

# Keith Goldstein (Vol 1)

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<p>1 UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF COLUMBIA</p> <p>3 SENATOR MITCH MCCONNELL, et al., :</p> <p>4 Plaintiffs, :</p> <p>5 v. : CIV No. 02-582</p> <p>6 FEDERAL ELECTION COMMISSION, :</p> <p>7 Defendants. :</p> <p>8 : Pages 1 - 53</p> <p>9 - - - - -</p> <p>10</p> <p>11 Deposition of Kenneth Goldstein</p> <p>12 Washington, D.C.</p> <p>13 Thursday, October 24, 2002</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Reported by: Marian E. Cummings, Notary Public</p> <p>22 Job No.: 148702</p>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 Cahil, Gordon &amp; Reindel</p> <p>4 For the Plaintiffs MCCONNELL</p> <p>5 and NATIONAL ASSOCIATION OF BROADCASTERS</p> <p>6 80 Pine Street</p> <p>7 New York, New York</p> <p>8 (212) 701-3862</p> <p>9 BY: Susan Buckley, Esq.</p> <p>10 Eric Lipman</p> <p>11</p> <p>12 Cravath, Swaine &amp; Moore</p> <p>13 For the Defendant BRENNAN CENTER</p> <p>14 Worldwide Plaza</p> <p>15 825 Eighth Avenue</p> <p>16 New York, New York</p> <p>17 (212) 474-1214</p> <p>18 BY: Paul M. Dodyk, Esq.</p> <p>19 Peter Ligh, Esq.</p> <p>20 James Abamont, Esq.</p> <p>21</p> <p>22 Rупpa Bhattacharyya, Esq.</p>
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<p>1</p> <p>2</p> <p>3 October 24, 2002</p> <p>4 9:40 a.m.</p> <p>5</p> <p>6</p> <p>7 Deposition of Kenneth Goldstein, held at the offices</p> <p>8 of:</p> <p>9</p> <p>10</p> <p>11 Cozen &amp; O'Connor</p> <p>12 1990 K Street, Northwest</p> <p>13 Washington, D.C. 20006</p> <p>14</p> <p>15</p> <p>16 Pursuant to notice, before Marian E. Cummings, a</p> <p>17 Notary Public of the District of Columbia.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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## C O N T E N T S

### EXAMINATION OF KENNETH GOLDSTEIN

MS. BUCKLEY

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## E X H I B I T S

### GOLDSTEIN DEPOSITION EXHIBITS:

1 - Subpoena

2 - Proposal

3 - Project Description

4 - Grant Proposal

5 - Letter of Agreement

6 - Letter to PEW 5-10-00

7 - Brennan Center Project Draft

8 - Multi-page Document BRE 006861-006866

9 - Manuscript

(Exhibits are attached to deposition transcript.)

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

Thereupon,

KENNETH GOLDSTEIN

the Witness, called for examination by counsel for the Plaintiffs, and, after having been sworn by the notary, was examined and testified as follows:

### EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

BY MS. BUCKLEY:

Q Good morning, Professor Goldstein.

A Good morning.

Q My name is Susan Buckley. I'm here today representing Senator McConnell and National Association of Broadcasters in this litigation. I guess before I start I should ask my favorite question across the table. Who are you representing?

MR. DODYK: Apparently the Brennan Center.

MS. BUCKLEY: The Brennan Center?

MR. DODYK: Yes, and also Mr. Goldstein, Professor Goldstein, excuse me, and the intervener defendants.

MS. BUCKLEY: Okay. I like to ask that question because I get a different answer every time I

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ask it, Paul.

MS. DODYK: I know. Well, we're zeroing in on the end yet.

MS. BUCKLEY: Any dissents from you, Ruppia?

MR. DODYK: I'm not purporting to represent the United States this morning, I've been told that that's not allowed.

BY MS. BUCKLEY:

Q Okay. And your name, for the record, please.

A Kenneth Goldstein.

Q And you reside in where?

A Middleton, Wisconsin.

Q And I take it from having reviewed your report that you are an associate professor of political science at the University of Wisconsin; is that correct?

A Yes.

Q What courses are you teaching this year?

A This year I'm teaching the big introductory course, American Politics, also teaching a graduate seminar in mass political behavior.

Q And what is the focus of your seminar this year?

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A The smaller graduate class?

Q Right.

A It's on mass political behavior so we look at general political participation, voting behavior and then spend a lot of time the end of the class on the effect of media on American politics.

MR. DODYK: Let me stop you one second and say that the court reporter is dutifully writing down everything we say so if you could keep her in mind when you speak, she has to try to keep up with you.

THE WITNESS: People from Wisconsin speak really quickly.

MR. DODYK: It's cold out there.

BY MS. BUCKLEY:

Q And also bear in mind that the court reporter can't record nods or shakes of the head, we have to do everything audibly.

Are you pursuing any other endeavors this year in addition to your work as a professor at the University of Wisconsin?

A Yes.

Q And what are they?

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1 A I'm continuing my research on political  
2 advertising, I'm also doing a project on local news  
3 coverage of politics. Those are the two major research  
4 projects I'm involved in this semester.

5 Q Now the research project on political  
6 advertising, could you describe that for us?

7 A Sure, it's an ongoing project on political  
8 advertising which I've been doing since 1996 in which I  
9 purchased data from Campaign Media Analysis Group and  
10 then we do additional coding and analysis of those data  
11 and then release those data in realtime to the national  
12 media to use it as a way to cover political campaigns.  
13 And in the medium term I use that in my own scholarly  
14 work, combining that information on advertising with  
15 aggregate election data and public opinion data, and  
16 then in the long term all of those data are then  
17 archived for other scholars to use.

18 Q Now, are you working with any other entity in  
19 connection with this project?

20 A The advertising?

21 Q Correct.

22 A No.

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1 Q This is the similar kind of project that you  
2 worked with the Brennan Center on in 1998 and 2000, is  
3 it not?

4 A Yes.

5 Q And there is no equivalent to the Brennan  
6 Center anymore?

7 A No, well, there -- no, not for me.

8 Q Okay. Who else is working on this project  
9 with you?

10 A There are ten undergraduates and four graduate  
11 students.

12 Q Who is funding the project?

13 A PEW Charitable Trust.

14 Q Let's mark as Goldstein Exhibit 1 a subpoena  
15 addressed to Kenneth Goldstein in this case.  
16 (Exhibit Number 1 was marked for  
17 identification.)

18 BY MS. BUCKLEY:

19 Q Professor Goldstein, do you recall being  
20 served with a subpoena in this matter?

21 A Yes.

22 Q In effect --

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1 A I think there was two subpoenas.

2 Q You were served with two, weren't you?

3 A Yes.

4 Q Let me direct your attention to what we've  
5 marked as Exhibit 1, a subpoena dated July 18th, 2002  
6 served on behalf of the plaintiffs and this was the  
7 subpoena asking you to produce certain documents. Do  
8 you recall that, Professor Goldstein?

9 A Uh-huh.

10 Q I'd like you to turn your attention to  
11 Attachment A to the subpoena which is a list of the  
12 documents that we requested that you produce, do you see  
13 that?

14 A Yep.

15 Q Now Professor Goldstein, your counsel provided  
16 us with a number of boxes of documents in response to  
17 the subpoena and my question to you is did you search  
18 your files for all the documents asked for in this  
19 subpoena and did you produce them to your counsel?

20 A Yes.

21 Q Have you since located any documents that you  
22 did not produce that seemed to fall within any of these

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1 categories?

2 A Don't believe so, no.

3 Q So to the best of your ability you believe  
4 that you have produced in the case all documents in your  
5 possession, custody and control which are responsive to  
6 the subpoena we've marked as Exhibit 1?

7 A Yes.

8 Q Professor Goldstein, do you consider yourself  
9 an advocate of campaign finance reform?

10 A No.

11 Q A proponent of campaign finance reform?

12 A No.

13 Q You consider yourself neutral on the subject?

14 A No.

15 Q How would you describe your beliefs about  
16 campaign finance reform?

17 A After doing this body of research I generally  
18 support the McCain Feingold Shayses [phonetic] Meehan  
19 legislation signed by the president which is BCRA.

20 Q And when did you come to this view, Professor  
21 Goldstein?

22 A Probably sometime after the 2000 election.

3 (Pages 9 to 12)

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# Kenneth Goldstein (Vol 1)

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1 Q So before that you considered yourself fairly  
2 neutral on the subject?  
3 A Yes.  
4 Q When were you first contacted by the Brennan  
5 Center to discuss the possibility of collaborating on a  
6 study for the 1998 election?  
7 A It was -- I don't remember exactly, it was  
8 either late fall of 1998 or early spring of 1999.  
9 Q And how did you come to --  
10 A -- actually, no, excuse me. I think it was, I  
11 think it was early fall 1998 because my first meeting  
12 with Brennan was election weekend 1998.  
13 Q That's the weekend after the election?  
14 A The weekend just before the election so the  
15 Saturday, the Monday before the Tuesday of the election.  
16 Q And where was this meeting?  
17 A That was at Brennan in New York.  
18 Q And how did you come to find yourself at the  
19 Brennan Center in New York that day?  
20 A Jon Krasno who was working for the Brennan  
21 Center then had seen a paper that I wrote at the  
22 American Political Association meetings which are the

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1 major professional meetings in my discipline, are in  
2 Labor Day weekend and Jon Krasno read a paper that I had  
3 written for that conference. That paper used data from  
4 the Campaign Media Analysis Group and then he called me  
5 and asked me about the data and we had a preliminary  
6 discussion whether I would be interested in working with  
7 the Brennan Center.  
8 Q And did you have an understanding of what the  
9 Brennan Center was interested in pursuing at that time?  
10 A I never heard of the Brennan Center before and  
11 Jon said that they were interested in campaign finance  
12 issues and thought my data were a good way of providing  
13 evidence on certain core questions relating to campaign  
14 finance.  
15 Q And can you describe briefly what transpired  
16 at this meeting at the Brennan Center on election day  
17 weekend 1996?  
18 MR. DODYK: 1998.  
19 BY MS. BUCKLEY:  
20 Q '98, sorry.  
21 A '98, right. Let's see, I went down to their  
22 office which are in -- south of Houston in New York

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1 City, met with I believe Nancy Northup, with Josh  
2 Rosenkranz and with Jon. And Josh and Nancy who are in  
3 the leadership of the Brennan Center wanted to hear me  
4 describe what these data were. And so basically it was  
5 just me telling them about what these data were and then  
6 since they were all political junkies we ended up  
7 gossiping about what was going to go on in the election,  
8 if I remember correctly.  
9 Q When you refer to these data, Professor  
10 Goldstein, you're referring to the data that's generated  
11 by CMAG; is that right?  
12 A Correct.  
13 Q And CMAG stands for Campaign --  
14 A -- Media Analysis Group.  
15 Q After you attended this meeting at the Brennan  
16 Center did you have a better understanding of what the  
17 Brennan Center was interested in pursuing?  
18 A It was a long time ago. They wanted to, there  
19 were certain factual questions about the magnitude of  
20 party advertising, the magnitude of interest group  
21 advertising, and the contents of that advertising which  
22 they wanted to be able to study and my data, the data I

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1 was using from Campaign Media Analysis Group, were a  
2 good way to do that.  
3 Q And was there any discussion about preparing a  
4 report about the 1998 election?  
5 A It was very preliminary discussion. The data  
6 from CMAG had not been purchased yet. I had been using  
7 in my scholarly work 1996 -- I had been using data from  
8 1996 and 1997 from the Virginia gubernatorial race. I  
9 had not been using 1998 work, '98 data in my work, so  
10 those data would have to be purchased, coded, processed.  
11 And they weren't talking about a report, they were  
12 talking about putting together a grant proposal in which  
13 they would go to a funder and ask for funds to execute  
14 those tasks.  
15 Q Now, had anyone funded your work on the 1996  
16 and 1997 election?  
17 A Small grants from Arizona State University  
18 which is where I was teaching before Wisconsin.  
19 Q Okay. And did there come a time when the  
20 Brennan Center and you agreed to collaborate on a study  
21 for the 1998 election?  
22 A Yes, sometime later that fall I agreed that

4 (Pages 13 to 16)

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1 they could put forward a grant application to PEW and  
2 part of that grant application would be purchasing the  
3 data, hiring me to code and process that data, and then  
4 in return, I would be able to -- I would also be allowed  
5 to use those data for my own scholarly purposes.

6 Q And did have any role in helping them prepare  
7 the grant application?

8 A No.

9 Q Okay. Let's mark as Goldstein Exhibit 2 a  
10 letter from Josh Rosenkranz to Sean Treglia dated  
11 January 12, 1999 with an attachment bearing the control  
12 numbers BRE 012322 through BRE 012330.

13 (Exhibit Number 2 was marked for  
14 identification.)

15 BY MS. BUCKLEY:

16 Q Professor Goldstein, have you ever seen this  
17 document before?

18 A Just my counsel showed it to me as we were  
19 preparing for the deposition.

20 MR. DODYK: You need to exclude that from your  
21 responses.

22 BY MS. BUCKLEY:

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1 campaign reform agenda?

2 A Hard to answer. At some point I realized that  
3 the Brennan Center wanted to advance the campaign  
4 finance reform. I don't remember if it was exactly in  
5 January of 1998, may have been a little bit earlier, may  
6 have been a little bit later but certainly I was aware  
7 at some point before.

8 MR. DODYK: You really need to slow down so  
9 the reporter can get it.

10 BY MS. BUCKLEY:

11 Q Would you turn to page three of this document,  
12 Professor Goldstein. It describes a two-phase process  
13 for the project that you and the Brennan Center  
14 ultimately participated in. And my question to you is  
15 do you recall that this was a two-phase process? Phase  
16 one is described on page three.

17 A Okay. No, I don't recall that it was a  
18 two-stage process.

19 Q All right. Did it turn out to be a two-phase  
20 process?

21 A I don't think so. Well, it was a two-stage  
22 process in the sense that data were purchased, they were

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1 Q Let's try it this way: I'll ask you have you  
2 seen this document before other than with your counsel?

3 A No.

4 Q You'll see, Professor Goldstein, there's a  
5 lengthy description about the CMAG data in this  
6 proposal, do you see that? It begins on the bottom of  
7 page two and runs over to the top of page three.

8 A Uh-huh.

9 Q Did you have any help in preparing that  
10 description?

11 MR. DODYK: Did he help or --

12 BY MS. BUCKLEY:

13 Q Did you help?

14 A Looks like language I've written before so  
15 they may have cut and pasted descriptions that I've  
16 written from scholarly papers or memos I gave them but  
17 it actually looks like almost verbatim something I've  
18 written in a journal article.

19 Q Professor Goldstein, did you have any idea at  
20 this time in January of 1999 that one of the goals of  
21 the Brennan Center in undertaking this project was to  
22 advance campaign finance reform agenda -- advance the

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1 delivered to me at Arizona State, I coded the data,  
2 processed the data, merged the data and then gave that  
3 data to the Brennan Center and then the Brennan Center  
4 subsequently used those data.

5 Q Okay. Were you told, Professor Goldstein,  
6 that phase two of the project would not go forward  
7 unless the data was helpful in advancing the cause of  
8 campaign finance reform?

9 A No.

10 Q No one ever told you that?

11 A No.

12 Q I direct your attention to page 6, Professor  
13 Goldstein, it's the description of phase two of the  
14 project. And reading from the first full paragraph  
15 under the heading Project and -- I'm sorry, the heading  
16 phase two, taking the case to the public and the  
17 politicians project and deliverables, it reads, "Whether  
18 we proceed to phase two will depend on the judgment of  
19 whether the data provide a sufficiently powerful boost  
20 to the reform movement," do you see that?

21 A Uh-huh.

22 Q This is news to you as you sit here today?

5 (Pages 17 to 20)

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1 A Yes.  
2 Q Let's mark as Goldstein Exhibit 3 a multi-page  
3 document dated February 19, 1999 bearing the control  
4 numbers BRE 014281 through BRE 014297.  
5 (Exhibit Number 3 was marked for  
6 identification.)  
7 BY MS. BUCKLEY:  
8 Q Can you tell us what this document is,  
9 Professor Goldstein?  
10 A It looks to be a project description of the  
11 project that involves the CMAG data in 1998.  
12 Q Well, this is a submission that the Brennan  
13 Center made to PEW; is that right?  
14 A It's submitted to the PEW Charitable Trusts,  
15 yes.  
16 Q And now this is a description of the project  
17 that you ended up working with the Brennan Center on; is  
18 that right?  
19 A Correct.  
20 Q And why did the Brennan Center, if you know,  
21 send such a project description to PEW?  
22 A I assume because they wanted to get it funded.

1 A Yes.  
2 Q What was the division of responsibility as  
3 between you and Dr. Krasno in connection with the 1998  
4 project?  
5 A The data were delivered to me from CMAG to  
6 Arizona State. Actually, let me take a step back.  
7 Q Sure.  
8 A There was a -- I'm a little fuzzy on the  
9 dates. It was sometime in the spring of 1999, February  
10 or March, Brennan had a conference about campaign  
11 finance. After that conference a number of scholars got  
12 together, Darryl West from Brown, David Hagelby from  
13 BYU, Jon Krasno, me, then Josh Rosenkranz, Nancy from  
14 the Brennan Center and met on a Saturday morning after  
15 this Friday conference, worked on the coding instrument.  
16 After that the data were -- I went back to Arizona, the  
17 data were delivered to Arizona, Jon came down to Arizona  
18 to put the finishing touches on the coding sheet and  
19 then I think it would have been just after spring break  
20 in spring of 1999 we started the coding of the story  
21 boards and continued on with the coding of the story  
22 boards throughout the summer, did the merging of the

1 Q Did you have any role in preparing the project  
2 description?  
3 A No.  
4 Q Did anyone ever give you a copy of the project  
5 description when you started working on the project?  
6 A No.  
7 Q They didn't share with you what the project  
8 was all about?  
9 A They did not share with me this project  
10 description.  
11 Q I'm sorry?  
12 A They did not share with me this project  
13 description.  
14 Q So this is the first time you've seen this  
15 document, Professor Goldstein, other than with counsel?  
16 A Yes, first I've seen this document.  
17 Q If you'd turn to page 9, Professor Goldstein,  
18 there's a description of you there and I'd like you to  
19 read to yourself the paragraph entitled Project Team.  
20 A Okay.  
21 Q Is that an accurate description to the extent  
22 it describes your role and your experience?

1 targeting data to the story board data in the fall of  
2 1999, and then I sent that off to the Brennan Center.  
3 Q Now, as between your role in the project and  
4 Dr. Krasno's role can you explain to me what your  
5 responsibilities were vis-a -- as opposed to his? I'm  
6 really focusing on what your role is versus his role and  
7 if there's any difference in the two.  
8 A Sure, yes. My role was to oversee the coding  
9 and processing of the raw CMAG data, John's job was to  
10 take that data and write buying time with it.  
11 Q And when you refer to buying time, you're  
12 referring to the report entitled, Buying Time 1998,  
13 which was published by the Brennan Center?  
14 A Yes.  
15 Q Well, let's mark as Goldstein Exhibit 4 the  
16 grant proposal for the 1998 study, which is dated  
17 February 19, 1999, bearing the control numbers BRE  
18 007707 through BRE 007723.  
19 (Exhibit Number 4 was marked for  
20 identification.)  
21 BY MS. BUCKLEY:  
22 Q Other than in meetings with your counsel,

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1 Professor Goldstein, had you ever seen this document  
2 before?  
3 A No.  
4 Q The Brennan Center never shared the grant  
5 proposal with you?  
6 A No.  
7 Q I want to refer you to page two of the  
8 document which you referred to in your expert report in  
9 the case and I'm focusing on the paragraph, the second  
10 full paragraph, on the page which I will read into the  
11 record. Quote, While the data will be enormously  
12 valuable to political scientists - it will undoubtedly  
13 keep them busy for years - the purpose of our acquiring  
14 the data set is not simply to advance knowledge for its  
15 own sake but to fuel a continuous and multi-faceted  
16 campaign to propel reform forward.  
17 The campaign will involve a variety of reports  
18 and detailed analyses about discreet issues conferences,  
19 public education, commission scholarship and more. Each  
20 element of the proposal is directed at influencing at  
21 least one of the four critical audiences that will play  
22 a pivotal role in determining the success or failure of

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1 any reform: legislators, journalists, academics, and  
2 courts. Professor Goldstein, do you agree with the  
3 sentiment that the purpose of acquiring the data set was  
4 to fuel a continuous and multi-faceted campaign to  
5 propel campaign reform forward?  
6 A Do I agree with the statement that was  
7 written? Could you re-read that for me, please?  
8 (Whereupon, the court reporter read back the  
9 previous question.)  
10 BY MS. BUCKLEY:  
11 Q Professor Goldstein, do you agree with the  
12 statement that the purpose of our acquiring the data set  
13 is not simply to advance knowledge for its own sake but  
14 to fuel a continuous and multi-faceted campaign to  
15 propel campaign reform forward?  
16 MR. DODYK: Are you asking the witness whether  
17 he agrees that that's an accurate description of the  
18 Brennan Center's purpose?  
19 BY MS. BUCKLEY:  
20 Q We'll start there.  
21 A The reason why I'm having trouble answering  
22 the question is the key word there is "our," which is

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1 not me, it's them. So I do not agree with that  
2 statement if the our includes me. Was that a goal of  
3 the Brennan Center? Yes.  
4 Q So let me see if I have this straight. If I  
5 were to ask you personally if this was one of your goals  
6 I take it that you would tell me that it was not?  
7 A No.  
8 Q But you're telling me that it was one of the  
9 Brennan Center's goals?  
10 A Yes.  
11 Q Okay. We have another huge description, huge,  
12 well, two-page description, excuse me, of the CMAG data  
13 in the grant proposal. Did you have any role in --  
14 MR. DODYK: What page is that?  
15 MS. BUCKLEY: Two to three.  
16 MR. DODYK: Two to three?  
17 MS. BUCKLEY: Uh-huh.  
18 THE WITNESS: So under, What Is It?  
19 BY MS. BUCKLEY:  
20 Q CMAG Data, What It Is? CMAG can answer.  
21 A It looks like paraphrase or verbatim cut and  
22 prose I've written describing the data boiler plate

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1 stuff.  
2 Q Do you know if you had any role in preparing  
3 this document, Professor Goldstein?  
4 A No.  
5 Q You don't know?  
6 A I did not. They may have, can you E-mail us a  
7 blurb on what the CMAG data are and I would E-mail them  
8 that blurb.  
9 Q Now, there came a point in time where you  
10 entered into a contract with the Brennan Center, did  
11 there not?  
12 A Yes.  
13 Q Let's mark as Goldstein Exhibit 5 a two-page  
14 document dated April 28, 1999 bearing the control  
15 numbers BRE 006857 to BRE 006858.  
16 (Exhibit Number 5 was marked for  
17 identification.)  
18 BY MS. BUCKLEY:  
19 Q Can you tell us what that is, Professor  
20 Goldstein, what Exhibit 5 is?  
21 A The contract between -- the letter of  
22 agreement between the Brennan Center and me about my

7 (Pages 25 to 28)

1 work on the 1998 CMAG data.  
2 Q I note that this contract is dated in April of  
3 1999, did you start working on this project before that?  
4 A Probably a couple of weeks before that, yes.  
5 Q So this gives us a general ball park figure as  
6 to when you started working on this project with the  
7 Brennan Center?  
8 A Correct.  
9 Q Now, how were the grants handled for the 2000  
10 project, Professor Goldstein?  
11 A The 2000 project was also money -- was also  
12 funded by the Brennan Center using money that was left  
13 over from 1999.  
14 Q Did you make another submission to PEW for  
15 additional funds for 2000?  
16 A Yes, I made a letter of inquiry to PEW in  
17 April, May of 2000 to get additional funds for 2000  
18 trying to have it be done all by myself.  
19 Q Well, let's mark as Goldstein Exhibit 6 a  
20 document dated May 10, 2000 to Sean Treglia from Ken  
21 Goldstein bearing the control numbers BRE 012093 through  
22 BRE 012097.

1 (Exhibit Number 6 was marked for  
2 identification.)  
3 BY MS. BUCKLEY:  
4 Q Can you tell me what Goldstein Exhibit 6 is?  
5 A This is a memo that I sent to Sean at the PEW  
6 Charitable Trusts trying to get funds to execute a study  
7 in 2000, during the 2000 elections.  
8 Q Reading from the first page, Professor  
9 Goldstein, the second sentence begins quote, If we are  
10 to reform the system and improve the way that our  
11 political campaigns are funded and even how they are  
12 conducted, we must not only understand how candidates,  
13 parties, interest groups, and even wealthy individuals  
14 speak to the public, but how citizens respond to this  
15 barrage of messages. The 2000 version of the CMAG  
16 project marks both an important continuation of earlier  
17 efforts to examine the sources and targeting of  
18 political advertising as well as an unprecedented  
19 opportunity to explore the impact of such advertising.  
20 Both of these components address questions vital to  
21 efforts to improve our political system; both are  
22 essential to a comprehensive understanding of how

1 political actors and voters interact; and both will  
2 result in substantial increases in knowledge that will  
3 attract attention from scholars, policy-makers and the  
4 press. You wrote that, Professor Goldstein?  
5 A Yes.  
6 Q And did you believe it to be true at the time?  
7 A Yes.  
8 Q You believe it to be true today?  
9 A Yes.  
10 Q Turning to page two, Professor Goldstein, I'm  
11 on the second full paragraph, which begins quote,  
12 Surprisingly, though, there's almost no empirical  
13 evidence to support this argument. Let me digress for a  
14 moment and say that you're referring to the argument  
15 about campaign finance excesses in the previous  
16 paragraph, but I'll let the document speak for itself.  
17 Continuing, "We need to know whether citizens learn  
18 important facts from the ads they see, are they inspired  
19 to participate in politics or turned off? How are the  
20 images of the candidates affected by various  
21 advertisements? And so on. All of these questions are  
22 essential to efforts to the reform the campaign finance

1 system and to more broadly enhance the level of  
2 discourse in American democracy."  
3 Were those statements true when you wrote them  
4 in May of 2000?  
5 A Yes.  
6 Q And do you still believe them today?  
7 A Yes.  
8 Q Turning to page the page that bears the  
9 control number 012095, Professor Goldstein, under the  
10 paragraph that's beginning with the word Second, and  
11 about halfway down you write quote, This investigation  
12 has enormous importance to policy makers, as well as to  
13 academics.  
14 A I'm sorry, where are you looking?  
15 Q I'm in the paragraph beginning with the word  
16 Second.  
17 A Okay.  
18 Q And I'm about two-thirds of the way down.  
19 A Got it.  
20 Q "This investigation has enormous importance to  
21 policy makers, as well as to academics, especially since  
22 most of the resistance to campaign reform stems from its



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1 supposed impact on election returns. Our research will  
2 allow observers to determine whether Democrats are  
3 correct to argue a bill will hurt them badly or whether  
4 Republican claims to be the aggrieved party are  
5 justified, helping bill drafters to create reform that  
6 is fair to both sides. This information can even help  
7 surmount the judicial hurdles to reform by showing more  
8 clearly the practical ramifications of various  
9 provisions that opponents are sure to label as  
10 cataclysmic violations of the First Amendment."

11 Did you believe that when you wrote it in May  
12 of 2000, Professor Goldstein?

13 A Yes.

14 Q And do you believe it today?

15 A Yes.

16 Q And do you still maintain, Professor  
17 Goldstein, that you're not an advocate of campaign  
18 finance reform until after the 2000 election?

19 A I generally support campaign finance reform, I  
20 don't support every single element of campaign finance  
21 reform. Campaign finance reform is a very, very broad  
22 term.

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1 Q Well, you told me earlier today that you  
2 didn't come to the view that you were an advocate of  
3 campaign -- strike that.

4 You told me earlier today that not until the  
5 2000 election was over did you view yourself as an  
6 advocate of campaign finance reform, isn't that right?

7 MR. DODYK: I object to the form of the  
8 question and that it mischaracterizes the witness's  
9 prior testimony.

10 BY MS. BUCKLEY:

11 Q All right. What did you tell me earlier  
12 today, Professor Goldstein?

13 A During the course of my research with CMAG I  
14 came to support certain elements of campaign finance  
15 reform and obviously during the 2000 election I also  
16 came more and specifically to support current elements,  
17 specific elements of campaign finance reform.

18 Q Now, having taken a look at your document  
19 dated May 10, 2000 does that help you place better in  
20 time the point at which you began to support those  
21 efforts?

22 A Yes, it's -- it's a difficult question to

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1 answer, it's not like I was sitting my office and had an  
2 epiphany. It was as I was doing research over the  
3 course of -- as I was doing research on the 1998  
4 campaign which occurred in 1999 and then as I continued  
5 to do research on the 2000 campaign and as the 2000  
6 campaign progressed.

7 Q You'll agree that this document doesn't sound  
8 like it's written by someone who is neutral on the  
9 subject, don't you?

10 A No, I don't agree with that statement.

11 Q You think it sounds like someone has  
12 written -- the person who wrote this was neutral on the  
13 subject?

14 A It's -- well, what I meant when I was writing  
15 these words, for instance, when I wrote words like  
16 Improving the health of the American political process  
17 demand that policy makers have more precise information  
18 about the nature and impact of modern political  
19 campaigns," that there's lots of criticisms of American  
20 political campaign, there's lots of criticisms of the  
21 financing of American political campaigns, but striking  
22 to me as a political scientist, as a social scientist,

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1 there wasn't lots of empirical evidence about any of  
2 these claims and this was an effort to provide empirical  
3 evidence on a wide range of issues relating to the  
4 health of American democracy.

5 Q You weren't hoping to advance the cause of  
6 campaign finance reform, Professor Goldstein?

7 A I was hoping to -- I was hoping to improve the  
8 American political process.

9 Q Let me see if you can answer my question. You  
10 were hoping to advance the cause of campaign finance  
11 reform in engaging in the 2000 project, Professor  
12 Goldstein?

13 A Yes.

14 Q Let's turn to the last page of this document,  
15 Professor Goldstein. Under the second full paragraph  
16 which begins with the word Because, are you with me?

17 A Yeah.

18 Q And it reads, "Because of strong personal and  
19 professional relationships with Tom Mann, Paul Hernson,  
20 and David Magleby, we will be able to integrate the  
21 findings of this project with other PEW sponsored work.  
22 I will also ask Tom, Paul, and Dave to be members of an

1 advisory board for the project. I am also happy to work  
2 with others in the policy community to make sure that  
3 our study is designed and executed in ways that help  
4 move the reform ball forward."

5 Professor Goldstein, was that true when you  
6 wrote it in May of 2000?

7 A Yes.

8 Q So I take it that it was your goal to design  
9 and execute the study in a way that would help move the  
10 campaign reform ball forward; is that right?

11 A It says the reform ball forward, yes.

12 Q Okay. And did you design the study in a way  
13 to help move the reform ball forward, Professor  
14 Goldstein?

15 A I designed the study in a way to answer  
16 empirical questions.

17 Q That's not what it says here, does it? It  
18 says to make sure that our study is designed and  
19 executed in ways that help move the reform ball forward,  
20 did I get that right?

21 A Yes.

22 Q And that's accurate, is that not true?

1 Q Were you a member of this policy committee?

2 A I can't remember. At some point I attended  
3 the policy committee meetings. At some point I said  
4 that I didn't want to be on the official policy board, I  
5 didn't want to sign any letters or make any, or be part  
6 of the recommendations that the policy board was making.

7 Q So you don't know how long you served on the  
8 policy committee?

9 A No, I don't.

10 Q Looking at Exhibit 7 it talks about potential  
11 policy group members and then it lists a number of  
12 academics, do you see that?

13 A Yes.

14 Q Was Jonathan Krasno on the policy committee?

15 A I believe so, yes.

16 Q And you were for some point in time, correct?

17 A Yes.

18 Q And it refers to you there as the co-principal  
19 investigator, Professor Goldstein, do you see that?

20 A Yes.

21 Q You're described in other documents as the  
22 co-principal investigator for the 1998 study; is that

1 A Yes.

2 MS. BUCKLEY: All right, let's take a break.

3 (A brief recess was taken.)

4 BY MS. BUCKLEY:

5 Q Let's mark as Goldstein Exhibit Number 7  
6 control numbers BRE 012228, and as Exhibit 8 a  
7 multi-page document bearing the control numbers BRE  
8 006861 through BRE 006866.

9 (Exhibit Numbers 7 and 8 were marked for  
10 identification.)

11 BY MS. BUCKLEY:

12 Q Now, turning first to Exhibit 7, Professor  
13 Goldstein, entitled, Brennan Center CMAG Project, Draft  
14 7-30-99. It lists potential policy group members, do  
15 you see that?

16 A Yes.

17 Q What was, if there was, the policy group  
18 that's being referred to here, if you know?

19 A I think the policy group was a group that was  
20 going to look at the results once the data crunching was  
21 finished and see if there were any proposals that could  
22 be made out of the findings of the data.

1 right?

2 A Yes.

3 Q And you acted as the co-principal investigator  
4 for the 1998 study, didn't you?

5 A Yes.

6 Q Was Tom Mann of the Brookings Institution a  
7 policy committee member?

8 A Yes.

9 Q How about Kathleen Hall Jamieson?

10 A I think she was on the board, I'm not sure she  
11 attended any meetings?

12 Q David Magleby?

13 A I don't remember, I think so.

14 Q You think he was a member of the policy  
15 committee?

16 A Yeah.

17 Q Frank Sorauf?

18 A I don't know.

19 Q You don't know if he was or was not?

20 A (Witness nodding.)

21 Q And Tony Corrado from Colby College?

22 A I believe so.

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1 Q You believe he was a member of the policy  
2 committee? What was the role of the policy committee in  
3 this project? We're talking about the 1998 buying time  
4 project.

5 A To make reform proposals given the factual  
6 evidence that was discovered in the 1998 study, the  
7 study of the 1998 data.

8 Q Did they also have a role in designing the  
9 1998 study?

10 A Some of the individuals did. I don't believe  
11 the policy group had started when we came up with the  
12 coding sheet but I believe David Magleby and Tom Mann  
13 were at the meeting when the coding sheet was developed.

14 Q Who else was at the meeting where the coding  
15 sheet for 1998 was developed?

16 A I think it was Darryl West of Brown, David  
17 Magleby, Jon --

18 Q Jon Krasno?

19 A Jonathan Krasno, me, and Josh Rosenkranz,  
20 Nancy Northup from the Brennan Center and then I think  
21 there were a couple of other Brennan Center people there  
22 but I don't remember specifically who.

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1 somebody else or about the witness?

2 BY MS. BUCKLEY:

3 Q I'm just trying to get a point in time. Can  
4 you tell me when the coding for the 1998 study began?

5 A I believe April, May, 1999. We should  
6 probably adjust that, maybe a little earlier than that,  
7 just after spring break, so yeah, late March, April of  
8 1999.

9 Q Okay. When was the data obtained from CMAG?

10 A Evan started giving me story boards before,  
11 Evan Tracey who is head of campaign media analysis group  
12 I believe started giving me story boards before the  
13 formal contract was executed with Brennan.

14 Q And when did he start giving you these story  
15 boards?

16 A I don't remember exactly, I think it was  
17 sometime around spring break of 1999, although, actually  
18 it would have had to have been earlier because at the  
19 meeting where we developed the coding sheet I believe we  
20 had some story boards. So that would have been whenever  
21 that meeting took place which was February or March of  
22 1999.

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1 Q How about Glenn Morramarco [phonetic]?

2 A I think so.

3 Q And do you know, Josh Rosenkranz is an  
4 attorney, is he not?

5 A Yes.

6 Q And so is Mr. Morramarco, correct?

7 A Yes.

8 Q And they had input into the coding sheet, did  
9 they?

10 A I don't remember if Glenn was at the specific  
11 Saturday morning meeting.

12 Q Did Josh have input into the coding sheet?

13 A Yes.

14 Q Do you recall when the policy committee first  
15 met, Professor Goldstein?

16 A No, I don't.

17 Q Now, you described for us earlier that you  
18 developed a coding sheet for the 1998 data and then  
19 began the coding process. Can you put --

20 MR. DODYK: I'm going to object to the form of  
21 the question. Just the question of your use of the word  
22 "you developed." Are you talking to the witness or

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1 Q March of 1999?

2 A Right.

3 Q I thought you just told me that the data  
4 started coming in in the spring of 1999; is that right?

5 A Well, there are two ways of talking about  
6 data. One is Evan gave me a sample of story boards  
7 before the formal contract was executed with Brennan and  
8 I believe those story boards were used to give guidance  
9 in developing coding sheets. I don't think we got the  
10 full round of data until later in the spring, earlier in  
11 the summer.

12 Q We'll come back to these then, Professor  
13 Goldstein. We're going to mark as Goldstein Exhibit 9 a  
14 copy of a manuscript, Professor Goldstein, which I  
15 believe is attached to your expert report in this case.  
16 It bears the control numbers KG 00012783 through KG  
17 00012812. And before we go on, Professor Goldstein, I  
18 note that there's a confidential stamp on this document  
19 and Mr. Dodyk and I have had some discussions about the  
20 confidentiality designations in this case and I just  
21 want to make sure I understand what the Brennan Center's  
22 position is and your position is on this.

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1 MS. BUCKLEY: I take it, Mr. Dodyk, that any  
2 documents that are marked as confidential for both the  
3 Brennan Center and Professor Goldstein have been  
4 undesignated, if you will, with the exception of the  
5 2000 story boards produced by Professor Goldstein and  
6 the 2000 data base that was produced by Professor  
7 Goldstein?

8 MR. DODYK: That's my understanding, if you  
9 have correctly, Susan, described the scope of the  
10 undertaking in the contract and I don't have a contract  
11 in front of me but I think what you say is accurate.  
12 Let's assume this falls outside.

13 MS. BUCKLEY: I'm assuming that every document  
14 falls outside except for the 2000 story boards produced  
15 by Professor Goldstein.

16 MR. DODYK: I'm hopeful of agreeing with you  
17 but we'll see what the documents come up.

18 MS. BUCKLEY: That doesn't do me much good.  
19 If we're going to do it document by document I thought we  
20 had a more comprehensive arrangement than that, Paul.  
21 Are you now saying we have to go document by document  
22 through all the grants?

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1 MR. DODYK: No, I'm saying you should presume  
2 that each document that you use is not marked  
3 confidential. If something comes in up in a particular  
4 document which appears to contain data from CMAG which  
5 is something they're going to assert confidentiality  
6 with respect to we may have to revisit the question, but  
7 why don't you go ahead and assume that these are not  
8 confidential.

9 MS. BUCKLEY: Okay, thank you.

10 THE WITNESS: The only reason that -- this is  
11 under Referee Journal Review and that's a double-blind  
12 process in political science.

13 MR. DODYK: Well, this will not affect that  
14 process, will it, because I don't imagine that the use  
15 of this document or the document itself is in any way  
16 going to affect that process so let's not worry about  
17 that.

18 BY MS. BUCKLEY:

19 Q When you're referring to this as your review,  
20 Professor Goldstein, you're talking about what we've  
21 marked as Goldstein Exhibit 9?

22 A Right.

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1 Q And that's an unpublished manuscript that  
2 you've submitted to a political science journal for peer  
3 review; is that right?

4 A Yes.

5 Q And what journal have you submitted this  
6 manuscript to?

7 A Political Communication.

8 (Exhibit Number 9 was marked for  
9 identification.)

10 BY MS. BUCKLEY:

11 Q Now, Professor Goldstein, you've described the  
12 company known as CMAG a few times in the course of your  
13 testimony here today. Could you tell us exactly what  
14 CMAG does to gather the data that you worked with?

15 A CMAG gets the data from a company called CMR,  
16 Competitive Media Reporting, which is a New York-based  
17 company that tracks advertising now in the top one  
18 hundred markets, during the time of the '98 and 2000 in  
19 the top 75 markets. And their clients include most of  
20 the big commercial advertisers in the country. They  
21 entered into an agreement with CMAG, started CMAG, to do  
22 their political work and to work out of Washington D.C.

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1 so CMAG gets the data from CMR.

2 Q And how does CMAG collect the data, if you  
3 know?

4 A CMR sends it to them.

5 Q And how does CMR collect the data from the  
6 broadcasters, if you know?

7 A CMR has captured facilities in each of the  
8 markets that monitor television within each of the  
9 market, a technology that recognizes the seams between,  
10 I don't know the technical, technical details but as it  
11 has been explained to me it is a technology that  
12 recognizes the seams between television programs; this  
13 is a commercial, and then recognizes the audio and video  
14 content of that commercial, or then tracks the audio and  
15 video content of that commercial.

16 If the system has already seen that audio and  
17 video content there will be a unique fingerprint on it,  
18 it will say that's the Proctor & Gamble toothpaste ad  
19 with the kid. And then subsequently every time it sees  
20 that Proctor & Gamble toothpaste ad with the kid it  
21 knows it's ad number 496, or whatever it is.

22 When it sees, when the system sees an ad for

12 (Pages 45 to 48)

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1 the first time that ad is sent to the CMR coding center  
2 which I believe is in Suburban Philadelphia and a CMR  
3 worker analyst looks at the ad and gives it a number and  
4 gives it a name.

5 Q Now, you mentioned the markets that CMAG  
6 monitors, am I correct that in connection with the 1998  
7 election year and the 2000 election year that CMAG  
8 monitored 75 markets in the United States?

9 A Yes.

10 Q And you'll agree, won't you, Professor  
11 Gibson -- Gibson, we did it again.

12 MR. DODYK: Objection, objection, objection.

13 BY MS. BUCKLEY:

14 Q You'll agree, won't you, Professor Goldstein  
15 that CMAG coverage is not comprehensive?

16 A No, I wouldn't agree with that.

17 Q You won't agree with that, okay. You would  
18 agree, wouldn't you, that there are significant gaps in  
19 CMAG's market coverage, wouldn't you?

20 A The top 75 markets comprise 80 percent of the  
21 country's viewing population.

22 Q So you would concede that there is a

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1 we need to respond to before the editor would decide to  
2 publish it or not.

3 Q So you have to kind of revise it, is that what  
4 you're telling me?

5 A Yes.

6 Q Let's turn to page 16, Professor. The page  
7 begins with a heading, Addressing Potential Critiques,  
8 and this is your discussion of CMAG. And reading,  
9 quote, The use of ad tracking data is nonetheless open  
10 to critique from several angles. One potential  
11 criticism of the CMAG data is that they are not  
12 comprehensive, unquote. And you wrote that, didn't you  
13 Professor?

14 A Yes.

15 Q And you agree with that today?

16 A Uh-huh. One potential criticism of the CMAG  
17 data is that they are not comprehensive.

18 Q Then you go on to say later on in that  
19 paragraph, "So although there are gaps in CMAG's  
20 coverage of the country that advertising in the hotly  
21 contested 2002 South Dakota senate race is untracked,  
22 for example - scholars will find that almost all of the

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1 significant gap, would you?

2 A I don't think 20 -- no, I wouldn't.

3 Q And would you agree that the limitations on  
4 CMAG's coverage raises a potential concern that the  
5 results may be biased?

6 A No.

7 Q Okay. Let's take a look at Exhibit 9. Now,  
8 could you describe for the record exactly what is,  
9 Exhibit 9, Professor Goldstein?

10 A Exhibit 9 is a manuscript written by two of my  
11 graduate students, a colleague at the University of  
12 Virginia and me about measuring exposure to political  
13 advertising and is currently under review at a journal,  
14 Political Communication.

15 Q And do you expect a decision soon as to  
16 whether this will be published by the Political  
17 Communication?

18 A We just got word that it is a revise and  
19 resubmit.

20 Q What does that mean?

21 A Pretty common in this world that the editor  
22 wants, that reviewers had a couple of questions and that

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1 respondents in any nationally representative poll are  
2 covered." Is that true, Professor Goldstein?

3 A Yes.

4 Q So there are gaps?

5 A Yes.

6 Q Reading on, Professor Goldstein, quote, A  
7 potential concern, though, is whether one's results  
8 might be biased by excluding people who live outside  
9 those one hundred markets who would tend to reside in  
10 more rural areas.

11 Now, the reference in that sentence to a  
12 hundred markets is to CMAG's coverage today; is that  
13 correct?

14 A Right.

15 Q At the time of the 1998 and 2000 buying time  
16 study CMAG covered only 75 markets, correct?

17 A Right.

18 Q So I take it that in 1998 and 2000 the bias  
19 would be even more problematic than that you referred to  
20 here; is that right?

21 MR. DODYK: Objection, you may answer the  
22 question. Read it back.

13 (Pages 49 to 52)

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**en eth Goldstei (Vol 1)**

**Page 53**

1 (Discussion off the record.)  
2 (Luncheon recess was taken.)  
3 (Whereupon, at 11:00 a.m. the deposition of  
4 KENNETH GOLDSTEIN was suspended.)  
5 \* \* \* \* \*

**Page 54**

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC  
2 I, Marian E. Cummings, Certified Court  
3 Reporter, the officer before whom the foregoing  
4 deposition was taken do hereby certify that the  
5 foregoing transcript is a true and correct record of the  
6 testimony given; that said testimony was taken by me  
7 stenographically and thereafter reduced to typewriting  
8 under my supervision; and that I am neither counsel for,  
9 related to, nor employed by any of the parties to this  
10 case and have no interest, financial or otherwise, in  
11 its outcome.  
12 IN WITNESS WHEREOF, I have hereunto set my  
13 hand and affixed my notarial seal this 28th day of  
14 October 2002.  
15 My commission expires: April 3, 2003  
16  
17  
18 NOTARY PUBLIC IN AND FOR  
19 THE DISTRICT OF COLUMBIA  
20  
21  
22

**14 (Pages 53 to 54)**

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