional Studies,
10 the Review of Regional Studies is also one of the core
11 journals that's included in here.

12 So the journal -- the Journal of Regional
13 Analysis & Policy is not one of the ones listed in here,
14 and Applied Economics Letters is more of a general
15 interest economics journal.

16 Q. Let me ask the question a little differently. It
17 sounded like the way you were describing regional
18 science that it's a broad category of disciplines, and
19 the work you have done which you've identified here is a
20 subcategory, perhaps, of the broader term regional
21 science; is that correct?

22 A. Yeah, like I said, in regional science, there are
23 geographers that consider themselves to be regional
24 scientists. There are even people that call themselves
25 economic geographers that have a lot of -- an economic

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Defendant,)	
)	
CHARLES SIDMAN,)	
)	
Defendant-Intervenor)	

CONTINUED ZOOM DEPOSITION OF: CHARLES SIDMAN

BEFORE: Lisa Fitzgerald, Notary Public, via Zoom on
June 6, 2023 beginning at 9:03 a.m.

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1 So his results and conclusions are equivalent to, I
2 walked around Bar Harbor for a bunch, and I counted some
3 numbers a bunch, and these are the numbers that I got.

4 Do they mean anything with that level of precision
5 and reporting? No. My expert opinion is they mean
6 absolutely nothing. So, again, his sidewalk crowding
7 study is not worth the paper it's printed on.

8 Q. And what would, in your view, have been required for the
9 Sidewalk Crowding Sites & Routes Investigated by
10 Dr. Gabe to have made his report and investigation
11 supportable?

12 A. He would have had to have a table or an addendum
13 available with the date, the time, and the specific
14 routes walked on his 61 exploratory walks around
15 Bar Harbor.

16 Q. Anything else?

17 A. No, that's it. It's very simple.

18 Q. Okay. Subsection c, Hard vs. Soft Science; Natural vs.
19 Social; Experimental & Predictive.

20 What's the issue there?

21 A. Okay, so the academic field, the discipline that
22 Dr. Gabe is part of, economics, if you will, has been
23 termed historically the dismal science, and that is
24 broadly and customarily taken to mean that, it's not
25 really a science but they claim it to be.

1 Now, an historical fact that is not the origin of
2 the term, dismal science, that term arose completely
3 otherwise -- and I can explain it if you like -- but the
4 nature of the field is such that economists start with a
5 whole bunch of assumptions, and then they claim
6 numerical gains, and they get number outputs, and the
7 numbers are not confirmable, reproducible, they're not
8 predictive.

9 So it's -- it's sometimes argued whether it's a
10 science or not. I will simply say generously, it's a
11 soft science as opposed to a hard science, which deals
12 with experimentation and prediction.

13 And the distinction there is not natural science
14 like genetics or chemistry versus social science, like
15 economics or psychology, because economics can be done
16 fully rigorously, psychology can be done fully
17 experimentally and rigorously.

18 So it's just a matter of how scholars like Dr. Gabe
19 proceed and the respect that they are accorded by harder
20 more rigorous scientists of my flavor.

21 His work was accepted in peer-reviewed journals,
22 his peers, I think it is largely nonsense and fluff but
23 there it is. We have different views of his science as
24 opposed to chemistry and genetics and biology, which are
25 experimental, rigorous, reproducible.

1 When someone publishes a study in those fields,
2 they can be precisely replicated or not because all of
3 the methods are expressly explicitly laid out.

4 So anyway, that's a generic comment on Dr. Gabe's
5 discipline. He's clearly following the standards within
6 his field, he got the papers published, but whether they
7 are recorded, the similar recognition is another issue,
8 and that's what Point 1.c refers to.

9 Economics can be done in a rigorous way. Economic
10 papers are included in the first-rate economic journals
11 that I have published: Biology articles in first-rate
12 journals such as Science and Nature and Proceedings of
13 the National Academy of Sciences are hand disciplinary.
14 So economics can be done in a rigorous way.

15 Dr. Gabe's approach and standards are not those --
16 he has not published in the top-notch journals. He's
17 published in little niche journals whose evaluators or
18 editors are satisfied with this kind of academic work.

19 It's a critique of his overall discipline and
20 field, not that he is unusual among his peers.

21 Q. And I believe you made it clear in your previous
22 deposition, you, yourself, do not hold yourself out as
23 having expertise -- let me put it this was -- as being
24 an expert in the field of economics; is that correct?

25 A. That's certainly correct.

1 Q. And so your commentary on the field of economics that
2 economists are lax with their work and play games with
3 their numbers, that's from the outside looking in of
4 that particular discipline; is that correct?

5 MR. PAPA ZIAN: I'll object. That misstates the
6 testimony.

7 MR. WOODCOCK: Is that correct?

8 THE WITNESS: That's not correct. Economics can be
9 done rigorously. Psychology could be done rigorously.
10 It can be published in the top academic journals, as it
11 often is.

12 Dr. Gabe's work is of the soft variety, which
13 wouldn't have a snowball's chance in hell of being
14 published in a top-rated general journal.

15 That's opinion and expertise and experience and
16 judgment, which I'm fully qualified to make having
17 published and edited and reviewed articles for top-notch
18 journals in my long career in academia. I'm not an
19 economist but I am a researcher and an academician.

20 Q. And a commentator on the field of economics here;
21 correct?

22 A. I've never said that.

23 Q. But you're commenting on it generally today, are you
24 not?

25 A. I'm comparing it to rigorous science, yes, I am.

1 broad principles by making models. You can very seldom
2 make a practically useful suggestion or operational
3 conclusion from a specific model because there are
4 almost infinite models which are consistent with any
5 data set which come to very different conclusions.

6 So they're not a useful practical approach, and in
7 the world of business or in the world of science, if you
8 rely on building a model and then deriving specific
9 conclusions and advice from it, you're going in the
10 wrong direction. It is not a reliable approach.

11 So -- but statisticians, like Dr. Gabe, are very
12 enamored of their models. To me it's a Tinkertoy game.

13 Q. With respect to Dr. Gabe, what in particular were the
14 failings of the models he employed?

15 Maybe I should ask it this way. Did you identify
16 particular models that he employed, and if so, what are
17 they?

18 And with respect to those models, in what way did
19 they fail the standards that you've just articulated?

20 A. Well, I'm not going to comment on the models because he
21 did identify several packaged, commercially available
22 models that he used. Statistical economists, which I
23 know many, do that, they use standard statistical
24 packages.

25 My criticism is very much starting with the points

1 we discussed under No. 1 that with the gaps in essential
2 reporting of the data, it's essentially garbage in and
3 there's an old computer expression, garbage in, garbage
4 out.

5 So it's a model. I've manipulated models a great
6 deal in my own work. They're illustrative whether
7 they're commercially available ones or custom-built
8 ones. They're illustrative based on a whole bunch of
9 assumptions which may or may not be accurate, and if you
10 make a buy/sell decision or a launch/no-launch decision
11 based on such models, you're probably going to come to
12 grief.

13 Q. So the question that I have, I think I understood your
14 answer here, but you do not have a criticism of the
15 particular, any particular models, that Dr. Gabe
16 employed; is that correct?

17 A. No, they're standard statistical packages, and sometimes
18 they give a useful result that's replicated and reality
19 tested, and very often they give a meaningless result,
20 which nobody would pay any attention to.

21 But it's the output of the model. Academicians of
22 Dr. Gabe's variety give great credence to the output of
23 the model, it must be true because the model says so,
24 and I, as a different kind of academic researcher say,
25 not so fast. There are so many alternative models with

1 so many different assumptions that you can discuss and
2 illustrate principles, but you have no reliable
3 conclusions or operational guidance from them.

4 Q. So is it your testimony that Dr. Gabe misapplied the
5 statistical models he employed?

6 A. I think he used them as most users of those models use
7 them. It's the use they make of them, which is what I
8 have a different view of.

9 Q. So which models do you have in mind that Dr. Gabe
10 employed that he did not properly use?

11 A. I didn't say he didn't probably use. He used them as
12 they are intended, and his testimony, he -- and his
13 papers report -- the acronyms of those models. I don't
14 know them in detail.

15 I do have extensive experience in model building
16 and use as illustrative and hypothesis generators to be
17 evaluated in reference to experimental or hard data, but
18 in model output, per se, maybe it's worth the paper it's
19 printed on but not much more.

20 Q. I want to make sure I understand your answer. You're
21 not testifying that the statistical models that Dr. Gabe
22 employed are themselves unreliable in the field of
23 economics; is that correct?

24 A. I do think they are generally unreliable. They are
25 standard tools -- let me make an analogy that might be

1 helpful.

2 You can build out of a set of Tinkertoys a little
3 steam shovel, and you can illustrate how the strength of
4 the arm and the forces applied can affect what it can
5 lift and when it will break. A little Tinkertoy model
6 is not useful guidance for me to go out with a John
7 Deere and actually dig a trench in the ground for a
8 building foundation.

9 It's illustrative, you can make a point to
10 students, and you might be able to generate some
11 hypotheses about what should be measured on the
12 Tinkertoy excavator or the John Deere excavator, but the
13 Tinkertoy doesn't give you any useful guidance to the
14 John Deere in the real world.

15 Q. I need to understand your testimony on this point,
16 Mr. Sidman. Are you saying that the statistical models
17 that Dr. Gabe employed were models that in the field of
18 economics he should not have employed?

19 A. I'm not saying that.

20 Q. Are you saying that those statistical models that he
21 employed are ones that economists generally should not
22 rely on?

23 A. Economists may rely on them. The general citizenry that
24 economists advise and educate may have a dimmer view of
25 them. Maybe another analogy is useful.

1 Q. Well, let me -- we're getting a good deal of narration
2 going on here, so let me just focus on this a bit.

3 A. I feel you can interrupt me but I can't interrupt you.

4 Q. Mr. Sidman, I've been very generous. You have gone on
5 and on at various points. We could --

6 A. If you don't want to hear my opinion, we can close out.
7 You ask the question, you should let me answer it.

8 Q. Mr. Sidman, this is my deposition, I'm going to ask you
9 the questions.

10 MR. PAPAZIAN: Mr. Woodcock.

11 THE WITNESS: Let me answer. If you don't let me
12 answer, we're done.

13 MR. PAPAZIAN: He is attempting to answer.

14 MR. WOODCOCK: Wait a minute here, wait a minute
15 here. I understand Mr. Sidman is calling the deposition
16 off; is that true, Mr. Sidman?

17 MR. PAPAZIAN: No, he is not.

18 MR. WOODCOCK: I'm asking Mr. Sidman.

19 Are you calling this deposition off? I just heard
20 you say you're not answering any more questions.

21 THE WITNESS: I did not say that. That is an
22 inaccurate quote.

23 I said, if you ask a question and then will not let
24 me answer it as I choose to answer it, then we're done.

25 MR. WOODCOCK: Well, let me be very clear about

1 this, Mr. Sidman. I am not going to ask you a question
2 and have you give me a 20-minute answer.

3 THE WITNESS: I'm --

4 MR. WOODCOCK: I am going to ask you questions and
5 I expect you to answer those questions.

6 I will say with respect to a number of the
7 questions I have posed to you today, you've gone well
8 beyond the question asked, and I've been patient with
9 you in that regard; but we have a deposition to complete
10 here, and your questions [sic] have to actually
11 relate -- your answers have to relate to the questions
12 that I have posed.

13 BY MR. WOODCOCK:

14 Q. My question with respect to the statistical models that
15 Dr. Gabe employed, it sounds like, from your testimony,
16 that you see yourself very well qualified to evaluate
17 the merits of statistical models; is that correct?

18 A. That's not what I said.

19 Q. Is it true?

20 A. The use of statistical models I know very well. I would
21 not say to a tarot card reader you should not use that
22 pack of tarot cards. That's what they do as part of
23 their occupation.

24 What I can say as a citizen and as an academic that
25 whatever you come up with with your tarot cards, it

1 Q. So if I understand your testimony just a couple of
2 minutes ago, it sounds as though you're relating No. 5
3 also to your qualifications as an expert; is that
4 correct?

5 A. Absolutely.

6 Q. In what way?

7 A. I have extensive experience doing exactly that.

8 Q. What is that experience that relates to your
9 qualifications here as an expert?

10 A. I have testified to a broad range of high-level,
11 decision-making legislative or regulatory bodies. I
12 understand how expert opinion is sought, offered, and
13 used.

14 Q. Have you testified at trial in any litigation as an
15 expert witness?

16 A. I have not.

17 Q. Let's go to No. 6, which I'll read. Limited Relevance &
18 Impact of Journal Publications and Rank Lists.

19 What is the issue there?

20 A. The issue there is Dr. Gabe -- a great deal was made of
21 Dr. Gabe being somewhere in the Top 100 in his economic
22 subfield of scholars ranked by publications, and that's
23 a -- it's a counting scheme, which is used.

24 My expert opinion is that his publications were in
25 journals of very low relevance and impact, and thus you

1 can have a whole lot of garbage, but the mechanism of
2 the rank list and citation list can put you at No. 56 in
3 a Top 100 listing of participants in a given academic
4 field.

5 And the counterpoint I will offer is, I've
6 published in the top academic journals in the world. I
7 don't believe that Dr. Gabe has a single publication in
8 the top-rated general journals.

9 So I'm qualified to make this statement. One paper
10 in a science, nature or PNAS is worth 100 in the journal
11 of left-handed Bar Harbor cruise ship studies.

12 Q. And your own journal publications, those were not in the
13 field of economics; is that correct?

14 A. That is correct. But they were in excellent journals,
15 top journals, which do include economic publications.
16 They're generalist journals as well as
17 discipline-specific journals.

18 Q. But your publications under your name were not in the
19 field of economics; correct?

20 A. That's correct.

21 Q. Next is No. 7 --

22 MR. PAPA ZIAN: Can we get a break real quick?

23 MR. WOODCOCK: Yes, sure, we can do that.

24 (There was a break in the deposition at 10:40 a.m.
25 and the deposition resumed at 10:56 a.m.)

1 particular term that you're raising, I have no
2 familiarity with at all.

3 Q. And you haven't conducted any studies related to
4 evaluating the pedestrian level service in any location
5 or anything like that; is that fair?

6 A. That's not -- I've never touched the subject.

7 Q. Are you familiar with an entity known as the
8 Transportation Research Board?

9 A. I may have heard of it but not familiar with it, no.

10 Q. So, again, whatever expertise you might have in
11 critiquing Professor Gabe, it wouldn't include any
12 familiarity of the publication of the Transportation
13 Research Board; is that fair?

14 A. Well, I could look at a publication from any body, and I
15 can assess whether they meet the standards that I
16 understand for good research, whether they're
17 transportation or pedestrian level of service or
18 anything else.

19 Every field, I understand, has its own criteria and
20 standards, but I will stick with the generally accepted
21 standards for excellent reproducible science, which I
22 don't think are multiple, pretty consistent across every
23 top-notch field journal and study, et cetera.

24 Q. I think I understand what you're saying, Mr. Sidman, and
25 I don't have any doubt that you can read and you have

1 great reading comprehension and you have a scientific
2 background and that you could read and comprehend
3 publications of the Transportation Research Board.

4 My question to you is a little more narrow, sir, in
5 that I'm just asking sitting here today, have you read
6 any publications of the Transportation Research Board?
7 I understood your answer to be no. Do I have that
8 wrong?

9 A. Not to my awareness.

10 Q. If you read it, it didn't stick out?

11 A. Fair.

12 Q. So you're not aware of reading any publications of the
13 Transportation Research Board; is that true?

14 A. That is true.

15 Q. So it's fair to suggest that whatever facts or data that
16 you were relying on, including the analysis of
17 Professor Gabe, those fact don't include any of the
18 publications or work of the Transportation Research
19 Board so far as you know?

20 A. Not that particular group. There are myriad groups of
21 interest or practice, et cetera, I will return to and
22 reassert that good science is good science. It's
23 universal principles.

24 Q. What are the groups that I would look to if I were
25 interested in studying pedestrian congestion and quality

1 of life considerations?

2 A. I have no idea.

3 Q. So sitting here today, you can't identify a single group
4 that studies or publishes in the field of pedestrian
5 street congestion or quality of life?

6 A. No, because I've never studied that academically. My
7 views on quality of life and pedestrian issues are
8 derived from personal experience and the experience of
9 many fellow citizens, they're experiential, but I've
10 never been involved in academic studies on the topic.

11 Q. Are you familiar with the National Academies of Science
12 and Engineering and Medicine in the United States?

13 A. Yes, quite familiar. I've published in there.

14 Q. And would those publications, publications that work
15 their way into the National Academies of Sciences and
16 Engineering and Medicine in the United States, would
17 those fall into your reputable journal bucket or your
18 sort of disreputable journal bucket?

19 A. I would expect them to be highly reputable, but I would
20 look at each one with the criteria that I know and
21 understand. There are days when a bad paper gets into a
22 good journal, but on average those should be first-rate
23 publications.

24 Q. You understand that Professor Gabe purported to make
25 some observations about the number of pedestrians per

1 to go there. I'm not going to touch it.

2 Q. All right. You're not going to touch it, you're not
3 going to read it; is that right?

4 A. Right.

5 Q. So it's also true, isn't it, that to the extent that you
6 would be opining on the reliability of this study that
7 was marked as Gabe Exhibit 4, you would be opining on a
8 study that you have not, in fact, read?

9 A. I would not opine on that basis other than to say that I
10 think inherently ab initio it is worthless because
11 restricting your attention to what appears on a social
12 media platform is the ultimate [inaudible] --

13 Q. To the extent --

14 A. -- talking about the way the Ouija boards or the pick-up
15 sticks fall, you're entitled to do so. I give no
16 credence or credibility to that kind of study. And so
17 if other people want to, that's their business. I will
18 not opine on it except to say it's garbage in my
19 professional opinion.

20 Q. A professional opinion that you formed without actually
21 reading it, and we're referring to Gabe Exhibit 4?

22 A. I don't have to read it. As soon as you say you're
23 analyzing data on Yelp, that's sufficient for me. I
24 will not go further.

25 Q. Your view of the world is that you didn't need to read

1 the study that was marked as Gabe Exhibit 4 in order to
2 offer your professional opinion on that study?

3 A. I'm not offering a professional opinion on that study
4 beyond saying it's garbage, I pay no attention to it
5 because it's analyzing data on a totally uncontrolled
6 arbitrary social media platform. That's all I need to
7 say.

8 Q. Are you --

9 A. -- the results of --

10 Q. Are you --

11 A. You can analyze tarot cards and pick-up sticks all you
12 want. I'm not going to exert my professional abilities
13 on that kind of garbage.

14 Q. You didn't exert any of your professional abilities in
15 forming any opinions related to the study that was
16 marked as Gabe Exhibit 4; is that right?

17 A. I keep telling you that. Because it's analyzing
18 uncontrolled social media data. That's all I need to
19 know. I've reached the end of my professional
20 evaluation and conclusion, I have my opinion, I don't
21 need to read any further than the title line.

22 Q. So you read no further than the title line of Gabe
23 Exhibit 4 in forming whatever opinions you may offer at
24 trial related to Gabe Exhibit 4?

25 A. I'm not going to offer any opinion beyond what I have

1 just stated.

2 Q. Which is an opinion formed from reading the title line
3 of Gabe Exhibit 4; is that right?

4 A. Right. So if the title said tarot cards, that's all I
5 need to know.

6 Q. No, I think you've answer my question.

7 A. This is an example of voodoo research that you can
8 possibly come up with.

9 Q. I'm sorry, sir, I didn't hear that. Would you mind
10 repeating it?

11 A. It's as good an example of voodoo science as you can
12 come up with, and I don't need to spend my time and
13 limited brain cycles on that sort of thing. My
14 professional opinion is that anything dealing with that
15 kind of "data" is worthless, it's garbage, it doesn't
16 need any more opinion from me beyond that.

17 Q. You need to get beyond the title of Gabe
18 Exhibit 4 -- excuse me, Gabe Exhibit 5, to determine
19 that it was sort of a platonic ideal of junk science?

20 MR. PAPAZIAN: I'm going to object. We've been
21 through this. So asked and answered.

22 This is outside the scope of what he's been
23 designated to testify to as an expert. Can we move on?

24 BY MR. KINGSTON:

25 Q. Is your -- is Attorney Papazian correct, Mr. Sidman,

1 that you don't intend to offer any testimony one way or
2 the other about the study that was identified in Gabe
3 Exhibit 4?

4 A. The Yelp study?

5 Q. Yes, sir.

6 A. All I intend to say about that is it's complete and
7 utter garbage in my opinion. I have no further opinion,
8 I've done nothing further about it, I have nothing
9 further to say than to say anybody who wants to draw
10 conclusions about "social media data" is not a scientist
11 as I understand the term. I'm not interested in going
12 further, I do not intend to go further.

13 Q. Mr. Sidman, did you read the study that's been marked as
14 Gabe Exhibit 5, which is entitled, What Landmarks do
15 Visitors remember about a Place?

16 A. I did not read that one. I think my familiarity with
17 that is from his testimony. Again, it's completely --
18 it's a good illustration, as we keep going through this
19 stuff, of how Dr. Gabe will make completely irrelevant
20 publications to bolster a CV.

21 I could care less about that topic, and if he wants
22 to do a psychology study, that's fine. I have no
23 interest in it, I'm not going to offer any opinions
24 about it. That's not economics, that's pop psychology,
25 and so I've not read that.

1 Q. Whatever facts and data you may have relied upon in
2 forming opinions related to Gabe Exhibit 5, that would
3 include actually reading the study; is that right?

4 A. Right, I think I heard sufficient from his testimony.

5 Q. So you base your opinions on Gabe Exhibit 5, to the
6 extent you have any, based on the questions that your
7 lawyer or the lawyers for the plaintiffs or Bar Harbor
8 chose to ask Professor Gabe about that study?

9 A. Description and statements and discussion of it, that's
10 adequate to tell me that it's completely irrelevant,
11 irrelevant fluff, not germane.

12 The only reason it's even coming up here is you
13 want to paint Dr. Gabe as a respected academic, which my
14 opinion thereof is declining steadily.

15 If you want to keep drawing out his irrelevancies,
16 I don't think it helps you. I think you're degrading
17 his reputation, for what purpose, I don't know.

18 Q. Mr. Sidman, I'm going to continue just a little more
19 with Exhibit 5 if that's okay with you, or Gabe
20 Exhibit 5.

21 Do you mind if we continue, sir?

22 A. You can try. I don't know what more I have to add.

23 Q. So you don't have any opinion about anything that's
24 actually written down based on reading what was written
25 down in Exhibit 5, do you, sir?

1 before their eyes.

2 I'm not going to offer any further opinion because
3 I don't see the relevance of that. I'm simply saying it
4 is completely irrelevant to everything at issue here,
5 and I'm not going to offer an opinion as to Dr. Gabe's
6 neck tie or shirt color or his ruminations about what
7 makes people remember a given site that they may have
8 seen. I'm not going to offer any --

9 Q. The document -- the study that was marked as Gabe
10 Exhibit 6 is entitled, Popping the Question: The
11 Influence of Survey Design on Estimated Visitor Spending
12 in a Region, did you read that one, sir?

13 A. I didn't read that one because that applies to the
14 economic impact conclusions.

15 Q. Was that one that you read quickly or was that one that
16 you read --

17 A. All of this I read. When you start -- when I read a
18 scientific article or a learned article, you look at the
19 purpose, you look at the abstract, and then start with
20 the methods, and if the methods seem sound, you go into
21 detail.

22 You look at the data, and then you talk about -- or
23 you pay attention to -- the conclusions. If there are
24 methodological problems or if there is no purpose, the
25 process terminates earlier.

1 So I --

2 Q. Have you -- I think you've described some of the points,
3 then, of Gabe Exhibit 6 that you take issue with,
4 Mr. Sidman.

5 Are there any portions of the study marked as Gabe
6 Exhibit 6 that you haven't had a chance to -- that
7 question got away from me, Mr. Sidman. Do you mind if I
8 start over?

9 A. No, that's fine.

10 Q. You testified about your perceived -- about the
11 deficiencies that you perceived in the study that was
12 marked as Gabe Exhibit 6; is that so?

13 A. Yes.

14 Q. Have you fully described those deficiencies that you
15 perceived for us today?

16 A. Well, I did not do any extra preparation and I did not
17 re-review his studies for this conversation, so I'm
18 going to hold that in abeyance. If you really want to
19 go into a more thorough analysis, I'm not a big fan of
20 survey research, I think it is a weak sister in all the
21 approaches, and the extrapolations and extensions are
22 unforgiveable and the conclusions are unreliable.

23 So beyond that, if you want me to dissect it in
24 more detail, I could at a future time. I'm not prepared
25 to do so right now.

1 Q. But sitting here today as a rebuttal expert designated
2 to testify offering opinions rebutting the conclusions
3 in the study submitted by Professor Gabe, you're not
4 prepared to offer anything other than what you've
5 already offered; is that right?

6 A. I think this is lightweight, pseudo science or science
7 like. It's the form without the substance or the
8 purpose for the impact of science. It's just -- off.

9 Q. You kind of have a broad view, but as far as trying to
10 get into the weeds, that's not something you're prepared
11 to do today, but if we wanted to talk to you later down
12 the road, you might be prepared to do that.

13 Is that a fair summary?

14 A. I could. If it was significant to the case. I don't
15 see how it is, and no one has asked me for a detailed
16 analysis of fluff or suggested how it's relevant to our
17 case.

18 Q. But as far as what you're prepared to talk about today,
19 you've told us everything that you're prepared to talk
20 about with respect to Gabe Exhibit 6; is that right?

21 A. As far as I can recall at this point, yes. I can't
22 think of anything else at the moment.

23 Q. Okay. The study that was marked as Gabe Exhibit 7 is
24 entitled, Measurement and analysis of neighborhood
25 congestion: Evidence of sidewalk pedestrian traffic and

1 Cruise Ship Passengers in Bar Harbor, Maine, March 2003.

2 Did you read Gabe Exhibit 9?

3 A. No, I don't believe I did.

4 Q. This is one of those ones where whatever opinions you
5 would have to offer with respect to Gabe Exhibit 9,
6 these were opinions that were formed without the benefit
7 of reading it?

8 A. I don't even recall what he said about that study, 2003.

9 Q. Very good. I think I know the answer to this, but Gabe
10 Exhibit 10 is The Impact of Cruise Ship Passengers in
11 Maine: The Example of Bar Harbor published in 2003 for
12 the Maine Policy Review.

13 Did you read Gabe Exhibit 10?

14 A. No, I did not because the 2016 was the most current
15 economic impact analysis.

16 Q. The Maine Policy Review -- go ahead, I'm sorry, sir.

17 A. His survey. So the '16 was the most current among his
18 studies, so that's the one I paid attention to.

19 I did not go back and read all of Professor Gabe's
20 publications. The Maine Policy Review sounds
21 legitimate, but I haven't read anything from that
22 journal, so I can't really say.

23 Q. [Inaudible] whether the Maine Policy Review is one of
24 those lower-ranked journals or a [inaudible] journal?

25 A. Perhaps it's in the medium category. I suspect it's not

1 in the lowest rank, but I don't know for a fact.

2 Q. What about Applied Economics Letters, where do you think
3 that journal rates?

4 A. It's a subdisciplinary journal. I would have to look at
5 the publications in it to judge their quality. So I
6 can't tell you the consensus of what the higher or lower
7 ranked journals are in that field.

8 Q. The journal that's called the Applied Economics Letters
9 is not one that you identified as one of those kind of
10 subpar journals off the top of your head?

11 A. I have no knowledge or opinion of it without looking at
12 it.

13 Q. You would need to read the stuff that was actually
14 published in the Applied Economics Letters to form an
15 opinion as to its quality?

16 A. What date was that publication?

17 Q. Say that again?

18 A. What date was that publication?

19 Q. No, I'm just asking you in broad terms, sir.

20 A. That's entirely hypothetical in general. It's not an
21 actual [inaudible].

22 Q. You can't tell me off the top of your head whether you
23 could identify the Applied Economics Letter journal as a
24 subpar or a non subpar journal without reading it?

25 A. I've looked at it. There are thousands of journals in

1 the world, and I have not spent time reading example
2 papers from each of them. That's a ridiculous
3 expectation.

4 Q. I don't think we're --

5 A. I can't give you a judgment or an opinion on the
6 thousands of journals that exist in the world without
7 looking at them.

8 Q. Mr. Sidman, I'm not positive that we're actually
9 disagreeing. We need to, both of us, I think, probably
10 mainly me, work a little bit harder to make
11 Ms. Fitzgerald's job easier by not talking over each
12 other.

13 I don't think we [inaudible] point I'd like to
14 clarify that, if I may. Can I do that, sir?

15 A. Yes.

16 Q. You couldn't tell me whether you viewed the Applied
17 Economics Letter journal as subpar or non subpar without
18 reading some of the stuff that is published in that
19 journal; is that fair?

20 A. Yes, of course.

21 Q. What about the Review of Regional Studies, do you know
22 anything about that journal?

23 A. Again, I -- I've seen -- I've heard Dr. Gabe talk about
24 his work in that field in that journal. It was not very
25 impressive to me, but I've not read even a selection of