Page 1

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3 - - - - - - - - - - - - - - - - - x

4 SENATOR MITCH MCCONNELL, et al., :

5   Plaintiffs, :

6 v.   :CIV No.02-582

7 FEDERAL ELECTION COMMISSION,

8 et. al.,   :

9   Defendants. :

10 - - - - - - - - - - - - - - - - X

11   Deposition of KENNETH GOLDSTEIN

12   Washington, DC

13   Thursday, October 24, 2002

14   (Relieving morning reporter)

15   12:15 p.m.

16

17

18

19 Reported by: Kimberly Brantley, CSR

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21

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Page 2

1   Deposition of KENNETH GOLDSTEIN, held at the

2 offices of:

3

4   COZEN & O'CONNOR

5   1990 K Street NW

6   Washington, DC

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11   Pursuant to agreement, before Kimberly Brantley,

12 Certified Shorthand Reporter and Notary Public of the District of

13 Columbia.

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Page 3

1   A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF SENATOR MITCHELL MCCONNELL:

3   SUSAN BUCKLEY, ESQUIRE

4   CAHIL, GORDON & REINDEL

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6   New York, New York

7   (212)701-3862

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10

11 ON BEHALF OF DEFENDANT FEDERAL ELECTION COMMISSION:

12   PAUL M. DODYK, ESQUIRE

13   CRAVATH, SWAINE & MOORE

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21

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Page 4

1   C O N T E N T S

2 EXAMINATION OF Kenneth Goldstein   PAGE

3   By Ms. Buckley   9

4   By Mr. Dodyk   214

5

6   E X H I B I T S

7   (Attached to the Transcript)

1 (Pages 1 to 4)

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

2   KENNETH GOLDSTEIN

3   having been previously sworn, testified as follows:

4   EXAMINATION BY COUNSEL FOR PLAINTIFF SENATOR MITCHELL

5   McCONNELL:

6   BY MS. BUCKLEY:

7   Q.   Professor Goldstein, when we took our break we were

8   talking about CMAG. Do you recall that?

9   A.   Yes.

10   Q.   And we had turned to what we marked as Exhibit 9,

11   which is your unpublished manuscript, right, and we were focusing

12   on the sentence on page sixteen, which says, talking about CMAG,

13   quote, "a potential concern, though, is whether one's results

14   might be biased by excluding people who live outside those one

15   hundred markets, who tend to reside in more rural areas."

16   My question to you was, it's my understanding that for

17   the Buying Time '98 and Buying Time 2000 CMAG only covered five

18   markets, correct?

19   A.   Yes.

20   Q.   And so my question is whether the bias would have been

21   more extensive in '98 and 2000 because the markets were even

22   smaller?

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1   A.   I don't think anywhere I say that there was a bias.

2   Q.   Well you say it was a potential concern, don't you?

3   A.   I say a potential concern is there might be a bias.

4   Q.   Is it your potential concern or someone else's

5   potential concern?

6   A.   It could be both.

7   Q.   Well, do you have a concern that there might be a bias

8   because the CMAG data doesn't track rural areas?

9   A.   I really do not have that concern.

10   Q.   All right, what concern are you expressing here?

11   A.   Well, it's -- that it's a potential concern, a

12   potential criticism, but I think it is not a concern or a

13   criticism in reality.

14   Q.   So you no longer consider it a potential concern?

15   A.   That's --

16   MR. DODYK: I object to the form of the question.

17   Q.   Do you any longer consider it a potential concern,

18   Professor Goldstein?

19   MR. DODYK: Same objection.

20   A.   Is it a potential concern?

21   Q.   Yes.

22   A.   Sure.

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1   Q.   Do you believe it's a concern?

2   A.   No.

3   Q.   I believe I read in Buying Time '98 that you had data

4   for approximately two hundred and ten races that year. Does

5   that sound about right?

6   A.   It sounds about right.

7   Q.   And how many races were there in 1998?

8   A.   There were four hundred and thirty-five congressional

9   races, although not all of them were contested.

10   Q.   Does that include the Senate, as well?

11   A.   There would have been another thirty-three,

12   thirty-four in the Senate.

13   Q.   So we're up to about four hundred and sixty-eight or

14   so?

15   A.   Yes.

16   Q.   Now, I'm no expert on CMAG, Professor Goldstein, but

17   as I understand it, that CMAG first has to identify which

18   commercials are political and which commercials are not in order

19   to provide the data to you. Is that correct?

20   A.   CMR actually makes the initial judgment.

21   Q.   And how did they determine what's political and what's

22   not?

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1   A.   They are instructed by CMAG to err on the -- I'm not

2   sure if the liberal side, but to err on the inclusive side of

3   political. So, I have never seen the formal instruction, but I

4   have seen what CMR gives to CMAG and it ends up being overly

5   inclusive, ads for the Red Cross, ads for electric companies,

6   which is more general advertising.

7   Q.   Well there are some documents in this case which will

8   come to you later which suggest that sometimes you get

9   storyboards long after the fact from CMAG. Do you know that?

10   A.   Yes.

11   Q.   And why is that that you get these storyboards long

12   after the fact?

13   A.   There is a large amount of data, a large amount of

14   storyboards and sometimes CMAG fails to get it to us in a timely

15   fashion.

16   Q.   And you received more than a hundred storyboards about

17   Buying Time 2000 after it was published, didn't you?

18   A.   Well they weren't about Buying Time 2000. We were

19   about -- they were storyboards from ads that were aired in 2000.

20   Q.   Okay, thank you for the correction. But it's true

21   that you received storyboards ads aired after 2000,

22   approximately, or more than a hundred of them, after Buying Time

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Page 13

1 2000 was published. Is that right?

2   A.   Yes. Yes.

3   Q.   And was that because of some problem with CMAG, or

4 CMR?

5   A.   It was never clear to me whether the problem was with

6 CMR to CMAG or CMAG getting it to us.

7   Q.   Did you draw any conclusions about what the likely

8 problem was by looking at the storyboards, themselves?

9   A.   No.

10   Q.   You couldn't tell?

11   A.   No, actually I think they were probably -- the problem

12 was probably CMAG to us, not CMR to CMAG, because someone else

13 who was using CMAG data, I was at a conference, asked me about a

14 couple of ads, and I said I'm not familiar with those ads. That

15 lead me to go back to CMAG and say, hey, did we miss some ads

16 from the last time, so the problem was probably -- the problem

17 was probably CMAG to us, not CMR to CMAG.

18   Q.   And that's how you obtained these more than one

19 hundred ads after the fact?

20   A.   Right. And also we had -- we had gone to stations

21 and done validity checks on the logs and in a couple of stations

22 we found some mistakes, so that -- mistakes that were more than

Page 14

1 we would usually see, and so that lead us to go back to CMAG, as

2 well, and ask were we missing anything.

3   Q.   Well let's take a look at page seventeen of your

4 unpublished manuscript, Mr. Goldstein, which we have marked as

5 Exhibit 9. I take it what you are describing in your last

6 answer was your trips to broadcasters, local broadcasters, in an

7 effort to determine whether CMAG was producing reliable

8 information about the number of airings in a particular market.

9 Is that right?

10   A.   Valid information, yes.

11   Q.   Okay, you'll have to correct me as to the difference

12 between valid and reliable in your science.

13   And one of the places you visited was KDKA in

14 Pittsburgh. Is that right?

15   A.   Right, one of my graduate students visited it.

16   Q.   And at the visit to KDKA in Pittsburgh, your graduate

17 student reviewed invoices of the political advertisements aired

18 in that market that year. Is that correct?

19   A.   Yes.

20   Q.   And according to your unpublished article, quote, "for

21 reasons unknown to us, we were unable to locate sixty-two of the

22 three hundred and eight spots listed on the invoices obtained

Page 15

1 from the television station," end quote.

2   I'd like you to help me understand what that means.

3 I take it that you discovered from the invoices at the television

4 station that the station in Pittsburgh had aired three hundred

5 and eight spots during the election. Is that right?

6   A.   Three hundred and eight spot airings. Three hundred

7 and eight airings.

8   Q.   And the data that you --

9   A.   Actually it's -- the station in Pittsburgh had

10 obviously aired many more than that. We went in, took a sample

11 of days and then from that sample of days matched it up to our

12 data.

13   Q.   So you didn't examine every invoice for every

14 political airing in Pittsburgh on that --

15   A.   No, we took a random sample.

16   Q.   And you found in your random sample of three hundred

17 and eight that you had no record of sixty-two of those spots

18 having aired --

19   A.   That's correct.

20   Q.   From the information provided to you by CMAG. Is

21 that right?

22   A.   That's correct.

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1   Q.   And that tells us, does it not, Professor Goldstein,

2 that at least in Pittsburgh you were missing about twenty percent

3 of the ads. Is that right?

4   A.   For that station in Pittsburgh, during that time

5 period, we were missing twenty percent, correct.

6   Q.   And is the three hundred and eight spot samples a

7 large enough sample that we can project that to the Pittsburgh

8 station as a whole?

9   A.   To that particular Pittsburgh station as a whole, it's

10 difficult to calculate what the standard air here should be,

11 because those three hundred and eight spots only came from -- I

12 don't remember exactly, but probably two or three days, so you

13 really should be calculating the standard air on days, and then,

14 no, that wouldn't be enough to generalize. If it was three

15 hundred and eight spots, one spot picked from different days

16 throughout, I would be more confident generalizing to that

17 number.

18   Q.   Well, you draw the conclusion in your report that --

19 do you not, that "twenty percent of the airings in Pittsburgh

20 were missed" --

21   MR. DODYK: Can you give us the citation to the page.

22   MS. BUCKLEY: Page twenty-eight of your report.

Page 17

1 Q. "Twenty-eight percent of the sample spots on that
2 station in Pittsburgh" -- excuse me, WKDK --
3 A. Right, "twenty percent of the three hundred and eight
4 spots from that station in Pittsburgh were missed."
5 Q. But you now say that the three hundred and eight
6 sample is not large enough to draw that conclusion? Is that
7 right?
8 A. What we were trying to do was to the greatest extent
9 possible look at a number of stations over a number of days and
10 get an idea of how accurate the CMAG data were.
11 Q. Well, do you stand by the twenty percent figure,
12 Professor Goldstein?
13 A. Yes.
14 Q. All right, let's mark as Exhibit 10, a memo bearing
15 the control numbers BRE007621 to BRE007631.
16   (Whereupon a memo Bates numbered BRE007621 to
17 BRE007631 was marked Goldstein Deposition Exhibit 10 for
18 identification.)
19 Q. And the question for you, Professor Goldstein, is if
20 you can tell us what this document is.
21 A. A memo before that initial Saturday morning coding
22 sheet meeting.

Page 18

1 Q. Now, you described this meeting a little bit in your
2 testimony this morning. Is that right?
3 A. Yes.
4 Q. And I see in the first paragraph of the memo it refers
5 to Saturday morning March 20. Do you see that, about three
6 lines down?
7 A. Yes.
8 Q. Is it March 20, 1999 we're talking about here?
9 A. Yes.
10 Q. Now this is a meeting entitled "To: Saturday Morning
11 Meeting Volunteers," and it's from Jon Krasno and you, right?
12 A. Yes. I think Jon wrote it, though.
13 Q. Tell me about this Saturday morning meeting with
14 volunteers. What was the purpose of the meeting?
15 A. The meeting was to devise a coding sheet to code the
16 1998 data.
17 Q. And who were the volunteers who attended the meeting?
18 A. I think I have answered it a couple of times, but it
19 was Jon Krasno; it was me; I think it was Daryl West from Brown.
20 I think it was Tom Mann from Bookings. I can't remember whether
21 David Magelby was there or not. Josh Rosencranz from Brennan,
22 Nancy Northup from Brennan and there was a couple of other of

Page 19

1 Brennan's folks there.
2 Q. I apologize. I did not know we were talking about
3 the same meeting. And where did this take place?
4 A. I think it was at a conference room at the N.Y.U. Law
5 School.
6 Q. Can you describe for me what happened at that meeting?
7 A. We sat around a table and people looked at
8 storyboards. CMAG had provided us with some storyboards, and
9 the coding sheet was devised and written, the first draft of the
10 coding sheet was devised and coded from.
11 Q. With inputting from all the people that you have
12 named?
13 A. Yes.
14 Q. Was that a common way to devise a common protocol,
15 Mr. Goldstein?
16 A. I'm not sure there is a common way, to sit around with
17 people who have expertise, yes.
18 Q. Now, I see here in paragraph two, this memo, Professor
19 Goldstein, it says a main reason -- quote, "a main reason for the
20 Center's acquisition of these data is to test a variety of
21 hypotheses about issue. Advocacy policy-makers have important
22 questions about these ads as they struggle to regulate them,

Page 20

1 including questions about their timing, tone and content, along
2 with ways to distinguish, 'true,' issue ads from electioneering."
3   Was that one of the main reasons for your
4 participation in the project, as well, Professor Goldstein?
5 A. Which --
6 Q. To test a variety of hypotheses about issue advocacy?
7 A. It was not my specific role to test a variety of
8 hypotheses.
9 Q. Was that one of your goals?
10 A. One of my goals?
11 Q. Correct.
12 A. That was not a particular goal of mine in 1998.
13 Q. You don't dispute that it was a particular goal at the
14 Brennan Center, though?
15 A. No, absolutely not. I was mostly concerned with the
16 tone of advertising.
17 Q. And that is whether advertising is negative or
18 positive?
19 A. Exactly.
20 Q. You say on page two of this memo, Professor Goldstein,
21 down at the bottom, under the heading "three," quote, "The seven
22 or so black and white frames shown in the storyboard of the

Page 21

1 average thirty-second commercial offer limited opportunities to
2 code visual content," unquote.
3   Do you agree with that?
4   A.   That's probably stronger language than I would have
5 used.
6   Q.   But you'll agree that having only seven or so black
7 and white frames makes it more difficult to code than if you had
8 the actual commercial, itself, wouldn't you?
9   A.   Sure, absolutely.
10   Q.   And you, yourself, experienced problems with the
11 storyboards in that many of them never contained the tag line as
12 to who was sponsoring them.   Isn't that right?
13   A.   Right.
14   Q.   About twenty-five percent of them, I think you
15 guesstimated.   Is that correct?
16   A.   Yes.
17   Q.   If you will go back up the page, Professor Goldstein,
18 there is a paragraph beginning in the center, "the Center, of
19 course, is vitally interested."   Do you see that?
20   A.   Yes.
21   Q.   And following that -- let me read the whole thing.
22 Quote, "The Center, of course, is vitally interested in this

Page 22

1 category," and the category we're talking about is issue
2 advocacy, quote, "particularly in the ways to distinguish issue
3 ads, both real and fake, from what everyone understands to be
4 electioneering.   The Supreme Court's magic words test is clearly
5 inadequate to insure that issue ads truly advocate issues instead
6 of candidates, yet many judges seem satisfied," end of quote.
7   Professor Goldstein, do you agree that the Supreme
8 Court's magic words test is clearly inadequate to insure that
9 issue advocates truly address issues instead of candidates?
10   A.   Yes.
11   Q.   And did you believe it at that time?
12   A.   At that time, no.
13   Q.   You didn't believe it at the time this was --
14   A.   I didn't have an opinion on it at the time of this
15 memo.
16   Q.   Did you read this memo before it was distributed?
17   A.   I don't think so.
18   Q.   Even though it has your name on it?
19   A.   Yes.
20   Q.   As one of the authors?
21   A.   Yes.
22   Q.   So you're not sure if you read it or not?

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1   A.   I'm not sure -- no, I'm not sure if I read it or not.
2   Q.   Now what was the result of this Saturday morning
3 meeting with the volunteers, Professor Goldstein?
4   A.   We had first draft of a coding sheet.
5   MS. BUCKLEY: Let's mark as Goldstein Exhibit 11 a
6 document bearing a control numbers BREOO 7616 through BREOO
7 7620.
8   (Whereupon an email Bates numbered BREOO 7616
9 through BREOO 7620 was marked Goldstein's Exhibit 11 for
10 identification.)
11   Q.   And can you tell us what this document is,
12 Professor Goldstein.
13   A.   This is a -- it's from my email account at ASU, but I
14 don't think I wrote it.   Jon -- this is the time during spring
15 break of 1999 when Jon was down in Arizona and it looks like him
16 using my email to write a note to the members of this advisory
17 board updating them on what was going on with the coding and
18 processing of the CMAG data.
19   Q.   Okay, well we see on the first page of this document
20 it's an email, correct?
21   A.   Right.
22   Q.   And on the "from" line it says "from Ken Goldstein,"

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1 right?
2   A.   Right.
3   Q.   You're just not sure if it was you who wrote this
4 email?
5   A.   I'm almost -- it doesn't look like language I'd use,
6 and usually when I write emails I never capitalize them, I always
7 use small letters.   I think Jon was having trouble signing into
8 his email.   I think it was before web-based email existed,
9 essentially, and so he was probably using my email.
10   Q.   Why don't you review the rest of the email and tell me
11 if you disagree with any of it, Professor Goldstein.
12   MR. DODYK: I'll object to the form of the question
13 as asking the witness to perform a task with respect to a
14 multi-page document.
15   MS. BUCKLEY: I'm just asking him to look at the
16 one-page email.
17   MR. DODYK: Which has numerous statements in it
18 and which he can't possibly give a meaningful answer to a
19 question that general.
20   MS. BUCKLEY: Well he can tell me about any one.
21   Q.   It's only a two -- three-paragraph email,
22 Professor Goldstein.   Why don't you look at it.

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1   MR. DODYK: I object to the form of the question

2   for the reasons stated.

3   (Brief pause while witness peruses document.)

4   A.   It's a list updating people who had either been at

5   the Saturday meeting or people who had experience -- like I don't

6   think Jon Geer was at the meeting in New York, but John's a

7   scholar of television advertising at Vanderbilt and this is an

8   email to people who had either helped develop the coding sheet or

9   scholars who might want to use CMAG data down the line, updating

10   them on where they were and where we were in terms of processing

11   and coding the data and in terms of developing a coding sheet.

12   Q.   Now the email says in paragraph one, quote, "after

13   resolving a variety of technical issues, we have moved to create

14   a coding instrument from our discussions on Saturday morning,"

15   end quotes.

16   Is that true?

17   A.   Is that sentence true?

18   Q.   Right.   Did that happen?

19   A.   Yes.   Actually it's hard for me to remember what

20   would have happened on March 24th, 1999, but it seems perfectly

21   reasonable.

22   Q.   Well we know that the Saturday morning meeting was on

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1   March 20, 1999, and we're now a few days after that, Wednesday,

2   March 24th, 1999.   Continuing on with that paragraph that I was

3   just looking at, the last sentence reads, quote, "we're going to

4   resume work on the instrument this afternoon and pre-test it

5   tomorrow morning before introducing it to the group of coders in

6   the afternoon.   They will work for several days and then we

7   reconvene on Monday to reconsider," unquote.

8   Is that the process that occurred after March 24th,

9   1999, if you recall, Professor Goldstein?

10   A.   I don't recollect it very clearly, but it sounds

11   reasonable.

12   Q.   This seems to suggest that the coding instrument was

13   presented to some coders on or about March 24th, 1999 to see how

14   it worked.   Is that right?

15   A.   Yes.

16   Q.   Okay.   And attached in this email is a document

17   entitled "Coding CMAG Storyboards."   Do you see that?

18   A.   Yes.

19   Q.   Is that the coding instrument that is being referred

20   to in the email?

21   A.   Yes.   It looks like it.

22   Q.   And did you present this coding instrument to coders

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1   in March or April of 1999 to pre-test the questionnaire?

2   MR. DODYK: Are you asking the question with

3   reference to this specific form of coding sheet?

4   MS. BUCKLEY: I am.

5   A.   I don't know if it was exactly this one, but

6   something like this, yes.

7   Q.   And in the email it refers to it says you are going to

8   ask the coder to work for several days and then reconvene on

9   Monday to reconsider.   Do you see that?

10   A.   Um-hum.

11   Q.   Did the coders work for several days at the end of

12   March, early April, 1999?

13   A.   Again I don't have a specific recollection of that.

14   Q.   You simply don't recall coders even working on that?

15   A.   Oh, I remember coders working on it.   I don't remember

16   if they worked for several days during those particular days.

17   Q.   What do you remember about the coders working on this

18   coding instrument?

19   A.   That coders who were honor students at ASU along with

20   some graduate students at ASU were doing the coding on the 1998

21   advertisements.

22   Q.   And do you have a best recollection of how long they

Page 28

1   worked?

2   A.   Yes, it took a lot longer than we had thought and

3   hoped.   They worked into the fall of 1999.

4   Q.   Now I'm talking about working on the pre-test of this

5   instrument.

6   A.   Oh, do I remember how long they worked on the

7   pre-test?   No.

8   Q.   Do you know if it was more than a week?

9   A.   I would assume it wasn't, but I don't specifically

10   know.

11   Q.   And who were these coders who were working on this

12   pre-test?

13   A.   They were undergraduate honor students at ASU and then

14   also a couple of my graduate students at ASU.

15   Q.   And what if anything did you learn from this pre-test,

16   Professor Goldstein?

17   A.   I don't really remember specifically the pre-test from

18   1999.   I remember there not being any major issues with the

19   coding sheet and that we proceeded with the original coding sheet

20   that we had.

21   Q.   Well take a look at the coding sheet attached to this

22   email, Professor Goldstein, which is the coding sheet that your

Esquire Deposition Services

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1   email says you were using for the pre-test. I want you to show
2   me where on this coding sheet is the equivalent of the question
3   that appeared in the twenty-six-question protocol for Buying Time
4   '98 on the purpose of the ad?
5   A.   On the purpose of the ad?
6   (Brief pause while witness peruses documents.)
7   Q.   "In your judgment is the primary focus of" -- I'm
8   sorry, no, that's wrong. "In your judgment is the primary focus
9   of this ad on the personal characteristics of either candidate or
10   policy matters," is there any equivalent in the coding sheet of
11   the question that became question six on the coding protocol for
12   Buying Time '98, and that question is, "in your opinion, is the
13   purpose of this ad to provide information about or urge action on
14   a particular issue or is it to generate support or opposition for
15   a particular candidate," and then there are three answers. Can
16   you find that in this coding sheet that you used with the
17   pre-testers?
18   A.   No.
19   Q.   The question isn't there, is it?
20   A.   No.
21   Q.   Who added the question, Professor Goldstein?
22   A.   I assume Jon, because I have no memory of changing the

Page 30

1   coding sheet.
2   Q.   You have no memory of changing the coding sheet?
3   A.   I have no memory of changing the coding sheet.
4   Q.   When you pre-tested the coding sheet attached to
5   Exhibit 11, what kind of results did you get in response to the
6   question you just referred to, and that is "In your judgment is
7   the primary focus of this ad on the characteristics of either
8   candidate or on policy matters?" Do your recall?
9   A.   No.
10   Q.   Whatever it was, in the next iteration of this coding
11   sheet we find question six. Is that right?
12   A.   Yes. I don't know if it's the next iteration, but
13   the final iteration it was included.
14   Q.   And there was no questions about why question six
15   should be added?
16   A.   No.
17   Q.   You didn't add it?
18   A.   I didn't add it, no.
19   Q.   Who did you report the results of the pre-testing to,
20   Professor Goldstein?
21   A.   I think Jon mostly did the pre-test. He camped out
22   in my office and worked with the students, but the results would

Page 31

1   have been reported to Jon. Jon was making the calls.
2   Q.   And then who did Jon and/or you report to?
3   A.   Brennan Center.
4   Q.   Can you tell me what you reported to the Brennan
5   Center about the reports of the --
6   MR. DODYK: Object to the form of the question. The
7   prior question asked him or Jon, and you are now assuming
8   that he reported and you have not established that.
9   MS. BUCKLEY: Okay, either way.
10   Q.   Either way.
11   A.   I never reported to the Brennan Center.
12   Q.   Did you ever ask Dr. Krasno why he added question six,
13   if he did?
14   A.   No.
15   Q.   Let's mark as Exhibit 12 a one-page email from
16   Dr. Krasno to you dated April 2, 1999.
17   (Whereupon an email from Krasno to Goldstein was
18   marked Goldstein Exhibit 12 for identification.)
19   Q.   Can you read that to yourself, Professor Goldstein.
20   A.   Sure.
21   (Brief pause while witness peruses document.)
22   A.   It's an email from Jon to me and other members of that

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1   coding committee updating them on the progress of the coding and
2   processing of the CMAG data for 1998.
3   Q.   Now this is a few days later from the document we just
4   looked at as Exhibit 11, right?
5   A.   Right.
6   Q.   Dated April 2nd, 1999. And Dr. Krasno is reporting
7   that you have come to a final version of the coding instrument,
8   correct?
9   MR. DODYK: Where are you looking?
10   MS. BUCKLEY: Second paragraph.
11   A.   It has the MS-Word version of the final coding
12   instrument, yes.
13   Q.   And actually he then reports that you are going to
14   have thousands printed. Do you recall that?
15   A.   Vaguely.
16   Q.   And did you arrange for that?
17   A.   I vaguely remember that, yes, something about the
18   secretary not letting me use the copier and we had to contract
19   that out.
20   Q.   And is the final coding instrument the instrument that
21   was attached to Buying Time '98? Is that what the final coding
22   instrument is?

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1   A.   Yes.

2   Q.   Now if you look --

3   A.   That's the instrument we used when we coded, right.

4   Just judging from this email, I guess there could have been

5   changes to the document after this, because he says at the end

6   "Let us know if you have any comments or ideas."

7   Q.   Okay. He talks at one point, Professor Goldstein,

8   quote, and I'm in the second paragraph here, quote, "there is

9   room for ambiguity," referring to the coding sheet, I take it,

10 "at a few points on the instrument (e.g. the distinction between

11 a 'characterization' and a 'theme'), but Ken and I felt we could

12 deal with those things most effectively while briefing the

13 coders. We will obviously have to write up a short description

14 of those briefings to settle any lingering questions."

15   Do you see that?

16 A.   Yes.

17 Q.   Did you brief the coders who coded the data for Buying

18 Time '98 before they did their coding?

19 A.   Yes.

20 Q.   Did you write up any short discussion of those

21 briefings?

22 A.   Did I? No.

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1   Q.   Have you ever seen any short description of those

2   briefings?

3   A.   I don't remember.

4   Q.   Can you describe for me how you briefed the coders?

5   A.   I gave them instructions that they would get the ads

6   on C.D. roms, and I actually had not remembered that we provided

7   them on C.D. roms, and they would come and we would give them a

8   bunch of coding sheets and they were supposed to fill out these

9   coding sheets to the best of their ability using these C.D. roms

10 and then separately we had graduate students and me figuring out

11 the contextual data for those races, so Representative Snodgrass

12 was from District Two, and that ended up being -- and he was an

13 incumbent or she was an incumbent and who won the race, so there

14 was graduate students and me doing that and then the

15 undergraduates doing the coding.

16 Q.   Now you didn't train these coders, did you, Professor

17 Goldstein?

18 A.   We explained to them how to take the C.D. rom, how to

19 look at storyboards, explained to them what a storyboard was and

20 explained to them that we wanted them to fill out these

21 questionnaires.

22 Q.   So you gave them instructions how to fill out the

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1   questionnaires, correct?

2   A.   Right.

3   Q.   But you didn't have a formal training program as to

4   how they should proceed. Is that right?

5   A.   That's correct.

6   Q.   Now if you look at the third -- fourth paragraph,

7   excuse me, in this email, you'll see reference at the end about

8   "coder fatigue," and I will read it, quote, "To prevent coder

9   fatigue - or whatever one might call a situation when a coder

10 does dozens of similar ads for the same candidate in a row - we

11 have created randomized lists of ads for them to work with."

12   Do you recall that, Professor Goldstein, creating

13 randomized lists of ads for the student coders to work with?

14 A.   Vaguely, yes.

15 Q.   And the reference to "coder fatigue," what was the

16 concern there, if you know?

17 A.   Again, this is a vague recollection, but that CMAG

18 provided the storyboards in alphabetical order, so

19 Alabama/Alabama, Arkansas/Arkansas all the way down, and we

20 didn't necessarily want the same coder doing the same race all

21 the time, so we numbered the storyboards and then gave them to

22 each coder. I think we then pulled a random sample of numbers

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1   and then each coder was given a list of numbers -- a list of

2   numbers or a list of storyboards that they would then have to go

3   find on the C.D. to code.

4   Q.   Can you give me a ball-park idea of how many candidate

5   ads were coded by the student coders for 1998?

6   MR. DODYK: Total?

7   MS. BUCKLEY: Um-hum.

8   A.   Yes, I'm not sure offhand.

9   Q.   Can we find that in Buying Time '98?

10 A.   I'm sure we could.

11 Q.   I wonder if you could show me that, if you would,

12 Professor Goldstein?

13   (Brief pause while witness peruses documents.)

14 A.   That's not exactly it, but it's somewhere around two

15 hundred and thirty thousand spot airings. And let's see, we

16 want the unit of analysis here where it's the creative, not the

17 airings, and let me see if I can find that.

18 Q.   Sure.

19   (Further pause.)

20 A.   I'm just looking. Most of the graphs seem to be

21 proportioned, so it's total spots aired. I'm just looking to

22 see if there is a graph or a table that has creatives as the unit

Page 37

1 of analysis.

2   Q.   Um-hum.

3   A.   Creatives is what we call the storyboard.

4   Q.   I'm just trying to get a sense of how many candidate

5 ads versus how many party ads versus how many group ads.

6   A.   I don't see the exact number here. Judging from

7 these numbers, probably about two and three were candidate ads.

8   Q.   Two off three were --

9   A.   I'm just extrapolating from this. I assume that

10 generally would hold with creatives, as well.

11   Q.   Are you distinguishing between creatives and unique

12 ads?

13   A.   Creative is a unique ad. So it's Snodgrass asked of

14 congress, saying this, that's a creative. That's an ad and that

15 ad could air ten thousand times. But as for coded, it was coded

16 off of one creative.

17   Q.   Right. Well we will see if we can find the number,

18 but do you have a ball-park figure about how many ads were coded

19 overall?

20   A.   In --

21   Q.   In '98.

22   A.   In '98? Somewhere around twenty-five hundred, I

Page 38

1 think, but I'm not sure.

2   Q.   Well, let's see if we can get more definitive numbers

3 and come back to you with that.

4   But my question, and back on Exhibit 12 now, Professor

5 Goldstein, the reference to coder fatigue, Dr. Krasno's referring

6 to "whatever one might call a situation when a coder does dozens

7 of similar ads for the same candidate in a row," was it a concern

8 of yours that so many of these ads were candidate ads that a

9 coder would suffer from something like coder fatigue?

10   A.   Coder fatigue? I don't remember exactly what the

11 coder fatigue concern was.

12   Q.   You don't remember what Dr. Krasno is talking about

13 here?

14   A.   Well -- no. I mean I remember us going through the

15 exercise because we didn't want one person encoding all the same

16 race, but I don't know what he specifically means otherwise by

17 coder fatigue.

18   Q.   Now he also refers to "randomized list of ads," and

19 you were explaining that to us earlier, Professor Goldstein.

20 How were those lists compiled?

21   A.   That we had an alphabetical list of all the creatives,

22 so Arkansas/Snodgrass and then a title that CMAG gives it, and

Page 39

1 then we put all the titles in a database, numbered them and then

2 did a random poll saying every coder is going to get a hundred,

3 two hundred, three hundred -- I don't remember what it was, and

4 then went through and matched those numbers with the particular

5 storyboards and then gave coders a list of the particular

6 storyboards they were supposed to find.

7   Q.   So each coder should have had ads from the full

8 spectrum, if you will, of ads rather than all Alabama for one

9 coder and all Arizona for another coder?

10   A.   Right. They should have a random sample of all the

11 codes, of the creatives.

12   Q.   Well we have talked about the coding sheet for 1998,

13 so let's mark it as Goldstein Exhibit 13.

14   (Whereupon a 1998 coding sheet was marked Goldstein

15 Deposition Exhibit 13 for identification.)

16   MS. BUCKLEY: And while we're here let's mark the

17 coding sheet for Buying Time 2000 as Goldstein Exhibit 14.

18   (Whereupon a Buying Time 2000 coding sheet was

19 marked Goldstein Deposition Exhibit 14 for identification.)

20   MS. BUCKLEY: Goldstein Exhibit 13 is a -- the

21 cover page for Buying Time '98 and then there is appendix A

22 and B. There is a control number BRE024039 and then it

Page 40

1 picks up BRE024242 through 247.

2   Exhibit 14 has the cover page for Buying Time 2000

3 and then it attaches appendix C entitled "Coding the

4 Commercials."

5   Q.   Turning to Exhibit 13, Professor Goldstein, this

6 is the coding sheet for Buying Time '98. I want to direct

7 your attention to question six. Are you with me?

8   A.   Yes.

9   Q.   I'm trying to establish a shorthand way I can talk to

10 you about question six, and let me just say something and you

11 tell me if it's accurate or not. If an ad was coded as -- if

12 the answer to question six for a particular ad was number one,

13 that it provides information or urges action, in your lingo, that

14 would translate into its being an issue ad. Is that right?

15   A.   Correct.

16   Q.   And if the answer to question six was number two, that

17 it generates support/opposition for a candidate, then that would

18 make it an electioneering ad in your terms. Is that right?

19   A.   Yes.

20   Q.   So if I find throughout the course of these documents

21 that certain ads are coded one or two as to question six, I can

22 determine whether it's an issue ad or an electioneering ad,

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1 simply by reference to those two answers. Is that right?

2   A.   Yes.

3   Q.   Okay. Now if you look at Buying Time 2000, which is

4 Goldstein Exhibit 14, I direct your attention to question eleven,

5 and question eleven reads, quote, "in your opinion, is the

6 purpose of the ad to provide information about or urge action on

7 a bill or issue, or is it to generate support or opposition for a

8 particular candidate," and then the coder has three choices, "one,

9 generate support or opposition for a candidate, two, provide

10 information or urge action, three, unsure/unclear."

11   Did I read that correctly, Professor Goldstein?

12   A.   Yes.

13   Q.   Now if you notice question six in '98 is different

14 from question six in 2000. Do you see that?

15   A.   Yes.

16   Q.   Why were the order of the answers switched, Professor

17 Goldstein?

18   A.   I have no recollection of that. I don't know.

19   Q.   Well in '98 the first answer the student could choose

20 is "provide information or urge action." Is that right?

21   A.   Yes.

22   Q.   And in 2000 the first question a student could choose

Page 42

1 is "generate support or opposition for a candidate." Is that

2 right?

3   A.   Yes.

4   Q.   And you have no idea why the question was changed?

5   A.   I had actually never noticed the difference before.

6   Q.   Do you know who changed it?

7   A.   No, I don't.

8   Q.   So as we go through the rest of the documents when we

9 are looking at 2000 ads and the answer is question one, then it's

10 an electioneering ad, and if the answer is two, it's an issue ad.

11 The numbers are switched is all I'm saying.

12   A.   Right.

13   Q.   Do you understand that?

14   A.   It's probably just easier for us to use the terms

15 "issues" and "electioneering" instead of one and two.

16   Q.   Okay, fair enough. Who were the student coders who

17 coded the ads for 1998?

18   A.   They were undergraduate honor students at ASU and then

19 graduate students in the political science department at ASU.

20   Q.   Would you consider them representative of an average

21 viewer, Professor Goldstein?

22   A.   Representative of an average viewer? That's sort of

Page 43

1 hard to say. In some ways, yes, in some ways no.

2   Q.   In what ways no?

3   A.   They're obviously younger than the average television

4 viewer. That's the main way they're not representative.

5   Q.   So other than age, do you think that undergraduate

6 honor students at the university -- at Arizona State University

7 are representative of the average viewer?

8   A.   They are younger. Higher SAT scores are ways that

9 they're different.

10   Q.   That's all you can think of?

11   A.   Yes.

12   Q.   Let's mark at this point in time your expert reports

13 in this litigation, Professor Goldstein.

14   And we will mark as Exhibit 15 the expert report of

15 Kenneth Goldstein and we will mark as Exhibit 16 the rebuttal

16 report.

17   (Whereupon Expert Report of Kenneth Goldstein and

18 Rebuttal Report of Kenneth Goldstein were marked Goldstein

19 Deposition Exhibits 15 and 16, respectively, for identification.)

20   Q.   Miss Bhattacharyya brings up the point that we have

21 marked your original expert report and that there were a couple

22 of minor amendments to it thereafter. I am not going to focus

Page 44

1 on any of those minor amendments.

2   A.   It was different names.

3   Q.   It was lists of different groups at a certain point in

4 time, and I am sure Mr. Dodyk will speak up if we approach

5 anything that was amended.

6   If you turn to page thirty-three of your rebuttal

7 report, Professor --

8   MR. DODYK: Exhibit 16.

9   Q.   Goldstein, which I believe is Exhibit 16. You

10 have a section in there about the student coders. Do you see

11 that?

12   A.   Um-hum.

13   Q.   And you say, quote, "the data contained in the Buying

14 Time data" --

15   A.   Where exactly are you looking?

16   Q.   I'm sorry, on page thirty-three.

17   A.   C?

18   Q.   C. Second sentence, quote, "The data contained in

19 the Buying Time databases were coded primarily by teams of

20 undergraduate students. In 1998 all data was coded by

21 undergraduate honors students from the Arizona State University.

22 In 2000, data was primarily coded by a team of six undergraduates

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1 students enrolled in my upper-level Interest Groups course at the
2 University of Wisconsin."
3   Did I read that correctly, Professor Goldstein?
4 A. Yes.
5 Q. How were the undergraduate honors students from
6 Arizona State University selected?
7 A. There is a program, and I believe there still is a
8 program at Arizona State called the Junior Fellows Program, in
9 which students -- or faculty members they get to know from
10 classes or students, where they approach faculty members and ask
11 the faculty member if they would sponsor them to be in this class
12 called the Junior Fellows class. The Junior Fellows class is
13 then a class that is run usually by a senior member of the
14 department where different members come in every week and talk
15 about their own research to give students a little taste of
16 political science. I think the underlying goal is to get them
17 to go to Poly Sci Grad School and not law school, but it was
18 never very successful, and then in addition to going to the
19 class, the students worked as research assistants for their
20 sponsored faculty member.
21 Q. How many student coders were there for 1998?
22 A. I don't remember exactly. I think five or six or

Page 46

1 seven. I was always a big user of the Junior Fellows program.
2 Q. Okay.
3 A. And I also would have -- I think the coding went into
4 the fall of 1999, as well, so I would have used Junior Fellows
5 for the fall, as well.
6 Q. Let's establish a point in time, you're correct,
7 Professor Goldstein. When did the coding for the 1998 study
8 begin?
9 A. It began early April, mid April of 1999, I believe.
10 Q. And you believe it carried over into the fall semester
11 of 1999?
12 A. Yes. A couple of those junior fellow students in the
13 summer of 1999, I ran ASU's summer and Washington program and a
14 number of the ASU students who were junior fellows also took that
15 class, and so they continued to work coding over the summer.
16 Q. So you think there are roughly six or seven student
17 coders for 1998?
18 A. Yes.
19 Q. How about 2000?
20 A. About the same number.
21 Q. And they were of course from the University of
22 Wisconsin, correct?

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1 A. Right.
2 Q. Now you say here that they were coders in your
3 upper-level Interest Groups course. Do you see that?
4 A. Yes.
5 Q. What's the name of that course, Professor Goldstein?
6 A. I don't even know if it's -- I always call it the
7 Interest Groups course. I'm not sure what the official title
8 is, to tell you the truth.
9 Q. Is the name of the course the Politics of Pressure
'0 Groups?
11 A. It could be. I really have never looked at the
12 title.
13 Q. You never looked at the title of a course you're
14 teaching?
15 A. Well, it's the -- it's Poli-Sci 4 or whatever. It's a
16 course on interest groups.
17 Q. Is it Poli-Sci 472?
18 A. Poli-Sci 472.
19 Q. Politics of Pressure Groups?
20 A. Yes.
21 Q. I got that right?
22 A. Yes.

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1 Q. I'm happy to show you a copy and I will show it to
2 you, I don't know that we need to mark, it from the web site of
3 the University of Wisconsin setting forth the undergraduate
4 catalog from 2001 to 2003.
5 A. All I'm saying is I'm teaching the Intro to American
6 Politics now. I have no idea what it's called. Sometimes it's
7 Intro to American Politics and sometimes it's Intro to American
8 Politics in Government.
9 Q. I'll be happy to hand it to you. It's Policy -- 472
10 Policy and Pressure Groups?
11 A. That's the course.
12 Q. That's the course you taught in the fall of 2000?
13 A. That's the course I taught in the fall of 2000, right.
14 Q. That's the course for which the student coders were
15 selected, right?
16 A. Yes.
17 Q. And considered in that course, I take it, as described
18 here, are the techniques employed in advancing the policy in
19 government by pressure groups?
20 A. That's not a course description I wrote. It's
21 probably a course description that was written in the nineteen --
22 the term "pressure groups" is sort of a dated term in political

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1 science. It was used more in the '40's and 50's when that
2 course catalog was probably written.
3 Q. When the students sit down to decide what courses to
4 take, that's what they have in front of them. Isn't that right?
5 A. Yeah, or they would call it, if anyone asked them,
6 they would say that was the Interest Group course with Goldstein,
7 I think.
8 Q. But that's not what it's called, correct?
9 A. You are right.
10 Q. You would agree, wouldn't you, Professor Goldstein,
11 that the coders in 2000 were far more sophisticated than the
12 coders in 1998?
13 A. No.
14 Q. Would you agree that they were more sophisticated?
15 A. More sophisticated in 2000 than 1998? Correct.
16 Q. No.
17 MS. BUCKLEY: Let's mark as Goldstein Exhibit 17 a
18 two-page document bearing the control numbers BRE00 1417 to
19 BRE00 1418.
20 (Whereupon an email Bates numbered BRE00 1417 to
21 BRE00 1418 was marked Goldstein Exhibit 17 for
22 identification.)

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1 (Brief pause while witness peruses document.)
2 Q. And I will direct your attention to the first page
3 of this email, Professor Goldstein, and this is an email
4 discussing the problem of missing data in the 1998 database. Do
5 you see that?
6 A. Um-hum.
7 Q. And it says, quote, "The missing data category is
8 uncomfortably large in the 1998 database; according to Ken, the
9 2000 database will be tighter because of the increased experience
10 of the data inputers."
11 Why did the 2000 coders have increased experience?
12 A. That certainly is a mis-reporting of what I said. It
13 would have made no sense to make that statement because I was in
14 Arizona State in 1998 and I was at Wisconsin for 2000. They
15 weren't the same coders.
16 Q. That's why I'm asking why the Wisconsin coders were
17 viewed as having more experience than the Arizona State coders?
18 MR. DODYK: It should be noted this document appears
19 to be authored by Craig Holman.
20 MS. BUCKLEY: It appears to be quoting Professor
21 Goldstein or paraphrasing Professor Goldstein, so I'm
22 asking.

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1 MR. DODYK: Just for the record there is no quote
2 in Exhibit 17.
3 MS. BUCKLEY: I said it appears to be quoting and
4 then I corrected myself to say appears to be paraphrasing.
5 Q. I mean the "Ken" in that sentence is you. Is
6 that right?
7 A. Yes.
8 Q. And?
9 A. And I would amend that to say it appears to be
10 mis-paraphrasing what I said.
11 Q. All right. So you don't agree with Mr. Holman here?
12 A. It simply would not have made any sense. I have no
13 recollection of saying it, and it would not have made any sense
14 for me to say that the 2000 database would be tighter because of
15 increased experience of the databasers.
16 Q. Did you hope that the 2000 database would be tighter?
17 A. I had a much more active role in the 2000 database and
18 there was more quality control in the 2000 database, so, yes.
19 Q. You hoped it would be tighter?
20 A. I'm not sure what the word "tighter" means.
21 Q. Well, did you hope there would be less missing data in
22 the 2000 database than there was in the 1998 database?

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1 A. Yes.
2 Q. Now if you turn to page two of this exhibit, Professor
3 Goldstein, this is purporting to show missing data in the 1998
4 database. Do you see that?
5 A. All I see is a --
6 MR. DODYK: For the record I don't see any reference
7 to the 1998 database on that page, Susan, unless you see
8 something I don't.
9 MS. BUCKLEY: I thought that the -- it says
10 "attached are the answers to your questions from the 1998
11 database."
12 Q. I mean this is how it was produced by the Brennan
13 Center.
14 A. It's a calculation made by somebody, not me, and
15 it looks to be saying that almost all the data are missing data
16 from candidates on magic words, and I don't believe that was the
17 case for 1998, if I am reading this sort of confusing chart
18 clearly.
19 Q. All right, well we can disregard the chart, Professor
20 Goldstein, and just ask you. How can you articulate for us how
21 great a problem the missing data was in 1998?
22 A. I have no recollection of how big a problem missing

Page 53

1 data was in 1998.

2 Q. You have no recollection?

3 A. No.

4 Q. So you wouldn't agree, then, that the missing data

5 category is uncomfortably large in the 1998 database?

6 A. I don't know what the missing data category is in the

7 1998 database.

8 Q. Okay. Professor Goldstein, you were responsible for

9 supervising the student coders in both 1998 and 2000, were you

10 not?

11 A. Yes.

12 Q. We have had a number of other depositions and

13 cross-examinations in this case, as I'm sure you know, Professor

14 Goldstein, and I want to point you to some of that testimony.

15 MS. BUCKLEY: For Mr. Dodyk, if you could hand him the

16 transcript of Craig Holman's deposition.

17 Q. I'm reading from page thirty-eight of Mr. Holman's

18 testimony in this case --

19 MR. DODYK: If you could give us just a second.

20 Q. Your counsel has it there.

21 (Brief pause.)

22 MR. DODYK: Where do you want to start reading?

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1 MS. BUCKLEY: I'll read it.

2 Q. Starting on page thirty-eight is where I'm

3 focused. And Mr. Holman was asked the following questions and

4 gave the following answers.... Quote, "Question: Were the coders

5 ever overruled by Professor Goldstein?

6 "Answer: I am aware that they were overruled on

7 occasion by Professor Goldstein.

8 "Question: Do you know the circumstances in which

9 they were overruled?

10 "Answer: Not really. Not most of them. It was the

11 policy of the Brennan Center that Ken Goldstein had the ultimate

12 decision as to what was going to go in the database.

13 "Question: Did you participate in discussions with

14 Professor Goldstein about certain decisions as they were made

15 with regard to the coding?

16 "Answer: I had some discussions with Professor

17 Goldstein, but he always had the final decision."

18 Do you see that, professor Goldstein?

19 A. Um-hum.

20 MR. DODYK: I think you should make clear, Susan,

21 from the context that they're referring to 2000 from the

22 prior question.

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1 MS. BUCKLEY: I'm not sure that that's so, but

2 your point is made, Mr. Dodyk.

3 Q. My question is, is Mr. Holman's testimony correct?

4 A. Which part of Mr. Holman's testimony?

5 Q. That you always had the final decision.

6 A. That I always had the final decision?

7 Q. About the coding.

8 MR. DODYK: I don't see an "always" -- I see -- no.

9 You're right.

10 MS. BUCKLEY: "He."

11 Q. "He," meaning you, "always had the final

12 decision."

13 A. Yes.

14 Q. And he's correct, is he not, that the coders were on

15 occasion overruled by you, isn't he?

16 A. In cleaning the data, we corrected factual errors, but

17 for Buying Time 2000, we cleaned the data for factual errors,

18 yes.

19 Q. Let's stick with Buying Time '98. In Buying Time '98

20 you cleaned the data for factual errors, did you not?

21 A. Not -- yes. Not as extensively as 2000.

22 Q. And in 1998 you overruled certain of the student

Page 56

1 coding decisions, did you not?

2 A. No.

3 Q. Did you overrule certain student coding decisions for

4 2000?

5 A. It sort of depends what you mean by "overruled." Did

6 we correct factual errors and inconsistencies in the database?

7 Yes, on occasion.

8 Q. Did that include changing the responses to question

9 eleven, if you found them to be erroneous?

10 A. Question eleven in?

11 Q. 2000.

12 A. In 2000? No.

13 Q. Now in 1998, you also corrected factual errors, did

14 you not?

15 A. Yes.

16 Q. Including responses to question six?

17 A. No, I didn't change anything on question six.

18 Q. Who did?

19 A. I don't know.

20 Q. You don't know who changed them?

21 A. No.

22 Q. Moving further on in Mr. Holman's deposition, and

1 reading from page seventy-three to --

2   A.   There is also, I didn't change any question elevens

3 for the data that were given to Brennan Center for Buying Time

4 2000, except in one instance when they called me up and asked me

5 to give my judgments on a couple of ads.   Subsequently, as is

6 clear in my reports and my rebuttal, from my own work, I didn't

7 think the students got it right and I changed it, but that's all

8 after Buying Time 2000.

9   Q.   Okay.   Maybe we should focus on one year at a time.

10 I understand your answer as to Buying Time 2000, and we will come

11 back to Buying Time 2000.   Reading from Mr. Holman's deposition,

12 page seventy-three, "was it in the" -- Question: Was it in the

13 end Professor Goldstein who provided that with respect to the

14 2000 study that Exhibit 13 should be treated as an electioneering

15 ad?

16   "Answer: Yes, it was Ken Goldstein's decision.

17   "Question: Why was it his decision rather than the

18 students who did the coding?

19   "Answer: I don't know why Ken Goldstein would have

20 made that decision. That's something you would have to ask him.

21   "Question: Wouldn't the only circumstances be if the

22 students had decided that it was a genuine issue ad?

1   "Answer: There are occasions in which Ken overrode

2 the students' judgement.   Here in this case Ken had two years to

3 look at this in 2000, and in '98, you know, it was viewed as an

4 electioneering issue ad and Ken decided to keep it the same way

5 in 2000."

6   Do you see that, Professor Goldstein?

7   A.   Yes.

8   Q.   Is it true that there are occasions in which you

9 overrode the students' judgment as to the coding of question

10 eleven in 2000?

11   A.   Brennan Center called me up in March of 2001 and asked

12 me to make an assessment -- asked me to give another assessment

13 of three ads.

14   Q.   So the answer is yes?

15   A.   And I gave them that assessment.   I did not change

16 that on my own database, but I gave that assessment to -- or I

17 might have change that on my own database for my own reasons, but

18 I did not change it in the database that I gave to Brennan.

19   Q.   Were there occasions in which you overrode the

20 students' judgment, Professor Goldstein?

21   A.   Brennan Center, looking at their own database, asked

22 me for the assessment of three ads and I gave them that

1 assessment.

2   Q.   And you overrode the students' judgment, did you not?

3   A.   They asked for my assessment of what the ads were.

4 So it would have overrode the students' judgments -- if my

5 assessment would have been different than the student one, then

6 it would have overrode it, if it wasn't, then it wouldn't have.

7   MS. BUCKLEY: Can I have that read back.

8   (Record read.)

9   MS. BUCKLEY: This is a good time to take a break, I

10 guess.

11   MR. DODYK: Yes.

12   (Brief recess taken.)

13 BY MS. BUCKLEY:

14   Q.   I'm going to go back a step, Professor Goldstein, and

15 clear something up which I apparently did not ask you.   When we

16 were talking about the CMAG data and your efforts to confirm the

17 scope of what CMAG is capturing by visiting a select group of

18 local broadcast stations, did you do the same kind of checking

19 for 1998?

20   A.   No.

21   Q.   So we don't have any check on the validity of the data

22 for 1998?

1   MR. DODYK: I object to the form of the question,

2   vastly overgeneralizes the witness's prior testimony?

3   A.   I did not specifically visit stations in 1998.

4   Q.   Maybe you could put in front of you again, Professor

5 Goldstein, the 1998 coding sheet which we have marked as Exhibit

6 13.   I think it has the picture of the cover of Buying Time '98.

7   MR. DODYK: You can use this copy.

8   Q.   We'll find it.   Turning to appendix A, "Coding

9 the commercials," Professor Goldstein, and directing your

10 attention to question six, question six reads, quote, "In your

11 opinion, is the purpose of this ad to provide information about

12 or urge action on a bill or issue or is it to generate work or

13 opposition for a particular candidate," and "particular

14 candidate" is in bold face, and "unsure/unclear"?

15   Is that right?

16   A.   Yes.

17   Q.   And then the answers: "One, provide information or

18 urge action, two, generate support/opposition for candidate,

19 three, unsure/unclear."

20   Is that right?

21   A.   Yes.

22   Q.   Do you consider this question a subjective one,

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1 Professor Goldstein?

2   A.   Asking the opinion of a coder, so it's yes.

3   Q.   It is subjective?

4   A.   Yes. At the individual level on an individual ad from

5 an individual person, yes.

6   Q.   So, it is a subjective question or an objective

7 question?

8   A.   Well, it's not necessarily a dichotomous choice or

9 either/or. One can aggregate subjective questions which give

10 you an unobjective assessment of a group of coders' assessments

11 of a group of ads.

12   Q.   You stated in the past that it was a subjective

13 question, didn't you?

14   A.   Right, and I just agreed that it was.

15   Q.   So we're all agreed that it's a subjective question.

16 Is that right?

17   MR. DODYK: Subject to the witness's prior testimony.

18   MS. BUCKLEY: All right, then let's mark as

19 Exhibit 18, and we will go back and look at Exhibit 9.

20   (Whereupon a P.S. article was marked Goldstein

21 Deposition Exhibit 18 for identification.)

22   Q.   Exhibit 18 is a copy of an article that appeared

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1 in P.S. Is that right, Professor Goldstein?

2   A.   Yes.

3   Q.   And this is an article that you wrote with

4 Dr. Krasno, correct?

5   A.   Yes.

6   Q.   Is P.S. a peer-reviewed journal, by the way?

7   A.   Yes.

8   Q.   I direct your attention to the third column.   There

9 is a paragraph beginning "some of the questions." Do you see

10 that?

11   A.   The third column on the first page?

12   Q.   Yes.   Quote, "some of the questions coders answered -

13 such as whether an ad mentioned a candidate for office by name or

14 urged viewers to, quote, 'vote for,' or quote 'defeat' a

15 particular candidate - were objective.   Others were subjective.

16 These included items asking coders to assess the purpose (to

17 support a particular candidate or express a view on an issue),

18 and tone, (promote, attack, or contrast) of an ad."

19   Do you see that?

20   A.   Yes.

21   Q.   And in describing questions that were subjective, one

22 of the very ones you're describing is question six. Is that not

Page 63

1 right?

2   A.   And when you asked me, it is subjective.

3   Q.   Okay.

4   A.   And then I characterized that.

5   Q.   I was -- let us stray by the objection of your

6 counsel. Let's take a look at Exhibit 9. And if you would turn

7 to page eighteen.

8   A.   Page?

9   Q.   Page eighteen. First of all the paragraph says,

10 "Below we report the results for five questions of interest -

11 three-subjective measures (the first three below), and two

12 objective measures." And then you list five questions.

13   A.   Un-hum.

14   Q.   And the first one is the equivalent of question six.

15 Is it not?

16   A.   Yes.

17   Q.   All right. Now we're back to the coding sheet for

18 1998 which is Goldstein Exhibit 13.   How many separate ads did

19 each of the coders look at in doing the 1998 coding, Professor

20 Goldstein, if you know?

21   A.   I don't recall.   There was probably a wide variance.

22   Q.   All right, we have gone back during the break as we

Page 64

1 promised you we would to see if we could find any reference in

2 Buying Time '98 as to how many separate commercials there were,

3 and reading from page seven of Buying Time '98, which is Exhibit

4 C to your expert report, it says, quote, "Using these data, we

5 have analyzed political advertising in the top seventy-five media

6 markets (containing more than eighty percent of U.S. residents),

7 including ads by candidates, parties and interest groups totaling

8 over twenty-one hundred separate commercials aired over three

9 hundred thousand times."

10   Does twenty-one hundred sound about right for what you

11 call the "separate creatives"?

12   A.   Yes.

13   Q.   And what I would call a "unique ad"?

14   A.   Yes.

15   Q.   So there were twenty-one hundred unique ads or there

16 about in the 1998 study?

17   A.   Yes.

18   Q.   And you told us before you had about seven student

19 coders. Is that right?

20   A.   Yes.

21   Q.   So on average, at least, they each looked at three

22 hundred storyboards. Is that right?

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1   A.   Yes.

2   Q.   Now when they looked at the three hundred -- when they

3   looked at their storyboards, Professor Goldstein, did they all

4   fill out a questionnaire that was the same?

5   A.   Yes.

6   Q.   They all used the same questionnaire?

7   A.   Yes.

8   Q.   And the questions were all in the same order?

9   A.   Yes.

10   MS. BUCKLEY: Let's mark as Exhibit 19 the storyboard

11   entitled "AFLT Stand Up for Us."

12   (Whereupon a storyboard entitled AFLT Stand Up For

13   Us was marked Goldstein Deposition Exhibit 19 for

14   identification.)

15   MS. BUCKLEY: We will mark as Exhibit 20 and 21

16   two code sheets for that ad.   The first coding sheet bears

17   the control number KG0000 551 through 554 and the second

18   coding sheet is KG0000 5881 through 5884.

19   (Whereupon coding sheets Bates numbered KG0000 551

20   through 554 and KG0000 5881 through 5884 were marked as

21   Goldstein Deposition Exhibits 20 and 21, respectively, for

22   identification.)

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1   Q.   Professor Goldstein, you recognize Exhibit 19 as

2   one of the storyboards for 1998?

3   A.   Yes.

4   Q.   And can you tell us what Exhibits 20 and 21 are?

5   A.   Twenty and twenty-one appear to be coding sheets from

6   1998.

7   Q.   Now, Professor Goldstein, these coding sheets were

8   produced by you in response to the subpoena served on you,

9   correct?

10   A.   Right.

11   Q.   And as a matter of fact you produced boxes of coding

12   sheets, did you not?

13   A.   Yes.

14   Q.   Looking at Exhibit 21, you see that question six, the

15   purpose of the ad, and it's coded as a one, the student coder has

16   decided in his or her opinion that the purpose was to provide

17   information or urge action.   Do you see that?

18   A.   Yes.

19   Q.   And in Exhibit 20, we see for the same ad, ad sixteen,

20   that the student coder answered the same way, that in his or her

21   opinion the purpose of the ad was to provide information or urge

22   action.   Do you see that?

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1   A.   Yes.

2   MR. DODYK: I would note that the circle also covers

3   a good part of two, so it's difficult to tell whether your

4   attribution of the circling is correct or not.

5   MS. BUCKLEY: I think we will leave -- I think

6   Professor Goldstein already answered that it was the same.

7   MR. DODYK: I'm just describing what physically

8   appears on the sheet.

9   MS. BUCKLEY: Okay, that's fine and we will leave

10   that to the court to decide whether a one or a two is

11   circled on Exhibit 20.

12   Q.   So I take it from --

13   A.   There is actually some evidence that it might actually

14   be two, because I just looked on the second page, and there is a

15   bunch of questions answered there, but they're only supposed to

16   be answered if they do it -- if they do one they're supposed to

17   skip to question nineteen.

18   Q.   Um-hum.

19   A.   So --

20   Q.   Well, Professor Goldstein, you're the one under oath.

21   Do you think the one is circled or the two?

22   A.   If I was just looking at six and I had to pick one,

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1   I'd probably say one, but if I was looking at it with other

2   evidence, I'd say it would lead me to question that.

3   Q.   And what is the other evidence that would lead you to

4   question that?

5   A.   The fact that it says skip to question nineteen.   If

6   you want one, then the person didn't skip to question nineteen.

7   They went right to -- they went to question seven.

8   Q.   So because that person didn't skip to nineteen, you

9   take that as evidence that they didn't circle the one?

10   A.   Well, it's -- it's not perfectly clear whether it's

11   one or two, and like I said, if you were asking me if I could

12   only look at six, what do I think is circled, I would say one.

13   Q.   All right.   So if you only had to look at six, you're

14   saying that what you think is circled is that if this student

15   coder in his or her judgment found that the ad provided

16   information or urged action, correct?

17   MR. DODYK: Can I hear the question back, please.

18   MR. DODYK: I object to the form of the question.

19   It's unintelligible.

20   MS. BUCKLEY: Let me rephrase the question.

21   Q.   I think I was just trying to understand your last

22   answer, Professor Goldstein, and that is if you were looking at

Page 69

1 this questionnaire, which we have marked as Exhibit 20, and you

2 were looking at the circled response to question six, that it is

3 your judgment that the student circled answer one. Is that

4 right?

5   A.   It is, yes.

6   Q.   And answer one reads, quote, provide information or

7 urge action, correct?

8   A.   Yes.

9   Q.   Okay. Now, do you know whether this ad, which we

10 have marked as nineteen, was one of the --

11   MR. DODYK: Isn't it sixteen?

12   MS. BUCKLEY: It's ad number sixteen, and it's

13 marked as Exhibit 19.

14   Q.   Do you know whether this was one of the ads that was

15 considered a genuine issue ad in Buying Time '98?

16   MR. DODYK: Considered by whom?

17   MS. BUCKLEY: Well, how about Buying Time '98.

18   A.   I believe in Buying Time '98 that this was

19 considered an election ad.

20   Q.   And in your database, is it coded as an election ad or

21 an issue ad?

22   A.   The only database I have from 1998 is one that was

Page 70

1 subsequently worked on by Brennan, so I don't have the database

2 that I gave to Brennan.

3   Q.   Well I believe your expert report says you have two

4 1998 databases. Is that right, Professor Goldstein?

5   A.   That's correct.

6   Q.   It says that you have one in the form in which you

7 sent it to Brennan. Do you recall that?

8   A.   I don't think I said that.

9   Q.   All right, let's go back and check.

10   MR. DODYK: Is this the rebuttal or the original?

11   Q.   Page six, Professor Goldstein, of your rebuttal

12 report.

13   A.   And on that page?

14   Q.   The paragraph beginning, "my work." I'll read it into

15 the record. "My work on the 1998 database was essentially

16 limited to collecting the CMAG data, supervising the coding by

17 students at Arizona State University, merging the two sets of

18 data, (coding and targeting) and forwarding the resulting

19 database to the Brennan Center." And I will skip down to two

20 lines later it says, "Jonathan Krasno, one of the authors of

21 Buying Time '98, subsequently sent me a revised version of the

22 1998 database that incorporated some of the corrections made by

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1 the Brennan Center analyst. I have not used my original

2 database or the Brennan Center's revised database in any of my

3 subsequent scholarly work," unquote.

4   Do you see that Professor Goldstein?

5   A.   Yes.

6   Q.   And what is the reference to the original database

7 there?

8   A.   That would have been the database that I provided to

9 Brennan in I guess the fall of 1999.

10   Q.   And are you saying that you no longer have that

11 database?

12   A.   No, I no longer have that database.

13   Q.   And the only database for 1998 that you have is a

14 revised database sent to you by Professor Krasno?

15   A.   Right, I had that in my files and then during this

16 process I was sent another 1998 file which was the one that I

17 think Jon said he used to create Buying Time.

18   Q.   How many 1998 databases do you have in your

19 possession, Professor Goldstein?

20   A.   I have two.

21   Q.   Describe the two of them for the record.

22   A.   One is one that Jon Krasno sent to me in the spring of

Page 72

1 2000, and one is one that I got in the last couple of weeks

2 from -- I can't remember if it was from Brennan Center or from

3 Jon.

4   Q.   In your version of the original database, which I take

5 it you no longer have -- is that right?

6   A.   Yes.

7   Q.   How is ad sixteen coded?

8   A.   I have no idea.

9   Q.   You will agree it should have been coded as an issue

10 ad, won't you?

11   A.   The coding sheets have it as an issue ad.

12   Q.   And therefore if you are not going to disregard the

13 student coders, it should have been coded as an issue ad. Is

14 that right?

15   MR. DODYK: Objection to the form of the question in

16   that it implies that they are significant to the coding

17   sheets, which has not been established in the record,

18   namely that they are the only or the last coding sheets

19   prepared with respect to Exhibit 16 which is marked as

20   Exhibit 19.

21   A.   There are two coding sheets here which is -- it's

22 odd, it's not unusual. There are sometimes we, you know -- the

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1 students did one by mistake and did a sixteen when they should
2 have done a nineteen, and so a decision would have had to have
3 been made which one of these to use. That's a decision that was
4 probably made by one of my graduate students at ASU who were
5 supervising the day-to-day nitty gritty of it, and then the other
6 thing that happened is all of these coding sheets were key
7 punched, and so there could have been errors in key punching, as
8 well, and this is the sort of thing that a key puncher could make
9 an error on.
10   Q.   But can we agree that if the student coder's judgment
11 was respected, that this ad should have been coded as an issue ad
12 in the database that you sent to the Brennan Center?
13   MR. DODYK: I object to the form of the question
14 once again because it attributes a significance to these
15 particular coding sheets, which the record has not been
16 established, namely that they are the only coding sheets relating
17 to this ad.
18   Q.   Are there other coding sheets relating to ad number
19 sixteen, Professor Goldstein?
20   A.   Not in my possession.   If these are -- if these --
21 there could be another coding sheet out there.   It could have
22 been a case where the graduate student saw two coding sheets, saw

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1 them in, you know, opposition and put it out to a third coder to
2 make a distinction, and there could be another number sixteen,
3 either in that huge number of things I gave you or that never
4 made it.
5   Q.   Well, I believe if there were your counsel would have
6 found them, Professor Goldstein, but I can represent to you that
7 these are the only coding sheets for ad number sixteen that you
8 produced in this litigation?
9   A.   Okay.
10   Q.   So, based on the production that you made and the
11 coding sheets that you supplied in this litigation, we have two
12 coding sheets in which we have now all agreed that the students
13 determined this ad was an issue ad. Is that right?
14   A.   Yes.
15   Q.   And --
16   MR. DODYK: Counsel, you haven't established anything
17 by way of chain of custody of these coding sheets.
18   Q.   Is that right?
19   MR. DODYK: Read the question back.
20   (Record read.)
21   MR. DODYK: I object to the form of the question
22 as it attributes also significance to the markings on the

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1 coder which has not been testified to, one of the coding
2 sheets obviously being internally conflicted as to the
3 characterization which counsel wrongly attributed to it.
4   MS. BUCKLEY: There is no such internal
5 inconsistency.   They're both coded answer one as the
6 professor has already testified to this.
7   MR. DODYK: The inconsistency is if the coder had
8 intended to code question one they would have not coded it
9 in number seventeen, as we have established with respect to
10 Professor Gibson is the case.
11   Q.   Professor Goldstein, do you agree with your
12 counsel that because a coder declined to skip questions seven
13 through nineteen that that is proof that the intention in
14 answering question six was not to choose answer one?
15   A.   "Proof" I guess is a term of legal art, but given that
16 it's a little bit unclear on six and the coder answered these
17 other questions, that's -- that's at least a suggestion something
18 to look more carefully at, that it's not slam dunk obvious that
19 this is one, whereas this I would say is (indicating).
20   Q.   So, you're talking about Exhibits 20 and 21?
21   A.   Right.
22   Q.   Which one of the two exhibits -- do you know the order

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1 in which these would have been filled out?   Do you know?
2   A.   There is no way for me to figure that out.   There is
3 no way for me to know whether -- there is no way for me to know
4 which one of these was punched and there is no way for me to know
5 if one of these was punched.
6   Q.   You have no record of how the students coded the 1998
7 data, Professor Goldstein.
8   A.   I have no original -- I do not have an original data
9 set from 1998, no.
10   Q.   That wasn't my question.   My question is whether you
11 have any record, a comprehensive record of how the students coded
12 the 1998 data?
13   A.   My -- the record -- the only record I have of initial
14 student work are the coder sheets.
15   Q.   And that's the coder sheets that we have just put in
16 front of you. Isn't that right?
17   A.   Yes, but it's not necessarily a complete set of coding
18 sheets.   They actually were sent to me -- they got stored in the
19 conference room at ASU and then the ASU room -- and then when I
20 went to Wisconsin, I forgot them there, and then the building
21 where the political science department got condemned and so the
22 secretary called and yelled at me that I had all these old boxes

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1　in the conference room, so they then sent those to me.

2　　　Q.　Did you produce documents in this litigation that you

3　doubt -- as to which you doubt their authenticity, Professor

4　Goldstein?

5　　　A.　That I doubt their authenticity?

6　　　Q.　Yes.

7　　　A.　No.

8　　　　MR. DODYK:　I object to the form of the question,

9　because it assumes that the witness reviewed the documents

10　for authenticity, which has not been established of record.

11　It's highly unlikely.

12　　　Q.　Professor Goldstein you produced bosses of

13　documents in this litigation that we asked you for?

14　　　A.　Um-hum and I gave them to you.

15　　　Q.　And many of them were boxes of student coding sheets?

16　　　A.　Yes.

17　　　Q.　Where did you get them from?

18　　　A.　From my office.

19　　　Q.　They were in your possession?

20　　　A.　Yes.

21　　　Q.　They were in your custody?

22　　　A.　They were not -- they were not in my custody for the

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1　last four years.　They have been in my custody for a year and

2　then I sent them to you.

3　　　Q.　Are you suggesting that somebody altered them in the

4　interim?

5　　　A.　No.

6　　　Q.　There is nothing fishy about these documents that you

7　know of, is there?

8　　　A.　No.

9　　　　MS. BUCKLEY:　All right let's mark as Exhibit 22 an

10　ad entitled "AFL/SS Trust Fund."

11　　　　(Whereupon an ad entitled AFL/SS Trust Fund was

12　marked Goldstein Deposition Exhibit 22 for identification.)

13　　　　MS. BUCKLEY:　As Exhibit 23 I would like to have

14　marked a coding sheet for the same ad.

15　　　　(Whereupon a coding sheet for an ad entitled

16　AFL/SS Trust Fund was marked Goldstein Deposition Exhibit

17　23 for identification.)

18　　　　(Brief pause while witness peruses documents.)

19　　　Q.　Do you recognize Exhibit 22 which is ad fifteen as

20　one of the political advertisements in the 1998 election,

21　Professor Goldstein?

22　　　A.　Yes.

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1　　　Q.　And you see Exhibit 23, that's another student coding

2　sheet.　Is that right?

3　　　A.　Yes.

4　　　Q.　And that's the student coding sheet for ad fifteen.

5　Is it not?

6　　　A.　Yes.

7　　　Q.　And in answering the first question, question six, the

8　student concluded that this was an issue ad.　Isn't that right?

9　　　A.　Yes.

10　　　　MS. BUCKLEY:　Let's mark as Exhibit 24 ad number two

11　entitled "AAHP Look Out For The Lawyers."

12　　　　(Whereupon an ad entitled AAHP Look Out For The

13　Lawyers was marked Goldstein Deposition Exhibit 24 for

14　identification.)

15　　　　MS. BUCKLEY:　And we will mark as Exhibit 25 the

16　student coding sheet for that ad.

17　　　　(Whereupon a coding sheet for an ad entitled AAHP

18　Look Out For The Lawyers was marked Goldstein Deposition

19　Exhibit 25 for identification.)

20　　　　MR. DODYK:　I guess the record should reflect

21　that these storyboards that you have been using, Susan,

22　have numbers which have been affixed to them, and I assume

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1　those have been affixed by counsel for plaintiffs.　Is

2　that correct?

3　　　　MS. BUCKLEY:　The number on the top right-hand

4　corner is the ad number, correct.

5　　　　MR. DODYK:　Affixed by counsel for plaintiffs.

6　　　　MS. BUCKLEY:　Affixed by counsel for plaintiffs.

7　Do you want one that's affixed by Professor Goldstein?　We

8　have those, too.

9　　　　(Brief pause while witness peruses documents.)

10　　　Q.　Do you recognize what we have marked as Exhibit 24

11　as a political advertisement in a 1998 election, Professor

12　Goldstein?

13　　　A.　Yes.

14　　　Q.　And you will see that Exhibit 25 is the student coding

15　sheet for that advertisement.　Do you see that?

16　　　A.　Yes.

17　　　Q.　And if you look at the answer to question six, the

18　student coded this ad as an issue ad.　Is that correct?

19　　　A.　Yes.

20　　　　MS. BUCKLEY:　Let's mark as Exhibit 26 ad number

21　eleven bearing a control number BREOO 120, and then it's

22　cut off, and as twenty-seven -- I'm sorry, for twenty-six

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1 we're using CMAG quadruple O six.

2   (Whereupon an ad Bates numbered BRE00 120 was

3 marked Goldstein Deposition Exhibit 26 for identification.)

4   MS. BUCKLEY: And that's ad number eleven.

5   Mr. Dodyk, we're using new copies of this ad

6 because they're much more legible because we received them

7 in production from CMAG. Do you want to go back and check

8 them against all the other ones?

9   MR. DODYK: No, I just want to make it clear for

10 the record that the exhibit you're tendering has content

11 which has been affixed by Plaintiff's counsel which is my

12 convention whenever that occurs.

13   MS. BUCKLEY: All right, that's fine. Do you

14 want me to go back and establish that the numbers affixed

15 by counsel are the numbers that appear on the illegible

16 copies?

17   MR. DODYK: Not as to any that you have marked so

18 far.

19   (Whereupon a coding sheet for an ad entitled

20 AFL-CIO Strengthen Surplus SS was marked Goldstein

21 Deposition Exhibit 27 for identification.)

22   MS. BUCKLEY: Okay, thank you.

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1   (Brief pause while witness peruses documents.)

2   Q. Do you recognize Exhibit 26 entitled "AFL-CIO's

3 Strength and Surplus SS," it's Exhibit 26, ad eleven, as a

4 political advertisement in the 1998 election, Professor

5 Goldstein?

6   A. As a political advertisement in the 1998 election?

7 Yes.

8   Q. And do you see that Exhibit 27 is the student coding

9 sheet for ad eleven, correct?

10   A. Yes.

11   Q. And in response to question six, asking what the

12 purpose of the ad was, we see that the student circled answer

13 one, which is the determination that it was an issue ad. Is

14 that right?

15   A. Yes.

16   Q. A genuine issue ad?

17   A. Right. Also, but then I also note that they filled

18 out those other questions, seven, eight, nine, ten, eleven and

19 twelve, which they should have skipped.

20   Q. They failed to skip questions seven to nineteen. Is

21 that right?

22   A. Right.

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1   Q. But in responding to question six, there is no doubt

2 about what they circled, is there, Professor Goldstein?

3   A. No, that's a one.

4   MS. BUCKLEY: Let's mark as Exhibit 28 an ad entitled

5 AFTL/KY Lucas, and we will mark as Exhibit 29 a student

6 coding sheet with the control numbers KG 3365 through KG

7 3368.

8   (Whereupon an ad entitled AFTL/KY Lucas and a

9 student coding sheet Bates numbered KG 3365 through KG 3368

10 was marked Goldstein Deposition Exhibits 28 and 29,

11 respectively, for identification.)

12   Q. Do you recognize the ad which is ad 21, which we

13 have marked as Exhibit 28, as a political advertisement that ran

14 during the 1998 election?

15   A. Yes, I recognize it as a political ad that ran during

16 the 1998 elections.

17   Q. And Exhibit 29 is a student coding sheet for ad 21, is

18 it not?

19   A. Yes.

20   Q. And directing your attention to question six, the

21 student coded this ad as a genuine issue ad. Is that right?

22   A. Yes.

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1   Q. Because "one" means genuine issue ad and "two" means

2 electioneering ad. Isn't that right?

3   A. Correct and I'd also note again on this one they

4 didn't skip -- they failed to skip to question nineteen.

5   Q. Do you know what the "KARA" at the top of Exhibit 29

6 refers to?

7   A. Probably Kara, who was one of the coders. Or it

8 could have been initials for I think Christy Richardson who was

9 another one.

10   Q. You think it's one of the student coder's initials?

11   A. One of the student coders, yes.

12   MS. BUCKLEY: All right, let's mark as Exhibit 30 an

13 ad entitled "AFJS/Stabenow Turned Her Back," and we will mark as

14 Exhibits 31 and 32 two student coding sheets for this ad.

15   MS. BUCKLEY: Thirty is CMAG quadruple O four.

16   (Whereupon an ad entitled AFJS/Stabenow Turned Her

17 Back and two student coding sheets were marked Goldstein

18 Deposition Exhibits, 30, 31 and 32, respectively, for

19 identification.)

20   Q. We have marked as Exhibit 31 a student coding

21 sheet bearing the control numbers KG5905 through 5908. And we

22 have marked as Exhibit 32 a student coding sheet bearing the

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1 control numbers KG5901 to KG5904. Do you recognize Exhibit 30,
2 which is ad seven, as a political advertisement that ran during
3 the 1998 election, Professor Goldstein?
4   A.   Yes, I recognize it as an advertisement that ran
5 during the 1998 elections.
6   Q.   Now, if you turn to Exhibit 31, Professor Goldstein,
7 you will see that in response to question six the student coder
8 gave no answer. Is that right?
9   A.   That's correct.
10   Q.   And if you look at exhibit --
11   A.   And then again I note on 31 we have the question seven
12 through eight again filled out.
13   Q.   All right, but we're still agreed that they didn't
14 answer question six?
15   A.   Right.
16   Q.   And in Exhibit 32 the student coder coded in response
17 to question six -- the student coder coded this as a genuine
18 issue ad. Is that right?
19   A.   They circled one, yes.
20   MS. BUCKLEY: All right, let's mark as Exhibit 33 ad
21 number 22, and we will mark as Exhibits 34 and 35, two
22 student coding sheets for this ad, and we will mark as 34

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1 the sheet bearing the control numbers KG5485 through
2 KG5488. Thirty-five is KG5489.
3   (Whereupon ad number 22 and two coding sheets
4 Bates numbered KG5485 through KG5488 and KG5489 were marked
5 Goldstein Deposition Exhibits 33, 34 and 35, respectively,
6 for identification.)
7   (Brief pause while witness peruses documents.)
8   Q.   Professor Goldstein, do you recognize Exhibit 33,
9 which is ad 22, to be a political advertisement that aired in the
10 1998 election?
11   A.   Yes, I recognize it as a political advertisement that
12 aired in the 1998 elections.
13   Q.   And Exhibit 34 is a student coding sheet for that ad.
14 Is it not?
15   A.   Yes.
16   Q.   And Exhibit 35 is also a student coding sheet for that
17 ad. Is it not?
18   A.   Yes.
19   Q.   Now, both of these student coders coded this ad as a
20 genuine issue ad, did they not?
21   A.   Yes.
22   Q.   There is no dispute about that, is there?

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1   A.   No.
2   Q.   How is it that ad 22 was not considered a genuine
3 issue ad in Buying Time '98?
4   A.   I don't know.
5   Q.   You don't know?
6   A.   No.
7   Q.   When the database left your shop, was it coded as a
8 genuine issue ad?
9   A.   I don't know that.
10   Q.   You have no idea?
11   A.   No.
12   MS. BUCKLEY: All right, let's mark as Exhibit 36 I
13 think the ad that is your favorite, Professor Goldstein, ad
14 number 1411, and the coding sheet has Bates numbers BRE
15 1220 -- KG1257 through KG2360 as Exhibit 37.
16   (Whereupon Ad 1411 and a coding sheet Bates
17 numbered KG1257 through KG23260 were marked Goldstein
18 Deposition Exhibit 36 and 37 for identification.)
19   Q.   Did you recognize Exhibit 36, Professor Goldstein,
20 as a political advertisement that aired during the 1998
21 elections?
22   A.   Yes, I recognize this as the political ad that aired

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1 during the 1998 elections.
2   Q.   This is the "Feingold Kohl" ad?
3   A.   Yes.
4   Q.   And Exhibit 37 is the student coding sheet for that
5 ad, right?
6   A.   Yes.
7   Q.   And the students coded this ad as a genuine issue ad.
8 Did he or she not do that?
9   A.   Yes.
10   Q.   This is an ad that was not considered a genuine issue
11 ad in Buying Time '98, isn't it?
12   A.   Right.   What did you say?   Could you read the
13 question back.
14   (Record read.)
15   MS. BUCKLEY: I can try to rephrase it.
16   MR. DODYK: There was a double negative there, I
17 think.
18   Q.   Ad 1411 was considered an electioneering ad in
19 Buying Time '98, was it not?
20   A.   I believe so, yes.
21   MS. BUCKLEY: All right, if you want to go off the
22 record, two-minute break.

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 1            (Brief recess taken.)
 2   BY MS. BUCKLEY:
 3       Q.    Professor Goldstein, if I could ask you to pull out
 4   Exhibits 19, 22 and 24 --
 5       A.    Wait one second.
 6       Q.    The ads, themselves, that we have just marked.
 7            MR. DODYK:   All the ads?
 8            MS. BUCKLEY:   Yes, nineteen, Exhibit 19 which is
 9   ad sixteen, Exhibit 22 which is ad fifteen, Exhibit 24
10   which is ad two, Exhibit 26 which is ad eleven, Exhibit 28
11   which is ad twenty-one, Exhibit 30 which is ad seven,
12   Exhibit 33 which is ad twenty-two and Exhibit 36 which is
13   ad 1411.
14       A.    So thirty-six, thirty-three, thirty, twenty-eight,
15   twenty-six, twenty-four, twenty-two, nineteen.
16       Q.    That's correct, in reverse order.
17            I'd like you to take a look at Exhibit 19, Professor
18   Goldstein, which is ad sixteen, and tell me in your opinion how
19   should this ad have been treated in Buying Time '98 as an
20   electioneering ad or as an issue ad?
21       A.    I don't know how it should have been treated in Buying
22   Time, but if I was coding it from my own scholarly work and
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 1   describing its goal, I would say it's -- it -- as an election
 2   goal.
 3       Q.    It's an electioneering ad?
 4       A.    An electioneering ad.
 5       Q.    Does it provide information or urge action?
 6       A.    Yes.
 7       Q.    But you're of the view that its true purpose is to
 8   generate support or opposition for a candidate?
 9       A.    Yes.
10       Q.    Who is the candidate?
11       A.    Merrill Cook.
12       Q.    Would you agree, Professor Goldstein, that this ad
13   does both, provide information and in your view generate support
14   for a candidate?
15       A.    All ads provide information, yes.
16       Q.    So the answer is yes?
17       A.    Yes.
18       Q.    And you'll agree that this ad asks the viewer to take
19   some action, won't you?
20       A.    Yes.
21       Q.    So the ad provides information, urges action and in
22   your view generates opposition for a candidate or support for a
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 1   candidate?
 2       A.    Opposition for a candidate.
 3       Q.    Since it does all three of those things, Professor
 4   Goldstein, what leads you to believe that it's an electioneering
 5   ad?
 6       A.    A lot of my initial work was dealing with interest
 7   groups and dealing with interest group lobbying strategies and
 8   looking at a lot of interest group grass root strategies and
 9   public strategies and advertising strategies, and it doesn't look
10   like an ad that a group would air if they just wanted to provide
11   information or if they were lobbying on a particular issue.   It
12   looks more to me like -- in style and substance, like an election
13   ad.
14       Q.    So you disagree with the student coding sheets that we
15   saw earlier today?
16       A.    Yes.
17       Q.    Take a look at ad number -- ad fifteen, which is
18   Exhibit 22, same question, Professor Goldstein.
19            (Brief pause while witness peruses document.)
20       A.    And could you repeat that same question?
21       Q.    Sure.   Do you think this should have been treated as
22   an issue ad or an electioneering ad in Buying Time '98?
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 1       A.    My own assessment is that it's an electioneering ad.
 2       Q.    Why is that?
 3       A.    Again it looks -- I have looked at lots of advertising
 4   in the last couple of years and advertising by both descriptions
 5   have been aired for lobbying purposes or informational purposes,
 6   and also I have looked at lots of candidate ads by definition are
 7   meant for election and this looks a lot like more one of those
 8   candidate ads than it looks like a lobbying ad.
 9       Q.    You will agree that this ad provides information,
10   won't you?
11       A.    Yes, and again all ads provide information.
12       Q.    And you'll agree that it urges the viewer to take some
13   action, does it not?
14       A.    Yes.
15       Q.    And in your view does it generate support or generate
16   opposition for a candidate?
17       A.    It generates opposition.
18       Q.    So you disagree with the student coders on this one,
19   Professor Goldstein?
20       A.    Yes.
21       Q.    Let's take a look at ad two, Exhibit 24.
22            (Brief pause while witness peruses document.)
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1   Q.   The ad is entitled AARP/Look Out For the Lawyers. In
2 your opinion, Professor Goldstein --
3   A.   That is a correct statement, yes.
4   Q.   Do you believe this should have been coded as an
5 electioneering ad or an issue ad in Buying Time '98 -- sorry
6 should have been treated as an election ad or an electioneering
7 ad in Buying Time '98?
8   A.   From my own scholarly research, from my own assessment
9 of what this ad is I would consider this an electioneering ad.
10   Q.   Why is that?
11   A.   That in content it looks a lot more like a candidate
12 ad, a candidate-sponsored ad which is by definition an
13 electioneering ad and less like ads that I have seen that are for
14 lobbying purposes or informational purposes.
15   Q.   It certainly provides information, you will grant me
16 that, correct?
17   A.   Yes, like all advertising.
18   Q.   And it urges action, too, doesn't it?
19   A.   Yes.
20   Q.   And in your view does it generate support or
21 opposition for a particular candidate?
22   A.   It generates support.

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1   MR. DODYK: But not for trial lawyers?
2   THE WITNESS: But not for trial lawyers.
3   Q.   So you disagree with the student coders on this
4 one, too?
5   A.   I would disagree with the student coders on this, yes.
6   Q.   Let's take a look at Exhibit 26, which is ad eleven.
7   (Brief pause while witness peruses document.)
8   Q.   Now in your opinion, Professor Goldstein, how
9 should this ad have been treated in Buying Time 1998, as an
10 electioneering ad or as an issue ad?
11   A.   In my own -- for my own use, in my own opinion I would
12 consider this an electioneering ad.
13   Q.   Why is that?
14   A.   Because it looks much more like a candidate ad, which
15 is by definition electioneering more so than lobbying ads that I
16 have seen in previous work.
17   Q.   You'll agree that it's about the issue of Social
18 Security, correct?
19   A.   Yes, it's about the issue of Social Security.
20   Q.   And you'll agree that it provides information?
21   A.   Yes.
22   Q.   And that it urges action?

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1   A.   Yes.
2   Q.   And in your opinion, does it generate support for or
3 opposition to a candidate?
4   A.   It generates opposition.
5   Q.   So you disagree with the student coders on this one,
6 too?
7   A.   Yes.
8   Q.   Let's take a look at Exhibit 28, which is ad 21.
9   (Brief pause while witness peruses document.)
10   Q.   Entitled AFTL/KY Lucas. Do you have a view as to
11 how this ad should have been treated in Buying Time '98, as an
12 issue ad or an electioneering ad?
13   A.   In my own opinion, I believe this is an electioneering
14 ad.
15   Q.   Why is that?
16   A.   Because it is similar in form and content to candidate
17 ads which are by definition electioneering and are different than
18 interest group ads that lobby that I have seen.
19   Q.   You'll agree that this ad raises the issue of taxes,
20 correct?
21   A.   Yes.
22   Q.   And that it provides information, correct?

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1   A.   Yes.
2   Q.   And that it urges the viewer to take some action. Is
3 that right?
4   A.   Yes.
5   Q.   And do you believe that its purpose is to generate
6 support or opposition to a candidate?
7   A.   Opposition.
8   Q.   So you disagree with the student coders on this one,
9 too?
10   A.   Yes.
11   Q.   Ad seven, which is Exhibit 30.
12   (Brief pause while witness peruses document.)
13   Q.   Do you have a view whether this ad should have been
14 treated as an issue ad or an electioneering ad in Buying Time
15 '98?
16   A.   I would consider this to be an electioneering ad.
17   Q.   Now you'll agree that it raises the issue of gang
18 violence, does it not?
19   A.   Yes.
20   Q.   And that it certainly provides information, correct?
21   A.   Yes.
22   Q.   And it urges the viewer to take some action, correct?

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1   A.   Yes.

2   Q.   But in your view it also -- its purpose is to generate

3   support or opposition for a candidate, correct?

4   A.   Yes.

5   Q.   Is it support or opposition?

6   A.   Opposition.

7   Q.   So you disagree with the student coders on this one,

8   too?

9   A.   Yes.

10   Q.   The same questions for ad 22, Exhibit 33.

11   (Brief pause while witness peruses document.)

12   Q.   In your opinion should this ad have been treated

13   as an issue ad or electioneering ad in Buying Time '98?

14   A.   I don't know how it should have been treated in Buying

15   Time 1998, but my own opinion is this is an electioneering ad.

16   Q.   This is an ad about term limits, is it not?

17   A.   Yes.

18   Q.   Do you know who the sponsor of this ad is, Professor

19   Goldstein?

20   A.   I believe it's the Americans for Term Limits.

21   Q.   Presumably they feel fairly strongly about the issue

22   of term limits, yes?

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1   A.   Yes, I would assume.

2   Q.   Now I take it you'll agree that this ad provides

3   information and urges the viewer to take some action, correct?

4   A.   Yes.

5   Q.   What candidate does it support or oppose, in your

6   view?

7   A.   It's opposing Paul Ryan.

8   Q.   It's opposing Paul Ryan?

9   A.   Yes.

10   Q.   So you disagree with the student coders on this one,

11   too?

12   A.   Yes.

13   Q.   And finally Exhibit 36, which is ad 1411, you have

14   changed your view about this ad, have you not?

15   A.   Yes. It's -- go ahead.

16   Q.   In 1998, I take it in your expert report you were of

17   the view that this ad should properly be characterized as an

18   electioneering ad. Is that correct?

19   MR. DODYK: Objection.   There is nothing in the

20   record which establishes the premise of that question.

21   Q.   You can answer, professor.

22   A.   I don't think I talked about this ad specifically in

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1   my export report in '98.

2   Q.   Okay.   In 1998 what was your view as to whether this

3   ad should be treated as an electioneering ad or an issue ad?

4   MR. DODYK: Objection.   You haven't established a

5   basis for this client -- for this witness having any

6   opinion as to the character of that ad in 1998.

7   Q.   You can answer, professor.

8   A.   I don't remember having a specific opinion on this

9   specific ad in 1998.

10   Q.   But you did have an opinion on it in 2000, did you

11   not?

12   A.   Yes.

13   Q.   And that opinion has changed, is that correct?

14   A.   Yes.

15   MR. DODYK: At this point I'd like to note for the

16   record that counsel's use of the term "coder" in the last

17   series of questions both assume that the coding sheet that

18   has been marked as an exhibit represents the final coding

19   sheet entered with respect to that ad, and also in the case

20   of four of these ads rests on plaintiff counsel's

21   construction of an internal inconsistent coding sheet,

22   which she has construed to support one of the two possible

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1   answers to question six, which is highly debatable from

2   inspection of the coding sheet.

3   MS. BUCKLEY: I disagree that the coding sheets

4   were internally inconsistent, but I don't think we should

5   take time to argue between counsel.

6   MR. DODYK: That I can agree with.

7   Q.   Now you know, do you not, Professor Goldstein,

8   that none of these eight ads was treated as a genuine issue ad in

9   Buying Time '98, correct?

10   A.   From the Gibson report.

11   Q.   You didn't know that before reading Professor Gibson's

12   report?

13   A.   No.

14   Q.   Did you know before reading Professor Gibson's report

15   what ads were viewed to be genuine issue ads in Buying Time 1998?

16   A.   Specifically, no.

17   Q.   Now after the student coding was finished, Professor

18   Goldstein, you say in your expert report that you cleaned the

19   data and transmitted the database to the Brennan Center.   Is

20   that right?

21   A.   Yes.

22   MR. DODYK: Which year are we referring to?

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1   MS. BUCKLEY: 1998.

2   A.   Yes.

3   Q.   Describe to me what the process is in cleaning the

4   data?

5   A.   Making sure the contextual data is on correctly, make

6   sure that there is no -- the number of the ad matches to the name

7   of the ad, matches to the name of the ad in the content -- excuse

8   me in the targeting database.   There are two separate databases.

9   There is one database which is storyboards and the date that's

10 generated on the coding sheets from storyboards, and then there

11 is another database that it was aired on WXYZ for thirty seconds,

12 on Oprah at this time, and making sure -- and the way we would

13 link it is on the name, and most of the cleaning had to do with

14 making sure those names were identical so that it would link up.

15   Q.   The names on the top of the ad is what you are

16 referring to?

17   A.   Yes.

18   Q.   That's called the cuss title, is it not?

19   A.   That's called the cuss title by CMAG, right.

20   Q.   And when did you transmit this data set to the Brennan

21 Center?

22   A.   I don't recall exactly.   It was some time in the fall

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1   of 1999, but I don't remember exactly.

2   Q.   And when did Buying Time '98 come out?

3   A.   April or May of 2000, I believe.

4   Q.   So am I adding correctly, we're talking about maybe a

5   six-to-nine-month period after you sent the data?

6   A.   Yes.

7   Q.   What was going on during that six-to-nine-month

8   period, Professor Goldstein, do you know?

9   A.   I believe they were writing Buying Time.

10   Q.   Was there any particular cause of the holdup that you

11 are aware of?

12   A.   In the writing?

13   Q.   In the publication of Buying Time magazine --

14   MR. DODYK: I object to the form of the question.

15   The word "holdup" implies that in some sense there was one.

16   Q.   Why did it take so long, professor, do you know?

17   A.   It's actually not a long time.   It was actually

18 released and published in April.   That's actually an incredibly

19 quick amount of time to go from data to a finished published

20 book.   Jon Krasno had to run his analysis, had to do his

21 writing, had to create his tables and then the tables had to be

22 graphically created.   I'm just speculating here.   I wasn't at

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1   Brennan, I'm not sure what was happening.   I'm not sure whether

2   he would have had to have gotten that to the press and the press

3   has to set it and publish it and I'm not sure what the books came

4   back.   They probably didn't release it the day they got the

5   books back from the publisher.   I'm just speculating but that's

6   not a particularly long time.

7   Q.   What was your role during this period?

8   A.   Very, very limited.   I talked to Jon a couple of

9   times to give him -- he would have specific questions about CMAG

10 practice or CMAG data or he would be missing a -- a storyboard

11 and I would try and find that storyboard for him.

12   Q.   Now at some point in time, Professor Goldstein, you

13 had discussions with the Brennan Center about proceeding to do

14 yet another study in 2000, didn't you?

15   A.   Yes.

16   Q.   And you earlier talked about the proposals to Pew to

17 undertake that work, have you not?

18   A.   Yes.

19   Q.   And was the -- the original proposal was for you and

20 Dr. Krasno to collaborate on that study.   Am I correct?

21   A.   Yes.

22   Q.   And Dr. Krasno ended up -- what was his role on Buying

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1   Time 2000?

2   A.   He had no role in Buying Time 2000.

3   Q.   No role?   Did he assist you in any way during that

4   process?

5   A.   In 2000?   Not at all, no.

6   Q.   Not at all?

7   A.   No.

8   Q.   When did he drop off that project?

9   A.   He was never a part of the 2000 project and he left

10 the Brennan Center in April or May of 2000 and then did not have

11 any role in the project after that.

12   Q.   That's just around the time that Buying Time '98 was

13 being published.   Is that right?

14   A.   I think it was a couple of days before, or a week

15 before.

16   Q.   Do you know the circumstances under which Dr. Krasno

17 left the Brennan Center?

18   A.   Some knowledge of that, yes.

19   Q.   What did you hear?

20   A.   Jon and the head of the -- Jon Krasno and the head of

21 the Brennan Center, Josh Rosencranz, were having a personality

22 clash and that personality clash had apparently been over a

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1 couple of months and that ended up in April -- that got to the

2 point where Josh, or Mr. Rosencranz fired Jon from the Brennan

3 Center.

4   MS. BUCKLEY: Let's mark as thirty-eight a three-page

5 document bearing the control numbers BRE 7516 through 7518.

6   (Whereupon a hand-written note Bates numbered BRE

7 7516 through 7518 was marked Goldstein Deposition Exhibit

8 38 for identification.)

9   Q.   Did you have a conversation with Nancy Northup at

10 the Brennan Center at the end of December, 2000, Professor

11 Goldstein, that you recall?

12   A.   I talked with Nancy. I don't remember

13 specifically -- I remember a number of conversations, not -- I

14 had a number of conversations with Nancy, yes.

15   Q.   Do you recall a conversation where you reported to

16 Nancy that you were going to the University of Wisconsin?

17   A.   I don't recall that specific conversation, but I'm

18 sure I told her.

19   Q.   This appears to be a handwritten note of a

20 conversation with you, Professor Goldstein. I'd like you to

21 take a look at it and see if it refreshes your recollection as to

22 a conversation you had with Miss Northup at that time.

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1   (Brief pause while witness peruses document.)

2   A.   It's sort of hard for me to read the handwriting

3 and "Ken Goldstein doesn't know what to say, have been great,

4 have" -- I can't read it. "No need to get in the middle" -- I

5 can't read the handwriting, I'm sorry.

6   Q.   Next thing, says "wouldn't want to work with the

7 Brennan Center without Jon if were getting the data for other

8 purposes."

9   Does that refresh any recollection about the phone

10 call with Northup?

11   A.   There was a -- this is actually -- this is well after

12 I -- this was after I had been at Wisconsin for a semester, if

13 this is December 30th, 2000.

14   Q.   Um-hum.

15   A.   Nancy's notes, and it was probably -- we had funded

16 2000 by using carry-over funds from 1998.

17   Q.   Um-hum.

18   A.   I then wanted to pursue getting additional funds

19 from -- for 2001 and 2002. Brennan wanted to be a part of that.

20 I remember a conversation was both Jon and Brennan. Brennan --

21 there was a continued effort by Brennan to have me take their

22 side with the matter with Jonathan Krasno and to just work with

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1 them to go with Pew. There was a continued effort by Josh for me

2 to just take his side and for us together just to go to Pew, and

3 what I said was I'd be happy -- I'd be happy to work with both,

4 but I wasn't, you know. I didn't want to exclude -- I didn't

5 want to exclude Jon from using the data.

6   Q.   Do you know what the reference is up here where it

7 says "doesn't know what to say"? Do you have any recollection

8 about what that's about?

9   A.   I think she called me up and said -- it was some -- it

10 was sort of a weird comment, "Are you angry with us? Did we do

11 anything to anger you? Are we okay?" Because Brennan was

12 undergoing a little bit of a PR effort within the political

13 science community, because there was some bad blood among

14 political science tests after Jon had been fired, and I think

15 they were trying to talk to me and see what my feeling was about

16 it and I was trying to not get involved in the middle, but that's

17 all -- this is trying to recollect it from Nancy's notes, but

18 there were lots and lots and lots of conversations about John's

19 firing.

20   Q.   Now, did you ever learn that one of the reasons that

21 Jon was fired was because of his work with the data?

22   A.   No.

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1   Q.   You never heard that?

2   A.   No. In fact, specifically, Josh told me that it was

3 personality based.

4   Q.   You never learned that the Brennan Center was of the

5 view that Dr. Krasno's data could not be trusted?

6   A.   No, absolutely not.

7   Q.   Now at some point in time, Professor Goldstein,

8 Professor Basen wrote an article about the findings of Buying

9 Time 1998. Do you recall that?

10   A.   I haven't seen the article, but I know he was

11 commissioned by the Brennan Center to write that article.

12   Q.   And I believe in -- I believe in point of time we're

13 talking the fall of 2000. Does that sound about right?

14   A.   Yes.

15   Q.   And do you recall that in Buying Time '98 the author's

16 report that -- let me get it. I'm referring to your -- the

17 appendix to your expert report, Professor Goldstein, which is

18 hard to hold, and Exhibit C is Buying Time '98 and I'm on page

19 109.

20   A.   There a --

21   Q.   I'll give it to you in a second.

22   A.   Okay.

Page 109

1   Q.   The authors conclude here, discussing figure 4.22,

2 that, quote, "The results show that while forty-one percent of

3 issue ads that provide information or urge action appeared within

4 sixty days of the fall election, just seven percent of those ads

5 (consisting of just two spots), appeared within sixty days and

6 referred to a candidate," end quote.   I'll hand it to you.

7   First of all, does that refresh your recollection that

8 only two ads were considered genuine issue ads that fell within

9 the requirements?

10   A.   I didn't do any specific analysis in 1998, but I

11 accept this finding.

12   Q.   Do you see the reference to the seven percent figure

13 there?

14   A.   Yes.

15   Q.   And when Professor Basen was commissioned to write his

16 article, he undertook to replicate that figure.   Do you know

17 that?

18   A.   Yes.

19   Q.   And he had some trouble doing it, didn't he?

20   A.   Yes.

21   Q.   And at one point in time the Brennan Center sent Luke

22 McLoughlin out to visit you to see if you could replicate that

Page 110

1 figure, too?

2   A.   Yes.   I don't know if that's the reason why they sent

3 him out.   He was just starting there and they wanted him to see

4 the CMAG central operation.

5   Q.   CMAG central operation at the University of Wisconsin?

6   A.   Exactly.

7   Q.   When Mr. McLoughlin came out to visit you, were you

8 able to produce the seven-percent figure for him?

9   A.   No, I was not.

10   Q.   You came up with thirty-eight percent, didn't you?

11   A.   I --

12   Q.   Something like that?

13   A.   Something like that.   But that was wrong.   What I had

14 failed to do was take into account cookie-cutter ads and ads that

15 were aired in places where there wasn't a federal candidate

16 running, and so I understand that when Buying Time was done, they

17 allocated those cookie-cutter ads on I think it was an AFL-CIO ad

18 about HMO's.   They allocated those by state, and when they

19 allocate those by state, you get the seven-percent number.

20   Q.   Now that's nothing they could get out of the database.

21 Is that right?

22   A.   You'd have to -- you'd have to update the database for

Page 111

1 the cookie-cutters, which is the correct thing to do.   And I was

2 using an old -- I was using a database that was not the

3 production database for Buying Time.

4   Q.   What database were you using?

5   A.   I was using the database that I had in my files, which

6 was a database that Jon had sent back to me sometime over the

7 fall of 1999.

8   Q.   Okay, and that's the one database that you still have

9 for 1998, correct?

10   A.   Right, that's the oldest 1998 database I have.

11   MR. DODYK: Counselor, the record reflects two 1998

12 databases when he said he only had one.

13   MS. BUCKLEY: I thought he testified earlier that

14 he only had one.

15   MR. DODYK: No.

16   A.   Well, I only had one during this process.   I was

17 sent the second one.

18   MR. DODYK: Just to be clear, he had --

19   A.   I never -- when I was asked to replicate that

20 number, I didn't have the production database for Buying Time.

21   Q.   What does the "production database" mean?

22   A.   The database they actually use to generate the numbers

Page 112

1 in Buying Time.

2   Q.   When did you get that?

3   A.   A couple of weeks ago.

4   Q.   During this litigation?

5   A.   During this litigation, exactly.

6   Q.   Now, in trying to replicate the seven-percent figure,

7 Professor Goldstein, your database, as you say, came up with a

8 figure of somewhere around thirty-eight percent, correct?

9   A.   I don't remember exactly, but it was a number

10 significantly higher than that, yes.

11   Q.   And then did you then go back and start subtracting

12 out marks on your own or did someone else do that?

13   A.   No, someone else did that.

14   Q.   Is the database that you now have -- let's start one

15 at a time.   Is the database that you had for '98 the one you had

16 before this litigation started and does that reflect information

17 sufficient to replicate the seven-percent figure?

18   A.   You'd have to allocate cookie-cutter ads correctly.

19   Q.   And you couldn't do that through the database.   Isn't

20 that right?

21   A.   Right.

22   Q.   The database doesn't help you do that is what I am

Page 113

1 trying to understand?

2   A.   The database gives you the markets where it's aired.

3   Q.   But then you have to go out and do outside research to

4 determine what candidate was targeted in that particular

5 advertisement in that particular market, correct?

6   A.   Yes.

7   Q.   And that's because CMAG doesn't capture every

8 advertisement. It only captures, I assume, and I take it from

9 your report, the first advertisement in -- that it receives on

10 that topic. Is that correct?

11   A.   And then cookie-cutters aren't different enough for

12 the CMAG technology to think it's two ads, right.

13   Q.   And now, --

14   A.   They're technically two creatives, but CMAG technology

15 doesn't realize that they are two creatives because they are so

16 similar.

17   Q.   Right. Now did you provide any information to

18 Professor Hasen when he was attempting to replicate the

19 seven-percent figure?

20   A.   No.

21   Q.   No. Now, when Buying Time '98 was being prepared,

22 did you assist Brennan Center in going through the process of

Page 114

1 trying to determine what markets cookie-cutter ads aired in?

2   A.   I don't remember doing it in a comprehensive way, like

3 I did in 2000. In 2000 I allocated all the cookie-cutters. In

4 1998 I don't remember doing that, but I think from time to time

5 Jon would call me and ask me my advice or ask me to check with

6 media contacts I had or political sources I knew to see if I

7 could allocate the cookie-cutter ads.

8   Q.   Now, did you work with them on that project before

9 Buying Time '98 was published or when Professor Hasen was asking

10 questions about it?

11   A.   I didn't do any '98 stuff. I did very limited 1998

12 work after I gave that initial data set to Brennan in the fall of

13 1998. I did nothing on 1998 except run that number once after

14 spring of 2000.

15   MR. DODYK: Can we get the answer back. I think you

16   want to listen to the answer.

17   A.   So spring of 2000.

18   Q.   One of those 1998's was a 1999, correct?

19   A.   Yes.

20   MR. DODYK: Why don't you re-ask the question and get

21   an answer.

22   MS. BUCKLEY: Yes.

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1   Q.   Did you assist the Brennan Center in doing the

2 analysis on the cookie-cutter ads before Buying Time '98 was

3 published?

4   A.   In a very limited way, yes.

5   Q.   And what was that?

6   A.   I don't remember specific times, but I have a general

7 recollection of Jon from time to time calling me and asking me

8 for my advice or to allocate a cookie-cutter or whether I could

9 contact someone that I knew was a political consultant or in the

10 news media to help us allocate the ad.

11   Q.   And after Buying Time '98 was published, do you

12 recall, as you said, "running that number," unquote, and that's

13 the number that you ran when Luke McLoughlin came out to advise

14 you in Wisconsin?

15   A.   Yes.

16   Q.   Did you have any role after Buying Time '98 was

17 published in trying to sort out the cookie-cutter ad phenomenon

18 for 1998?

19   A.   No.

20   Q.   Okay. Now in your rebuttal report in the

21 litigation -- in this litigation, Professor Goldstein, you lead

22 the reader through various versions of the 2000 data set.   Do

Page 116

1 you recall that portion of your report? I think it's pages nine

2 to sixteen, and that report is Exhibit 16.

3   MR. DODYK: Why don't you get the other copy. It's

4   Exhibit 16. What page?

5   MR. DODYK: Nine through sixteen.

6   A.   So read nine through sixteen.

7   Q.   I am giving you a point in time. You don't have to

8 read the whole thing and I am giving you a page number. So we're

9 at your rebuttal report again, back to your rebuttal report

10 again, Professor Goldstein, a section of it from pages nine to

11 sixteen. You take the reader through the various versions of

12 the 2000 data set. Do you recall that?

13   A.   Um-hum.

14   Q.   And you explain that there have been many iterations

15 of the 2000 data set since you originally sent it to the Brennan

16 Center. Isn't that right?

17   A.   Um-hum.

18   Q.   And that's true, correct?

19   A.   Yes.

20   Q.   And in a course there somewhere, and I will see if I

21 can find the page, you identify a particular iteration of the

22 database that you believe is likely closest to the database you

Page 117

1 forwarded to the Brennan Center and on which Buying Time 00 is

2 based. Do you recall that?

3   A. Right.

4   Q. I think that's called federal.sav, is it not?

5   A. Yes.

6   Q. Let's see if we can get a page for you, because I'm

7 not good at reciting the names of these data sets. Page

8 fifteen, at the second to last line, you talked about identifying

9 a file entitled federal.sav.

10   A. Right.

11   Q. Quote, "as closely tracking the database on which

12 Buying Time 2000 was based," unquote. Is that right?

13   A. Right.

14   Q. And then you go on to describe how the data set has

15 changed over time. Isn't that right?

16   A. Yes -- well, it -- I don't really go on there to do

17 that, I don't think.

18   MR. DODYK: Before that.

19   Q. I'm sorry, I think we're back at page nine.

20   A. Okay, sorry. I was on page fifteen.

21   Q. And then it goes on to page eleven. You keep

22 describing changes in your database. Do you see that paragraph,

Page 118

1 beginning the second?

2   A. Yes, right.

3   Q. And I take it that's because you keep cleaning the

4 database and updating it, is why this database keeps changing.

5 Is that correct?

6   A. My copy of the database, yes.

7   Q. Your copy of the database?

8   A. Yes.

9   Q. As opposed to the Brennan Center's copy of the

10 database?

11   A. Yes.

12   Q. So if we had had a number of databases for 2000

13 produced by you in this litigation and a number of databases

14 produced by the Brennan Center in this litigation, they won't

15 necessarily be the same, correct?

16   A. Exactly, correct.

17   Q. Now, did you produce every version of the 2000

18 database in your possession in response to this subpoena?

19   A. Yes.

20   Q. You did. In preparing your report for this

21 litigation, Professor Goldstein, what version of the 2000

22 database did you use, your opening expert report?

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1   A. My opening expert report, I used a version of the

2 database which was on every variable except question eleven. It

3 was my -- it was a database that included any cleaning I would

4 have done. On question eleven, it included new data that I got

5 in CMAG, as we discussed, gave me other data, plus if at any

6 time, according to our records, a student coder had ever said

7 Q11 -- our old Q6, Q11 for 2000, if at any time a student coder

8 had said that the ad was genuine issue, we included it as a

9 genuine issue from my expert report.

10   Q. All right, and the database you attached to your

11 expert report was not produced in the litigation, was it?

12   A. No, because it was something that was created as I

13 wrote my expert report.

14   Q. Ah, so the reason it wasn't produced was because it

15 didn't exist at the time you were subpoenaed. Is that right?

16   A. Exactly.

17   Q. If we go back to the databases you produced in your

18 response to your subpoena now, what is the most up-to-date of

19 those databases?

20   MR. DODYK: Up-to-date meaning the most recently

21 created?

22   MS. BUCKLEY: Correct.

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1   A. The most recently created would have been -- I

2 don't know the name of it, but whatever the one with the most

3 recent data. I don't remember the name of it.

4   Q. And I just want to understand, did you take that

5 database and use it for your expert report and just add things to

6 it?

7   A. That database and then if at any point on question

8 eleven -- if at any point in any iteration of Brennan or -- of

9 Brennan's data or of my data that those -- that Q11 had ever been

10 an issue ad, we made it an issue ad in the database that I used

11 to create my expert report.

12   Q. Okay. Now the database that you have produced in

13 response to the subpoena was

14 cmag_2000_labeled_data_may02_feb01_w_compet.sav, right?

15   A. That must have been one of my grad student's names,

16 yes. That's one that we produced, I don't know if that's the

17 latest one. We have to look under the creation date for it.

18 Whenever I say the "latest one," in the rebuttal report is the

19 latest one. I don't remember the name offhand.

20   Q. All right, then let's find the rebuttal report. Here

21 we are.

22   A. But it says, "He bases his accusations of re-coding on

1 his analysis of data produced by me." I think that's the one you

2 just said. I don't know if that's the latest one I produced,

3 though.

4 Q. How would you go find that out?

5 A. I have to go look at the -- I believe I produced a

6 number of them. I might be able to tell by the names. If not

7 I could tell by the sav.as date on the file.

8 Q. Right. Do you know of any database created after

9 this May -- this database I just read to you --

10 A. May, 2002, no.

11 Q. Okay. And just to make sure that I'm not

12 misunderstanding that, you took the May 2002 database --

13 A. Yes.

14 Q. And added to it to create what you gave to us with

15 your expert report?

16 A. Yes.

17 Q. And what you added to it was another variable showing

18 the changes of question eleven over time. Is that right?

19 A. On that is both -- is how we used Q11 in the expert

20 report, which is if at any time a student had considered a

21 genuine issue ad, we then used what the coding was in May

22 whenever that was in existence.

1 Q. The May database that is identified as

2 cmag_2000_labeled_data_may02_feb01_v_compet.sav. Is that right?

3 A. Yes.

4 Q. Now if you were going to sit down and write an article

5 today about the 2000 election, Professor Goldstein, is that the

6 database you would use?

7 A. Yes.

8 Q. And is that because it's the most accurate?

9 A. It's the most accurate in my opinion, yes.

10 Q. There is certainly nothing wrong about it, is there?

11 A. Not that I know of. There could be.

12 Q. To the best of your ability, it's not wrong?

13 A. To the best of my ability it's not wrong.

14 MR. DODYK: May I have just a moment, counsel.

15 (Off-the-record discussion between the witness and

16 his counsel.)

17 MS. BUCKLEY: We all sorted out over there?

18 MR. DODYK: I was trying to get straight,

19 counsel, what the relationship was between the file which

20 is attached to the expert report and what changes had been

21 made with respect to the prior report to put it in the

22 condition which the witness testified and I am not sure I

1 Q. And you created that to help you write your report?

2 A. Yes.

3 Q. Now, if I were to take that new variable out of that

4 database that you added, because you were talking about your

5 preparing your expert report and had to run certain numbers for

6 this case, would I end up with the most updated version of the

7 database?

8 A. You would end up with my most updated version of the

9 database.

10 Q. Now, what version of the database did you use when

11 writing your article for PS?

12 A. The article for PS would have been written in

13 January -- well probably first written in March of 2001. I

14 believe that database was the database that I had sent Jonathan

15 Krasno. So I would have sent him a database the same time I

16 sent the Brennan Center the database.

17 Q. And what database did you use for your recent

18 unpublished manuscript that you submitted to Political

19 Communication?

20 A. Whatever the database that was in -- probably that May

21 one, because I think it was originally submitted early in the

22 summer.

1 understand at this point still.

2 Q. Well it was my understanding that there was

3 another variable added to reflect the answers to Q11 over time.

4 Is that incorrect?

5 A. That's correct.

6 Q. And that otherwise it's what we are now calling your

7 "May '02 database." Is that right?

8 A. Right.

9 Q. Now you recall in your rebuttal report that you

10 criticized Professor Gibson for not using the federal.sav

11 database. Do you remember that?

12 A. Yes.

13 Q. And you repeat that charge several times, do you

14 remember that?

15 A. Yes, because he's trying to replicate Buying Time

16 2000.

17 Q. Well you don't know what Professor Gibson was going to

18 do. That's what you presume Professor Gibson was going to do?

19 A. I think he was saying he was going to --

20 Q. That may have been one of the things that Professor

21 Gibson was doing. But Professor Gibson was also analyzing the

22 data for its reliability and --

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1   A.   I don't know what the professor at that time was

2   doing.

3   Q.   You were saying that if you were going to sit down and

4   write an article tomorrow the May '02 database would be the one

5   you would use. Is that correct?

6   A.   Yes.

7   Q.   And that's exactly the database that Professor Gibson

8   used that you criticized him for using?

9   A.   I --

10   Q.   Yes or no?

11   MR. DODYK: You can answer the question any way you

12   need to.

13   Q.   Isn't that the one you criticized him for? We're

14   on page twenty.

15   A.   I criticized him for not -- I criticized him for using

16   that database to try and replicate Buying Time 2000.

17   Q.   Well, no, you don't, Professor Goldstein.

18   Several -- you mentioned that several times throughout the course

19   of your report, and that's not my question. My question is,

20   isn't the database identified on page twenty the very same

21   database that you just testified that you would use if you were

22   going to write a scholarly article today?

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1   A.   Yes.

2   Q.   Thank you.

3   MS. BUCKLEY: All right, let's take a five-minute

4   break.

5   (Brief recess taken.)

6   BY MS. BUCKLEY:

7   Q.   Professor Goldstein, if you would have handy a copy of

8   your expert report which has been marked as Exhibit 15, and I

9   want to direct your attention to page twenty-six.

10   (Brief pause while witness peruses document.)

11   Q.   Page twenty-six, Professor Goldstein you introduce

12   your chart, table seven, which I think immediately proceeds it.

13   The page before is your table seven?

14   A.   Um-hum.

15   Q.   And you talk about analyzing only six distinct ads

16   broadcast a total of fourteen hundred and thirteen times as being

17   classified as genuine issue ads. Do you see that on the top of

18   page twenty-six?

19   A.   Yes.

20   Q.   And then you drop a footnote, footnote twenty-one and

21   you describe those ads for us. Now I'm trying to understand how

22   these six ads were chosen.

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1   A.   If at any time in any of the databases that I had in

2   my possession the ad was considered a genuine issue ad, I

3   considered it a genuine issue ad for the purposes of this expert

4   report. So it's the most conservative -- or it's the most

5   encompassing definition of genuine issue ads.

6   Q.   The most comprehensive?

7   A.   The most -- I don't know if it's the most -- I'm not

8   sure if "comprehensive" is the right word. I'll just restate

9   it. If at any time in any database someone had said it was a

10   genuine issue ad, I considered it a genuine issue ad. So I'm

11   erring on the side of things including the genuine issue ad

12   rather than an electioneering ad.

13   Q.   Well I'm not sure that's exactly what you say. Let's

14   look at footnote twenty-one. You said "The storyboards for

15   these ads appear in appendix J for this report." And then quote

16   "These six ads represent every unique ad ever coded as a genuine

17   issue ad by the coders of the 2000 data," unquote.

18   A.   Correct.

19   Q.   So it's your testimony that the six ads that you have

20   analyzed for your expert report are the only ads that were ever

21   denominated as a genuine issue ad by the coders. Is that

22   correct?

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1   A.   Yes.

2   Q.   How did you find that information?

3   A.   It was a combination of databases that were in my

4   possession and the database that -- I think it was just a

5   combination of databases that were in my possession.

6   Q.   Now, do you have a database that shows the other --

7   A.   Actually it was a combination of databases that were

8   in my possession plus the ads that Brennan Center considered

9   genuine issue for Buying Time 2000.

10   Q.   Well let's go back. Do you have a database which

11   reflects how the students coded the ads for Buying Time -- for

12   the 2000 study?

13   A.   I don't have a copy of the database that I gave to

14   Brennan in December or January -- December 2000, January of 2001.

15   I have a database just after that, which may include changes that

16   I made to it.

17   Q.   All right. I'm not being clear.

18   I understand that the 2000 coders at the University of

19   Wisconsin coded the advertisements for 2000 --

20   A.   Yes.

21   Q.   On computers. Is that right?

22   A.   Yes.

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1   Q.   And they filled out the questionnaire, which we have
2   previously marked here, electronically. Is that correct?
3   A.   Yes.
4   Q.   Now the raw input from the student coders, I'm asking
5   where is that?
6   A.   They actually did it on the CMAG service, so it was an
7   access database, and they would -- and it was a web-based
8   key-punching program, or coding program in a sense, and they
9   would do it on the CMAG server and then CMAG would pop back to us
10   access databases. We do not have those access databases.
11   Q.   You do not have the original student coding for 2000.
12   Is that right?
13   A.   Right. The political science department changed
14   service and mistakenly deleted a big chunk of our files,
15   including our access database.
16   Q.   Okay, so there is nowhere I can go look to see exactly
17   how the student coders filled out the questionnaires for 2000.
18   Is that right?
19   A.   That's correct. They weren't actually questionnaires
20   in 2000, it was online.
21   Q.   Okay. So, in picking these six ads, you went through
22   a number of versions of the 2000 database and identified ads that

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1   at some point in time someone had considered a genuine issue ad.
2   Is that right?
3   A.   That's correct.
4   Q.   Okay, and now we go back to table seven, which is the
5   page before.
6   A.   Um-hum.
7   Q.   And the number six representing those six ads appear
8   under the column "unique ads"?
9   A.   Yes.
10   Q.   That was a constant in your analysis because that's
11   the sum total of what you view to be the universe of ads that
12   were ever determined to be genuine issue ads, correct?
13   A.   No. Those were ads that were genuine issue ads that
14   would have been captured by BCRA. They are issue ads that
15   mention or depicted the candidate within sixty days of the
16   federal election.
17   Q.   Okay. Now if we go to appendix J of your report, the
18   storyboards for those six ads which form the basis of your table
19   seven are reproduced as Exhibit J to the volume two of the
20   appendix to your opening expert report. Is that correct?
21   A.   Yes.
22   Q.   And the ads are identified, I believe, in your

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1   rebuttal report by name and number. Are they also?
2   A.   Yes. I think there are three -- as a set of three at
3   one point and there is a set of three at another point.
4   Q.   Right. I just want to get the ad numbers.
5   (Brief pause.)
6   Q.   Okay, the first one in appendix J to your report
7   is the "KY/CFAW Call Northup," correct, and that's ad 6627,
8   right?
9   A.   Um-hum.
10   Q.   The second one in appendix J is --
11   A.   I'm not looking at that, but --
12   Q.   Okay, I'll let you. "FAIR/IA, Latham Foreign Worker
13   Bill," and that's ad 1389, correct?
14   A.   Okay.
15   Q.   And the next one identified in Exhibit J to your
16   report is "UT/COC Matheson Can't Decide RX," and that's ad number
17   2862, isn't it?
18   A.   Okay.
19   Q.   The fourth ad identified in appendix J is "CBM/RX Plan
20   For Seniors 60." Do you see that?
21   MR. DODYK: What's the number on that?
22   Q.   CBM/RX Plan For Seniors. Do you see that?

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1   A.   Yes, it's really small --
2   MR. DODYK: What is the number of that ad?
3   MS. BUCKLEY: It's 1269.
4   A.   Okay.
5   Q.   The fifth ad is "RI/RIWV Langevin Abortion," and
6   that's ad 1367 referenced on page sixteen of your report?
7   A.   Okay.
8   Q.   And the last one, ad 2107, is "WI/NPLA Feingold Kohl,
9   abortion 60," and that's ad 2107 in the 2000 election?
10   A.   Yes.
11   Q.   Do you see that?
12   A.   Yes.
13   Q.   Okay. There is a little bit of confusion in your
14   expert report, Professor Goldstein, at page sixteen. You
15   identify ad 1269 as "CBM/PA Sherwood If You Don't Have Health,"
16   but then in your appendix -- bear with me.
17   A.   I don't have the appendix with me.
18   Q.   In your appendix when you are attaching the ads you're
19   talking about, the ad you attach as we just saw was "CBM/RX Plan
20   For Seniors."
21   A.   Right.
22   Q.   Now, which ad -- I think you got the title wrong in

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1   your expert report is all I'm saying. Does that make sense to
2   you?
3   A.   Yes, let me see.
4   (Brief pause while witness peruses document.)
5   MR. DODYK: Which do you think is the erroneous
6   caption?
7   MS. BUCKLEY: 1269 should be CBM/RX Plan for
8   Seniors.
9   A.   It looks like we got the wrong title. Another
10 possibility is that occasionally CMAG will make a mistake and
11 capture the same ad twice and give it a different title. There
12 is no official title to the ads. CMAG just makes up a title.
13 So --
14   Q.   All I'm saying, Professor Gibson, is in your opening
15 report --
16   A.   Goldstein.
17   Q.   I'm sorry, Professor Goldstein --
18   A.   I'll represent there is a mistake.
19   Q.   I'll represent to you that 1229 is "CBM/RX Plan for
20 Seniors."
21   A.   Yes.
22   Q.   And it is in fact 1269 that you used in conducting

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1   your analysis, is it not?
2   A.   Yes, sir.
3   Q.   Now of these six ads that we have identified,
4   Professor Goldstein, for 2000, do you know, as you sit here
5   today, which ones were considered genuine issue ads captured by
6   BCRA in Buying Time 2000?
7   A.   Yes. The --
8   Q.   Page twenty-one?
9   A.   I think the -- right, I'm sorry. Page twenty-one,
10 right.
11   Q.   And that's ad 627 Call Northup, and 629 "Latham
12 Foreign Worker Bill," and 2862 "Matheson Can't Decide RX,"
13 correct?
14   A.   Correct.
15   Q.   And then the three that you have identified on page
16 sixteen, 1269 which we now know is "CBM/RX Plan For Seniors,"
17 1367 which is "Langevin Abortion," and 2107 which is "Feingold
18 Kohl," these are --
19   A.   These are ones that -- apparently in the database that
20 I provided to Brennan, these were originally coded as G I --
21   Q.   Genuine issue ads?
22   A.   Genuine issue ads, and then Brennan, after a

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1   conference call with me, decided to make them election and so
2   they show up as election in Buying Time 2000.
3   Q.   Okay. Now as you sit here today, Professor
4   Goldstein, it's your personal opinion that of these six ads only
5   one is truly a genuine issue ad that would be captured by BCRA.
6   Is that right?
7   A.   That's correct.
8   Q.   And that's the "Feingold Kohl" commercial?
9   A.   That's the "Feingold Kohl" commercial.
10   Q.   When did you come to the view that the "Feingold Kohl
11 Abortion" ad should be considered a genuine issue ad captured by
12 BCRA?
13   A.   As we have talked about, that's a -- that's probably
14 the one ad in all the ads that I have looked at in '98 and 2000
15 where I flipped and flopped on it and came to my most recent
16 assessment of it, in this process.
17   Q.   In the process of this litigation?
18   A.   In the process of this litigation. But for my expert
19 witness report, I consider it a genuine issue ad because the
20 coders did so.
21   Q.   What coders did so?
22   A.   I mean -- well, the coders did so, because at some

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1   point -- at some point the coders considered this a genuine issue
2   ad.
3   Q.   We know from earlier today that they considered it a
4   genuine issue ad in 1998, right?
5   A.   Right, and I am extrapolating because these three ads
6   are ads that Brennan Center asked me to make an assessment on, so
7   they would have been looking at the original data set I gave them
8   which would have had the coder assessment.
9   MR. DODYK: I'm going to object to the form of the
10   last question because it assumes a fact not in evidence
11   which is that we have established as of this record that
12   the coders determined "Feingold Kohl to" be a GI ad in
13   1998.
14   MS. BUCKLEY: Professor Goldstein's report says
15   so, counsel, but why don't we move on.
16   Let's mark as Exhibit 39 a multi-page document
17   bearing a control number KG12859 through KG12864.
18   (Whereupon a multi-paged document Bates numbered
19   KG12859 through KG 12864 was marked Goldstein Deposition
20   Exhibit 39 for identification).
21   MS. BUCKLEY: And let's mark as Exhibit 40 what
22   appears to be a press release bearing the control numbers

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1 BRE 12099 through BRE 12101.

2   (Whereupon a press release Bates numbered BRE12099

3 through BRE12101 was marked Goldstein Deposition Exhibit 40

4 for identification.)

5   MS. BUCKLEY: And finally as Exhibit 41, one-page

6 document bearing the control numbers BRE 12547.

7   (Whereupon a document Bates numbered BRE12547 was

8 marked Goldstein Deposition Exhibit 41 for identification.)

9   Q.   Let's start with what we marked as Exhibit 40,

10 Professor Goldstein.   This appears to be a press release from

11 the Brennan Center dated October 16th, 2000.   Do you see that?

12   A.   Um-hum.

13   Q.   And your name is listed as one of the contacts,

14 correct?

15   A.   Yes.

16   Q.   And there is a press release about some of the

17 findings that you were uncovering in your study of the 2000

18 election?

19   A.   Yes.

20   Q.   May I direct your attention to the bottom of the

21 second page.

22   A.   Um-hum.

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1   Q.   Where you're talking about -- the paragraph beginning

2 "in addition," and I will read it, "In addition, Citizens for

3 Better Medicare, an independent group funded by the

4 pharmaceutical industry, has had an enormous presence in many of

5 the battleground states and media markets targeted by Governor

6 Bush's campaign.   Citizens for Better Medicare has spent more

7 than seven million dollars on ads advocating Medicare proposals

8 similar to those advocated by Governor Bush.   Professor

9 Goldstein explained, quote, 'Because they steer clear of

10 mentioning a candidate, the ads run by Citizens For Better

11 Medicare are different than those run by the AFL-CIO, Planned

12 Parenthood, Handgun Control and the Sierra Club on behalf of Vice

13 President Gore.   These ads are vitally distinguishable from the

14 ads run by the Gore campaign and Democratic party.   As a result,

15 we do not code ads paid for by Citizens For Better Medicare as

16 electioneering.   Nevertheless, given the volume and targeting of

17 these ads, they are an important part of the story of this

18 presidential campaign,' unquote.

19   Now in October of 2000, do I correctly read, Professor

20 Goldstein, that at that point in time you were of the view that

21 the ads run by Citizens for Better Medicare were genuine issue

22 ads as opposed to electioneering ads?

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1   A.   There was two sets of Citizens for Better Medicare

2 ads.   There was one set of Citizens for Better Medicare ads that

3 aired over the summer and I think the seven million dollars of

4 these Citizens for Better Medicare ads that we're talking about

5 here were ones that were mostly aired over the summer.   I'm not

6 remembering the exact ones but it was seniors going to Canada on

7 a bus and I think it was Flo, the woman bowler, talking about

8 prescription drugs, although I might be confusing that with

9 2001, and then Citizens for Better Medicare had a whole other set

10 of ads which they targeted in various House and Senate races in

11 2000, as well.

12   Q.   Is this press release do you distinguish between two

13 sets of ads run by Citizens for Better Medicare?

14   A.   No, just one set.   The other ones may not have been

15 aired yet by the time the study was done.

16   Q.   And this press release was issued October 16th, 2000?

17   A.   So it would have included data up to and including ads

18 paid for by Citizens for Better Medicare that we coded as

19 electioneering that would have been included in these aggregate

20 figures, but they're not mentioned specifically in this

21 paragraph.

22   MS. BUCKLEY: Can I have the question and the answer

Page 140

1 read back.

2   (Record read.)

3   A.   Actually, now that I look at this more carefully --

4   Q.   Slow down a little bit.

5   A.   Now that I look at this more carefully, this release

6 is just on the presidential race, so it would not include any CBM

7 ads that were -- that we determined were targeted at

8 congressional, at House races or Senate races, so that is why

9 those aren't mentioned.

10   Q.   So you're saying that the Citizens for Better Medicare

11 ads, discussing the presidential candidates, were viewed as issue

12 ads and those addressing other candidates were not?

13   A.   No, I'm saying --

14   MR. DODYK: Objection, that is not the witness's

15 testimony.

16   Q.   I don't know what you are saying.   Please

17 explain.

18   A.   What I am saying is according to our analysis Citizens

19 for Better Medicare did not air any -- according to our analysis,

20 Citizens for Better Medicare did not air advertisements

21 specifically in the presidential race.

22   Q.   You're trying to distinguish between two kinds of ads

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1 run by Citizens for Better Medicare and I thought the distinction
2 you were drawing was ads run about presidential races and ads run
3 about other races. Is that incorrect?
4   A.   I'm making two distinctions. I'm making one
5 distinction about ads run in the presidential race and ads run in
6 other federal races --
7   Q.   Okay.
8   A.   And then I'm making a distinction between ads that
9 have an issue goal, ads that have an election goal.
10   Q.   Okay. The only ads addressed in this press release
11 are CBM ads that you viewed as genuine issue ads. Is that
12 correct?
13   A.   That is correct.
14   Q.   Now if you take a look at what we have marked as
15 Exhibit 41, this is about two weeks later, Professor Goldstein.
16   MR. DODYK: Forty-one is it?
17   MS. BUCKLEY: Yes.
18   Q.   Do you see that halfway down this email, we're
19 talking about the CBM ads again and it says quote "CBM spending
20 has been both on legitimate, genuine issue ads as well as
21 thinly-veiled Republican-candidate-promoting sham issue ads.
22 Ken says it would be an arduous task to separate the spending out

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1 at this point."
2   Do you see that, Professor Goldstein?
3   A.   Yes.
4   Q.   Do you know what that is referring to?
5   A.   No, I don't, because I have a specific memory of being
6 able to separate them out quite easily.
7   Q.   Did someone ask you whether they could be separated
8 out and you said no?
9   A.   I don't remember.
10   Q.   You don't remember. All right, now let's turn to
11 Exhibit 39, Professor Goldstein. This is an email from Craig
12 Holman to you dated Saturday March 10, 2001. Do you see that?
13   A.   Um-hum.
14   Q.   Do you recall receiving this email?
15   A.   I don't specifically recall receiving this email, no.
16   Q.   Do you have any doubt that you received it?
17   A.   No.
18   Q.   Now this is Craig Holman saying that he found several
19 ads identical to ad 1269. Do you see that in the first
20 sentence?
21   A.   Yes.
22   Q.   And I think we have already established that 1269 is

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1 the CBM ad "RX Plan for Seniors," correct?
2   A.   Yes.
3   Q.   And he notes that it's coded as a genuine issue ad,
4 correct?
5   A.   Yes.
6   Q.   And he goes on to say he agrees with that coding, but
7 he does not want to over-inflate the amount of genuine issue ads.
8 "So," he continues, "ads 2424, 2163, 1269, 2926, 3309, 1544, and
9 1650 have been coded to specify that they would be caught by the
10 sixty-day test only in the candidate's own district markets."
11   Do you see that?
12   A.   Yes.
13   Q.   Did you ever have a discussion with Mr. Holman about
14 the issue of over-inflating the amount of genuine issue ads?
15   A.   Did I ever have a discussion with him? No, not that
16 I remember.
17   Q.   And do you recall his telling you that because the
18 listed ads here were identical to 1269 that he was re-coding them
19 as genuine issue ads in the markets in which the candidate
20 appeared?
21   A.   I don't have any specific memory of that.
22   Q.   You don't remember that?

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1   A.   No.
2   Q.   And these little icons on the bottom show that some
3 changes were being transmitted to you in this memo. Is that
4 right?
5   A.   They're SPSS syntax files.
6   Q.   Why don't you turn to the page that has the control
7 number 12861.
8   A.   Twelve eight six one?
9   Q.   This is a description of one of the little SPSS files.
10 Am I reading this correctly that this command reflected on page
11 12861 is changing the coding of the listed CBM ads from
12 electioneering to genuine? Isn't that right?
13   A.   Okay, so in 2000 "one" is electioneering and "two" is
14 issue?
15   Q.   Let's just be sure -- yes, that's right.
16   A.   So, the first piece of code is re-coding ad code 2107,
17 making -- moving that from issue to election.
18   Q.   And that's the "Feingold Kohl Abortion" ad?
19   A.   Yes. I don't have that -- is that?
20   Q.   Yes.
21   A.   The other code is changing 2424, 2163, 1269, 2926,
22 3309, 1544, and 1650. It's changing that from election to

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1 issue.

2 Q. Right. And those are the ads that Mr. Holman

3 identifies in his email as being identical to ad 1269. Is that

4 right?

5 A. Yes.

6 Q. And 1269 again, that is CBM/RX Plan for Seniors,

7 right?

8 A. Right.

9 Q. And the next day, well, do you recall having a

10 conference call in or about March of 2001 about the CBM ads and

11 other ads?

12 A. I recall -- I don't recall a specific conference call

13 about CBM. I recall a conference call in which the Brennan

14 Center asked my opinion on a couple of ads.

15 Q. And you were on vacation, were you not?

16 A. Yes, I was.

17 Q. And during that call, Mr. Holman told you that the

18 addition of these CBM ads was -- had significantly impacted the

19 numbers, did he not?

20 MR. DODYK: Objection. Do you have a source for

21 that or is that your assertion?

22 MS. BUCKLEY: I'm just asking a question.

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1 MR. DODYK: Let's hear the question back.

2 (Record read.)

3 A. I have no recollection from that call of talking

4 about CBM ads.

5 Q. You don't recall talking about CBM ads in the

6 conference call in March?

7 A. I remember the conference call and I remember talking

8 about some ads. I don't remember talking about CBM ads.

9 Actually I remember talking about -- I remember talking about one

10 CBM -- right, the Sherwood ad was one CBM that we talked about.

11 Q. The CBM or the RX Plan for Seniors?

12 A. Which is -- wait a minute, let me make sure I'm

13 getting it right. I think we talked about three ads. When you

14 say talking about CBM, I thought we were back to that previous

15 discussion of CBM.

16 MR. DODYK: Page sixteen of the rebuttal report.

17 Actually, use this copy.

18 A. Right, one of the ads we talked about at that

19 conference call was a CBM ad. 1269 was a CBM ad.

20 Q. We have already shown the name of that ad is "CBM/RX

21 Plan for Seniors"?

22 A. Right.

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1 Q. The other two ads that you talked about on that

2 conference call, or so you believed --

3 A. Are these three.

4 Q. Are also listed on page sixteen of your rebuttal

5 report, correct?

6 A. Yes. I think of that as the Sherwood ad, just in my

7 own head, I'm sorry.

8 Q. I can understand why.

9 Tell me what you recall about the conference call,

10 Professor Goldstein.

11 A. I was in the West Palm Beach airport luggage carrousel

12 area and they called me on my cell phone from the Brennan Center

13 and said they had a number of questions about what was my -- what

14 was my assessment of a number of different storyboards.

15 Q. What was the urgency?

16 A. I think the book was going to press -- oh, wait.

17 Yes -- oh, excuse me. Feingold was being debated the next week,

18 and Brennan wanted to be able to write a report or have a press

19 release, press conference, press event and talk about the 2000

20 data before McCain Feingold, as McCain Feingold was debated, and

21 I believe that was the time McCain Feingold was being debated in

22 the Senate.

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1 Q. And were these three specific ads raised during that

2 conference call that you can specifically recall?

3 A. Yes.

4 Q. Why was the Brennan Center calling you?

5 A. There was -- I think on one of them there was

6 contradictory codes. The "Feingold Kohl Abortion," because

7 previously it had gone through iterations, including in '98, and

8 they recognized it as one, plus I think there was an ad very

9 similar to "Feingold Kohl Abortion" that was aired in the Chuck

10 Rob and Chuck Allen Senate race that was coded as electioneering,

11 I believe, and then I can't remember the specific reasons why

12 they wanted to get my assessment of the other two.

13 Q. And you don't remember any discussion of the impact of

14 Mr. Holman's changes which we have seen in Exhibit 39, which

15 added all those identical CBM ads as genuine issue ads into the

16 next?

17 A. On the impact, no.

18 Q. You don't remember that?

19 A. No.

20 Q. Now, as you were standing in the -- did you say

21 Ft. Lauderdale airport?

22 A. I think it was West Palm. Whichever one is more

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1 north, West Palm.

2 Q. I'll take your word for it. As you were standing in

3 the West Palm Beach airport, did you have all these storyboards

4 lined up in front of you, Professor Goldstein?

5 A. No, I didn't.

6 Q. Did you consider the specific content of each ad in

7 making the determination that you did that day?

8 A. They read me a script. They read me the storyboard

9 over the phone.

10 Q. Of all three of these ads?

11 A. Yes.

12 Q. Did they read you the storyboards for the other CBM

13 ads which Holman had already re-coded as genuine issue ads?

14 A. I don't remember.

15 Q. You don't remember that?

16 A. No. I don't think they did, but they may have.

17 Q. You don't think they did. Well at this point in

18 time, at the point of the conference call with you in the

19 airport, there were one, two, three, four, five, six, seven,

20 eight -- eight CBM ads which had been coded as genuine issue ads?

21   MR. DODYK: Objection.

22 Q. I'm sorry, which are reflected in Exhibit 39 as

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1 changed codes by Mr. Holman, correct? We just went through

2 this.

3 A. Yes.

4 Q. But you don't know if they read you the storyboards

5 for any of the ones other than 1269. Is that correct?

6 A. I don't remember.

7 Q. Now why did the timing of McCain Feingold have an

8 impact on this decision?

9 A. Because the Brennan Center was trying to get a report

10 out the door around that debate.

11 Q. So it was your understanding that it was important

12 that they get the report out sooner rather than later?

13 A. Yes.

14   MS. BUCKLEY: Let's mark this as Exhibit 42, this is

15 a multi-paged document bearing KG12865 through KG12875. It

16 is a multi-page document and email from Mr. Holman to

17 Professor Goldstein dated March 19th.

18   (Whereupon an email from Holman to Goldstein was

19 marked Goldstein Deposition Exhibit 42 for identification.)

20 Q. Is this when you returned from your vacation,

21 Professor Goldstein?

22 A. Yes.

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1 Q. Mr. Holman writes in the second paragraph, quote,

2 "Most of the recodes are straightforward, objective changes that

3 we caught because Luke and I have been going through the

4 storyboards relevant to ads in the last sixty days of the

5 election. The one big change, of course, is as we discussed

6 last week on the conference call: Moving the large CBM ad out of

7 the genuine issue advocacy category and back into the

8 electioneering category coded for all CBM ads."

9   Do you see that?

10 A. Yes.

11 Q. And that's consistent with your recollection of that

12 conference call?

13 A. Yes. If the large CBM ad means that, the Sherwood --

14 the 1269.

15 Q. The 1269. And then Holman goes on to say "I have

16 sent you most of the recodes through March 11th, but since you

17 were on vacation I will send them again to make sure that we are

18 working with the same dataset. In the March 11 recodes I had

19 initially decided to group all the similar CBM ads together as

20 genuine issue advocacy and then target the ads as to whether they

21 mentioned a candidate, (Q12 and Q13) specifically to the

22 candidate's district, (as was done for the AFL-CIO ads in 1998).

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1 But then we all agreed to move the CBM ads into the

2 electioneering category during our conference call and hence code

3 changes dated March 14th does that."

4   Do you see that?

5 A. Yes.

6 Q. You want to go to the page which is KG1273. Now, as

7 I read these coding instructions, Professor Goldstein, these are

8 the instructions to change each one of those CBM ads back to a

9 sham ad, if you will.

10 A. To an electioneering ad, yes.

11 Q. Correct. These are the ads 2424, 2163, 1269, 2926,

12 3309, 1544, and 1650. Is that right?

13 A. Yes.

14 Q. So this whole clump of CBM ads is being moved from the

15 genuine issue ad category to the electioneering category through

16 these code changes that we have just identified. Is that right?

17 A. Yes.

18 Q. Okay. The page before, Professor Goldstein, has

19 something to do with ads 627 and 2862.

20 A. 627 and 2862. What page is that?

21 Q. It's numbered 872.

22 A. Yes.

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1 Q. Now 627 is the "Call Northup" ad and the 2622 is the

2 "Matheson Can't Decide" ad that were identified on page

3 twenty-two of your rebuttal report, correct?

4 A. Yes.

5 Q. And what's happening here with these code changes?

6 A. They're being moved from electioneering to issue.

7 Q. Did you discuss those changes in the conference call

8 at the airport in early March?

9 A. I don't have a specific recollection of those two. I

10 just remember those other three.

11 Q. So we know that in mid March, and we know that on

12 March 19th, by that time, with the implementation of three coding

13 changes that Holman sent you, that the whole block of CBM ads had

14 been moved out of the genuine issue category and into the

15 electioneering category?

16 MR. DODYK: Objection, counsel, because as long as

17 it's clear that the genuine issue category simply

18 represents the row code, which was done by Holman a few

19 days earlier as reflected in the earlier exhibit.

20 MS. BUCKLEY: Correct.

21 Q. And that ads 627 and 2862 were being moved from

22 electioneering into the genuine issue category. Is that right?

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1 A. Yes.

2 MS. BUCKLEY: Let's mark this as Exhibit 43.

3 (Whereupon a document Bates numbered BRE006130

4 through 006131 was marked Goldstein Deposition Exhibit 43

5 for identification.)

6 Q. By the way, do you remember what day of the week

7 this conference call took place? Was it Saturday or Sunday?

8 Do you know?

9 A. It was a Thursday or Friday. I may have been playing

10 hooky a couple of days from work.

11 Q. Okay.

12 A. I think it was Friday.

13 Q. Now we have Professor Basen, who we talked about

14 earlier, who is identified in Exhibit 43, purporting to ask a

15 question as to how all these ads got changed. And he says

16 "Okay. Now I'm confused. How did we go from ten to six to two

17 ads fitting into the sham category after sixty days," and

18 McLoughlin responds, "ten was the original number of ad titles

19 including the CBM ads; six was the number of distinct

20 advertisements because we noted that a couple of ads were

21 cookie-cutters, despite their different ad titles, and two was

22 the number of distinct ads left after the CBM ads were deemed to

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1 be electioneering."

2 Do you see that?

3 A. Yes.

4 Q. That describes what we have been going through in

5 these earlier exhibits, does it not, Professor Goldstein?

6 A. Yes.

7 Q. The movement of the CBM ads into the electioneering

8 category, correct?

9 A. Yes.

10 MS. BUCKLEY: We will mark as Exhibit 44 BRE 1271 and

11 1272, an email with the control numbers 1271 and 1272.

12 (Whereupon an email Bates numbered BRE1271 through

13 1272 was marked Goldstein Deposition Exhibit 44 for

14 identification.)

15 Q. Around the same time, Professor Goldstein, we see

16 Luke McLoughlin writing to Basen again saying, quote, "The CBM

17 ads have been determined by Ken Goldstein at Wisconsin to be

18 election ads," and that's correct, right?

19 A. Yes.

20 Q. And so we see at the bottom of this email --

21 A. "CBM ads have been determined." Well that one ad in

22 there is saying all those ads were similar, so they put all the

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1 ads.

2 Q. That's correct. So at the end of this email we see

3 that there are two ads left that are considered genuine issue ads

4 at this point in time, captured by BCRA, and that is 627 and

5 2862, the ones that we just showed moving back into that category

6 in Holman's email. Is that right?

7 A. Right.

8 Q. Do you know that when Buying Time 2000 was published

9 how many ads were considered genuine issue ads captured by BCRA?

10 A. I'm not entirely sure, but I think it was three. I

11 think "Feingold Kohl" was added to those two.

12 Q. Let's go back to your rebuttal report.

13 A. No, it was -- it was the Latham Foreign Worker Bill,

14 which was I believe in Buying Time, as well as the third one in

15 Buying Time.

16 Q. That was added later?

17 A. I guess, yes.

18 Q. Okay. Back in your rebuttal report on page sixteen,

19 and you say that you re-coded 1269, 1367 and 2107, and then you

20 give your reading -- reasons for why you did that. Do you see

21 that there, on page sixteen?

22 A. Yes.

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1        Q.    All right.  Let's look at 1269.  Quote, "I decided to
2   re-code these three ads as electioneering following a conference
3   call in March of 2001.  Ad 1269 was a cookie-cutter ad sponsored
4   by Citizens for Better Medicare (a front group representing the
5   pharmaceutical industry).  The authors of Buying Time 2000 had
6   noted that a number of other extremely similar CBM-sponsored ads
7   had all been identified by the student coders as electioneering,
8   while 1269 had been coded as a genuine issue ad.  Footnote 8.  And
9   then you list the ads we have just been talking about in your
10  footnote eight, correct?  Those are, and I will read footnote
11  eight, "The CBM ads coded as electioneering included 1544, 1650,
12  2163," which I will tell you is the Sherwood ad, "2424, 2926 and
13  3309."  Is that right?
14       A.    Yes.
15       Q.    You're going back, and please do, to check to make
16  sure that these ads are ads that are identified in Holman's
17  email, which we have marked as Exhibit 42?
18            MR. DODYK:   And also in thirty-nine.
19       Q.    And also in thirty-nine.  Thirty-nine is when
20  they moved to the genuine category.  Forty-two is when they moved
21  back to the sham category, as I understand it.
22            Now you have taken a look at your footnote eight and
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1   looked at the changes from Holman from thirty-nine and forty-two?
2   And these ads are all mentioned in there, are they not?
3        A.    Yes.
4        Q.    When you were adopting your most conservative approach
5   in picking the six ads to analyze for the purposes of your expert
6   report, Professor Goldstein, why didn't you also include the ads
7   listed in footnote eight?
8        A.    Right, because I -- I had thought that those were
9   originally -- that those ads had been originally coded as
10  electioneering.
11       Q.    You say in your report, quote, "After reviewing the
12  storyboards of these ads, I concluded that 1269 was not
13  meaningfully distinguishable from the other CBM ads and re-coded
14  it as electioneering."  Is that right?
15       A.    Right.  They would have -- it's a conference call
16  that occurred a long time ago in an airport lounge, but they must
17  have read to me the other -- the other ads which they said had
18  been coded as election, and they were not meaningfully different
19  than 1269.
20       Q.    That's not my question, though, Professor Goldstein.
21  I'm not challenging your determination that the ads listed in
22  footnote eight are not -- are not meaningfully distinguishable
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1   from 1269.  You say in your report that they are not meaningfully
2   distinguishable from 1269.
3        A.    Right.
4        Q.    And apparently Mr. Holman agreed with you, because he
5   moved them for the same reason.
6        A.    Um-hum.
7        Q.    I'm asking when you prepared your expert report --
8        A.    When I prepared my expert report --
9        Q.    Excuse me, let me finish the question, if you would.
10            When you prepared your expert report, why didn't you
11  include these additional CBM ads in your analysis counting them
12  as genuine issue ads when you yourself concede that they are
13  virtually indistinguishable from ad 1269?
14       A.    Because -- there are two things going on here.  1269
15  was an ad that I thought at some point had been a genuine issue
16  ad, so I included it in my most conservative estimate.  These
17  other ads, 1544, 1650, 2163, 2424, 2926 and 3309 I thought that
18  they were always electioneering ads.
19       Q.    Yes, but that's not my question, Professor Goldstein.
20  You're the one who chose the phrase "virtually
21  indistinguishable."
22       A.    Correct.
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1        Q.    To describe them.  And I am saying that if you
2   believe they are virtually indistinguishable, then wouldn't it
3   have been fairer to include them in your analysis, your quote
4   "conservative analysis" in undertaking to prepare your expert
5   report?
6        A.    In retrospect, knowing that these ads were originally
7   coded as genuine issue ads, they should have been included in the
8   most conservative estimate.
9        Q.    These in footnote eight?
10       A.    Yes.  Having said that, I have no reason -- I don't
11  know what they were originally coded as.
12       Q.    I wasn't asking you about coding, Professor Goldstein.
13  I was asking you about your opinion that they are virtually
14  indistinguishable and you answered my question before you
15  conferred with counsel.
16            MS. BUCKLEY:   Let's mark as Exhibit 45 the
17       storyboards for the ads identified in footnote eight of
18       your expert rebuttal.
19            MR. DODYK:   You marked them all as one?
20            MS. BUCKLEY:   I marked them as a collective
21       exhibit all stapled together so we won't drive ourselves
22       crazy.
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1   (Whereupon a collection of storyboards was marked
2 as Goldstein Deposition Exhibit 45 for identification.)
3   Q.   Now, Professor Goldstein, you want to check to
4 make sure that the ads that we have marked as Exhibit 45 are the
5 ads referred to in your footnote eight.
6   A.   These are footnote eight of rebuttal, correct?
7   MR. DODYK: Page sixteen.
8   A.   Yes.
9   MS. BUCKLEY: And we're going to mark as Exhibit 46 a
10 copy of ad 1269, "CBM/RX Plan for Seniors."
11   (Whereupon a copy of ad 1269 was marked Goldstein
12 Deposition Exhibit 46 for identification.)
13   Q.   Well I'd like to turn in your chart, now, Professor
14 Goldstein, which is table seven in your original report, which is
15 not on a numbered page, but it follows page twenty-four.
16   MS. BUCKLEY: I'm going to mark as Exhibit 47 a
17 printout of the airings for ad 1544 and that is "Northup
18 Working for RX Plan."
19   (Whereupon a printout of airings for ad 1544 was
20 marked Goldstein Deposition Exhibit 47 for identification.)
21   MR. DODYK: Which ad number is that?
22   MS. BUCKLEY: The ad number is 1544.   The

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1 exhibit number that we're marking now is forty-seven.
2   Q.   Now I had to print out an awful lot of paper to
3 keep up with you people, Mr. Goldstein, but what we have marked
4 as Exhibit 47 is a printout of the airings for ad 1544.
5   A.   Where is that?
6   Q.   Do you see that?
7   A.   No.
8   Q.   All right.   Well turn to page three -- four.
9   A.   Four?
10   Q.   I'm sorry, four.   And it goes on for pages of the
11 printout of 1544.   Do you see that?
12   A.   Um-hum.
13   Q.   And at the very last page, it tells us what the
14 airings are.   Is that not right, Professor Goldstein, the total?
15   A.   What page is that?
16   Q.   The last page in the exhibit, a hundred and fifteen.
17   A.   Two thousand three hundred and forty-nine times?
18   Q.   Right.   So we know that ad 1544 ran two thousand
19 three hundred and forty-nine times within the sixty-day period?
20   A.   If the person doing this did this correctly --
21   Q.   Do you want to check?   We have a computer for you to
22 do so.

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1   A.   I'll take your word for it.
2   Q.   Well, I want you to examine this as carefully as you
3 can and tell me if you believe this accurately reflects the
4 number of airings for ad 1544 within sixty days.
5   A.   It's just sort of an odd way to do it.   Most people
6 would just read a frequency which would give you the answer
7 without having to run all this paper.
8   Q.   We wanted to make sure that you would be able to see
9 every one of them, Mr. Goldstein.
10   A.   All it's showing me is a line.   If it was really
11 showing me every single one of them, it would be showing me the
12 time it was aired and what station it was aired on.   This is all
13 the same thing.
14   Q.   Right.
15   A.   It doesn't --
16   Q.   Each one reflects an air date.
17   A.   I'll take your word for it, but printing out the
18 seventy-five pages doesn't give me any additional information.
19   Q.   All right, we will go back to where the -- I just
20 wanted to keep you secure, Professor Goldstein.
21   Go back to page four.   And you'll see that the
22 database was asked to print out the airings for ad 1544 within

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1 sixty days of the election, mentioning a candidate, no magic
2 words.   We already know it mentions a candidate.   We already
3 know it says no magic words, but the search was restricted to
4 sixty days --
5   A.   Correct.
6   Q.   And it results in airings two three four four?
7   A.   Correct.
8   Q.   Let's take a look at ad 1650.
9   MS. BUCKLEY: And we will mark the printout as Exhibit
10 48.
11   (Whereupon a printout for airing dates for ad 1650
12 were marked as Goldstein Deposition Exhibit 48 for
13 identification.)
14   Q.   If you would turn to page four you will see this is ad
15 1650, Professor Goldstein.
16   A.   Correct.
17   Q.   And after all these lengthy printouts, we see that the
18 total number of airings for "Fletcher Medical Breakthrough" was
19 seventeen hundred and eighty-seven.   Is that right?
20   A.   Yes.   That's what the printout says.
21   MS. BUCKLEY: Exhibit 49 will be the airings for ad
22 2163.

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1   (Whereupon a printout for airing dates for ad 2163 was
2 marked as Goldstein Deposition Exhibit 49 for identification.)
3   Q.   This is the printout, Professor Goldstein, for that
4 famous "Sherwood If You Don't Have Health," and after piling
5 through all this paper --
6   MR. DODYK: What is the number?
7   MS. BUCKLEY: Exhibit 49.
8   MR. DODYK: I'm talking about the ad number.
9   MS. BUCKLEY: Twenty-one sixty-three.
10   Q.   If you look at page one hundred and seventy-two,
11 Professor Goldstein, I see that the airings for this ad were
12 thirty-five fifty-two, correct?
13   A.   Yes.
14   MS. BUCKLEY: All right, Exhibit 50 is the airings for
15 ad 2424.
16   (Whereupon a printout of the airings for ad 2424 was
17 marked Goldstein Deposition Exhibit 50 for identification.)
18   Q.   And if you look at page four, Professor Goldstein, you
19 can see this is the ad "Taylor If You Don't Have Health," number
20 2424, and the total airings within sixty days for this ad, seven
21 hundred and eleven, correct?
22   A.   Yes.

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1   MS. BUCKLEY: And as fifty-one we will mark the
2 airings for ad 2926.
3   (Whereupon a printout for the airings of ad 2926 was
4 marked Goldstein Deposition Exhibit 51 for identification.)
5   Q.   If you go to page four of Exhibit 51 you will see that
6 this is the printout for the airings of ad 2926 including "Foley
7 Cancer RX," correct?
8   A.   Yes.
9   Q.   And if we turn to the last page of the exhibit we
10 would see that the total airings within sixty days is three
11 hundred and fifty-eight, correct?
12   A.   Yes.
13   MS. BUCKLEY: And finally, we will mark the airings
14 for ad 3309 as Exhibit 52.
15   (Whereupon a printout for the airings for ad 3309 were
16 marked Goldstein Deposition Exhibit 52 for identification.)
17   Q.   Exhibit 52 reflect the airings for ad number 3309,
18 "Taylor Looking For Miracles," correct, Professor Goldstein?
19   A.   Yes.
20   Q.   And if we look at the last page of the exhibit, the
21 airings is one hundred and forty-five airings within sixty days.
22 Is that correct?

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1   A.   Yes.
2   MS. BUCKLEY: We're going to mark as Exhibit 53 a
3 prepared exhibit which puts on one page what the five
4 hundred pieces of paper we have marked has lead us to.
5   (Whereupon a compilation of airings for six ads
6 was marked Goldstein Deposition Exhibit 53 for
7 identification.)
8   Q.   Now Exhibit 53, Professor Goldstein, refers back
9 to your table seven in your opening expert report.   Do you see
10 that?
11   A.   Yes.
12   Q.   And it specifically -- specifically we're looking at
13 the second line up from the bottom, percentage of ads captured by
14 BCRA,(sixty days and candidate mentioned) that are genuine issue
15 ads, right?
16   A.   Yes.
17   Q.   Are you with me?
18   A.   Yes.
19   Q.   For your analysis the airings for the six ads you
20 considered were a total of fourteen thirteen.   Is that correct?
21   A.   Yes.
22   Q.   And you see that in the chart that we have marked as

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1 Exhibit 53, correct?
2   A.   Yes.
3   Q.   And then we have gone down and added the six ads that
4 we have just been through.
5   A.   Um-hum.
6   Q.   Ad 1544, 1650, 2163, 2424, 2926, 3309, and the airings
7 corresponding to them that we have just identified.
8   We can give you a calculator, if you like, Professor
9 Goldstein, but --
10   MR. DODYK: Subject to verification, I will stipulate
11 that Ms. Buckley's arithmetic is pretty good.
12   MS. BUCKLEY: Thank you, Mr. Dodyk.   I appreciate
13 that.
14   Q.   When we add the airings in for these six ads, we
15 get a total of ten thousand three hundred and fourteen airings.
16 Do you see that, Professor Goldstein?
17   A.   Yes.
18   Q.   And you have no reason to doubt my math either, do
19 you?
20   A.   No reason to doubt your math.
21   Q.   Okay.   So on your chart, we would then substitute ten
22 thousand three fifteen for your fourteen thirteen number, and so

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1 I do need the calculator. I wonder if we could calculate the
2 percentage of ads?
3   A.   Sixteen and a half, seventeen percent.
4   Q.   You're about right.
5   MR. DODYK: Why don't we actually calculate them.
6   MS. BUCKLEY: Yes.
7   MR. DODYK: You want the witness to do it?
8   MS. BUCKLEY: Yes, give it to him.
9   (Brief pause.)
10   A.   Seventeen percent.
11   MS. BUCKLEY: The witness has just told us that doing
12 the calculation, ten thousand three hundred and fifteen
13 airings over sixty thousand six hundred and twenty-three
14 denominator on his table seven, he ends up with a
15 percentage of seventeen percent.
16   Q.   If we were to consider all the CBM ads identified
17 in your report, and your six ads analyzed by you in your expert
18 report, the figure we would come up with for the number of ads
19 captured by BCRA that are genuine issue ads would be seventeen
20 percent, correct?
21   A.   The most -- using the most conservative standard
22 estimate, yes.

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1   MS. BUCKLEY: Sixty, six twenty-three. Let's take a
2 two-minute break and see where we are.
3   MR. DODYK: Great.
4   (Brief recess taken.)
5   MS. BUCKLEY: Let's mark as Exhibit 54 an email
6 with the caption -- control number is BREOO 1576, with a
7 one-page storyboard attachment.
8   (Whereupon an email Bates numbered BRE001576 was
9 marked Goldstein Deposition Exhibit 54 for identification.)
10   Q.   Could you take a look at the email that we have
11 marked as Exhibit 54, Professor Goldstein.
12   A.   Yes.
13   Q.   Now this reflects that Mr. Holman is changing the
14 "Latham Abortion" ad back to a genuine issue ad. Do you recall
15 that?
16   A.   Not specifically, no.
17   MS. BUCKLEY: All right, let's mark as Exhibit 55 an
18 email dated March 23 bearing control number BREOO 0192.
19   (Whereupon an email dated March 23, 2001 was
20 marked as Goldstein Deposition Exhibit 55 for
21 identification.)
22   MS. BUCKLEY: And I will mark as Exhibit 55 a

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1 multi-paged document -- fifty-two?
2   MR. DODYK: Fifty-six.
3   MS. BUCKLEY: Fifty-six, sorry, which has
4 previously been marked as Holman's 15.
5   (Whereupon a multi-paged document Bates numbered
6 BRE 015964 was marked as Goldstein Deposition Exhibit 56
7 for identification.)
8   Q.   Let's start with Exhibit 56, Professor Goldstein.
9 This is an email. The body of the email is from Craig Holman to
10 you and Jonathan Krasno regarding a conference call that you have
11 already testified about. Do you see that? And the body of the
12 second email on the page to which there is a reply on the top of
13 the page --
14   A.   I'm sorry, can you give me the page number? The
15 first page --
16   Q.   Exhibit 56.
17   A.   Yes.
18   Q.   On Tuesday March 20, 2001?
19   A.   Yes.
20   Q.   "Hello, Jonathan"?
21   A.   Yes.
22   Q.   And about four or five paragraphs down, there is a

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1 description of the "Langevin Abortion" ad and the "Feingold Kohl
2 Abortion" ad. Do you see that?
3   A.   Yes.
4   Q.   And this is reporting what you have already testified
5 to that ads 1367 and 2107, being the "Langevin Abortion" ad and
6 the "Kohl Abortion" ad, were judgment calls made by you as
7 electioneering at the conference call which interrupted your
8 vacation. Is that right?
9   A.   Yes.
10   Q.   And that's also described in your expert report,
11 correct?
12   A.   Yes.
13   Q.   The email then goes on to discuss ad 1709. Do you
14 recall ad 1709, Professor Goldstein?
15   A.   Not particularly.
16   Q.   Okay. Attached to the exhibit we have marked as
17 fifty-six are the storyboards for all of the ads referred to in
18 it, and if you go through to about four pages from the back you
19 will find an ad entitled "RIPC Stocks Falling." Do you see
20 that?
21   A.   "RIPC Stocks Falling," yes.
22   Q.   Do you recall making a decision about that ad, as

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1 well?

2   A.   No, I don't.

3   Q.   Okay. Now if you turn to Exhibit 55, there is an

4 email talking about that Latham ad. Do you recall the Latham ad

5 you talked about earlier today?

6   A.   Yes.

7   Q.   And this is Bolman and you -- I'm sorry, from Krasno

8 to Bolman and you reporting a conversation that you had

9 presumably with Krasno. Do you recall a conversation with

10 Jonathan Krasno about the Latham ad?

11   A.   No, I don't.

12   Q.   And this reflects that it is now going to be the third

13 issue ad affected by "McCain Feingold." Do you see that?

14   A.   Right.

15   Q.   And that's your recollection, that this is the third

16 of the three?

17   A.   Right, yes.

18   Q.   It says here, Professor Goldstein, that, quote, "Ken

19 and I talked and decided the Latham ad should obviously be coded

20 as mentioning a candidate on Q12/13. (Among other things, it's

21 largely identical to the anti-Northup ad.)"

22   How does the coding on question twelve and thirteen

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1 impact whether it's an issue ad affected by "McCain Feingold," if

2 you would? Can you explain that, Professor Goldstein?

3   A.   Can I see the coding sheet for questions twelve and

4 thirteen?

5   Q.   Sure.

6   (Brief pause.)

7   A.   Thanks.

8   Q.   And you're looking at Exhibit 14?

9   A.   Yes. It's the candidate mention question --

10 candidate mention questions.

11   Q.   And can you explain to me how it is that the answer to

12 twelve and thirteen seems to be converting this ad into an issue

13 ad? What am I missing?

14   A.   I don't think it's converting it into an issue ad.

15 Probably always with an issue ad, but if it was an issue ad that

16 didn't mention or depict a candidate, then it wouldn't qualify

17 under BCRA.

18   Q.   Under BCRA. I see. So since it was determined that

19 the Latham ad mentioned a candidate, it is swept within the

20 criteria established by BCRA?

21   A.   Yes.

22   Q.   Or it would not have been if it hadn't mentioned a

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1 candidate?

2   A.   Correct.

3   Q.   Okay. Now I want to take you back, Professor

4 Goldstein, to Exhibit 22.

5   MR. DODYK: The witness has a copy of that before

6 him.

7   MS. BUCKLEY: Thank you.

8   Q.   Now we talked a little bit about this earlier.

9 It's entitled "AFL/SS Trust Fund" and I think you have already

10 given us your opinion that it's an electioneering ad. Do you

11 recall that?

12   A.   Yes.

13   Q.   I wonder if you would review the text to yourself,

14 once again.

15   (Brief pause while witness peruses document.)

16   A.   Okay.

17   Q.   If I were to represent to you, Professor Goldstein,

18 that this ad ran two to three days before a vote in congress on

19 the Social Security fund, would that change your mind as to

20 whether it's an electioneering ad or an issue ad?

21   A.   That would definitely factor into my judgment.

22   Q.   And if you accept my representation -- well, why don't

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1 you just assume that this ad ran two to three days before a vote

2 on Social Security, and knowing that information, would you then

3 assess it given that timing to be a genuine issue ad?

4   A.   That would be one part of what I would be assessing.

5   Q.   If that's the only additional fact I give you, does

6 that change your view?

7   A.   Well, again it's -- when I just look at it out of

8 context, I make the assessment that it's electioneering.

9   Q.   That's why I am asking.

10   A.   You have given me only one more other piece of context

11 in which there could be other contextual things going on.

12   Q.   I am. You're right.

13   A.   So that's why I am hesitant to answer the question.

14   Q.   Okay. Well if that is the only other piece that you

15 have to add your context --

16   A.   That's the only other piece I have to add to my

17 context --

18   Q.   The only other piece?

19   A.   And that knowing that there is other context going out

20 there, in language -- it still looks to me like an election ad in

21 its style and in its content.

22   Q.   Now you said several times today that it looks like an

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1 election ad in its style and content. What is it about an
2 election ad -- what is the style and content to which you are
3 referring?
4   A.   It's not talking about a specific bill. It's talking
5 about Newt Gingrich, who was clearly the target of many
6 democratic election ads during '98 and even 2000, and it's sort
7 of hard to explain the specifics. When you look at lots and
8 lots of election ads, it looks like an ad that candidates air.
9 It doesn't look like an ad that I have seen interest groups air
10 during legislative fights.
11   Q.   Well, I think you have already told us that -- did I
12 interrupt you?
13   A.   No, go ahead.
14   Q.   That it would be a factor that you would consider, if
15 you were to hear that this was aired two to three days before a
16 vote on a Social Security bill --
17   A.   Yes.
18   Q.   Why is knowing that there is a vote two to three days
19 later relevant to you?
20   A.   If there is a vote, it's plausible that it could be
21 about an issue. It could be -- it's more likely to be about
22 lobbying if there is a vote.

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1   Q.   And when you say lobbying in that sentence, you
2 mean --
3   A.   Trying to influence a member of congress to vote a
4 particular way on an issue. Ads that -- the ads that attempt to
5 influence members of congress to vote particular ways on issues
6 tend to give much more specific information about the bill, the
7 bill number, exactly what's involved in the specifics of the bill
8 and this is of the general sort of content that looks like a
9 candidate ad. It looks like an ad that's much more like a
10 candidate sponsored ad.
11   Q.   It sounds like you have coder fatigue, Professor
12 Goldstein, watching too many candidate ads.
13   I ask you to turn back to your rebuttal report,
14 Professor Goldstein. It is Exhibit 16. And on page
15 thirty-five to thirty-six -- I'm sorry, it begins on page
16 thirty-three, the bottom of page thirty-four. Professor
17 Goldstein, you say that you recently conducted another test as to
18 intercoder reliability using all ads sponsored by interest groups
19 as the population. Do you see that?
20   A.   Yes.
21   Q.   When did you conduct that test?
22   A.   Two and a half, three weeks ago.

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1   Q.   Okay. After you submitted your expert -- your
2 initial expert report?
3   A.   Yes.
4   Q.   Okay. And where did you conduct that test?
5   A.   At University of Wisconsin, Madison.
6   Q.   And I take it that this test was to assess the degree
7 of intercoder reliability for the 2000 data. Is that correct?
8   A.   Yes.
9   Q.   Okay. And you say here that you took ads sponsored
10 by interest groups as the population. Is that right?
11   A.   Yes.
12   Q.   And those were about three hundred and fifty
13 advertisements, correct?
14   A.   Right.
15   Q.   And from that you randomly selected fifty of them?
16   A.   Yes.
17   Q.   And you asked ten undergraduate students to code them?
18   A.   Yes.
19   Q.   On three attributes, one of which was whether the ads
20 generate support or opposition for a particular candidate or
21 provide information or urge action, correct?
22   A.   Yes.

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1   Q.   That's our famous question eleven in 2000 and question
2 six in '98, correct?
3   A.   Yes.
4   Q.   And if I understand the results of this test,
5 Professor Goldstein, you have found that seventy-five percent of
6 the time, when the original code was to generate support or
7 opposition, the coders agreed. Is that right?
8   A.   Yes.
9   Q.   Now I want you to go back, if you would, to your
10 opening report, which is Exhibit 15, and I am back to table
11 seven, which is the page before page twenty-seven. Now if you
12 look on the column labeled "denominator," Professor Goldstein.
13   A.   Yes.
14   Q.   On table seven. What does the denominator one
15 fifty-four represent in that chart?
16   A.   Issue ads that would have been -- that were within the
17 sixty days -- that were BCRA qualifying.
18   Q.   All issue ads?
19   A.   Yes.
20   Q.   Aired within sixty days?
21   A.   Mentioned in the -- mentioned depicting a candidate.
22   Q.   Right, without magic words?

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1   A.   Without magic words, right.

2   Q.   Whether genuine or not, correct?

3   A.   Correct.

4   Q.   So if I apply the results of your intercoder

5 reliability test that we just discussed from your reliability

6 report, it's true if we were to focus in on those one hundred and

7 fifty-four ads that the coders disagreed among themselves

8 twenty-five percent of the time as to whether they were

9 electioneering or not. Isn't that right?

10   A.   Yes.

11   Q.   And put another way -- and what's roughly twenty-five

12 percent of a hundred and fifty-four? Let's see.

13 Thirty-eight --

14   A.   That's an easy one.

15   Q.   Okay, tell me.

16   A.   Thirty-seven and a half.

17   Q.   Thirty-seven and a half. So we would expect, based

18 on your intercoder reliability test, that in more than

19 thirty-seven cases of those one hundred and fifty-four,

20 reasonable people would disagree as to whether the ad was an

21 electioneering ad or an issue ad. Is that right?

22   A.   And the key thing is, another sentence that you didn't

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1 talk about in the rebuttal report is that it goes both ways. So

2 in seventy-five percent of the cases when it was originally

3 electioneering -- excuse me, on ads that were originally coded as

4 electioneering, twenty-five percent of the time they thought it

5 was genuine issue, but also on those ads that they thought were

6 genuine issue, twenty-five percent of the time they thought they

7 were genuine -- they thought they were electioneering. So the

8 net affect would be that it cancels itself out.

9   Q.   Well it doesn't cancel itself out if what your focus

10 on is determining how much speech that is genuine issue speech is

11 affected by BCRA. We don't particularly care about the other

12 half of the occasion, Professor Goldstein. All I'm interested

13 in is that it's clear that twenty-five percent of the time

14 reasonable people would disagree --

15   A.   But you would, because it would be adding ones that

16 aren't here to that, correct?

17   Q.   No. You are just saying they're wrong twenty-five --

18 they disagree twenty-five percent of the time if it's an issue ad

19 and they disagree twenty-five percent of the time if it's an

20 electioneering ad. That's all I'm saying.

21   A.   Okay.

22   Q.   I think we have previously marked and we will find it,

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1 your article in PS.

2   MR. DODYK: We have a copy of it here.

3   MS. BUCKLEY: You have it?

4   MR. DODYK: Yes.

5   Q.   Referring to Exhibit 18, I want to direct your

6 attention to page 208, I guess, which is the second page of the

7 exhibit. Under the heading "Regulating Issue Advocacy." Do

8 you see that?

9   A.   Yes.

10   Q.   And you talk about the Supreme Court's decision in

11 Buckley and footnote fifty-two, and at the bottom of the page,

12 referring to the Buckley magic words test, as you call

13 it --

14   MR. DODYK: Can you tell us exactly where you are.

15   MS. BUCKLEY: I'm at the bottom of 209 in the

16 left-hand column.

17   MR. DODYK: The left-hand column?

18   MS. BUCKLEY: Yes.

19   MR. DODYK: Okay.

20   Q.   Referring to the Buckley test, you say, quote,

21 "Any device that fails to detect what it was designed to find

22 nine times out of ten is clearly a flop. The magic words test

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1 simply does not work," unquote.

2   How did you come to the view that the Buckley magic

3 words test fails to detect what it was designed to find nine

4 times out of ten?

5   A.   We stipulated that ads sponsored by candidates, which

6 are express advocacy, electioneering, we stipulated that

7 candidate ads, express electioneering, and we looked at what

8 percentage of ads by definition were express advocacy used magic

9 words and thus would have been captured by Buckley.

10   Q.   So you are saying that because many ads don't use

11 Buckley magic words, the Buckley test fails? Is that what you

12 are saying?

13   A.   I'm saying that -- I'm not a lawyer, but as I

14 understand luckily, Buckley is the -- the goal of that -- the

15 magic word part of Buckley is to give a way -- provide a way to

16 distinguish between ads that have an election goal and ads that

17 have some other goal, and we know that candidate ads have an

18 election goal, so let's see if that test as applied by Buckley

19 characterizes those ads that we know have an election goal, has

20 an election goal.

21   Q.   What lead you to believe that the Buckley test is a

22 device intended to distinguish between election ads and issue

1 ads?

2   A.   It's my understanding of the decision.

3   Q.   Let me go back to the coding sheet for either 2000 or

4 '98, Plaintiff's Exhibit 14. That's the coding sheet for 2000.

5 And we will turn to your -- the question we have been concerned

6 with here today, question eleven. Quote, "In your opinion, is

7 the purpose of the ad to provide information about or urge action

8 on a bill or issue or is it to generate support or opposition for

9 a candidate? Answer one, generate support or opposition for a

10 candidate, two, provide information or urge action, three,

11 unsure, unclear."

12   I'd like you to assume, Professor Goldstein, that the

13 law is that ads which contain express advocacy are treated in one

14 way, the words that are -- that you referred to as Buckley's

15 magic words, that ads that you view as genuine issue advocacy are

16 treated another way, and that ads which contain speech about

17 candidates and speech about issues, as long as they don't contain

18 Buckley's magic words, are treated a third way. Are you with

19 me?

20   A.   I'm not sure.

21   Q.   We have one category with express advocacy?

22   A.   Um-hum.

1   Q.   One category with what you view as genuine issue

2 advocacy?

3   A.   Um-hum.

4   Q.   And another category that's something in between, ads

5 that talk about both issues and candidates. Are you with me on

6 the three categories?

7   A.   I'm not a lawyer. My understanding is that there is

8 only two categories.

9   Q.   I'm asking you to assume that the Supreme Court has

10 come down with a decision, and we will call it "Goldstein,"

11 because we have been calling it Buckley all day for me. The

12 decision is there are three categories: One express advocacy,

13 one what you view as genuine issue advocacy, and something in

14 between, ads that talk about both, candidates and issues. Are

15 you with me?

16   A.   In this hypothetical --

17   Q.   Yes, it's a hypothetical.

18   A.   Hypothetical fantasy world, right.

19   Q.   I accept that. And my question to you is how would

20 you design question eleven to test for that hypothesis?

21   MR. DODYK: What is the hypothesis that we're

22 testing?

1   MS. BUCKLEY: How to distinguish between those

2 three kinds of speech.

3   A.   How would I -- so we're in this hypothetical word

4 where there are three sorts of ads and I'm being asked to write a

5 question that -- so the first is candidate ads, express advocacy?

6 So I don't need to write a question because they're candidate

7 ads. I guess your question would be generate support or

8 opposition for a candidate or something.

9   MR. DODYK: Can we go off the record a second.

10   (Discussion off the record.)

11   Q.   So in our hypothetical Supreme Court case, we're

12 told that ads that are electioneering are treated one way.

13   A.   Okay.

14   Q.   Ads that are genuine issue ads are treated another

15 way.

16   A.   Um-hum.

17   Q.   And ads which talk about both, generating support or

18 opposition for a candidate and provide information about issues,

19 are treated a third way.

20   A.   Okay.

21   Q.   How would you design a question to identify what an ad

22 is within those three parameters? What question would you ask?

1   A.   Well, I wouldn't -- and there is no -- and it's not

2 the world we live in now in which candidate ads are by definition

3 election ads.

4   Q.   All right, let's limit it to group ads.

5   A.   Okay, so there are group ads in which -- well, you

6 can -- and the electioneering is the current law we have, the

7 current definition of express advocacy we have.

8   Q.   Well now you're falling back into Mr. Dodyk's problem.

9 Let's limit our inquiry to group ads.

10   A.   Okay.

11   Q.   And let's say that there is a law that says that if

12 your group ad advocates the election or defeat of a candidate,

13 it's treated one way.

14   A.   Okay.

15   Q.   If it is purely about policy issues, it is treated a

16 second way?

17   A.   Um-hum.

18   Q.   And if it's both about candidates and policy issues,

19 it's treated a third way.

20   A.   Okay.

21   Q.   How would you design a question to discern what a

22 particular ad was under those three hypotheses?

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1   A.   Probably a very similar question and then give a both

2   answer, as well, option, as well.

3   Q.   So you would add another option?

4   A.   Yes.

5   Q.   Here we have three options, generates support or

6   opposition, provide information or urge action, unsure, unclear,

7   and you would add a fourth category that the coder could choose,

8   which is both, correct?

9   A.   Yes.

10   Q.   All right, I'd like to go back to your expert

11   report -- your rebuttal expert report, excuse me, Professor

12   Goldstein, and I'm on appendix A.

13   A.   I don't have appendix A in here.

14   (Brief pause.)

15   Q.   All right, Professor Goldstein, we have just

16   noticed that what we have marked as Exhibit 16, which is your

17   rebuttal report, didn't have attached to it what was attached to

18   your rebuttal report, which is appendix A, and appendix B which

19   had two storyboards.

20   MS. BUCKLEY: Shall we mark these separately, Paul.

21   MR. DODYK: Sure.

22   MS. BUCKLEY: Let's mark these as, the appendices

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1   to your rebuttal report as 16-A, collectively.

2   (Whereupon the appendices to Professor Goldstein's

3   report were marked Goldstein Deposition Exhibit 16-A,

4   collectively, for identification.)

5   Q.   On that appendix A to your rebuttal report which

6   we probably have very unwisely marked as Exhibit 6-A -- are you

7   with me?

8   A.   Let us go forward.

9   Q.   Okay. Now you discuss these various ads that are set

10   forth in your appendix A in your rebuttal report. Is that

11   right, right, Professor Goldstein?

12   A.   Yes.

13   Q.   And so that we have some idea of what you're referring

14   to, we have gone through the CMAG discs to try to identify the

15   ads that you are referring to here in your appendix A and I'm

16   sure you will appreciate that some are missing?

17   A.   Um-hum.

18   Q.   And some we have.

19   MS. BUCKLEY: So we're going to mark as Exhibits 57

20   and 58 all the storyboards that we could find from the list

21   of what you call "Thirty-one Changes From Missing Data to

22   Issue."

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1   (Whereupon a collection of storyboards were marked

2   Goldstein Deposition Exhibits 57 and 58, respectively, for

3   identification.)

4   Q.   You see that on page two?

5   A.   Yes.

6   Q.   And from the list on the next page which is

7   "Twenty-six Changes From Electioneering to Issue." Do you see

8   that?

9   A.   Yes.

10   Q.   And I will do that one more time, Professor Goldstein.

11   Exhibit 57 is all the storyboards that we could find from your

12   list of missing changes to date of issue, which is the appendix

13   to your rebuttal report, and Exhibit 58 is all the storyboards we

14   could find for the ads listed on the next page of your appendix

15   which are "Twenty-six Changes From Electioneering to Issue."

16   Are you with me?

17   A.   Yes.

18   Q.   Let's start with Exhibit 57. Did you sit down and

19   review all the storyboards that you listed in your appendix and

20   many of which we have collected as Exhibit 57 to determine from

21   the originally-missing data that these were issue ads?

22   A.   These are -- these were coded by students.

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1   Q.   The thirty-one you're referring to?

2   A.   Yes.

3   Q.   And they were coded when?

4   A.   They would have been coded in probably fall of 2001.

5   Q.   And are --

6   A.   Fall of 2001.

7   Q.   And are these among the clump of storyboards that you

8   received late CMAG?

9   A.   Yes.

10   Q.   So these ads had never been coded before, right?

11   A.   Right.

12   Q.   Do you know whether any of these ads identify a

13   federal candidate?

14   A.   I could look through, but not offhand.

15   (Brief pause while witness peruses document.)

16   Q.   Well I just was struck that we hadn't seen reference

17   to any of these ads in any of our discussions, but is that

18   because they're not included in the data that was considered for

19   Buying Time 2000?

20   A.   These were not considered in Buying Time 2000, right.

21   Q.   Do you know whether any of these ads aired within

22   sixty dates of the election?

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1   A.   Not offhand.

2   Q.   Where would you go to find out?

3   A.   Back to our database.

4   Q.   I assume, because in your expert report you didn't

5 include any of these ads in your six, that they don't fall within

6 the bigger criteria. Is that a correct assumption?

7   MR. DODYK: May I hear the question back, please.

8   (Record read.)

9   A.   Right, so they're either one of two. They either

10 don't mention or depict the federal candidate or they don't air

11 within sixty days. Both of those conditions have to be met for

12 them to make it into the six.

13   Q.   Okay, and if any -- either of those conditions had

14 been met for any of these ads, would you have included them in

15 the six, Professor Goldstein?

16   A.   If they were aired within sixty days and they

17 mentioned or depicted a federal candidate, yes, they should have

18 been included in the six.

19   Q.   So that tells us as to at least the ads listed in

20 Exhibit 57 that we know that either they don't identify a federal

21 candidate or they weren't aired within sixty days, correct?

22   A.   Correct.

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1   Q.   So they have no impact on the analysis of BCRA,

2 correct?

3   A.   Correct.

4   Q.   How about the ads which you conclude in your list of

5 twenty-six changes from electioneering to issue and that we had

6 collected as many as we have in Exhibit 58.

7   A.   '58?

8   MR. DODYK: It's electioneering to issue.

9   MS. BUCKLEY: Correct.

10   A.   From electioneering to issue, right. Okay.

11   MR. DODYK: Can you reread the question.

12   (Record read.)

13   MS. BUCKLEY: Let me rephrase the question,

14 professor.

15   Q.   Exhibit 58 we know includes all of the storyboards

16 for the ads listed in your list in appendix A as those twenty-six

17 ads that changed from electioneering to issue, correct?

18   A.   That I changed from electioneering to issue?

19   Q.   Correct.

20   A.   For my own work.

21   Q.   For your own work?

22   A.   Yes.

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1   Q.   And my question is, the same one that I asked of you

2 with regard to fifty-seven. Would you have included any of

3 these ads in your six if they identified a federal candidate and

4 aired within sixty days in preparing your rebuttal report?

5   A.   The data that I used in the rebuttal report I -- were

6 those ads that were -- it was my best reconstruction, to the best

7 of my ability, of what any coder had done at any time, so it

8 would not have included these, because these were my changes from

9 electioneering to issue.

10   Q.   Okay. Do you know whether any of these ads

11 identified a federal candidate or aired within sixty days?

12   A.   Not offhand.

13   Q.   Isn't the reason that they were changed from election

14 to issue because it was later determined that they did not

15 identify a federal candidate?

16   A.   No.

17   Q.   No?

18   A.   No.

19   Q.   Did you sit down and review all of these storyboards

20 in making a determination as to whether they were issue ads?

21   A.   Yes.

22   Q.   You did?

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1   A.   Yes.

2   Q.   Personally --

3   A.   Well either I did or my graduate students did.

4   Q.   And you did this after the Buying Time report was

5 published?

6   A.   After Buying Time, yes.

7   Q.   If you could turn to the "NRA/Glendening Trigger

8 Lock," which is the fifth ad back, Professor Goldstein.

9   MR. DODYK: In which exhibit, fifty-seven or

10 fifty-eight?

11   MS. BUCKLEY: I'm sorry, fifty-eight.

12   (Brief pause while witness peruses document.)

13   Q.   Now, you had made a determination, Professor

14 Goldstein, yourself, that this is a genuine issue ad. Is that

15 right?

16   A.   I don't remember if I did this myself or one of my

17 graduate students did.

18   Q.   Do you agree that it's a genuine issue ad?

19   A.   Yes.

20   Q.   And what distinguishes it from the ads that we have

21 talked about earlier today?

22   A.   Distinguishes it from which ads that we were talking

1 about --

2   Q.   Well we reviewed eight ads this morning, all of which

3 you told us were electioneering ads because they resembled

4 candidate ads in tone and substance.   I think it's roughly what

5 you said.

6   A.   Um-hum.

7   Q.   But the record will speak for itself, and my question

8 to you is why is this one an election -- an issue ad, in your

9 view?

10   A.   It's actually a state issue, so we probably shouldn't

11 even include it in here at all.

12   Q.   Let's assume that it's talking about a federal

13 candidate.

14   A.   Actually, I'll change my mind.   Given this -- this

15 looks more like an election ad to me, I have to say.

16   Q.   Let's take the next one, Professor Goldstein.

17 "NRA/Heston Background Check."

18   A.   Um-hum.

19   Q.   According to your appendix, you changed this from an

20 election ad to an issue ad, right?

21   A.   Right.

22   Q.   Do you still agree with that determination today?

1   A.   Yes, that's pretty simple, because it's about -- it's

2 about Bill Clinton and it's about this issue and it can't be an

3 election ad because Bill Clinton's not running for president in

4 2000.

5   Q.   Okay.   They sure all look the same.   Hold on a

6 minute.

7   (Brief pause.)

8   Q.   I'm just seeing a lot of Charlton Heston here.

9   A.   But he is saying different things.

10   MR. DODYK: You have to look at the words.

11   A.   I think the great majority are the Heston ones.

12   Q.   We have a whole bunch of NRA ads here, Professor

13 Goldstein, and I am going towards the end, and I still keep

14 seeing Mr. Heston and they're all Heston ads, and they're all

15 ads, up until maybe five pages from the end, and I think we have

16 one, two, three, four, five, six, seven, eight, nine, ten,

17 eleven, twelve, thirteen, fourteen, fifteen, sixteen -- there are

18 sixteen, I'll call them "NRA/Charlton Heston" ads which talk

19 about guns and President Clinton?

20   A.   Yes.

21   Q.   And this is easy because President Clinton wasn't

22 running in 9- -- in 2000.   Is that right?

1   A.   Yes, and it also doesn't look like -- it doesn't look

2 like the typical sort of election ad.   It's one person speaking

3 to the camera, which just, given my experience, looking at

4 candidates in election ads, sometimes you will have a candidate

5 do that, but rarely do you have a third person do that.

6   Q.   All right.   So that one-on-one aspect of this ad

7 leaves you to factor in that it's an issue ad?

8   A.   The one-on-one is part of the reason, and the complete

9 focus and sole focus on guns and the mention of Bill Clinton.

10   Q.   Okay.   Let's say we were to change Bill Clinton in

11 every one of those ads, say to Al Gore, what answer then?

12   A.   If you changed it to Al Gore and it was the same

13 style, just talking about guns?   Probably keep it the same.

14 It's hard to answer these hypothetical questions.

15   Q.   I'm just asking you to change one word -- one name,

16 Bill Clinton, substitute Al Gore.   Now we have a federal

17 candidate running for office, and my question is, are the Heston

18 ads still issue ads in your view?

19   A.   Yes.

20   Q.   Now after our clump of Heston ads, we have one

21 "SAVENY/Water Tax" ad.

22   A.   Um-hum.

1   Q.   That has nothing to do with the federal election, does

2 it, Professor Goldstein?

3   A.   No.

4   Q.   It shouldn't be in here, should it?

5   A.   As a federal ad, no.

6   Q.   How about the next one, "Fowler Kept Her Word"?

7   A.   Okay.

8   Q.   What's your view about that ad today, Professor

9 Goldstein?

10   A.   Sort of neither, but it's talking about term limits.

11 It's Fowler didn't -- is not a federal candidate and it's sort of

12 an odd ad.

13   Q.   Fowler is not a federal candidate?

14   A.   But she is not running for reelection.

15   Q.   So your view stands that it's an issue ad?

16   A.   Yes.

17   Q.   The fact that U.S. Term Limits runs ads identifying

18 people who aren't candidates have any impact on your view as to

19 whether their ads are issue ads or not as a whole?

20   A.   Sure.

21   Q.   So, when we have a U.S. Term Limits ad identifying an

22 office holder, as we do here, who is not a candidate, you are

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1 comfortable that this is an issue ad, correct?
2   A. Yes.
3   Q. But we saw other ones today from U.S. Term Limits
4 identifying candidates which you were comfortable were
5 electioneering ads, right?
6   A. Yes.
7   Q. Is that the difference for you, that there is a
8 candidate mentioned?
9   A. That's one element, but not the only element. They
10 were longer ads, talking about Term Limits, talking about general
11 corruption in Washington, much longer ads, a thirty-second ad
12 dealing with more stuff and looking to me more like an ad you
13 would see a candidate running against another candidate.
14   Q. They had more discussions of the issue than this ad
15 does, didn't they?
16   A. More discussion of the ad issue, but also more
17 discussion of general congressional corruption.
18   Q. In the U.S. Term Limits?
19   A. Yes.
20   Q. So length has something to do with whether it's
21 genuine or not?
22   A. No, content.

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1   Q. I thought you said length?
2   A. Well, right, there is more -- it's hard to pack
3 content into a ten-second ad. This is one of the only -- I
4 don't think I have ever seen a ten-second ad before. This is
5 the only ten-second ad, to my knowledge, that I have ever seen.
6   Q. Now I asked you about Exhibit 57 and I will ask the
7 same thing about Exhibit 58. Would your changing of these ads
8 from electioneering ads to issue ads have any impact on your
9 numbers in your expert report about the affect of BCRA?
10   A. Fifty-eight?
11   Q. Um-hum.
12   A. Which is changes from electioneering to issue?
13   Q. Yes.
14   A. If they named federal candidates and if they were
15 aired within sixty days --
16   Q. I'm just asking you if you know whether they do.
17   A. No, I don't know.
18   Q. We know that many of them don't name federal
19 candidates because we just went through all those NRA ads, right?
20   A. Yes.
21   Q. But we can find out by just looking at them whether
22 they identify a federal candidate. Have you done the analysis

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1 to see whether or not they were run within the sixty days?
2   A. No, I haven't.
3   Q. So you don't know?
4   A. I don't know.
5   MS. BUCKLEY: I'm going to take a five-minute break
6 and see if maybe I am there. I will be back.
7   Q. Professor Goldstein, I'm back on your rebuttal
8 report, Exhibit 16, and you're describing scholarly studies on
9 page eight to nine?
10   A. Page eight?
11   Q. To nine. And you're talking about the CMAG databases
12 that were used in that scholarly study. Is that right?
13   A. Yes.
14   Q. And my question is, I take it, from your description,
15 that neither the database that was used for Buying Time '98 nor
16 the database that was used for Buying Time 2000 has ever been
17 subject to period review. Is that right?
18   A. That's correct.
19   Q. The databases, your own CMAG databases, as you say
20 here, have been -- and then you cite four articles. Is that
21 right?
22   A. Yes.

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1   Q. Which database was the subject of the first article on
2 campaign advertising?
3   A. That's the 1996 database.
4   Q. And in the second article, political communication?
5   A. 2000 database.
6   Q. That was your CMAG 2000 database?
7   A. Yes.
8   Q. Not the database that gave rise to Buying Time 2000?
9   A. No.
10   Q. How about the third article?
11   A. '96?
12   Q. '96. Your own '96 database.
13   A. My own '96 database.
14   Q. And the fourth article?
15   A. A '97 database just in Virginia.
16   Q. Now I also see that you mentioned in your report,
17 professor, that you have never used your original 1998 database
18 or the Brennan Center's revise the 1998 database in any of your
19 subsequent scholarly work. Is that right?
20   A. Right.
21   Q. Do you lack confidence in any part of the 1998
22 database?

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1   A.   No.   Just by the time it was ready I was already
2   starting with 2000.
3   Q.   Um-hum.
4   A.   I'll probably use it in the future.
5   MS. BUCKLEY: Let's mark as Exhibit 59 an email chain
6   bearing control numbers BRE 013098, as Exhibit 59.
7   (Whereupon a chain of emails Bates numbered BRE
8   013098 were marked Goldstein Deposition Exhibit 59 for
9   identification.)
10   Q.   Take a minute to look at that, Professor
11   Goldstein.
12   (Brief pause while witness peruses document.)
13   A.   Okay.
14   Q.   Did there come a time where you submitted Buying Time
15   '98 to Congressional Quarterly to see if they would publish it?
16   A.   Jon submitted Prime Time 2000 to Congressional
17   Quarterly --
18   Q.   To Buying Time --
19   A.   I'm sorry, to Buying Time '98.
20   Q.   Okay, and what was Congressional Quarterly's decision?
21   A.   They decided not to publish it.
22   Q.   And according to this email chain, and I am on page

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1   one, second paragraph, it says Mr. Headley of Congressional
2   Quarterly writing, "As I told Ken on Friday evening, I just got
3   word that the library and reference folks are not going to be
4   pursuing this project."
5   Do you see that?
6   A.   Yes.
7   Q.   Do you remember a conversation with J. Headley at CQ
8   Press --
9   A.   James, yes.
10   Q.   About whether or not CQ would publish Buying Time '98?
11   A.   Yes.
12   Q.   And what did he say to you?
13   A.   That -- I played middleman.   James was a friend of
14   mine and Jon wanted to see if he could get Buying Time published
15   and so I contacted -- I put Jon and James in touch and I'd
16   actually forgotten about this, but James told me that the folks
17   in the division that were responsible for making publishing
18   decisions decided not to publish it.
19   Q.   And then on the very top email, the last one in the
20   email chain, Jonathan Krasno expresses his dismay, I'll put it
21   that way, at the --
22   MR. DODYK: Very delicate.

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1   Q.   And says, quote, "Let's get a move on plan B."
2   A.   Um-hum.
3   Q.   What was plan B, do you know?
4   A.   I have no idea.
5   Q.   You have no idea.   Have you read the rebuttal report
6   of Professor Lupia in this case, Professor Goldstein?
7   A.   Yes.
8   Q.   We're going to give you a copy of Professor Lupia's
9   report now, which I guess we will have marked as Exhibit 60.
10   (Whereupon the rebuttal report of Professor Lupia was
11   marked Goldstein Deposition Exhibit 60 for identification.)
12   (Brief pause while witness peruses document.)
13   Q.   I will direct your attention to page thirty-seven.
14   This is Professor Lupia's "height of the tree" example?
15   A.   You are standing in front of a tree, correct.
16   Q.   Correct.   Professor Lupia is commenting here about
17   the question which we have looked at today in the Buying Time
18   questionnaire, question six in '98 and question eleven in 2000,
19   asking about the purpose of the ad, and Professor Lupia notes,
20   quote, "again it is worth noting that this question begins with
21   the words quote, 'in your opinion,'' unquote.   "The question is
22   asking about the coder's opinion-a mental state," unquote.

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1   Do you agree with Professor Lupia?
2   A.   That the question starts with "in your opinion"?
3   Q.   That the question is asking about the coder's opinion,
4   a mental state?
5   A.   Yes.
6   Q.   And then he goes on to give his tree example, quote,
7   "You are standing in front of a tree.   There are many questions I
8   could ask about your situation including the following: Question
9   type one: What is the height of the tree?   Question type two:
10   In your opinion, how tall is the tree?   In the first case I'm
11   asking a question about a physical attribute of the tree.   In the
12   second case I'm asking about an impression, a mental state.   The
13   two questions need not seek the same information," unquote.
14   Do you agree with Professor Lupia that questions six
15   and eleven were asking the students for their impression of the
16   purpose of an ad?
17   A.   Yes.
18   Q.   And would you also agree that every time you overruled
19   the student coders' determination you were rejecting their
20   impression?
21   A.   I was giving my impression from my own work.
22   Q.   But you were also rejecting theirs, were you not?

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1   A.   Yes.

2   MS. BUCKLEY: Let's mark as Exhibit 61 -- oh, this is

3   already in as Exhibit 8.

4   Q.   I promised we would go back to Exhibit 8,

5   Professor Goldstein, so if you would get it out of your pile.

6   MR. DODYK: I have it right here.

7   MS. BUCKLEY: And we will mark as sixty-one and

8   sixty-two the following documents: Sixty-one is minutes of

9   a Policy Committee Meeting, BREOO 6952 through BREOO 6957.

10   And sixty-two are the Recommendations of the Brennan Center

11   Policy Committee: Five New Ideas.   Control number is

12   BREOO 7554 and BREOO 7555.

13   (Whereupon the minutes of a 2/7/2000 Policy

14   Committee Meeting and a Brennan Center Policy Meeting were

15   marked Goldstein Deposition Exhibits 61 and 62,

16   respectively, for identification.)

17   Q.   Exhibit 8, we understand, Professor Goldstein, are

18   notes of a policy committee meeting of October 25, 1999.   Did

19   you attend a policy committee meeting on October 25, 1999?

20   A.   I know I attended a policy meeting around that time,

21   yes.

22   Q.   Okay.   And at this point in time, where are we in the

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1   process of producing Buying Time '98?

2   A.   I think I have provided data to Brennan, to Krasno at

3   that point, and they are working on it.   He's working on it, he

4   and Daniel are working on it.

5   Q.   And you will see sort of halfway down the page there

6   is a reference saying, "Magelby Q Re: Coding."   Do you see that?

7   A.   Yes.

8   Q.   "Seven and nine seem really close.   They are right

9   versus call, mainly call."

10   Do you have any recollection about having a discussion

11   about coding for ads seven and nine at this meeting?

12   A.   No.

13   Q.   What is your recollection of what occurred at the

14   policy committee meeting in October of '99?

15   A.   I really don't remember any specifics about it.   I

16   remember there was a meeting of -- Leon Pinetta was there and --

17   can I look at one?

18   Q.   Sure.   It's a little later, though --

19   MR. DODYK: That's not the same meeting?

20   A.   Oh, it's not the same meeting.   Policy in October

21   of 19 -- what was that?   To tell you the truth, I don't even

22   remember what -- I was there.   I don't remember where it was.

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1   I have a more vivid meeting of the February 7th, that was in

2   Washington D.C.

3   Q.   Okay.

4   A.   The first one might have been in New York, but I don't

5   remember.

6   MR. DODYK: Can I have that read back, please.

7   (Record read.)

8   MR. DODYK: Okay, thanks.

9   Q.   Okay, so you don't recall where the October

10   meeting was?

11   A.   No.

12   Q.   You recognize this as Miss Northup's notes of the

13   meeting?   We talked about her earlier, Professor Goldstein?

14   A.   I don't recognize her handwriting, but I will take

15   your word.

16   Q.   It references Professor Magelby.   Do you recall his

17   being there?

18   A.   I really don't remember that meeting very well.

19   Q.   Okay.

20   A.   But this suggests he was, so I have no reason to doubt

21   that.

22   Q.   All right, well let's go on to what we have marked as

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1   Exhibit 61, and this is the meeting you have a more vivid

2   recollection of, correct?

3   A.   More vivid recollection of where it was, yes, and who

4   was there.

5   Q.   Okay.   And it tells us here that it was at the

6   Widmeyer Baker Group offices in Washington?

7   A.   Right.

8   Q.   What is Widmeyer Baker?

9   A.   They are a public relations firm.

10   Q.   Do you know who if anyone had retained Widmeyer Baker

11   to work on this project?

12   A.   The Brennan Center.

13   Q.   Okay, let's take a look at sixty-two.   The

14   "Recommendations of the Brennan Center Policy Committee, Five New

15   Ideas."

16   Were you part of the committee that recommended five

17   new ideas, Professor Goldstein?

18   A.   I believe I'm not the assignee of the five new ideas.

19   Q.   If you turn to page two of the document, you would see

20   that it describes the committee membership and it says, quote,

21   "The Policy Committee's membership includes Republicans and

22   Democrats, Former Members of Congress and White House officials,

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1 business leaders and scholars of law and politics. Each

2 committee member shares the conviction that the campaign finance

3 system must be reformed to benefit candidates, parties, interest

4 groups, and most of all, citizens."

5   And you share that conviction, do you not, Professor

6 Goldstein?

7   A.   Yes.

8   Q.   And you shared it in May of 2000?

9   A.   Yes.

10   Q.   You know Professor Magelby, I take it, Professor

11 Goldstein?

12   A.   Yes.

13   Q.   I understand that he testified yesterday as to what is

14 and is not an issue ad and the record will correct me if I am

15 incorrect, but my understanding is that he said that if a federal

16 candidate is identified in the body of the ad, it's a sham ad,

17 but if the federal candidate is identified only in the tag line,

18 such as Call Congressman Northup and tell them to do something,

19 that it's a genuine issue ad. Do you agree with that?

20   MR. DODYK: I don't think that's an accurate summary

21   of his testimony which returned to that subject on a number

22   of times, counsel.

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1   Q.   Okay, well why don't I just ask you the question.

2 Do you agree with that definition of an issue ad, Professor

3 Goldstein, whether or not Professor Magelby testified to it?

4   A.   No.

5   Q.   Why not?

6   A.   It's a very hard and fast rule and I could see

7 situations where the federal candidate was mentioned in the body

8 and I would consider it an issue ad and I can see situations

9 where the federal candidate was just named in the tag line and I

10 would think it was an electioneering ad.

11   MS. BUCKLEY: I have no further questions. Thank

12   you, Professor Goldstein.

13   THE WITNESS: You're welcome.

14   MR. DODYK: You want to give us a couple of

15   minutes?

16   MS. BUCKLEY: Sure.

17   (Brief recess taken.)

18 EXAMINATION BY

19 MR. DODYK:

20   Q.   Professor Goldstein, I'm going to ask you a few

21 questions about the CBM ad that you were discussing with Miss

22 Buckley. First I'm going to ask you to take a look at Exhibit

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1 39 which is the email from Craig Holman to you bearing the date

2 of March 10, 2001.

3   A.   I'll look over your shoulder.

4   Q.   Turning to the pages marked 00012861, do you see that

5 the -- is that a syntax for re-coding?

6   A.   Yes.

7   MS. BUCKLEY: Hold on one second, please. What's

8   the date on that?

9   MR. DODYK: The date is March 10, 2001.

10   MS. BUCKLEY: Thank you.

11   Q.   Does that syntax reflect the coding as of March

12 10, which the ads' reference bore?

13   A.   Yes.

14   Q.   And can you tell me what coding that is?

15   A.   Sure. In one case it's changing an ad from issue to

16 electioneering. In the second case it's changing one, two,

17 three, four, five, six, seven ads from election to issue.

18   Q.   And are the ads one, two, three, four, five, six ads,

19 are those the CBM ads?

20   A.   Yes.

21   MS. BUCKLEY: I thought there were seven. No?

22   Q.   Are there six or seven?

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1   A.   Seven.

2   Q.   And does this email indicate to you that Mr. Holman is

3 reporting to you that he is changing the coding from

4 electioneering to genuine issue?

5   A.   Yes.

6   Q.   Now, Miss Buckley also showed you what has been marked

7 as Exhibit 42, which is an email from Mr. Holman dated March

8 19th, 2001.

9   A.   Yes.

10   Q.   And I'm going to correct direct your attention to the

11 page which bears the page reference 00012873.

12   A.   Yes.

13   Q.   And I ask you to tell us what that indicates to you,

14 the syntax which is indicated there.

15   A.   That's changing those ads back to electioneering from

16 issue.

17   Q.   Now, in your rebuttal report at page sixteen, there is

18 footnote eight in which you state "The CBM ads coded as

19 electioneering included 1544, 1650, 2163, 2424, 2926 and 3309."

20   Do you understand that to refer to the CBM ads we have

21 been discussing?

22   A.   Yes.

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1   Q.   And do you have any reason to doubt the accuracy of

2 the statement that the CBM codes -- CBM ads were coded as

3 electioneering?

4   A.   No.

5   Q.   I'm going to ask you to take a look at Exhibit 45.

6 Now I think Exhibit 45 and 46, which Miss Buckley showed you,

7 show you the storyboards from the CBM ads we have been

8 discussing. Is that your understanding?

9   A.   Yes.

10   Q.   Now I'm going to ask you to look at the facing sheet

11 Exhibit 45, which is as I understand it the storyboard for ad

12 1544. Is that correct?

13   A.   Yes.

14   Q.   Would you take a moment to examine that ad and tell me

15 whether you think that's a genuine issue ad or an electioneering

16 ad?

17   A.   I think that is an election ad.

18   Q.   And why do you think that?

19   A.   Given my experience, looking at lobbying ads and

20 election ads, it looks more like an election ad, and

21 specifically, although it does talk about an issue, the focus --

22 the star of the ad, if you will, is the member of congress.

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1   Q.   And you understand the ad to be for or against the

2 congress person who is identified in that?

3   A.   For Congressman Northup.

4   Q.   Now, is there any doubt in your mind that this should

5 be classified as an electioneering ad?

6   A.   In my opinion, this is an electioneering ad,

7 absolutely.

8   Q.   Now the second page Exhibit 45 shows the storyboard

9 for ad 1650, which is another one of the CBM ads. Is that

10 correct?

11   A.   Yes.

12   Q.   And I'm going to ask you to take a moment to review

13 that and tell me whether in your best judgment that should be

14 classified as a genuine issue ad or an electioneering ad.

15   (Brief pause while witness peruses document.)

16   A.   An electioneering ad.

17   Q.   Turning to page three of Exhibit 45, do you understand

18 that to be the storyboard for ad 2163?

19   A.   Yes.

20   Q.   Once again, I'm going to ask you to take a moment to

21 review the ad and its texts and tell me whether you think that ad

22 should be classified as a genuine issue ad or an electioneering

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1 ad?

2   A.   Electioneering ad.

3   Q.   Turning to the next page of Exhibit 45 which sets

4 forth the storyboard of ad 2424, I'm going to ask you once again

5 to take a moment to review the ad and its text to tell me whether

6 you think that ad should be classified as a genuine issue ad or

7 an electioneering ad?

8   A.   Election ad.

9   Q.   Turning to the next page of Exhibit 45 which has the

10 storyboard of ad 2426. I'm going to ask you again to take a

11 look at the pictures, the frames and read the text and tell me

12 whether or not you think that should be classified as a genuine

13 issue ad or an electioneering ad?

14   A.   Electioneering ad.

15   Q.   Turning lastly to page -- the last page of Exhibit 45,

16 which appears to reflect the storyboard for ad 3309, I'm going to

17 ask you to take a moment to review the storyboard and the text

18 and ask you whether you think that should be classified as a

19 genuine issue ad or an electioneering ad?

20   A.   Election ad.

21   Q.   Next, turning to Exhibit 46, which is a storyboard in

22 the text for ad 1269, and I ask you to review that. It's a

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1 little bit hard to read because it's been reduced here quite a

2 bit. But take your time to read it and I guess the first thing

3 I have to ask is which -- are both parts of this the same ad or

4 is it -- are these two different ads?

5   A.   It's one ad.

6   Q.   Okay. Take a moment, if you would, to review all of

7 the frames so far as we can see them here. I guess they're sort

8 of legible, and read the text -- now, do you recognize this as

9 another CBM ad?

10   A.   Yes.

11   Q.   And do you think this ad should be classified as a

12 genuine issue ad or an electioneering ad?

13   A.   Electioneering.

14   Q.   Now with respect to the storyboards and the text which

15 have been marked Exhibits 45 and 46, would you call any of these

16 a close call -- call any of these a close call?

17   A.   No.

18   Q.   Do you have any doubt at all that these ads should be

19 classified as electioneering ads?

20   A.   No.

21   MR. DODYK: No further questions.

22   MS. BUCKLEY: None here. Have a good evening,

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1   Professor Goldstein?

2   THE WITNESS: Thank you.

3   (Signature having not been waived, the deposition

4   of Kenneth Goldstein was concluded at 7:18 p.m.)

5   ACKNOWLEDGMENT OF DEPONENT

6   I, KENNETH GOLDSTEIN, do hereby acknowledge that I

7   have read and examined the foregoing testimony, and the

8   same is a true, correct and complete transcription of the

9   testimony given by me and any corrections appear on the

10   attached Errata sheet signed by me.

11

12   _____   _____

13   (DATE)   (SIGNATURE)

14

15

16

17

18

19

20

21

22

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1   C E R T I F I C A T I O N

2

3   I, KIMBERLY BRANTLEY, a Certified Shorthand

4   Reporter and notary public, within and for the District of

5   Colombia, do hereby certify:

6   That KENNETH GOLDSTEIN, the witness whose

7   deposition is hereinbefore set forth, was first duly sworn,

8   and the above transcript testimony is a true record of the

9   testimony given by said witness.

10   I further certify that I am not related to any

11   of the parties to this action by blood or marriage, and

12   that I am in no way interested in the outcome of this

13   matter.

14

15   IN WITNESS WHEREOF, I have hereunto set my

16   hand this 28th day of October, 2002.

17

18

19   KIMBERLY BRANTLEY,

20   Certified Shorthand Reporter

21

22

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1   E R R A T A   S H E E T

2   IN RE: MCCONNELL V FEDERAL ELECTION

3   RETURN BY: _____

4   PAGE   LINE   CORRECTION AND REASON

5   ____   ____   _____

6   ____   ____   _____

7   ____   ____   _____

8   ____   ____   _____

9   ____   ____   _____

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11   ____   ____   _____

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15   ____   ____   _____

16   ____   ____   _____

17   ____   ____   _____

18   ____   ____   _____

19   ____   ____   _____

20   ____   ____   _____

21   _____   _____

22   (DATE)   (SIGNATURE)

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1   E R R A T A   S H E E T   C O N T I N U E D

2   IN RE: MCCONNELL V FEDERAL ELECTION

3   RETURN BY: _____

4   PAGE   LINE   CORRECTION AND REASON

5   ____   ____   _____

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17   ____   ____   _____

18   ____   ____   _____

19   ____   ____   _____

20   ____   ____   _____

21   _____   _____

22   (DATE)   (SIGNATURE)

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