

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA
3 - - - - - X
4 SENATOR MITCH McCONNELL, :
5 et al., :
6 Plaintiffs, :
7 v. : CIVIL ACTION
8 FEDERAL ELECTION COMMISSION, : NO. 02-CV-582
9 et al., : CKK, KLH, RJL
10 Defendants, : Consolidated
11 - and - : Action
12 SENATOR JOHN McCain, SENATOR :
13 RUSSELL FEINGOLD, REPRESENTATIVE :
14 CHRISTOPHER SHAYS, REPRESENTATIVE :
15 MARTIN MEEHAN, SENATOR OLYMPIA :
16 SNOWE, SENATOR JAMES JEFFORDS, :
17 Intervenors. :
18 - - - - - X

19 Washington, D.C.

20 Friday, October 25, 2002

21 Deposition of JONATHAN S. KRASNO, a
22 witness herein, called for examination by counsel for
23 Plaintiffs in the above-entitled matter, pursuant to
24 notice, the witness being duly sworn by MARY GRACE
25 CASTLEBERRY, a Notary Public in and for the District

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2002 NOV - 6 P 4: 07

<p style="text-align: right;">Page 2</p> <p>1 of Columbia, taken at the offices of the Federal 2 Election Commission, 999 E Street, N.W., Washington, 3 D.C., at 10:00 a.m., Friday, October 25, 2002, and 4 the proceedings being taken down by Stenotype by 5 MARY GRACE CASTLEBERRY, RPR, and transcribed under 6 her direction. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (Continued): 2 3 On behalf of Senator McConnell and National 4 Association of Broadcasters: 5 SUSAN BUCKLEY, ESQ. 6 ERIC LIPMAN, ESQ. 7 Cahill Gordon & Reindel 8 80 Pine Street 9 New York, New York 10005 10 (212) 701-3000 11 12 On behalf of the Federal Election Commission: 13 COLLEEN T. SEALANDER, ESQ. 14 MICHELLE ABELLERA, ESQ. (Morning Session) 15 Federal Election Commission 16 999 E Street, N.W. 17 Washington, D.C. 20463 18 (202) 694-1650 19 20 On behalf of the AFL-CIO: 21 MICHAEL B. TRISTER, ESQ. 22 Lichtman, Trister, Singer & Ross 23 1666 Connecticut Avenue, N.W., Suite 500 24 Washington, D.C. 20009 25 (202) 328-1666</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 On behalf of the Plaintiff Republican National 4 Committee: 5 THOMAS O. BARNETT, ESQ. 6 Covington & Burling 7 1201 Pennsylvania Avenue, N.W. 8 Washington, D.C. 20004-2401 9 (202) 662-0800 10 11 On behalf of the United States of America: 12 RUPA BHATTACHARYYA, ESQ. 13 United States Department of Justice 14 Civil Division 15 Federal Programs Branch 16 901 E Street, N.W. 17 Washington, D.C. 20044 18 (202) 514-4336 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES (Continued): 2 3 On behalf of Intervenor-Defendants: 4 PAUL DODYK ESQ. 5 PETER LIGH, ESQ. 6 Cravath, Swaine & Moore 7 825 Eighth Avenue 8 New York, New York 10019 9 (212) 474-1000 10 11 ALSO PRESENT: JAMES ABAMONT 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1	CONTENTS	1	PROCEEDINGS
2	WITNESS EXAMINATION BY COUNSEL FOR	2	Whereupon,
3	JONATHAN S. KRASNO REPUBLICAN NATIONAL COMMITTEE	3	JONATHAN S. KRASNO,
4	By Mr. Barnett 8	4	was called as a witness by counsel for Plaintiffs,
5	NATIONAL ASSOCIATION OF BROADCASTERS	5	and having been duly sworn by the Notary Public, was
6	By Ms. Buckley 40, 205	6	examined and testified as follows:
7	THE UNITED STATES	7	EXAMINATION BY COUNSEL FOR
8	By Ms. Bhattacharyya 202	8	THE REPUBLICAN NATIONAL COMMITTEE
9		9	BY MR. BARNETT:
10	Afternoon Session - Page 92	10	Q. Please state your name for the record.
11		11	A. Jonathan S. Krasno.
12	EXHIBITS	12	Q. Professor Krasno, my name is Tom Barnett
13	KRASNO EXHIBIT NO. PAGE NO.	13	and I'm here representing what we call the RNC
14	1 Drug Industry Financing Fuels 22	14	plaintiffs in this action.
15	Pro-GOP TV Spots 41	15	Have you been deposed before?
16	2 Subpoena in a Civil Case 52	16	A. Yes.
17	3 Handwritten notes BRRE 007733-34 62	17	Q. So you generally understand the process?
18	4 Ltr 1/12/99 w Issue Advocacy: Amassing	18	A. Yes.
19	the Case for Reform 65	19	Q. And just to clarify that if you don't
20	5 Ltr. Re Ken Goldstein 1/10/99 62	20	understand any of my questions, please let me know.
21	6 Brennan: Amassing the Case for Reform 65	21	I'll try to clarify it. And secondly, to do our best
22	7 Project Design/Costs/Pop Sizzle	22	not to talk over one another so that the court
23	Negotiations 65	23	reporter can get everything down. And finally, to
24	8 Ltr Re CMAG Project Status 4/27/00 71	24	enunciate verbal answers as opposed to nods of the
25	9 Re: Coding the CMAG storyboards 95	25	head, that sort of thing is helpful to her.
Page 7		Page 9	
1	EXHIBITS (Continued)	1	Are you currently employed?
2	KRASNO EXHIBIT NO. PAGE NO.	2	A. I am currently a visiting fellow at the
3	10 K. Goldstein 3/24/99 Storyboard coding 100	3	Institute for Social and Policy Studies at Yale
4	11 J. Krasno 4/2/99 Re Storyboard coding 111	4	University.
5	12 Buying Time Television Advertising '98	5	Q. And how long have you held that position?
6	Congressional Election Brennan Ctr. 114	6	A. Approximately 20 months.
7	13 Rebuttal to Prof. James L. Gibson	7	Q. You're aware that Frank Sorauf was
8	Jonathan S. Krasno Yale University 139	8	examined in this case?
9	14 CMR NPLA/Call Feingold/Kohl photos	9	A. Yes.
10	Partial-Birth Abortions 145	10	Q. Did you read the transcript from that
11	15 Coding CMAG Storyboards 146	11	examination?
12	16 Evaluating the BCRA Krasno/Sorauf 151	12	A. Yes.
13	17 Appendix Discussion w attach. Tables 151	13	Q. You submitted a report in connection with
14	18 CMR AAHP/Look Out for the Lawyers photos 161	14	the litigation at issue here. You're familiar with
15	19 Faxes Krasno Re Political Advertising	15	that report, I assume?
16	book 183	16	A. Yes.
17	20 Holman Re Final set of recodes 4/11/01 184	17	Q. In that report, you stated that parties'
18	21 Buying Time 2000 Television Advertising	18	health is of grave concern to us and to many others.
19	2000 FedElections Holman/McLoughlin 185	19	Do you recall that statement?
20		20	A. Yes.
21		21	Q. Why is the parties' health such grave
22		22	concern to you?
23		23	A. For the reasons that I believe we wrote
24		24	about in our report, that political parties are
25		25	believed by political scientists to be an essential

<p style="text-align: right;">Page 10</p> <p>1 part of democratic systems in this country and 2 elsewhere. 3 Q. And why are they so essential? 4 A. The way that political scientists 5 typically answer that question is by talking about 6 the three different facets of political parties. 7 Parties in government. They help organize government 8 and help make it possible for members of both the 9 legislative and the executive branch to essentially 10 make policy, to find one another to form policy 11 coalitions and so forth. For the public, they're 12 important because they help organize elections. 13 This takes place in two ways. 14 Organization of parties promote candidates and 15 promote candidacies. They also help mobilize their 16 members and attract adherents to the party banner. 17 And for the public, even though most people are not 18 members in the parties, they do think of themselves 19 as affiliated with those parties in some 20 psychological way so that they root for the Democrats 21 or the Republicans typically and it makes it easier 22 for them in a mass political society with complex 23 political issues so essentially simplify the 24 information dialogue around them so that they can 25 understand politics in partisan terms. It's the</p>	<p style="text-align: right;">Page 12</p> <p>1 particular candidate. 2 Q. And what characterizes such 3 advertisements? 4 A. Well, as far as the BCRA is concerned, 5 what characterizes such advertisements are 6 advertisements that name a candidate, appear in that 7 candidate's district within 30 days of the primary or 8 60 days of the general election. I should 9 furthermore say that those are ads, when sponsored by 10 political -- actually, by political groups, that I'm 11 referring only to that sponsored by interest groups. 12 Q. That's what I'm focused on for right now. 13 A. Right. 14 Q. And your understanding is outside of the 15 30 and 60 day windows, these interest groups can fund 16 these advertisements with contributions of any size 17 from virtually any source? 18 A. Yes. 19 Q. Including individuals? 20 A. Yes. 21 Q. In unlimited amounts? 22 A. Yes. 23 Q. Including corporate donations? 24 A. Yes. 25 Q. And I think you've also looked at the</p>
<p style="text-align: right;">Page 11</p> <p>1 easiest way to understand them. 2 Q. I think you referenced three reasons. Did 3 I lose count of them? 4 A. To be honest, there may have been more 5 than three but I talk about three different facets of 6 parties and I try to attribute each one of those 7 facets to a different set of reasons. 8 Q. Now, under your understanding of the BCRA, 9 private special interest groups will be permitted to 10 engage in candidate-oriented issue advocacy, is that 11 correct? 12 A. Outside of the 60-day -- I should clarify 13 that they could use hard money resources to engage in 14 it all year round but outside of the 30 and 60-day 15 windows, that's correct, they can use soft money as 16 well. 17 Q. And I just want to make sure we're using 18 the same terms. When I say candidate-oriented issue 19 ads, I'm trying to use term that you have used. Do 20 you have an understanding of that term? 21 A. Yes. 22 Q. And what do you understand that term to 23 mean? 24 A. I mean that term to be issue ads that are 25 oriented toward the election or defeat of a</p>	<p style="text-align: right;">Page 13</p> <p>1 issue of how extensive these interest groups have 2 engaged in such activity in the past, have you not? 3 A. Yes. 4 Q. Could you just briefly summarize your 5 assessment of how extensive that activity has been in 6 the recent past? 7 A. In the 1998 version of Buying Time, we 8 have a series of tables and charts. I would be 9 hard-pressed to recall specific numbers from the 10 entire volume, but I think that in the top 70 media 11 markets in 1998, we found something in the order of 8 12 or 10,000 candidate-oriented issue ads by interest 13 groups aired in 1998. And my understanding is that 14 the number in 2000 was much, much higher. 15 Q. And would you expect this type of activity 16 to increase under the BCRA outside of the 30 and 60 17 day window? 18 A. It might, but I have no expectations. 19 Q. No prediction one way or the other? 20 A. Not really. 21 Q. Are you aware of public reports of special 22 interest groups actively soliciting current donors of 23 soft money to the political parties? 24 A. I've read a couple of stories in The 25 Washington Post and The New York Times.</p>

4 (Pages 10 to 13)

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1 Q. And just to make sure we're on the same
2 page again, you're aware of statements from these
3 groups indicating that they want to step into the
4 breach, if you will, left when the political parties
5 are banned from receiving soft money?

6 A. There may have been statements of that
7 sort, but I don't know anything more than what I've
8 read.

9 Q. Why wouldn't private special interest
10 groups be able to step in and begin broadcasting
11 candidate-oriented issue ads in much larger numbers
12 and much greater quantity under the BCRA, if you have
13 a view on that?

14 A. Outside of the 30 and 60 day periods?

15 Q. Outside of the 30 and 60 day period.

16 A. I think that the reason they may choose
17 not to do that is they may believe, as I think most
18 political professionals believe, that advertising
19 that early might have very little impact.

20 Q. And is that your view?

21 A. Yes.

22 Q. Is there any other reason?

23 A. None comes to mind.

24 Q. So what would be the harm of permitting
25 the Republican National Committee to broadcast issue

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1 where the money comes from. I'm focusing on the
2 activity of running candidate-oriented issue ads. In
3 your view, if the RNC were to run such ads outside of
4 the 30 and 60 day windows, does that create a
5 corruption or appearance of corruption?

6 A. I think that it does in several ways and I
7 think the most important way is the way in which it
8 undermines the sort of fundamental honesty and
9 integrity of the Federal Election Campaign Act
10 itself, that these ads can really only be understood
11 and really are only understood by those who view them
12 as ads that are aimed at the election or defeat of a
13 candidate, particularly when they're coming from
14 political parties. And the notion that political
15 parties would be pretending anything else I think is
16 both contrary to the notion of an accountable
17 democracy and honest dialogue in an election
18 campaign.

19 Q. I may not be making myself clear but I'm
20 not sure you're understanding my question. You're
21 saying the mere fact that the RNC runs an ad on
22 balancing the budget creates an appearance of
23 corruption in our electoral system?

24 A. I'm sorry?

25 Q. The mere fact that the RNC runs an

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1 ads outside the 30 and 60 day window set by the BCRA
2 funded by non-federal donations?

3 A. Well, the harm of this is unconnected to
4 the activity but is connected to the way in which
5 those donations are raised, large non-federal
6 donations.

7 Q. And how is it that they are raised that
8 creates the harm?

9 A. Well, as I believe we detail rather
10 extensively in our report, soft money by itself
11 constitutes a substantial risk of corruption to the
12 political system because of parties in their central
13 location in that political system, because of the
14 involvement of elected officials and the affairs of
15 parties and so forth.

16 Q. So to be clear, then, you don't think that
17 the national political parties running
18 candidate-oriented issue ads create an appearance of
19 corruption in and of itself?

20 A. I do think that it creates an appearance
21 of corruption in and of itself but I understood the
22 previous question you asked me to be -- the focus of
23 that question I thought was on soft money so I
24 addressed that part.

25 Q. Separate for a moment the question of

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1 advertisement calling for balancing the budget
2 creates an appearance of corruption in our electoral
3 system?

4 A. That ad does not create an appearance of
5 corruption.

6 Q. Well, let's take the example of an ad
7 calling for balancing the budget and call some
8 federal officeholder who also happens to be running
9 for election, and this ad will say, is paid for with
10 federal or hard money. Does that create an
11 appearance of corruption?

12 A. It depends on the context of the ad and
13 when it would air but you haven't given me enough
14 details for me to answer that question.

15 Q. For the moment now, I'm trying to
16 understand where it is that you draw the line and
17 exactly where the source of the corruption that
18 you're testifying about, where it derives. Let's
19 take an example now of an ad that's funded solely by
20 federal hard money raised under the FECA limits run
21 by the RNC saying, vote for Congressman Smith. Does
22 this create an appearance of corruption or actual
23 corruption?

24 A. No.

25 Q. Now, if the RNC runs a balance the budget

5 (Pages 14 to 17)

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1 ad and says, call Congressman Smith, and pays for
2 that with federal money or hard money, does that
3 create an appearance of corruption?

4 A. It depends on the context in which the ad
5 is aired.

6 Q. And what context would create an
7 appearance of corruption?

8 A. Excuse me, would you repeat the last
9 clause?

10 Q. What context would create an appearance of
11 corruption for you?

12 A. I think it would create an appearance of
13 corruption for me if that ad was aired directly
14 before an election when the balanced budget issue was
15 not before Congress in a race that was -- you know,
16 where the candidate Smith was in a heavily contested
17 election and so forth.

18 Q. Well, I'm trying to understand what your
19 concern is. You don't have a problem with the RNC
20 using the same money to run an ad that expressly
21 calls for the election or defeat of a federal
22 candidate but if the RNC runs an advertisement with
23 the same money that calls for public activity or
24 action on a public policy issue, that's wrong?

25 A. No. I'm suggesting that if they do the

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1 A. When you talk about an ad being subject to
2 the regulations of FECA, I'm assuming that's also
3 subject to all of the regulations of FECA, that is,
4 it's subject to the limits of expenditures by
5 political parties and so forth. I have no problems
6 with that. If it's meant to exclude or avoid those
7 limits as well, then I do have some concerns.

8 Q. Well, let's explore for a minute the
9 question of how you believe that it creates an
10 appearance of corruption, if you do, if the RNC is
11 permitted to raise money outside of the limits of
12 FECA for use in supporting a candidate for the mayor
13 of Los Angeles. And we'll assume that in this
14 election, there is no federal candidate on the
15 ballot. Are you with me in that situation?

16 A. Uh-huh.

17 Q. Can you explain to me how the raising of
18 money by the RNC, for money that they turn around and
19 use to support the mayoral candidate in Los Angeles,
20 how that creates an appearance of corruption in the
21 federal election process.

22 A. Money spent to support a mayoral candidate
23 in Los Angeles, its effect does not dissipate the
24 moment that the mayoral race is decided. It could be
25 spent to register voters who would be presumed to

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1 first, it's clearly an electioneering ad and it would
2 be suggest to the regulations of FECA and I'm very
3 comfortable with that. If they're doing the second,
4 perhaps I'm understanding your hypothetical
5 improperly, I'm assuming that they would not regard
6 themselves as regulated by FECA.

7 Q. My hypothetical was that they paid for
8 that advertisement with money subject to the FECA
9 limits.

10 A. Then I would have no problem.

11 Q. So to come back to my original question,
12 you don't have a concern that candidate-oriented
13 issue ads broadcast by the national political parties
14 and funded with hard money create an appearance of
15 corruption?

16 A. Yes, I do not have a problem.

17 Q. Now, which brings us back to your point
18 that your only concern is in the raising of the
19 money.

20 A. I would not necessarily characterize it
21 that way, but it is my main concern.

22 Q. Well, it's the source of the funding
23 that's a concern to you, correct?

24 A. Largely correct.

25 Q. Well, what else is it?

Page 21

1 vote and vote, in this case, Republican in future
2 elections. It can develop political candidates who
3 would be recruited to run for federal office in later
4 elections. It establishes -- I'm not certain about
5 the City of Los Angeles but certainly other cities --
6 a base of political power in the city that could help
7 a political party in both pursuing federal, state and
8 local offices.

9 Q. Let's hone our example a little bit and
10 assume that the money is used specifically to run an
11 advertisement saying, vote for Jane Doe for mayor of
12 Los Angeles.

13 A. Uh-huh.

14 Q. Now, my question is, does that create an
15 appearance of corruption in the federal election
16 process in your opinion?

17 A. I'm not sure that I would say that it
18 creates an appearance of corruption. I would wonder
19 what this is about with reference to federal
20 elections.

21 Q. It doesn't seem to have much at all to do
22 with federal elections, does it?

23 A. I think it does, in part because the RNC
24 would be involved in it. But on its face, it's hard
25 to argue on an appearance of corruption question.

6 (Pages 18 to 21)

Page 22

1 Q. To be clear, then, you're unable to
2 identify how the RNC raising non-federal money for
3 use in an advertisement to support the election of
4 the mayor of Los Angeles in an off year election
5 would create an appearance of corruption on the
6 federal election process?

7 A. I think so.

8 Q. Again, I just want it to be clear. You're
9 unable to identify any such federal interest?

10 A. At this time, yes.

11 Q. Let me go ahead and mark this as Exhibit 1.
12 (Krasno Exhibit No. 1 was
13 marked for identification.)

14 BY MR. BARNETT:

15 Q. I want to just back up for a moment. This
16 is an article from -- I believe it was Wednesday's
17 Washington Post. It was sometime this week. I ask
18 if you've seen this article before.

19 A. I'm not certain. Can I take a moment to
20 read it?

21 Q. Absolutely.

22 A. I'm done.

23 Q. You've read it?

24 A. Uh-huh.

25 Q. Have you seen the article before?

Page 24

1 Q. And Planned Parenthood, you're aware, is
2 an organization that sometimes engages in political
3 advocacy?

4 A. Yes.

5 Q. And sometimes in broadcasting issue
6 advertisements?

7 A. Yes.

8 Q. And you would agree with me that any
9 federal candidate who is involved in a race in a
10 district where a Planned Parenthood advertisement was
11 being aired would know that a good portion of those
12 advertisements were paid for by Jane Fonda, if they
13 had read The Washington Post article?

14 A. If they had read The Washington Post
15 article, yes.

16 Q. And in your view, was this sort of
17 activity going to buy Jane Fonda special access with
18 federal officials?

19 A. It might buy her access with some federal
20 officials, yes.

21 Q. And if you just look down at the next
22 paragraph, it says, the last sentence there,
23 "Beginning on November 6, the political parties --
24 but not independent groups -- will be barred from
25 raising and spending 'soft money,' the type of

Page 23

1 A. No.

2 Q. I would like you to focus on a paragraph
3 in the middle column, I think it's the first full
4 paragraph. In the middle of it, it says, Actress
5 Jane Fonda in 2000 broke donor records by channeling
6 more than \$11 million to abortion rights and
7 conservation groups. Do you see that?

8 A. Yes.

9 Q. And let's just assume for the moment that
10 that's true. I don't know that you have any
11 independent knowledge of that fact or not.

12 A. I do not.

13 Q. But assume it's true, you would agree with
14 me this is an example of what we were talking about
15 earlier of a private donor able to contribute
16 unlimited amounts of money to private special
17 interest groups?

18 A. Yes.

19 Q. And if you look in the next paragraph, if
20 you look down, it says, "Planned Parenthood, which in
21 2000 received more than \$6 million from Fonda's
22 political committee, has trimmed its spending this
23 year to about \$2 million compared to \$10 million in
24 2000." Do you see that?

25 A. Yes.

Page 25

1 unlimited donations that typically fuel independent
2 political ads."

3 Do you see that?

4 A. Yes.

5 Q. And would you agree with me that after the
6 BCRA goes into effect, that the national political
7 parties will be at a disadvantage relative to private
8 special interest groups in raising money to support
9 issue advertisements?

10 A. In this respect, that's correct.

11 Q. You would also agree with me, would you
12 not, that under the BCRA, in the short term at least,
13 the amount of money available to the political
14 parties at the national, state and local levels will
15 be reduced?

16 A. I believe I've written that in the report,
17 in the short run.

18 Q. So you agree with that?

19 A. Yes.

20 Q. And in the long run, do you agree with me
21 that it is likely that the amount of funds available
22 for political activity to the national political
23 parties is likely to be less under the BCRA than it
24 would be under the current system?

25 A. I don't have any way to know this or not.

7 (Pages 22 to 25)

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1 If you look at the parties' record in raising hard
 2 money over the last 10 years, they've done an
 3 astonishingly good job. It's possible but I don't
 4 know what will happen in the future with their hard
 5 money funding.
 6 Q. Are you saying you have no opinion one way
 7 or the other?
 8 A. I have no opinion one way or the other.
 9 Q. Would you agree with me that the political
 10 parties find hard money to be more useful than
 11 non-federal money because they can use it for federal
 12 campaign purposes as well as most other political
 13 purposes?
 14 A. I agree with you.
 15 Q. So as a general matter, they would prefer
 16 to raise hard money than soft money?
 17 A. Yes.
 18 Q. And would you agree with me that the
 19 political parties are, to the best of their ability,
 20 raising as much hard money as they can now?
 21 A. I have no way to know that.
 22 Q. Do you have any experience in raising
 23 money for political parties?
 24 A. No.
 25 Q. I don't think I asked, but have you ever

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1 Q. Do you agree that in order to replace the
 2 net funds available to the RNC -- strike that. Would
 3 you agree that in order to replace the net funds
 4 available to the RNC, it's going to replace the
 5 non-federal money with federal money, its gross
 6 fund-raising will have to be substantially higher
 7 than its soft money or non-federal fund-raising right
 8 now?
 9 A. Probably that's true.
 10 Q. Are you concerned if the national
 11 political parties are unable to raise as much hard
 12 money in total as they would have been able to raise
 13 hard and soft money under the current system?
 14 A. Not really.
 15 Q. Why not?
 16 A. Because I think the parties have a fairly
 17 substantial amount of money available to them right
 18 now in hard money alone and I think that they would,
 19 if they chose, be able to undertake an enormous
 20 variety of activities, useful activities with that
 21 money.
 22 Q. In your view, you think they have enough
 23 money?
 24 A. Certainly there is never enough in
 25 politics but they are not starving for funds, in my

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1 served in a position of responsibility for a
 2 political party?
 3 A. No.
 4 Q. How about for a campaign?
 5 A. I worked for a campaign for the House of
 6 Representatives in Milwaukee in 1982.
 7 Q. Anything else?
 8 A. No.
 9 Q. Are you aware of how much it cost the RNC
 10 or the DNC to raise hard money?
 11 A. I am aware of some of the estimates that
 12 I've read in documents in this case.
 13 Q. Are you aware of the cost -- do you recall
 14 any of those estimates?
 15 A. No.
 16 Q. Are you aware of the cost to the RNC of
 17 raising non-federal money?
 18 A. I don't have specific knowledge but I'm
 19 certain that I've seen some of those estimates in the
 20 documents in this case.
 21 Q. Do you recall if the cost was lower than
 22 the cost for raising hard money?
 23 A. Yes.
 24 Q. Substantially lower?
 25 A. Possibly.

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1 judgment.
 2 Q. In your report, you talk about, I think, a
 3 hope may have been the way you put it but you talk
 4 about a possibility that in the future, that budgets
 5 will reflect some rational level of need. Do you
 6 recall that statement?
 7 A. Vaguely. I would have to take a look at
 8 the report. Do you have a page number for me to --
 9 Q. Sure. It's on page 40.
 10 A. I see the quote, yes.
 11 Q. What did you mean by that?
 12 A. Well, I think when we were talking about
 13 campaign budgets, we were thinking about campaign
 14 budgets largely of those who are doing the
 15 campaigning which is the candidates, but I think we
 16 also mean the parties as well.
 17 Q. Let's focus on the candidates, if that's
 18 what you were focused on in the report. What did you
 19 mean by budgets reflecting some rational level of
 20 need?
 21 A. Candidates frequently find themselves
 22 locked in a sort of arms race mentality where they
 23 continue to raise money beyond the point which they
 24 could usefully spend it so political scientists, to
 25 my knowledge, virtually across the board believe

8 (Pages 26 to 29)

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1 there is something called diminishing marginal
2 returns from campaign spending; that at a certain
3 point, campaign spending becomes like an arms race in
4 the sense that you no longer get any return from your
5 campaign spending. It's largely wasted money.

6 In the meantime, it's difficult for
7 candidates to stop raising money because they see
8 their opponent raising money and because they are
9 fueled by their party and by media coverage to raise
10 more. There has been such a thing as budgeting in
11 the campaign in a competitive election.

12 Q. And when you say that they can't get
13 any -- is it they get no further return from their
14 money or they just get less return from their money?

15 A. They get a much less return. They get a
16 return from their money which is so severely
17 diminished that it is hard to find an effect. It's
18 hard to find effect when we do a sort of standard
19 kind of statistical analysis which I've done using
20 aggregate election returns.

21 Q. So if it were up to you, you would try to
22 limit the amount of money that candidates spent on
23 their campaigns, is that a fair statement?

24 A. I have been in favor of campaign spending
25 limits in other contexts in the past but this is not

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1 A. I guess. I'm not sure I had a definition
2 of tough love or situation in mind when I used it.
3 I'm not a parent myself.

4 Q. It doesn't have a paternalistic
5 connotation to you?

6 A. It might, but I hadn't thought of it.

7 Q. Let's turn back to the concerns that you
8 identified with respect to the national political
9 parties raising non-federal funds, if you will. I
10 want to ask you to assume for the moment that instead
11 of the BCRA that Congress actually passed, that it
12 had done something slightly different; that it were
13 to impose the same restrictions on using non-federal
14 money in the defined issue advertisements in the same
15 30-60 day window that it imposes on private special
16 interest groups. Would that resolve your concern
17 about an appearance of corruption?

18 A. No.

19 Q. And why not?

20 A. Because political parties who are closely
21 linked to political candidates and to the government
22 itself would be involved in raising non-federal
23 dollars outside of the 30 or 60 day window for
24 activities outside of the 30 or 60 day window and the
25 same concerns that we have.

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1 a campaign spending limits bill. We're merely
2 pointing out in this paragraph that without the
3 impetus by parties and other organizations, it's
4 possible that candidates will feel under less
5 pressure and may feel less obligated to devote all of
6 their time to raising money as opposed to
7 campaigning, crafting a message.

8 Q. You're not advocating actual campaign
9 limits?

10 A. I have supported actual campaign limits
11 but that's not what I'm advocating in this bill or in
12 this statement.

13 Q. And what do you mean by tough love?

14 A. I mean that this is sort of a
15 colloquialism that we use here to suggest that
16 political parties will be unhappy, especially state
17 and local parties will be unhappy to find that
18 federal -- excuse me, that soft money transfers from
19 the federal parties are not available to them. But
20 in the long run, we believe that this limited
21 privation will make them stronger.

22 Q. And the colloquialism you referred to
23 talks about how a parent will sometimes discipline or
24 restrict a child in a way that will help the child in
25 the long run?

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1 Q. So let's further amend this hypothetical
2 statute and say that it prohibits federal officials
3 from engaging in fund-raising activities for the
4 national political parties. Does that resolve your
5 concern?

6 A. I don't think you can separate the
7 national political parties who have as members every
8 member of Congress and every elected official in the
9 executive branch so easily from the parties
10 themselves.

11 Q. Well, I asked whether it would resolve
12 your concern if the -- you identified the raising of
13 funds as the source of your concern and I'm putting
14 forward --

15 A. The answer is no.

16 Q. Let me finish my question.

17 A. Sorry.

18 Q. I'm putting forward the hypothetical that
19 the statute prohibits them from raising the funds.
20 You say you still have a concern. Why do you still
21 have a concern?

22 A. I still have a concern because these
23 officials would be closely linked and closely
24 involved with the party and its activities and that
25 the physical wall or the barrier that you've erected

<p style="text-align: right;">Page 34</p> <p>1 would not reassure me that they were not involved in 2 different ways in either raising the money or in 3 creating the expectation that the money that was 4 being donated was involved in helping particular 5 individuals and particular sets of candidates. 6 Q. Well, it sounds to me like you're 7 basically saying you're suspicious that the statute 8 won't be enforceable. Is that another way to put it? 9 A. No. It's not that the statute is not 10 enforceable. It's that the statute is trying to 11 create a division between things that are virtually 12 indivisible. 13 Q. And I'm trying to understand the mechanism 14 that you see available to parties or candidates or 15 federal officials if the officials are prohibited 16 from engaging in fund-raising activities for the 17 political parties. You've thrown up the general 18 possibility and I'm asking you to identify exactly 19 how that would work, if you know. 20 A. Certainly. I can identify some things 21 that we talk about in the report itself. Federal 22 officials have friends and family, associates, who 23 are closely linked to them. Some of those people, as 24 you know, are currently involved in raising money for 25 leadership PACs, for other things for these</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I don't think federal officials can raise 2 money for Planned Parenthood. 3 Q. You're aware of a prohibition on that? 4 A. I am not an expert on this part of BCRA. 5 Q. But let's assume for a moment that there 6 is no such legal prohibition. Setting aside the 7 legal prohibition, is there any reason why they 8 couldn't raise the money for Planned Parenthood and 9 have Planned Parenthood run the issue ads of which 10 you've expressed so much concern? 11 A. Well, if they were issue ads that appeared 12 within a 30 or 60 day window, they would be regulated 13 by statute. 14 Q. Outside the 30 or 60 day window? 15 A. Outside the 30 or 60 day window, under the 16 existing law, I'm not certain because, as I 17 mentioned, I'm not an expert on this part of BCRA. 18 Q. And just to be clear here, let's say, 19 under our hypothetical statute, we prohibited the 20 national political parties from engaging -- not that 21 this would be constitutional necessarily but that we 22 prohibited the national political parties from 23 engaging in any advertising of any sort with 24 non-federal money and we permitted the national 25 political parties to raise money in limited amounts</p>
<p style="text-align: right;">Page 35</p> <p>1 officials. I don't think that there is much 2 functional distinction between a congressman and a 3 son of a congressman in this sort of situation. 4 Secondly, it's not clear to me that even 5 if you removed a federal official from the act of 6 fund-raising itself, that you could continue to 7 remove him or her from all interactions with the 8 donor so we already have laws that prohibit federal 9 candidates from raising money in different 10 circumstances. And in fact, they do -- they walk 11 outside the White House and they make telephone calls 12 or they use a cell phone that's paid for by the DNC 13 or RNC to make the phone calls as opposed to using a 14 government phone, but they're still in contact with 15 donors and they're still in contact with donors in 16 events where they never ask anybody for a check but 17 they simply provide the warm-up act for someone else 18 who swoops in. 19 Q. Would those same federal officials or 20 their families be able to raise money for Planned 21 Parenthood? 22 A. Would the same federal officials -- 23 Q. Strike that. Will those same federal 24 officials and their families be able to raise money 25 under the BCRA for Planned Parenthood?</p>	<p style="text-align: right;">Page 37</p> <p>1 for use in state and local elections for voter 2 mobilization efforts, for get out the vote efforts, 3 those sorts of activities. Under that scenario, does 4 that address your concern about the appearance of 5 corruptions created by donations to the national 6 political parties? 7 A. I'm sorry, I'm not certain I understood 8 your question. Are you saying that federal officials 9 are raising hard money donations for the parties to 10 be used on a variety of activities? 11 Q. Let's be clear about this. First of all, 12 let's remove federal officials from any fund-raising 13 activities for the parties. Second, let's assume 14 that any advertising done by the parties has to be 15 paid for with hard money. And third, we'll say that 16 the amount of money that the national parties can 17 raise is limited to some number for money that can be 18 raised for non-federal purposes. Does that address 19 your concern about creating the appearance of 20 corruption in the federal electoral system by 21 permitting the national political parties to raise 22 non-federal money for non-federal purposes? 23 A. I'm sorry, I have to ask another 24 clarification. What does they're limited to some 25 money or some limit mean?</p>

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1 Q. Pick whatever limits you want.

2 A. If you're referring to the limits that are
3 governing national parties and FECA already, then if
4 that's okay --

5 Q. I'm talking about over and above money
6 that can be used for federal purposes.

7 A. With the exception of the Levin Amendment,
8 which I'm not an expert on, then I would say -- it's
9 hard to remember the question -- that federal money
10 plus Levin amendment money does not raise for me an
11 appearance of corruption issue. Anything above and
12 beyond that might.

13 Q. I know you said you're not an expert but
14 you're aware that under the BCRA, the RNC, the DNC
15 will not be allowed to raise one cent of non-federal
16 money. The Levin amendment only applies to the state
17 and local political parties. My question is
18 essentially if you put these other restrictions on
19 the national political parties but permitted them to
20 raise eleven money like the state and local parties
21 are permitted to do under the BCRA and to use that
22 money for state and local purposes, not for media
23 advertisements, would that create an appearance of
24 corruption in your view on the federal election
25 process?

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1 A. I am so uncertain about what the
2 additional limits are that it's difficult for me to
3 answer that question. I broadly support the limits
4 that are in FECA that apply to political parties,
5 whether they use that spending for federal or for
6 non-federal purposes.

7 Q. Would you agree with me that the states
8 have an interest in voter mobilization, voter
9 registration, generally get-out-the-vote efforts in
10 elections that have state and local candidates on the
11 ballot, whether or not they also have federal
12 candidates on the ballot?

13 A. Yes.

14 Q. And would you agree with me that the
15 states have an interest in regulating activity that
16 affects elections for state and local officials?

17 A. Yes.

18 Q. Do you also agree with me that under our
19 system of government, that the federal government
20 should respect, at least to some degree, the interest
21 of the state governments in this regard?

22 A. At least to some degree.

23 Q. Is there any area of political activity
24 involving the election of state and local officials
25 that you believe is outside the province of the

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1 federal government to restrict?

2 A. There might be but I haven't considered
3 that question. I don't have any answer for you off
4 the top of my head at this time.

5 Q. That's not a question you purported to
6 address in your report?

7 A. That's correct.

8 Q. Nor a question that you've given any
9 meaningful thought to prior to today?

10 A. Yes.

11 Q. I think that's all the questions I have
12 for you. So I appreciate your time but I will -- I
13 don't know if you want to take a short break. Let's
14 go off the record.

15 (Recess.)

16 EXAMINATION BY COUNSEL FOR
17 THE NATIONAL ASSOCIATION OF BROADCASTERS
18 BY MS. BUCKLEY:

19 Q. Dr. Krasno, my name is Susan Buckley. I'm
20 from the firm of Cahill Gordon & Reindel representing
21 Senator McConnell and the National Association of
22 Broadcasters. Good morning. If you have any
23 questions about my question, please don't hesitate to
24 interrupt me and ask for clarification. With me is
25 my colleague, Eric Lipman, to my left.

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1 Before we start, I'll ask my favorite
2 question in this case. Who is representing you at
3 this cross-examination, Dr. Krasno, if anyone?

4 A. I'm represented by Colleen Sealander with
5 Rupa Bhattacharyya and Paul Dodyk from Cravath.

6 Q. Who have you been retained by in this
7 case?

8 A. I've been retained by the FEC.

9 Q. And who is paying your expert fees?

10 A. The FEC and I think, for the rebuttal
11 report, Department of Justice. I don't know.

12 Q. You don't know?

13 A. They'll have to work it out between them.

14 Q. And between them, we're talking about the
15 Federal Election Commission and the United States
16 Department of Justice?

17 A. I think that's right. I'm not certain.

18 Q. You're not certain? We'll mark as Krasno
19 Exhibit 2 a copy of the subpoena served on the
20 witness in this case.

21 (Krasno Exhibit No. 2 was
22 marked for identification.)

23 BY MR. BARNETT:

24 Q. If you would take a look at what's been
25 marked as Krasno 2, Dr. Krasno.

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall being served with this</p> <p>3 subpoena in this case in mid-August?</p> <p>4 A. Yes.</p> <p>5 Q. And if you take a look at what's been</p> <p>6 attached as attachment A, there is a list of</p> <p>7 documents that the plaintiffs requested that you</p> <p>8 produce in response to this subpoena. Do you see</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you search your personal files for</p> <p>12 documents described in attachment A to the subpoena,</p> <p>13 Dr. Krasno?</p> <p>14 A. No.</p> <p>15 Q. You've not done any search?</p> <p>16 A. I have searched for most of these things</p> <p>17 but I can't say that I've searched for all of them.</p> <p>18 Q. Have you produced any documents to your</p> <p>19 counsel to turn over in response to this subpoena?</p> <p>20 A. No.</p> <p>21 Q. And I'll represent to you that we have</p> <p>22 received no documents from you in response to the</p> <p>23 subpoena which required the production of documents</p> <p>24 on September 3rd. Do you see that?</p> <p>25 A. Did I see that you're represented it?</p>	<p style="text-align: right;">Page 44</p> <p>1 provided by others and was attached to my expert</p> <p>2 report, copies of the original command files used to</p> <p>3 create those tables and figures in Buying Time 1998.</p> <p>4 Q. Let me interrupt you there. What's a</p> <p>5 command file, Dr. Krasno?</p> <p>6 A. A command file is a computer file with a</p> <p>7 list of statistical commands, in this case, that the</p> <p>8 package that I used was called SPSS. And SPSS allows</p> <p>9 you to operate either interactively directly out of</p> <p>10 the screen or to save a record of all of the commands</p> <p>11 that you implement, and those commands are typically</p> <p>12 referred to as a command file.</p> <p>13 In the case of Buying Time 1998, because</p> <p>14 many of the chapters and many of the individual pages</p> <p>15 contained some relatively simple but involved data</p> <p>16 analysis, I saved the command file as well as the</p> <p>17 files that I used to create them.</p> <p>18 Q. Thank you for explaining that. What other</p> <p>19 documents would you have in your files?</p> <p>20 A. Well, I think I have some e-mails that I</p> <p>21 sent while working at the Brennan Center at which I</p> <p>22 believe may have already been provided. And I'm not</p> <p>23 certain that I have anything else that I could be</p> <p>24 helpful with.</p> <p>25 Q. I thought I understood you to say that you</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. That we requested the production of</p> <p>2 documents on September 3rd?</p> <p>3 A. Yes.</p> <p>4 Q. Did someone tell you to disregard this</p> <p>5 subpoena, Dr. Krasno?</p> <p>6 A. Yes.</p> <p>7 Q. Who told you that?</p> <p>8 A. I was told that the subpoena had been</p> <p>9 quashed and that I was not required to appear.</p> <p>10 Q. And when were you told that?</p> <p>11 A. Sometime, I think, in August.</p> <p>12 Q. I'm not talking about your appearance at a</p> <p>13 deposition, Dr. Krasno. I'm talking about your</p> <p>14 obligation to produce documents requested in the</p> <p>15 subpoena.</p> <p>16 A. I had no conversations with anyone about</p> <p>17 documents.</p> <p>18 Q. Can you describe for me, Dr. Krasno, what</p> <p>19 kind of documents you have in your files concerning</p> <p>20 Buying Time '98 or Buying Time 2000?</p> <p>21 A. I'll start with the second. I have no</p> <p>22 documents in my files regarding Buying Time 2000. I</p> <p>23 have in my files regarding Buying Time 1998 copies of</p> <p>24 the story boards which I believe were provided by</p> <p>25 others, a copy of the data set which I believe was</p>	<p style="text-align: right;">Page 45</p> <p>1 really hadn't looked. Is that not correct?</p> <p>2 A. Well, I hadn't looked in the context of</p> <p>3 this subpoena but I have looked, in the context of</p> <p>4 writing my report, at my information that related to</p> <p>5 Buying Time 1998.</p> <p>6 Q. How about a code book for the data set,</p> <p>7 Dr. Krasno?</p> <p>8 A. A code book in what respect? I'm sorry.</p> <p>9 Q. I thought your expert report referred to a</p> <p>10 code book for the data set that was used for</p> <p>11 preparing Buying Time 1998.</p> <p>12 A. The code book that I might have referred</p> <p>13 to is the code book that's included in the back of</p> <p>14 Buying Time '98. It's a copy of the original coding</p> <p>15 sheets, of an original coding sheet, not a copy but a</p> <p>16 facsimile, I should say. Plus a page of explanation</p> <p>17 about the different sorts of codes that we did to</p> <p>18 create specific categories.</p> <p>19 Q. Anything else you can think of in terms of</p> <p>20 documents that might be responsive to the subpoena?</p> <p>21 A. No.</p> <p>22 Q. Dr. Krasno, when did you first become</p> <p>23 employed by the Brennan Center?</p> <p>24 A. At the end of 1997, I began -- I don't</p> <p>25 believe that I was -- I'm not certain that I can say</p>

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1 that I was paid at the time because I was finishing
2 up with my teaching obligations at Princeton but I
3 moved to New York and I started spending a couple of
4 days a week in the office. I became a full-time
5 employee on January 1st, 1998.

6 Q. 1998?

7 A. 1998, I believe that's correct.

8 Q. And what position were you hired to fill,
9 Dr. Krasno?

10 A. Senior policy analyst.

11 Q. And what does a senior policy analyst do
12 at the Brennan Center?

13 A. A senior policy analyst at the Brennan
14 Center at that time, I was responsible for sponsoring
15 a series of conferences, sponsoring a lunch series,
16 writing various reports, participating in the general
17 life of the Brennan Center. In 1998, that included a
18 strategic planning process and planning research
19 projects that would interest the center.

20 Q. Who did you report to at the center,
21 Dr. Krasno?

22 A. I reported to Nancy Northup and to Josh
23 Rosenkranz.

24 Q. Did you have any specific areas of focus
25 in terms of subject matter as a senior policy analyst

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1 A. They told me.

2 Q. When you started at the Brennan Center in
3 January of 1998, was there any plan to do a study
4 such as was done for -- as reflected in Buying Time
5 '98?

6 A. There was a general hope that something of
7 this magnitude might emerge, but the Buying Time
8 project did not become -- we did not become aware of
9 the data set until later that year.

10 Q. And when you refer to the data set, what
11 are you talking about?

12 A. I refer to the CMAG data, which is the
13 satellite tracking data of all of the television
14 advertising in the top 75 media markets.

15 Q. When did you first become aware of the
16 availability of the CMAG data, Dr. Krasno?

17 A. Near the end of 1998, someone advised me
18 that I should look at work by Ken Goldstein on the
19 subject; that Ken had a data set that might include
20 information on issue advertising that we had not
21 seen, that no one had seen.

22 Q. Was issue advertising your focus at this
23 time?

24 A. No, actually I was really interested in
25 campaigns in general so I had done a lot of work on

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1 with the Brennan Center?

2 A. Well, my expertise was presumed to be in
3 campaigns and campaign finance.

4 Q. Was the Brennan Center, when you began in
5 January of 1998, active in the campaign finance
6 movement?

7 A. Yes.

8 Q. Was that one of the reasons you went
9 there?

10 A. Yes.

11 Q. What were they doing at the time you
12 arrived, in that regard?

13 A. Well, I know that they had been involved
14 in a court case in California on ballot proposition
15 20-something, I'm sorry.

16 Q. We won't hold you to the number,
17 Dr. Krasno.

18 A. Thank you. I was also working on that
19 case but for the California Fair Political Practices
20 Commission. I think that they have been involved in
21 doing some writing about the Buckley decision but I
22 didn't have anything to do with that. And I knew
23 that they intended to be involved in more campaign
24 finance cases in the future.

25 Q. How did you know that?

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1 campaign spending and candidate expenditures and so
2 forth.

3 Q. How did you come to be aware that
4 Professor Goldstein's data set had information about
5 issue advertising?

6 A. Well, everyone at the time was aware that
7 there was an increasing amount of -- number of issue
8 ads being aired through the '96 and coming into the
9 '98 election. And we had seen estimates from the
10 Annenberg Center. We knew that the numbers were
11 large and they were out there but we didn't have what
12 I regarded as very detailed comprehensive data about
13 this. The data that Ken Goldstein was using struck
14 me, when I heard of it, as the best way to study the
15 problem or study the situation.

16 Q. And the situation being, in that sentence?

17 A. The situation being the amount, the scope
18 and content of advertising of all sorts in the '98
19 election.

20 Q. And after you learned of Professor
21 Goldstein's work, did you bring it to the attention
22 of people at the Brennan Center?

23 A. I first contacted Professor Goldstein to
24 understand what he had and what he was doing and then
25 I did bring it to the attention of people at the

13 (Pages 46 to 49)

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1 Brennan Center.

2 Q. And can you place this in time for us just
3 very generally, Dr. Krasno?

4 A. I had some preliminary conversations with
5 Professor Goldstein at the end of '98. He happened
6 to be in New York for a personal visit. I think
7 somewhere near the end of '98, I arranged for a
8 meeting to have him come to the Brennan Center and
9 explain the data and so forth to Josh and to Nancy
10 and to perhaps several other people who came to that
11 meeting.

12 Q. And what else can you recall about what
13 happened at that meeting, Dr. Krasno?

14 A. Well, I do recall that the people there
15 had shared my excitement that this data set was
16 potentially very important and interesting resource
17 and that we should try to make an attempt to acquire
18 it for the '98 election which had just taken place.

19 Q. So this meeting was sometime after the
20 November 1998 election?

21 A. I believe that's correct.

22 Q. Thereafter, did you take steps to acquire
23 the data, Dr. Krasno?

24 A. Thereafter, we had several meetings with
25 different program officers of foundations who we

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1 BRE 007733 to 34.

2 (Krasno Exhibit No. 3 was
3 marked for identification.)

4 BY MS. BUCKLEY:

5 Q. Do you recall, Dr. Krasno, that Pew's
6 bottom line was to regulate sham issue advocacy as
7 expressed at this meeting?

8 A. I'm not certain. I'm having trouble
9 reading the document. Where are you --

10 Q. I'm just asking the question, do you
11 recall at this meeting that the representative from
12 Pew, Mr. Treglia, expressed the view that it was
13 Pew's bottom line that they wanted to regulate sham
14 issue advocacy? Do you recall that?

15 A. I don't recall the language Pew's bottom
16 line but I do recall that we discussed sham issue
17 advocacy.

18 Q. Well, do you recall what Mr. Treglia's
19 focus was during this discussion?

20 A. No.

21 Q. Do you recall that it was important for
22 Mr. Treglia -- strike that. What do you recall about
23 Mr. Treglia's focus during the course of this
24 meeting?

25 A. I think that he felt that these were

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1 thought might be willing to fund the project and
2 eventually then wrote a grant proposal.

3 Q. And you are the author of that grant
4 proposal, are you not?

5 A. Yes.

6 Q. Did you have a meeting with the folks at
7 Pew in early January of 1999, Dr. Krasno, that you
8 recall?

9 A. I think that's correct, yes.

10 Q. And what was the focus of that meeting?

11 A. The focus of that meeting was to describe
12 the CMAG data and talk about what we might do if we
13 acquired it.

14 Q. Who attended that meeting on behalf of the
15 Brennan Center?

16 A. Myself, Josh Rosenkranz, Nancy Northup, I
17 believe Ken Weine, who was our director of
18 communications at the time.

19 Q. Ken who?

20 A. Weine, W-e-i-n-e. There may have been
21 other attorneys there, but I don't recall.

22 Q. And from Pew, Mr. Treglia was there?

23 A. Yes.

24 MS. BUCKLEY: Let's mark as Krasno Exhibit
25 3 a two-page document bearing the control numbers

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1 extraordinarily interesting data, they would tell us
2 things that we didn't know about the world and that
3 they would undoubtedly inform a variety of policy
4 initiatives that he was interested in.

5 Q. I'm trying to get an understanding of
6 where Pew was in its thinking, if you would,
7 Dr. Krasno. Did you understand, having attended this
8 meeting with Pew, that Pew was interested in pursuing
9 a project that would result in the regulation of
10 issue advocacy?

11 A. I think that in general, they were
12 convinced that issue advocacy -- some issue advocacy
13 might merit regulation but, again, we didn't have
14 details because we hadn't done the study.

15 Q. I understand. In the notes that we've
16 marked as Krasno Exhibit 3, do you see down at the
17 bottom of page 1, Dr. Krasno, it says, Regulating
18 sham issue advocacy -- Pew bottom line. Two steps.
19 1, collect and analyze. 2, study groups to visit
20 regularly, and then it goes on.

21 A. Study groups to visit regularly --

22 Q. And then it goes on. I can't read the
23 last line and I won't. And my question is, do you
24 remember anyone at that meeting saying that the
25 regulation of issue advocacy was Pew's bottom line?

14 (Pages 50 to 53)

<p style="text-align: right;">Page 54</p> <p>1 A. No.</p> <p>2 Q. Do you know whose notes these are,</p> <p>3 Dr. Krasno?</p> <p>4 A. I assume they're Nancy Northup's.</p> <p>5 Q. You recognize the handwriting?</p> <p>6 A. Yes.</p> <p>7 Q. You mentioned earlier in your testimony,</p> <p>8 Dr. Krasno, that you considered approaching a number</p> <p>9 of foundations. Can you tell us who else you've</p> <p>10 approached?</p> <p>11 A. I recall that we had one other meeting</p> <p>12 with the representative of the Open Society</p> <p>13 Institute.</p> <p>14 Q. The Open Society Institute?</p> <p>15 A. OSI.</p> <p>16 Q. And what was the result of that meeting,</p> <p>17 Dr. Krasno?</p> <p>18 A. They were interested but they weren't</p> <p>19 certain of their finances and we were told to</p> <p>20 potentially get back to them.</p> <p>21 Q. And did you get back to them?</p> <p>22 A. No.</p> <p>23 Q. Because you had success in your meeting</p> <p>24 with Pew, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 write one.</p> <p>2 Q. Is this a formal grant application,</p> <p>3 Dr. Krasno, what we have marked as Krasno 4?</p> <p>4 A. In this case, I believe it is.</p> <p>5 Q. You'll see on page 1 of the attachment</p> <p>6 which you authored, Dr. Krasno, and four paragraphs</p> <p>7 down, the paragraph that reads, "The enormous</p> <p>8 proportions that issue advocacy has assumed has</p> <p>9 convinced reformers to make regulating it their main</p> <p>10 priority. The reform agenda of the previous dozen</p> <p>11 years in Congress, including public funding for</p> <p>12 campaigns and spending limits, has been replaced by</p> <p>13 the attempt to control issue advocacy directly and</p> <p>14 the soft money that funds parties' issue</p> <p>15 advertisements."</p> <p>16 Dr. Krasno, at this time, had you been</p> <p>17 persuaded that the enormous proportions that issue</p> <p>18 advocacy had assumed -- let me strike that. At this</p> <p>19 point in time, were you convinced that the enormous</p> <p>20 proportions that issue advocacy had assumed made</p> <p>21 regulating issue advocacy a main priority?</p> <p>22 A. Probably.</p> <p>23 Q. Take a look at page 2 of the attachment,</p> <p>24 Dr. Krasno. You write, at the top of the page, "To</p> <p>25 regulate issue advocacy effectively reformers must</p>
<p style="text-align: right;">Page 55</p> <p>1 MS. BUCKLEY: Let's mark as Krasno Exhibit</p> <p>2 4 a letter and attachment dated January 12, 1999</p> <p>3 bearing the control numbers BRE 012322 through</p> <p>4 012330.</p> <p>5 (Krasno Exhibit No. 4 was</p> <p>6 marked for identification.)</p> <p>7 BY MS. BUCKLEY:</p> <p>8 Q. Why don't you take a moment to look at</p> <p>9 that document, Dr. Krasno.</p> <p>10 A. I'm finished.</p> <p>11 Q. Do you recognize this document,</p> <p>12 Dr. Krasno?</p> <p>13 A. Yes.</p> <p>14 Q. Are you the author of the attachment?</p> <p>15 A. Yes.</p> <p>16 Q. The cover sheet of the letter from Josh</p> <p>17 Rosenkranz to Sean Treglia at Pew dated January 12th,</p> <p>18 1999, that's just a few days after your meeting with</p> <p>19 Pew, isn't that right?</p> <p>20 A. Yes.</p> <p>21 Q. And how did it come to be that you were</p> <p>22 writing this piece entitled Issue Advocacy: Amassing</p> <p>23 The Case for Reform?</p> <p>24 A. When it was clear that Pew was interested</p> <p>25 in a formal grant application, I was assigned to</p>	<p style="text-align: right;">Page 57</p> <p>1 have some insight into how it is similar to or</p> <p>2 different from traditional electioneering, the timing</p> <p>3 of each form of advertising, and the extent to which</p> <p>4 attempts to regulate electioneering masquerading as</p> <p>5 issue advocacy will affect legitimate efforts to</p> <p>6 speak out on an issue rather than a candidate."</p> <p>7 Do you see that, Dr. Krasno?</p> <p>8 A. Yes.</p> <p>9 Q. Were you of the view at this time -- and</p> <p>10 this time is January 1999 -- that there was much</p> <p>11 electioneering masquerading as issue advocacy?</p> <p>12 A. I was suspicious that this was likely true</p> <p>13 but I had no solid information.</p> <p>14 Q. Well, I take it you're a watcher of</p> <p>15 political campaigns, Dr. Krasno?</p> <p>16 A. I'm a watcher of political campaigns who</p> <p>17 lived at the time in the largest media market in the</p> <p>18 country where the amount of political advertising at</p> <p>19 the time was relatively low.</p> <p>20 Q. You're talking about the city of New York?</p> <p>21 A. Yes.</p> <p>22 Q. I'm just asking you, was it your belief at</p> <p>23 that time that issue ads -- strike that. Was it your</p> <p>24 belief at the time that -- let's limit it to</p> <p>25 groups -- groups were running issue ads which were</p>

<p style="text-align: right;">Page 58</p> <p>1 really electioneering ads in disguise?</p> <p>2 A. That seemed to be the case, yes.</p> <p>3 Q. And had you discussed that at your meeting</p> <p>4 with Pew?</p> <p>5 A. I'm also certain we did.</p> <p>6 Q. The next paragraph says, Dr. Krasno, "The</p> <p>7 best plan to harness issue advocacy offensive to</p> <p>8 democratic elections still requires the support of</p> <p>9 legislators to become law. Convincing legislators to</p> <p>10 act involves showing them that regulation is in their</p> <p>11 interest -- either to satisfy a restless public or to</p> <p>12 satisfy their own political needs." Dr. Krasno, what</p> <p>13 did you mean when you said, to satisfy their own</p> <p>14 political needs?</p> <p>15 A. I think that the concern that people who</p> <p>16 had dealt with campaign finance reform in virtually</p> <p>17 any area have felt over time is that legislators are</p> <p>18 only partially informed about the status quo and that</p> <p>19 more information would reassure them of how they're</p> <p>20 affected and how others are affected and how they</p> <p>21 might be affected if there were reform.</p> <p>22 Q. How would the regulation of issue advocacy</p> <p>23 satisfy legislators' own political needs?</p> <p>24 A. I think it might satisfy their own</p> <p>25 political needs in several ways. First of all, it</p>	<p style="text-align: right;">Page 60</p> <p>1 Assuming this new information about the issue</p> <p>2 advocacy and electioneering proves useful -- and we</p> <p>3 have every reason to assume that it will -- phase two</p> <p>4 will focus on convening a formidable group of</p> <p>5 scholars and activists to create policy</p> <p>6 recommendations and reports, as well as using a</p> <p>7 public relations firm and existing activist groups to</p> <p>8 help publicize these activities on Capitol Hill and</p> <p>9 beyond."</p> <p>10 Did I read that correctly, Dr. Krasno?</p> <p>11 A. Yes.</p> <p>12 Q. Is this an accurate description of the</p> <p>13 plan you had at the time to proceed with what</p> <p>14 ultimately became the Buying Time 1998 study?</p> <p>15 A. At the time, that's correct.</p> <p>16 Q. Turn to page 5, Dr. Krasno. Maybe we</p> <p>17 better go back to page 3. Do you see on page 3 that</p> <p>18 you are outlining your proposal and you're doing it</p> <p>19 in two phases as we just discussed. Phase 1, the</p> <p>20 acquisition and initial analysis of the CMAG data and</p> <p>21 then you turn on page 6 to phase 2, taking the case</p> <p>22 to the public and the politicians. I just wanted to</p> <p>23 put it in context. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Now, in your discussion of phase one,</p>
<p style="text-align: right;">Page 59</p> <p>1 would reassure them that they are not the sole</p> <p>2 beneficiaries of issue advocacy. I think the</p> <p>3 tendency to say to yourself, I've been elected and I</p> <p>4 got a lot of help in this election for this reason or</p> <p>5 another, from this group or this party or another,</p> <p>6 may be enough in some cases to decide to essentially</p> <p>7 create someone's perspective. We wanted to broaden</p> <p>8 their perspective to see the problem in the larger</p> <p>9 part.</p> <p>10 Secondly, I felt that, as I mentioned this</p> <p>11 morning, there was an arms race mentality that was</p> <p>12 brewing here that offered serious complications and</p> <p>13 serious degradation of quality of life to members of</p> <p>14 Congress and to anyone who ran for office.</p> <p>15 Q. Are you finished?</p> <p>16 A. Yes.</p> <p>17 Q. Turn to page 3, Dr. Krasno. In the middle</p> <p>18 of the page, there is a paragraph that begins in</p> <p>19 short. "In short, these new data allow activists and</p> <p>20 scholars to answer the questions raised by the rise</p> <p>21 of issue advocacy media campaigns. We propose to</p> <p>22 proceed in two steps. In phase one, we will acquire</p> <p>23 the CMAG data set, adapt it so that it might be</p> <p>24 easily used, and use it to develop a strategy for</p> <p>25 responding to the threat posed by issue advocacy.</p>	<p style="text-align: right;">Page 61</p> <p>1 Dr. Krasno, and on the top of page 5, you wrote, "An</p> <p>2 internal report will summarize our findings on these</p> <p>3 topics and others, and will provide a series of</p> <p>4 charts and graphics to show trends. This phase, in</p> <p>5 short, will provide the initial answers to the</p> <p>6 questions about the scope and content of issue</p> <p>7 advocacy campaigns, helping inform the judgment about</p> <p>8 how best to advance the case for reform and how best</p> <p>9 to craft a legislative solution. Once the working</p> <p>10 group has had an opportunity to evaluate the report,</p> <p>11 we can make the assessment about which way to proceed</p> <p>12 to phase two."</p> <p>13 Did I read that correctly, Dr. Krasno?</p> <p>14 A. Yes.</p> <p>15 Q. That's an accurate description of what</p> <p>16 your plan was in conducting the Buying Time 1998</p> <p>17 study?</p> <p>18 A. It's a description of our plan, yes.</p> <p>19 Q. And phase one, generally speaking, as you</p> <p>20 describe it here, is the acquisition, coding and</p> <p>21 analysis of the data, is that a fair description?</p> <p>22 A. Yes.</p> <p>23 Q. Turn to page 6, Dr. Krasno, Phase Two:</p> <p>24 Taking the Case to the Public and the Politicians.</p> <p>25 Do you see that?</p>

16 (Pages 58 to 61)

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1 A. Yes.
2 Q. And right under that heading is a
3 sentence, "Whether we proceed to phase two will
4 depend on the judgment of whether the data provide a
5 sufficiently powerful boost to the reform movement."
6 Did I read that correctly, Dr. Krasno?
7 A. Yes.
8 Q. And you wrote that in January of 1999,
9 correct?
10 A. Yes.
11 MS. BUCKLEY: Let's mark as Krasno Exhibit
12 5 a multipage document bearing the control numbers
13 BRE 007728.
14 (Krasno Exhibit No. 5 was
15 marked for identification.)
16 BY MS. BUCKLEY:
17 Q. Have you had a chance to take a look at
18 that, Dr. Krasno?
19 A. Yes.
20 Q. This is an e-mail chain, if you will. On
21 the first page, there is the date of January 10th,
22 1999. I am focusing in on the second page which I
23 believe is an e-mail written by you and
24 Mr. Rosenkranz has responded piece by piece in the
25 middle of the e-mail, is that correct?

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1 A. That's correct.
2 Q. So if we're looking at this e-mail that
3 begins about a third of the way down page 2, I take
4 it that the material that's not involved is you
5 writing and the material in response involved is Josh
6 responding, is that correct?
7 A. I'm not sure I followed -- my comments
8 have little arrows in front. My language has little
9 arrows in front.
10 Q. That will make it easier. So the language
11 with the little arrows in front is you speaking?
12 A. Yes.
13 Q. And the language without the little arrows
14 in front, which happened to be in bold at least in my
15 copy, is Josh speaking in response, is that correct?
16 A. That's correct.
17 Q. If you take a look, generally speaking,
18 your e-mail addresses proceeding with this project
19 and acquiring the data. Is that a fair description?
20 A. Yes.
21 Q. And you first write that -- you're talking
22 about that the data will cost approximately \$75,000?
23 Am I interpreting that correctly, Dr. Krasno?
24 A. That's correct, to purchase from CMAG.
25 Q. Josh responds and in his response, if

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1 you'll look down about four paragraphs, he says, "As
2 I've mentioned, you shouldn't be fooled by the big
3 fat numbers Sean floated by us. I guarantee you that
4 when push comes to shove, Pew will not be anywhere
5 near the number he offered. Besides, he made it
6 clear that the vast bulk of the money would be money
7 that would be devoted to the pop and sizzle stuff,
8 not to the research. Phase one he saw as a very
9 modest phase, subject to evaluation later on."
10 Did you ever have a discussion with
11 Mr. Rosenkranz about Pew's interest in funding the
12 pop and sizzle stuff?
13 A. Pop and sizzle is what I do recall from
14 the meeting with Sean Treglia in early January and
15 they were interested in publicity and drawing
16 attention to the findings and that was the expression
17 that he used, pop and sizzle.
18 Q. And your understanding of what he meant by
19 pop and sizzle is publicity?
20 A. Yes.
21 Q. Did you understand at this time,
22 Dr. Krasno, that Pew saw phase one as a very modest
23 phase, subject to evaluation later on, as Josh
24 writes?
25 A. Yes.

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1 MS. BUCKLEY: Let's mark as Krasno
2 Exhibit 6 what I understand to be the February 1999
3 grant proposal.
4 (Krasno Exhibit No. 6 was
5 marked for identification.)
6 BY MS. BUCKLEY:
7 Q. If you could take a flip through that
8 document, Dr. Krasno. I'm going to focus on a few
9 passages but familiarize yourself with it as much as
10 you need to. While you're reading that, Dr. Krasno,
11 we'll mark as Krasno Exhibit 7 a multipage document
12 beginning with the control number BRE 014183 through
13 014186.
14 (Krasno Exhibit No. 7 was
15 marked for identification.)
16 BY MR. BARNETT:
17 Q. Have you finally finished reading the
18 document, Dr. Krasno? When is the last time you
19 reviewed that document?
20 A. Probably several years ago.
21 Q. Take a look at what we've marked Krasno 7,
22 please. And I'm trying to get an understanding in
23 time which comes first, Krasno 6 or Krasno 7.
24 A. Krasno 7 looks like it's just notes that
25 probably informed Krasno 6.

17 (Pages 62 to 65)

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1 Q. Is Krasno 7 your notes?
 2 A. I don't know. I don't think so.
 3 Q. Do you have any idea whose they may be?
 4 A. I'm not certain. They might be Josh
 5 Rosenkranz's.
 6 Q. Let's go back to Krasno 6, the grant
 7 proposal. And you say in your expert report,
 8 Dr. Krasno, that you are the author of this document,
 9 is that right?
 10 A. Yes.
 11 Q. And you can see that it is an advocacy
 12 document, do you not?
 13 A. Yes.
 14 Q. I want to draw your attention to page 2,
 15 the section on CMAG data, a description of what the
 16 CMAG data can provide. And my question to you is,
 17 who wrote that section of the grant proposal?
 18 A. I believe that I wrote this section of the
 19 grant proposal. I would have asked Ken Goldstein for
 20 information about things like polaris ad detector.
 21 Q. Turn to page 5 of the grant proposal.
 22 Under the heading Arguments for Reform, Dr. Krasno,
 23 number 1, you write, "Message control. One of the
 24 most bitter complaints about issue advocacy is that
 25 it undermines the control that candidates have

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1 control, isn't it?
 2 A. I'm characterizing the complaints that
 3 others have had but that is what I meant.
 4 Q. You don't agree with those complaints?
 5 A. I can't agree with all of the complaints.
 6 I don't know all of the complaints. But I can see
 7 that in some cases, they may be justified.
 8 Q. And just to be clear, the complaints that
 9 we're talking about is that there are too many
 10 voices, is that right?
 11 A. That is what I've written, yes.
 12 Q. Then you set forth the arguments for
 13 reform in this grant proposal, Dr. Krasno, and on
 14 page 7 you wind up moving to your section on strategy
 15 for reform. And your section on strategy for reform
 16 begins, "As is evident from the discussion about
 17 obstacles to reform, we believe strongly that the
 18 first step toward overcoming the obstacles to reform
 19 is to develop a reliable source of information on the
 20 nature of the problem. But developing the data set
 21 is not nearly enough. We need to use it
 22 strategically to influence several audiences at once
 23 to move toward, and sustain, reform."
 24 Dr. Krasno, is that your view in January
 25 '99 that you needed to use this data strategically to

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1 traditionally exercised over their campaign message."
 2 Do you agree with that today, Dr. Krasno?
 3 A. Yes.
 4 Q. And what do you mean that it undermines
 5 the control that candidates have traditionally
 6 exercised over their campaign message?
 7 A. It goes to an argument about
 8 accountability that we discuss in our expert report,
 9 that in the past candidates essentially framed the
 10 nature of the debate which voters could take as
 11 essentially as implied campaign promises from the
 12 campaign period. So when candidate X says, I'm for
 13 lower taxes and candidate Y says, I'm for higher
 14 defense spending, voters could anticipate that if
 15 those candidates were elected, they were
 16 essentially -- they had received a promise from them.
 17 But there became a panoply of voices in elections.
 18 Q. So your point here is that there are too
 19 many voices?
 20 A. My point is that there has been a
 21 complaint that there have been too many voices.
 22 Q. Do you believe there have been too many
 23 voices, Dr. Krasno?
 24 A. In some cases, that may be true.
 25 Q. And that's what you mean by message

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1 influence several audiences at once to move toward
 2 and sustain reform?
 3 A. Yes.
 4 Q. Underneath that paragraph, Dr. Krasno, you
 5 discuss coordinating your efforts with an outside
 6 public relations firm. Do you see that?
 7 A. Yes.
 8 Q. Did you ever enter into an arrangement
 9 with an outside public relations firm to assist in
 10 the dissemination of any collected as part of your
 11 study?
 12 A. Yes.
 13 Q. What was that public relations firm?
 14 A. Widemeyer Baker
 15 Q. In Washington?
 16 A. Yes.
 17 Q. When were they retained?
 18 A. I imagine at the time the grant was
 19 awarded.
 20 Q. By Pew?
 21 A. By Pew.
 22 Q. Then you go on to say, "The following is a
 23 brief summary of the tracks we are following toward
 24 influencing those two ultimate audiences, along with
 25 a list of the types of products and activities that

18 (Pages 66 to 69)

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1 are most likely to influence them." And you have a
2 heading Legislators and then a subheading Targeting
3 Legislators and Their Staffs. Dr. Krasno, did you
4 target legislators and their staffs with the
5 information that you gathered in Buying Time '98?

6 A. I personally did not.

7 Q. I'm trying to figure out if any of these
8 strategies were carried out, Dr. Krasno. Were
9 legislators and their staffs targeted?

10 A. In my experience, they were not.

11 Q. Were activists targeted?

12 A. In my experience, they were not.

13 Q. How about journalists and other opinion
14 elites?

15 A. In my experience, they were not.

16 Q. And when you say in your experience, they
17 were not, are you saying that you didn't do it or you
18 don't know of anyone else doing it?

19 A. I'm saying I didn't do it and I don't know
20 what the Brennan Center did after my departure.

21 Q. When did you leave the Brennan Center,
22 Dr. Krasno?

23 A. April of 2000.

24 Q. And under what circumstances did you
25 leave?

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1 A. No.

2 Q. Would it be fair to describe it as a memo
3 from Josh Rosenkranz to Sean Treglia at Pew reporting
4 on the project status of Buying Time 1998?

5 A. Yes.

6 Q. If you'll turn to page 3 of the memo,
7 Dr. Krasno, you'll see that Mr. Rosenkranz writes,
8 "But I continue to believe that we cannot be put in a
9 position where we Brennan Center staff are expected
10 to rely upon, or collaborate with, John -- whether on
11 CMAG 1998 or on CMAG 2000. It's a recipe for
12 disaster. Maybe John can be funded for future
13 research on CMAG data. Or maybe he can come up with
14 a related project completely independent of CMAG.
15 But we cannot be put in a position where we have to
16 rely on data that John will have participated in
17 generating or we have to co-sponsor events or reports
18 in which John's role (even if artificially downplayed
19 and insulated) is significant. It would be an
20 untenable situation, and, as much as it pains me to
21 say, we'd have to walk away from a project that is
22 predicated on those terms."

23 Dr. Krasno, do you have an understanding
24 of what Mr. Rosenkranz is referring to when he says
25 that the Brennan Center can't be put in a position

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1 A. I was fired.

2 Q. Why?

3 A. Because I have a personality conflict with
4 the president and CEO.

5 Q. And that's Josh Rosenkranz?

6 A. Yes.

7 Q. When in point of time was Buying Time 1998
8 published?

9 A. Directly after I was fired.

10 MS. BUCKLEY: Let's mark as Krasno Exhibit
11 8 a document dated April 27, 2000 with the control
12 numbers BRE 011941 to BRE 011946.

13 (Krasno Exhibit No. 8 was
14 marked for identification.)

15 BY MS. BUCKLEY:

16 Q. Would you take a minute to review that
17 document? Have you seen this document before,
18 Dr. Krasno?

19 MS. BHATTACHARYYA: Objection. Would you
20 rephrase that?

21 BY MS. BUCKLEY:

22 Q. Other than preparation for your
23 deposition, Dr. Krasno, or putting preparation of
24 your deposition aside, have you ever seen this
25 document before?

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1 where it has to rely on data that you will have
2 participated in generating?

3 A. What I think he means is that he doesn't
4 want to have anything to do with me.

5 Q. That's your interpretation?

6 A. Yes.

7 Q. Were there ever complaints relayed to you
8 by Ms. Northup, Mr. Rosenkranz or anyone else at the
9 Brennan Center about the quality of the data you were
10 collecting in connection with Buying Time 1998?

11 A. Never.

12 Q. You don't recall that?

13 A. There were never any complaints.

14 Q. What other data did you collect for the
15 Brennan Center while you were there?

16 A. I don't recall that I had any other data
17 collection projects. Actually, I'll amend that. I
18 did a paper on independent expenditures which
19 required me to use an FEC database.

20 Q. So as you sit here today, you believe that
21 no one relayed this complaint to you, Dr. Krasno?

22 MS. BHATTACHARYYA: Objection.

23 BY MS. BUCKLEY:

24 Q. You can answer.

25 A. I know that no one relayed this complaint

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 to me.</p> <p>2 Q. Nobody told you about this problem?</p> <p>3 MS. BHATTACHARYYA: Objection.</p> <p>4 BY MS. BUCKLEY:</p> <p>5 Q. Nobody told you about this issue?</p> <p>6 MS. BHATTACHARYYA: Objection.</p> <p>7 BY MS. BUCKLEY:</p> <p>8 Q. You can answer, Doctor.</p> <p>9 A. I was never told by anyone at the Brennan</p> <p>10 Center or outside the Brennan Center about a problem</p> <p>11 relating to the data, the CMAG '98 study.</p> <p>12 Q. Mr. Rosenkranz never shared the sentiment</p> <p>13 that he articulates in this letter with you, is that</p> <p>14 right?</p> <p>15 MS. SEALANDER: Objection.</p> <p>16 THE WITNESS: He shared a sentiment that</p> <p>17 he articulates that he doesn't like me with me, but</p> <p>18 that is the only sentiment that I'm aware of.</p> <p>19 BY MS. BUCKLEY:</p> <p>20 Q. Let's go back to Krasno 6. Now, I'm</p> <p>21 asking you a series of questions, Dr. Krasno, about</p> <p>22 the section of your grant proposal called Strategy</p> <p>23 for Reform and the plans that you offer there in</p> <p>24 pursuing this project and you asked you whether</p> <p>25 legislators had been targeted, activists had been</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. On the theory that scholars are a plus in</p> <p>2 persuading courts of your position? Is that the</p> <p>3 theory?</p> <p>4 A. Yes.</p> <p>5 Q. And another plan or, if you would, step to</p> <p>6 influence the courts as you list here is to target</p> <p>7 journalists and other opinion elites, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And you say, "Judges read the papers too.</p> <p>10 They cannot help but be influenced by what they</p> <p>11 read." Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Then you go on to describe the project and</p> <p>14 you begin by saying the project will proceed in two</p> <p>15 basic steps, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And then on the next page, page 9, you</p> <p>18 describe the working group and the project team. The</p> <p>19 working group you describe as a small working group</p> <p>20 to help think through the coding of these data. Did</p> <p>21 you ever put together a small working group to help</p> <p>22 think through the coding of these data?</p> <p>23 A. We did. There was a regularly scheduled</p> <p>24 Brennan Center conference in the spring of 1999 and</p> <p>25 we asked people who attended to remain in town for an</p>
<p style="text-align: right;">Page 75</p> <p>1 targeted and you said not in your experience. Would</p> <p>2 all that activity have occurred after you left?</p> <p>3 A. It might have.</p> <p>4 Q. You just don't know?</p> <p>5 A. I just don't know.</p> <p>6 Q. In any event, in the plan as of February</p> <p>7 '99, which is when you submitted this to Pew, your</p> <p>8 plan was to target legislators and their staffs, is</p> <p>9 that right?</p> <p>10 A. Yes.</p> <p>11 Q. To target activists with this information,</p> <p>12 is that right?</p> <p>13 A. Yes.</p> <p>14 Q. To target journalists and other opinion</p> <p>15 elites, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And to target scholars as well, is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. You go on to say that another track to</p> <p>21 pursue would be the courts. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And the plan there was to target scholars,</p> <p>24 is that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 additional morning to meet and talk this over. So</p> <p>2 from that meeting, which included a few Brennan</p> <p>3 Center lawyers and then some political scientists, I</p> <p>4 sent several e-mails to that group and to a slightly</p> <p>5 larger group of political scientists as well.</p> <p>6 Q. Then you have a description here of the</p> <p>7 project team. Do you see that, Dr. Krasno?</p> <p>8 A. Yes.</p> <p>9 Q. You go on to discuss the role of Professor</p> <p>10 Kenneth Goldstein of Arizona State University. Do</p> <p>11 you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And you say at the bottom of that</p> <p>14 paragraph, "Goldstein will oversee actual coding of</p> <p>15 the story boards by his research staff with the</p> <p>16 participation of Jonathan Krasno, the Brennan</p> <p>17 Center's senior policy analyst, and under the</p> <p>18 direction of the working group. Goldstein and Krasno</p> <p>19 will serve as members of that working group and</p> <p>20 provide feedback to the other members of the group</p> <p>21 about the progress of the coding and preliminary</p> <p>22 results from the data set." Did I read that</p> <p>23 correctly, Dr. Krasno?</p> <p>24 A. Yes.</p> <p>25 Q. And is that an accurate description of</p>

<p style="text-align: right;">Page 78</p> <p>1 your plan?</p> <p>2 A. Yes.</p> <p>3 Q. And is that the way the plan was executed?</p> <p>4 A. Not entirely. We had less time in the end</p> <p>5 than we anticipated and so things were a little</p> <p>6 squeezed. Goldstein largely did the coding. He</p> <p>7 entirely did the coding himself. I was involved at</p> <p>8 the initial stages with the coding instrument and we</p> <p>9 involved the working team as much as possible in</p> <p>10 soliciting their comments about that instrument. But</p> <p>11 there was not regular updates about the progress and</p> <p>12 preliminary results about the data set.</p> <p>13 Q. To the members of the group?</p> <p>14 A. To anyone.</p> <p>15 Q. You didn't report to anyone during the</p> <p>16 course of the project how it was going?</p> <p>17 A. I didn't have any information from</p> <p>18 Professor Goldstein to report.</p> <p>19 Q. Ever?</p> <p>20 A. Until the data arrived at the end of</p> <p>21 September or the beginning of October in 1999, there</p> <p>22 was very little to say.</p> <p>23 Q. After the data arrived, did you have more</p> <p>24 to say?</p> <p>25 A. I did have more to say.</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes.</p> <p>2 Q. We're back to Krasno Exhibit 6,</p> <p>3 Dr. Krasno. You then move on to a heading called</p> <p>4 Making the Case for Reform. And you write, "As we</p> <p>5 explain above, our strategy is to make the data the</p> <p>6 centerpiece of a variety of activities and products</p> <p>7 that are designed to get the biggest and most</p> <p>8 sustained bang out of the effort. Different products</p> <p>9 are more suited to some audiences than for others,</p> <p>10 but together, these components should reach each</p> <p>11 audience we wish to influence. For the sake of</p> <p>12 clarity, we are dividing this presentation into</p> <p>13 different categories of products and activities: (1)</p> <p>14 reports and papers; (2) conferences; (3) press</p> <p>15 contact and material; (4) legislative contact and</p> <p>16 materials; (5) other media, and (6) legal action."</p> <p>17 Did I read that correctly, Dr. Krasno?</p> <p>18 A. Yes.</p> <p>19 Q. And then you go on to discuss what you</p> <p>20 call these categories and products of activities, is</p> <p>21 that right?</p> <p>22 A. Yes.</p> <p>23 Q. And the first category is reports and</p> <p>24 papers. And I take it that that refers to Buying</p> <p>25 Time 1998 -- what ultimately became buying 1998</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. And I take it at that point, you began --</p> <p>2 strike that. I take it at that point you in fact</p> <p>3 provided feedback to other members of the group about</p> <p>4 the preliminary results from the data set, did you</p> <p>5 not?</p> <p>6 A. I provided feedback largely to the policy</p> <p>7 group that had been formed at that point, so we were</p> <p>8 immediately involved in the next step, which was</p> <p>9 convening the policy group and making certain that</p> <p>10 they had some results to look at.</p> <p>11 Q. So you gave feedback to the policy --</p> <p>12 that's called the policy committee, is that right?</p> <p>13 A. I think the policy committee, that might</p> <p>14 be right.</p> <p>15 Q. We'll call it policy group or committee,</p> <p>16 either one. Did you also give feedback to other</p> <p>17 employees at the Brennan Center?</p> <p>18 A. Nothing beyond what we had done for the</p> <p>19 policy group.</p> <p>20 Q. Did you ever talk to Mr. Rosenkranz about</p> <p>21 the results that were coming in?</p> <p>22 A. No.</p> <p>23 Q. Ms. Northup?</p> <p>24 A. No.</p> <p>25 Q. How about Mr. Seltz?</p>	<p style="text-align: right;">Page 81</p> <p>1 itself, is that right?</p> <p>2 A. It's the comprehensive report that's</p> <p>3 described.</p> <p>4 Q. So the first thing in the strategy was --</p> <p>5 strike that. Then on page 11, you tell us that</p> <p>6 another product that you're going to produce, correct</p> <p>7 me if I'm wrong, is an executive summary, is that</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And that was in fact produced for Buying</p> <p>11 Time 1998, was it not?</p> <p>12 A. Yes.</p> <p>13 Q. And then the next category you have is</p> <p>14 case studies. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Explain that plan to me, Dr. Krasno.</p> <p>17 A. The comprehensive report was intended to</p> <p>18 be essentially a bird's eye aggregate look at the</p> <p>19 entire landscape. We wanted to then focus on four</p> <p>20 particular races to discuss those races in detail to</p> <p>21 show what had happened and the role of different</p> <p>22 kinds of campaign commercials and strategies of the</p> <p>23 candidates and the other players in the races.</p> <p>24 Q. The next step in the plan was a report on</p> <p>25 policy recommendations. Do you see that at the</p>

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1 bottom of 11?

2 A. Yes.

3 Q. And can you describe what you envisioned
4 there, Dr. Krasno?

5 A. We actually issued a report which is
6 called Five New Ideas which I think does a fairly
7 decent job of fulfilling what we anticipated when I
8 wrote this; that is, that we wanted a group of people
9 who came from essentially a variety of perspectives
10 to come together, consider the different information
11 that we had and to think about, in some cases,
12 different approaches to policy issues that they
13 thought were important.

14 Q. And what group produced Five New Ideas, do
15 you know?

16 A. I'm sorry, I don't understand the
17 question.

18 Q. Who were the members of the group that
19 produced Five New Ideas?

20 A. Well, I wrote the report. The members of
21 the group would include all the people that I think
22 are listed on the title page. Do you want my
23 recollection of who was there?

24 Q. If you would.

25 A. Well, this will be incomplete because I

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1 A. I don't know for certain but it seems
2 possible.

3 Q. Did you ever have any discussions with
4 professor Hasen about an article he was working on in
5 connection with the data that was used in Buying Time
6 1998?

7 A. I ran into him at a conference in the
8 context of how are you doing, what are you doing. He
9 may have mentioned something.

10 Q. Have you ever read it?

11 A. I read it briefly this summer.

12 Q. Now, after we have commission papers, the
13 next thing on your list is conferences. Do you see
14 that, Dr. Krasno?

15 A. Yes.

16 Q. And the plan was to have a launch event,
17 is that right?

18 A. Yes.

19 Q. And then a conference of scholars. Do you
20 see that?

21 A. Yes.

22 Q. Was such a conference held?

23 A. A conference of scholars?

24 Q. Yes.

25 A. Not to my knowledge.

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1 don't recall everyone but myself, Ken Goldstein,
2 David Magelby, Tom Mann, Charles Korb, K-o-r-b, Leon
3 Pineta, Vic Fazio, F-a-z-i-o, Linda Smith, Al Swift
4 and certainly others I can't recall.

5 Q. And when was Five New Ideas published, if
6 you remember, Dr. Krasno?

7 A. Well, it was written sometime before my
8 departure and it I believe came out in May of 2000.

9 Q. The next product/activity on your list,
10 Dr. Krasno, is commissioned papers. Do you see that
11 on page 12?

12 A. Yes.

13 Q. I take it the plan here was to commission
14 scholarly papers about the data?

15 A. Yes.

16 Q. Do you know whether any papers were in
17 fact commissioned, Dr. Krasno?

18 A. I don't believe that any papers were
19 commissioned from political scientists.

20 Q. How about from others?

21 A. I think it's possible that there may have
22 been a legal conference which featured some
23 commission papers but I had nothing to do with it.

24 Q. Do you know whether Professor Hasen was
25 commissioned to write a paper?

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1 Q. Not before you left?

2 A. Not before I left.

3 Q. The next part of the plan is entitled
4 press contact and materials. Do you see that?

5 A. Yes.

6 Q. It says Op Eds. "Over the course of the
7 project, we expect to create numerous separate pieces
8 and attempt to place them in the leading national and
9 regional newspapers. We will also encourage and aid
10 members of the working group and associated academics
11 to produce additional editorials on subjects related
12 to the study, and attempt to place them, too."

13 Do you know whether the Brennan Center,
14 over the course of the project, created any pieces
15 and placed them -- strike that. Do you know whether
16 any op eds were produced, Dr. Krasno?

17 A. By anyone?

18 Q. Uh-huh.

19 A. I wrote an op ed. I don't know what the
20 Brennan Center did.

21 Q. Do you know of any other op eds that
22 commented on the CMAG data at the request of the
23 Brennan Center?

24 A. No.

25 Q. Any other op eds about Buying Time '98

22 (Pages 82 to 85)

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1 that you know of?

2 A. No.

3 Q. Next step in the plan, Dr. Krasno, is
4 editorial board visits. Do you see that?

5 A. Yes.

6 Q. And it goes on to talk about
7 Mr. Rosenkranz having already visited most of the
8 major newspapers during 1998. Do you see that?

9 A. Yes.

10 Q. So I take it the editorial board visits
11 were in fact done?

12 A. My understanding of the sentence is that
13 this was part of a general promotion program that the
14 center had already embarked upon and that we would
15 resend Rosenkranz with the results in hand.

16 Q. I see. So when you're reporting here
17 about Rosenkranz having already visited most of the
18 major newspapers during 1998, you're not referring to
19 the plan for editorial board visits to discuss the
20 findings of Buying Time?

21 A. We're suggesting that he would be a useful
22 emissary since he is a known commodity.

23 Q. And do you know whether Mr. Rosenkranz
24 engaged in additional editorial board visits after
25 the publication of Buying Time '98?

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1 the ACLU or the Right to Life Committee." Did I read
2 that correctly, Dr. Krasno?

3 A. Yes.

4 Q. And do you know whether in fact
5 legislative analyses were prepared by the Brennan
6 Center?

7 A. I do not know.

8 Q. Because that would have happened after you
9 left, is that right?

10 A. That's right.

11 Q. The next category in the plan was the
12 so-called expert letters. Do you see that?

13 A. Yes.

14 Q. What was that part of the plan, if you
15 could describe it for us, Dr. Krasno?

16 A. That part of the plan was to use the data
17 to create a letter about some pending policy issue
18 that could be signed by a large number of different
19 sets of experts. And in this paragraph, we are
20 talking about two different sets of experts,
21 political scientists and legal scholars.

22 Q. And do you know whether any such expert
23 letters were ever written, Dr. Krasno?

24 A. There was an expert letter written to
25 Congress in 2000 that originally emanated from the

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1 A. No.

2 Q. You wouldn't know because you weren't
3 there?

4 A. I wasn't there.

5 Q. The next step in the plan is press kits
6 and other materials. Do you see that?

7 A. Yes.

8 Q. Do you know whether press kits and other
9 materials were compiled or were you gone before that
10 would have happened?

11 A. I was gone before that would have
12 happened.

13 Q. The next category is Legislative Contact
14 and Materials. The first step in that part of the
15 plan is legislative analyses, is your heading,
16 Dr. Krasno. "Armed with the CMAG data, the Brennan
17 Center will continue to issue periodic analyses of
18 important legal and policy issues related to campaign
19 finance, and particularly to the issue advocacy and
20 soft money problems. These issues papers will
21 include fast-breaking analyses of pending legislative
22 proposals or proposed alternatives and, equally
23 importantly, critiques of the public statements made
24 by opponents of reform, whether they are legislators,
25 like Mitch McConnell, or other activist groups, like

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1 Brennan Center and was edited and revised by myself
2 and several others.

3 Q. The next step in the plan is congressional
4 testimony. Do you see that on the bottom of page 14?

5 A. Yes.

6 Q. Do you know whether that part of the plan
7 was ever accomplished, Dr. Krasno?

8 A. I don't know.

9 Q. You don't know whether the Brennan Center
10 has ever testified about Buying Time '98?

11 A. That's correct.

12 Q. How about Buying Time 2000?

13 A. I don't know.

14 Q. The next step in the plan is other media.
15 Number one, a video on 1998 issue advocacy. What was
16 your plan there, Dr. Krasno?

17 A. Our plan was to create essentially a video
18 version of some of the main findings of the different
19 pieces that you've already discussed, to provide that
20 I think to reporters and to others who might be
21 interested in it.

22 Q. And you conclude there by saying, "We will
23 distribute this video mostly to journalists, but also
24 to reformers and policy makers." Did I read that
25 correctly, Dr. Krasno?

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 A. Yes.</p> <p>2 Q. And that was the plan, correct?</p> <p>3 A. Yes.</p> <p>4 Q. The next step in the plan was the creation</p> <p>5 of a website, is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. Do you know whether that's been</p> <p>8 accomplished, Dr. Krasno?</p> <p>9 A. I do know that that's been accomplished,</p> <p>10 at least with regard to the 1998 data.</p> <p>11 Q. And finally, in this category of other</p> <p>12 media, we have CD-ROM. And what was the plan in that</p> <p>13 regard?</p> <p>14 A. Eventually we were planning on making the</p> <p>15 1998 data set available to scholars who wished to</p> <p>16 work with it.</p> <p>17 Q. And do you know whether that part of the</p> <p>18 plan has been effectuated?</p> <p>19 A. I have discovered that it has, but they</p> <p>20 had been distributing some data set.</p> <p>21 Q. For '98 and 2000?</p> <p>22 A. 1998 only.</p> <p>23 Q. The next heading under section 6 is legal</p> <p>24 action. Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 92</p> <p>1 AFTERNOON SESSION</p> <p>2 (2:10 p.m.)</p> <p>3 Whereupon,</p> <p>4 JONATHAN S. KRASNO,</p> <p>5 the witness testifying at the time of recess, having</p> <p>6 been previously duly sworn, was further examined and</p> <p>7 testified further as follows:</p> <p>8 EXAMINATION BY COUNSEL FOR</p> <p>9 THE NATIONAL ASSOCIATION OF BROADCASTERS (RESUMED)</p> <p>10 BY MS. BUCKLEY:</p> <p>11 Q. Dr. Krasno, you told us earlier today that</p> <p>12 you were being compensated as an expert in this case,</p> <p>13 and my question to you is, do you know how many hours</p> <p>14 you've devoted to this matter for which you are</p> <p>15 charging either the FEC, the DOJ or someone else?</p> <p>16 A. I haven't done a final bill but I assume</p> <p>17 it's in the neighborhood of 400.</p> <p>18 Q. 400 hours?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And what is the rate that you are charging</p> <p>21 the defendants?</p> <p>22 A. 150 an hour.</p> <p>23 Q. You testified earlier in response to</p> <p>24 certain questions by Mr. Barnett that you were not an</p> <p>25 expert in certain areas BCRA, is that right?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. And what was the plan in that regard,</p> <p>2 Dr. Krasno?</p> <p>3 A. Well, the Brennan Center, which is mostly</p> <p>4 made up of lawyers, anticipated that it would be able</p> <p>5 to use these data in different court cases that it</p> <p>6 might be involved in.</p> <p>7 MR. BARNETT: Colleen, this would be the</p> <p>8 perfect time for a break.</p> <p>9 (Whereupon, at 12:42 p.m., the deposition</p> <p>10 in the above-entitled matter was recessed, to</p> <p>11 reconvene at 1:45 p.m., this same day.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Yes.</p> <p>2 Q. What do you consider yourself an expert</p> <p>3 in, Dr. Krasno?</p> <p>4 A. In this case, I consider myself an expert</p> <p>5 on the areas in which we've written which is the</p> <p>6 impact of BCRA on political parties and the impact of</p> <p>7 the issue advocacy provisions of BCRA.</p> <p>8 Q. So your expertise is in studying the</p> <p>9 impact of this statute that has not yet been in</p> <p>10 effect, is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. After the Brennan Center submitted the</p> <p>13 grant proposal to Pew, did there come a time when you</p> <p>14 heard that Pew had decided to fund the project?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know when that was, Dr. Krasno?</p> <p>17 A. It was several points. It was the first</p> <p>18 recognition or the first indication was in the spring</p> <p>19 of 1999.</p> <p>20 Q. The spring of 1999?</p> <p>21 A. Yes. In the spring of 1999, the program</p> <p>22 officer said that they had reviewed the project and</p> <p>23 they would take it to the board and that is close to</p> <p>24 approval but it is not final. And the second plan</p> <p>25 was in the fall of '99 when it was finally subject to</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 board approval.</p> <p>2 Q. When did the Brennan Center -- strike</p> <p>3 that. When did either the Brennan Center or</p> <p>4 Professor Goldstein finally receive the data from</p> <p>5 CMAG?</p> <p>6 A. Which data?</p> <p>7 Q. The data that was studied to produce</p> <p>8 Buying Time '98.</p> <p>9 A. There are two distinct data sets.</p> <p>10 Q. Okay. Please explain.</p> <p>11 A. There is a collection of story boards,</p> <p>12 which is essentially the picture of each ad as it</p> <p>13 appeared along with an accompanied text, and then</p> <p>14 there is the broadcast data which shows each</p> <p>15 individual airing of the ad, the station, the time,</p> <p>16 the date, the media market and so forth.</p> <p>17 The first was purchased in the spring of</p> <p>18 1999 and the second did not become available until we</p> <p>19 essentially paid the whole bill in the fall of '99.</p> <p>20 Q. So if I understand that correctly, in the</p> <p>21 spring of '99, the Brennan Center purchased the story</p> <p>22 boards for the '98 election from CMAG, is that right?</p> <p>23 A. That's correct. We purchased them for</p> <p>24 Professor Goldstein to code.</p> <p>25 Q. And can you place this in time in 1999?</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yes.</p> <p>2 Q. Who were the Saturday morning meeting</p> <p>3 volunteers, Dr. Krasno?</p> <p>4 A. I believe that at this meeting, we had</p> <p>5 myself, Ken, Tom Mann, Darrell West from Brown. I</p> <p>6 don't know if Dave Magelby was there. From the</p> <p>7 Brennan Center, Josh Rosenkranz was there, Nancy</p> <p>8 Northup, Marta Nelson, Glen Moramarco and I don't</p> <p>9 know if Daniel Seltz was there or not. There may be</p> <p>10 notes somewhere but those are the names that I</p> <p>11 recall.</p> <p>12 Q. And this took place at the Brennan Center</p> <p>13 in New York City?</p> <p>14 A. This took place in a room in the NYU</p> <p>15 school of law.</p> <p>16 Q. I'm sorry. I stand corrected. And how</p> <p>17 long did the Saturday morning meeting take place?</p> <p>18 A. I don't recall specifically. I would</p> <p>19 imagine two or three hours.</p> <p>20 Q. And what was the purpose of the meeting,</p> <p>21 Dr. Krasno?</p> <p>22 A. To discuss the questions we should be</p> <p>23 interested in when coding the story boards.</p> <p>24 Q. Now, who is Mr. Mann?</p> <p>25 A. Tom Mann?</p>
<p style="text-align: right;">Page 95</p> <p>1 A. I believe -- the coding of the story</p> <p>2 boards or the delivery of the story boards?</p> <p>3 Q. The delivery is what I was referring to.</p> <p>4 A. I'm assuming that took place sometime in</p> <p>5 March or April of 1999.</p> <p>6 MS. BUCKLEY: We're going to mark as</p> <p>7 Krasno Exhibit 9 a document bearing the control</p> <p>8 numbers BRE 007621 through BRE 007631.</p> <p>9 (Krasno Exhibit No. 9 was</p> <p>10 marked for identification.)</p> <p>11 BY MS. BUCKLEY:</p> <p>12 Q. Take a minute to look at that, Dr. Krasno.</p> <p>13 A. Done.</p> <p>14 Q. Dr. Krasno, Professor Goldstein testified</p> <p>15 yesterday that you wrote this document. Is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And in the second sentence, it refers to a</p> <p>19 Saturday morning meeting on March 20. Is it your</p> <p>20 understanding or is it your recollection that this</p> <p>21 meeting took place on March 20, 1999?</p> <p>22 A. Yes, it's the meeting that I described</p> <p>23 earlier.</p> <p>24 Q. But we know we're in the spring of 1999 at</p> <p>25 this point?</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. Right.</p> <p>2 A. At the time was director of governmental</p> <p>3 studies at the Brookings Institute. He is now the</p> <p>4 Harriman fellow at the Brookings Institute. He's a</p> <p>5 distinguished political scientist.</p> <p>6 Q. Somebody who is very active in the</p> <p>7 campaign finance reform movement?</p> <p>8 A. Yes.</p> <p>9 Q. Who is David Magelby?</p> <p>10 A. David Magelby I think at the time was</p> <p>11 chairman of the poly sci department at Brigham Young</p> <p>12 University.</p> <p>13 Q. And he too is very active in the campaign</p> <p>14 finance reform movement, is he not?</p> <p>15 A. He is now. I don't know what he was at</p> <p>16 the time.</p> <p>17 Q. And you named someone from Brown?</p> <p>18 A. Darrell west.</p> <p>19 Q. Can you tell us a little bit about</p> <p>20 Professor West?</p> <p>21 A. He at the time was the chairman of the</p> <p>22 poly sci department at Brown University, had written</p> <p>23 a book called Ad Wars About Political Advertising.</p> <p>24 Q. And have I correctly remembered all of the</p> <p>25 academics that you named who attended this meeting?</p>

25 (Pages 94 to 97)

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1 A. Plus Ken Goldstein and myself.
 2 Q. And you and Professor Goldstein had
 3 already been assigned the title of Co-Principal
 4 Investigators for This Buying Time '98 project, had
 5 you not?
 6 A. I think that's correct.
 7 Q. Did you sit there and review story boards
 8 that morning in March of '99?
 9 A. We looked at a sample of story boards.
 10 Q. And what did you conclude, if you recall,
 11 after viewing the sample of story boards?
 12 A. We discussed the sorts of questions or the
 13 sorts of categories of information we were hoping to
 14 find or hoping to discover. I don't know that I have
 15 any notes that have survived from that meeting but
 16 it's from those notes that I eventually began
 17 drafting the questionnaire.
 18 Q. And you don't know whether you have any
 19 notes that survived from that meeting because you
 20 haven't looked for it recently, have you?
 21 A. I have not looked for them but they were
 22 also -- would have survived at the Brennan Center. I
 23 have no control over them.
 24 Q. So you didn't move any documents from the
 25 Brennan Center to wherever you next went when you

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1 A. I believe it more today.
 2 Q. You say, at the bottom of the page, that
 3 the seven or so black and white frames shown in the
 4 story board of the average 30-second commercial offer
 5 limited opportunities to code visual content.
 6 Did I read that correctly, Dr. Krasno?
 7 A. Yes.
 8 Q. And did you believe that when you wrote
 9 this memo?
 10 A. Yes.
 11 MS. BUCKLEY: Let's mark as Krasno
 12 Exhibit 10 a document bearing the control numbers
 13 BRE 007616 to BRE 007620.
 14 (Krasno Exhibit No. 10 was
 15 marked for identification.)
 16 BY MS. BUCKLEY:
 17 Q. I'll note that this document which leads
 18 off with an e-mail, Dr. Krasno, appears to be
 19 dated -- or the e-mail appears to be dated
 20 March 24, '99, the Wednesday after the Saturday
 21 meeting that you told us about earlier.
 22 Does that sound about right to you?
 23 A. Yes.
 24 Q. And you see that this is an e-mail from --
 25 well, it says that it's from Ken Goldstein to a

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1 left?
 2 A. That's correct.
 3 Q. You say here in this memo, Dr. Krasno,
 4 that a main reason -- I'm on page 1, paragraph 2.
 5 "A main reason for the center's acquisition of these
 6 data is to test a variety of hypotheses about issue
 7 advocacy."
 8 Is that an accurate statement, Dr. Krasno?
 9 A. Yes.
 10 Q. The next page, you are talking about,
 11 again, about the issue ads versus electioneering ads.
 12 About halfway down the page you write, "The center,
 13 of course, is vitally interested in this category,
 14 particularly in the ways to distinguish issue ads,
 15 both real and fake, from what everyone understands to
 16 be electioneering. The Supreme Court's magic words
 17 test is clearly inadequate to insure that issue ads
 18 truly advocate issues instead of candidates, yet many
 19 judges seem satisfied."
 20 Did I read that correctly, Dr. Krasno?
 21 A. Yes.
 22 Q. And you certainly believed that when you
 23 wrote it, didn't you?
 24 A. Yes.
 25 Q. And you believe it today, do you not?

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1 variety of people, including Thomas Mann, Darrell
 2 West, David Magelby, et cetera.
 3 Dr. Krasno, Professor Goldstein testified
 4 yesterday that you wrote this e-mail when you were
 5 out visiting with him. Is that right?
 6 A. That's correct.
 7 Q. And where were you visiting him?
 8 A. At his office at Arizona State University.
 9 Q. Let's go back. I just wanted to get a
 10 sense of timing, where you were. Let's go back to
 11 the Saturday meeting.
 12 What did you conclude -- what did the
 13 group conclude after viewing the story boards and
 14 discussing how best to come up with a coding
 15 instrument after -- strike that.
 16 What did the group conclude about how best
 17 to come up with a coding instrument after the
 18 Saturday afternoon meeting, Dr. Krasno?
 19 A. It's difficult to answer that question
 20 with a single characterization. There were lots of
 21 different suggestions which we then -- or which I
 22 then tried to incorporate into the draft that I
 23 produced. A few examples stand out in my mind.
 24 For example, there was some interest in
 25 the technology of "morphing" which had been used in

26 (Pages 98 to 101)

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1 previous election cycles to turn one candidate into
2 another so we had a question that we asked about
3 "morphing."

4 People were wondering about telephone
5 numbers that were provided with ads, particularly
6 with ads that might have essentially asked people to
7 lobby and so we were instructed to make certain that
8 we provided a toll free versus toll number option in
9 that question. Just a variety of things of that
10 nature.

11 Q. Did the group come to any conclusions as
12 to how to distinguish between electioneering ads as
13 you used the term in Buying Time '98 and issue ads?

14 A. Not that I recall.

15 Q. Do you recall any observations being made
16 during the course of that meeting about how one would
17 go about trying to distinguish the two?

18 A. Well, we certainly were interested in some
19 of the things that are discussed in that memorandum,
20 like the timing of the ad and whether a candidate is
21 mentioned in an ad. So we were looking at a variety
22 of -- trying to code in a variety of objective and
23 other indicators from the ads.

24 Q. And the memorandum you're referring to is
25 Krasno Exhibit 9?

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1 Q. Now, you talk here about, after resolving
2 a variety of technical issues, we've moved to create
3 a coding instrument from our discussions on Saturday
4 morning.

5 Do you see that?

6 A. Yes.

7 Q. Do you recall what the technical issues
8 were, Dr. Krasno?

9 A. I recall what some of them were so we had
10 questions about whether to distribute copies of the
11 story boards to coders by a hard copy or whether we
12 should try to create sets of floppy disks with PDF
13 files on them, what would be the most efficient way
14 to go about doing that.

15 We had questions about how to essentially
16 control the flow of information to make certain that
17 there was a set of story boards available at all
18 times for Professor Goldstein to work with so that he
19 would essentially know what was being done by
20 different coders. We investigated whether we could
21 get a single coding room for all of the coding to
22 take place at the university and whether that would
23 make sense with the coders' schedules. If we could
24 schedule hour long periods of time at various times
25 and still get the work done.

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1 A. The previous exhibit that you've given me,
2 is that correct? Krasno Exhibit 9.

3 Q. Okay. Thank you. So the meeting
4 concluded on March 20, 1999 and several days later,
5 you find yourself in the beautiful state of Arizona,
6 correct?

7 A. Well, I did make the plane reservations.

8 Q. Pardon me?

9 A. I did make the plane reservations.

10 Q. So you did more than find yourself there.
11 You undertook the steps to get yourself there. When
12 did you go to Arizona and why?

13 A. I went to Arizona to work on putting
14 together a coding instrument, to have the opportunity
15 to do some pretesting with some of the actual coders,
16 and to make certain that the process had begun.

17 Q. How long were you at Arizona State?

18 A. About three or four days.

19 Q. Now, we've just marked as Krasno
20 Exhibit 10 the e-mail which appears to be sent from
21 Professor Goldstein but you've told us was sent by
22 you, working at his workstation, I take it, or
23 something like that?

24 A. Computer technology at the time made it
25 harder for me to get to an e-mail account of mine.

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1 Q. And that didn't work out, did it?

2 A. I don't think that there were rooms
3 available.

4 Q. Eventually the students took the coding
5 materials home to do their work, isn't that right?

6 A. Eventually that was a decision Professor
7 Goldstein made multiple copies of the sets of story
8 boards and kept a master copy for himself and then
9 assigned the other copies out in small chunks to
10 coders.

11 Q. Moving back to March 24th when you're out
12 there coming up with a -- I'm sorry, trying to,
13 quote, create a coding instrument, unquote, from the
14 discussions on Saturday. You attach to this e-mail a
15 draft coding instrument, is that right, Dr. Krasno?

16 A. Yes.

17 Q. And referring to it, you say, "We've tried
18 to be as faithful as possible to the consensus
19 reached on various issues. Please let us know if
20 we've left anything out, distorted something, or if
21 you have any new ideas. We're going to resume work
22 on the instrument this afternoon and pretest it
23 tomorrow morning, before introducing it to the group
24 of coders in the afternoon. They'll work for several
25 days, then we reconvene on Monday to reconsider."

27 (Pages 102 to 105)

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1 Who was reconvening on Monday to
 2 reconsider?
 3 A. Professor Goldstein had several coders
 4 that he knew would be working on the project so we
 5 asked them to look at a sample set of story boards, a
 6 selection, to try to code them and to report back to
 7 us about their impressions of the coding experience.
 8 Q. My question was, in the last sentence,
 9 they'll work for several days, the "they'll" is the
 10 coders in that sentence, right?
 11 A. Yes.
 12 Q. "Then we reconvene on Monday to
 13 reconsider," who is the "we"?
 14 A. The coders and Professor Goldstein.
 15 Q. So all together?
 16 A. Yes.
 17 Q. And did you have such a meeting with the
 18 coders after they worked for several days?
 19 A. I had individual conversations with
 20 several of the coders but I don't recall that we had
 21 a large meeting with the group of us at one time.
 22 Q. What did you learn as a result of the
 23 coders pretest with this coding sheet that you
 24 attached to Exhibit 10?
 25 A. I don't have any exact recollections. I

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1 coding.
 2 Q. Did Professor Goldstein examine the
 3 questionnaires?
 4 A. I don't know whether Professor Goldstein
 5 did. Eventually he had the questionnaires so he had
 6 to have them coded. He had to have them punched into
 7 a database.
 8 Q. Those would be the questionnaires for the
 9 real coding exercise which is yet to come, is that
 10 right?
 11 A. Yes.
 12 Q. We're still on the pretest in March.
 13 A. I don't know what the disposition of those
 14 story boards or those coding sheets was.
 15 Q. Did you talk to the students about how
 16 they coded particular ads?
 17 A. I don't have any recollection of doing
 18 that. It's possible but I don't know.
 19 Q. Do you recall being surprised at any of
 20 the results of the coding at this pretesting phase?
 21 A. No.
 22 Q. Did you even know the results of the
 23 coding during this pretesting phase?
 24 A. No.
 25 Q. Did Professor Goldstein, if you know?

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1 have a few ideas but I'm not entirely certain. I
 2 learned, I think, that some of the questions were
 3 difficult to answer because they refer -- the object
 4 of the question is a favorite candidate or favorite
 5 candidate's opponent. And when the ads did not
 6 appear to the coders to favor a candidate or not,
 7 they simply did not know what to do.
 8 Q. What else do you remember about that
 9 coders experienced during this pretest with this
 10 coding sheet?
 11 A. I remember that for the most part, the
 12 coders felt that they understood the questions and
 13 were able to answer them without much difficulty for
 14 all of the sample story boards that they had worked
 15 with.
 16 Q. And about how many story boards had they
 17 worked with at this point in time, do you know?
 18 A. I don't know. It would have been a small
 19 number.
 20 Q. Now, when these student coders engaged in
 21 this pretest completed their work, did you examine
 22 the questionnaires that they filled out and the story
 23 boards that went with them?
 24 A. I never examined any questionnaires. I
 25 just talked to them about their impressions from

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1 A. Not to my knowledge. Actually, looking at
 2 this, I realize there is something else we learned,
 3 which is item 1 on my e-mail, entering basic data
 4 about the nature of the race, et cetera, is something
 5 that the coders were not really able to do.
 6 Q. And as a result of that, you came up with
 7 a different plan for gathering that information, did
 8 you not, Dr. Krasno?
 9 A. That's correct.
 10 Q. What was that plan?
 11 A. That plan had Professor Goldstein and I
 12 believe a graduate student who was assisting him work
 13 with a separate set of story boards and provide that
 14 information.
 15 Q. And is that the way it was ultimately
 16 done?
 17 A. Yes.
 18 Q. So Professor Goldstein and his students --
 19 sorry, his graduate students were responsible for
 20 examining every story board and determining the
 21 nature of the race reflected in the story board?
 22 A. Well, they were responsible for
 23 essentially coding the race so that we knew that it
 24 was Minnesota 6 instead of Minnesota 7.
 25 Q. That's what you mean by state, district,

28 (Pages 106 to 109)

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1 office, result and favored party?
 2 A. Yes. Actually, I don't believe that
 3 result was ever coded.
 4 Q. What does result mean?
 5 A. Who won.
 6 Q. Favored party?
 7 A. Whether an ad favored the democratic
 8 candidate or the Republican candidate.
 9 Q. And when Professor Goldstein and his
 10 graduate students completed their coding of all the
 11 story boards in these respects, where was that
 12 information reflected?
 13 A. I don't know the interim steps in which
 14 it -- where it resided. I do know that eventually it
 15 was merged into the same database with all of the
 16 other information.
 17 Q. When Professor Goldstein and his graduate
 18 students are off doing that kind of coding and the
 19 undergraduate coders are off doing content coding,
 20 how would the undergraduate coder know, when asked a
 21 question about a favored candidate, who the candidate
 22 was?
 23 A. They would infer it from looking at the
 24 ad.
 25 Q. So the coders weren't provided with the

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1 reflect?
 2 A. As I said, it mentions the partisan
 3 direction of the ad.
 4 Q. I'm not understanding you. The favored
 5 party is which of the political parties was favored
 6 to win the race or which candidate was favored to win
 7 the race?
 8 A. It's not about whether somebody was
 9 favored or not. It's about whether the ad itself
 10 favored a particular partisan direction. So when we
 11 see an ad that is sponsored by a democratic candidate
 12 praising himself, it is coded as a pro-Democratic ad.
 13 Q. And if we see an ad of a democratic
 14 candidate criticizing his opponent, it would be coded
 15 as a --
 16 A. Pro-democratic ad.
 17 Q. And is that literally what the code would
 18 say, pro-democratic ad?
 19 A. It would be a numeric code.
 20 Q. So Professor Goldstein and his graduate
 21 students would sit down and look at the story boards
 22 and decide whether it was a pro-Democratic or
 23 pro-Republican advertisement?
 24 A. Yes.
 25 Q. What if it was neither?

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1 coding information that was entered by Professor
 2 Goldstein and his graduate students?
 3 A. That's correct.
 4 MS. BUCKLEY: Let's mark as Krasno Exhibit
 5 11 an e-mail dated April 2nd, '99 bearing the control
 6 numbers BRE 007632.
 7 (Krasno Exhibit No. 11 was
 8 marked for identification.)
 9 BY MS. BUCKLEY:
 10 Q. Have you had a chance to look at the
 11 e-mail, Dr. Krasno?
 12 A. I'm doing so right now. I'm done.
 13 Q. Before we get to that, my colleague has
 14 pointed out -- let's go back to Krasno Exhibit 10,
 15 Dr. Krasno. We were talking about the basic data
 16 that Professor Goldstein and his graduate students
 17 entered. It says state, district, office, result and
 18 favored party.
 19 Do you see that?
 20 A. Yes.
 21 Q. And that's the information that you told
 22 us a few minutes ago, Professor Goldstein and his
 23 graduate students coded, is that right?
 24 A. Yes.
 25 Q. What does the favored party phrase

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1 A. If it was neither, then they would use a
 2 different code.
 3 Q. And what would that code be, neither?
 4 A. It would be a different number. I don't
 5 know what the number was.
 6 Q. I see. Now, in coming to that
 7 determination, they had to make a judgment about the
 8 con at the present time of the ad, correct?
 9 A. Yes.
 10 Q. We're back to what we marked as Krasno 11
 11 and continuing on our journey through the spring of
 12 1999, we're at April 2nd, 1999 and you're back from
 13 Tempe. Do you recall that, Dr. Krasno?
 14 A. Yes.
 15 Q. And you're back in New York, I assume?
 16 A. Yes.
 17 Q. And you talk about, "Now that I'm back
 18 from Tempe where Ken and I had an intense week
 19 sorting out a variety of technical issues, I just
 20 wanted to let everyone know where we are. Attached
 21 is an MS Word version of the final coding instrument
 22 for the story boards and a list of campaign themes.
 23 We're having several thousand printed, so I hope this
 24 is in reasonably good shape."
 25 Was the version of the coding sheet that

29 (Pages 110 to 113)

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1 you referred to in this e-mail the final version of
 2 the coding sheet, Dr. Krasno?
 3 A. As far as I know, yes.
 4 Q. As a matter of fact, you discuss that in
 5 your expert report, don't you, that it never changed
 6 after this?
 7 A. That's correct. What I don't recall
 8 exactly is whether anybody came in with a last minute
 9 suggestion but I don't think they did.
 10 Q. Let's take a look at the -- let's mark the
 11 1998 questionnaire.
 12 (Krasno Exhibit No. 12 was
 13 marked for identification.)
 14 BY MS. BUCKLEY:
 15 Q. We're marking as Krasno Exhibit 12 a copy
 16 of the cover page to Buying Time 1998. Attached to
 17 that is appendix A and B, appendix A entitled Coding
 18 of Commercials and appendix B entitled Measurement
 19 Issues. If you want to take a moment to look at
 20 that, that's fine, Dr. Krasno.
 21 A. I'm ready.
 22 Q. Dr. Krasno, the coding sheet that appears
 23 in appendix A of Buying Time 1998, that is in fact
 24 the coding sheet that the students used to conduct
 25 the coding of the story boards in '98, is it not?

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1 A. Well, it's reformatted for the purposes of
 2 this book.
 3 Q. Okay. But the content of it is the same
 4 as the con at the present time of the coding sheet
 5 that the students used in 1998?
 6 A. That's correct.
 7 Q. Dr. Krasno, I would like to draw your
 8 attention to question 6 which has been the subject of
 9 some attention in this case. And I would ask you to
 10 tell me, if you can, where the equivalent of
 11 question 6 is on the coding sheet that you used for
 12 the pretesting which is attached to Exhibit 10.
 13 A. It is not on this document but I assume
 14 that means that we added it later after an official
 15 round of pretesting.
 16 Q. And when you're talking about this
 17 document in your last answer, Dr. Krasno, you're
 18 referring to the attachment --
 19 A. Krasno Exhibit 10.
 20 Q. -- Krasno Exhibit 10?
 21 A. That's the document you've asked me to
 22 refer to, yes.
 23 Q. I just wanted to establish what number you
 24 were looking at when you gave me your answer.
 25 A. No, I just want to make sure I'm looking

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1 at --
 2 Q. Yes, I'm on 10 if you're on 10.
 3 A. We're all on 10.
 4 Q. Do you know at whose request question 6
 5 was added to the questionnaire after the pretest?
 6 A. I don't have a clear recollection of this
 7 but the best that I can do is I remember the coders
 8 that I talked to were concerned that as they tried
 9 dealing with a small subset of story boards, about
 10 their ability to answer the number of questions
 11 because they refer to candidates. And it suggested
 12 to me that there was a demand for essentially
 13 bifurcating the set of story boards that coders dealt
 14 with and using this as a perceptual screen in
 15 structuring the questionnaire so that we would avoid
 16 confusion.
 17 MS. BUCKLEY: Can I have the answer read
 18 back, please?
 19 THE REPORTER: "Answer: I don't have a
 20 clear recollection of this but the best that I can do
 21 is I remember the coders that I talked to were
 22 concerned that as they tried dealing with a small
 23 subset of story boards, about their ability to answer
 24 the number of questions because they refer to
 25 candidates. And it suggested to me that there was a

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1 demand for essentially bifurcating the set of story
 2 boards that coders dealt with and using this as a
 3 perceptual screen in structuring the questionnaire so
 4 that we would avoid confusion."
 5 BY MS. BUCKLEY:
 6 Q. What you're saying, Dr. Krasno, is the
 7 student was less likely to be confused by having to
 8 answer the purpose question first than otherwise?
 9 A. Yes.
 10 Q. And tell me how that is.
 11 A. Because the object of many of the
 12 questions that eventually followed the purpose
 13 question was a candidate and for ads that did not
 14 mention candidates and were not oriented toward
 15 candidates, they did not know how to respond to those
 16 questions. So I recall several people saying to me
 17 that they found the instrument confusing for those
 18 sets of ads.
 19 Q. Well, that assumes, does it not,
 20 Dr. Krasno, that if an ad mentions a candidate, it's
 21 going to be coded in a particular way, is that right?
 22 A. No, it doesn't conclude that.
 23 Q. Why not?
 24 A. Because it concludes if an ad appears to
 25 favor a candidate, it would be mentioned in the

30 (Pages 114 to 117)

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1 particular way. Perhaps I was less than completely
2 precise in my previous answer. But as you'll note,
3 question 7 through 18 in the ultimate coding document
4 refers not to a candidate but to a favored candidate
5 or to a favored candidate's opponent.

6 Q. I see that.

7 A. And it is the notion that an ad might not
8 favor a candidate or might not appear to favor a
9 candidate which created confusion among the coders
10 about how to answer those questions.

11 Q. Let's assume that a student is presented
12 with a story board and asked question 6, which says,
13 "In your opinion, is the purpose of this ad to
14 provide information about or urge action on a bill or
15 issue, or is it to generate support or opposition for
16 a particular candidate?"

17 And the student coder concludes that the
18 answer is, one, that it provides information or urges
19 action. And that in this ad, there is a federal
20 candidate identified and the ad identifies the
21 federal candidate quite favorably.

22 Can you make that assumption?

23 A. There are several examples.

24 Q. I'm sure there are. And my question is,
25 how are we solving what you identified as the student

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1 question 6, they have not necessarily made a
2 determination that there is a favored candidate or
3 not, is that not true?

4 A. They've made a determination that the bill
5 appears to generate support or opposition for a
6 candidate. From that, in my experience dealing with
7 the few coders that I've dealt with and in listening
8 to Professor Goldstein describe the coding process
9 and in observing the results of the coding process,
10 they seem to have very little trouble answering the
11 remaining questions; that is, the questions that
12 immediately followed.

13 Q. So you're saying that once they've made up
14 their mind that the ad generates support or
15 opposition for a candidate, it's easy for them to
16 pick who the favored one is and who the unfavored one
17 is, is that what you're saying?

18 A. First of all, I haven't said that they've
19 made up their mind but they've formed an impression
20 and once they've formed an impression, most ads are
21 entirely lacking in subtlety. It's fairly easy for
22 them to determine whether somebody is being favored
23 or being opposed in an ad.

24 Q. So any student who coded an advertisement
25 on question 6 as generating support or opposition for

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1 coder confusion about favored candidates by the
2 inclusion of question 6?

3 A. We're solving this because students who
4 believe an ad is essentially neutral with respect to
5 a candidate being favored or opposed are not required
6 to answer, in fact are instructed to skip the next 13
7 questions which are the questions that refer to
8 favored candidates.

9 Q. Not if they question number 6, number 2.

10 A. If they answer question 6, number 2, then
11 they already have determined that an ad appears to
12 have favored a candidate or not and therefore it
13 makes sense to answer questions about favored
14 candidates and not favored candidates.

15 Q. They haven't made any determination as to
16 whether an ad favors a candidate or not. They have
17 made a determination as to whether in their opinion
18 the purpose of the ad is to generate support or
19 opposition for a candidate, is that right?

20 A. That's correct. In fact, we are asking
21 for their opinion on all of these questions and,
22 therefore, having reached that opinion, it becomes
23 much easier to answer the following questions.

24 Q. I don't think you understand what I'm
25 saying, Dr. Krasno. If a student answered 2 to

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1 a candidate is not being saved any confusion because
2 they're going to go ahead and have to answer
3 question 7 to 19, correct?

4 A. Because there is no confusion.

5 Q. And why is there no confusion? Because
6 you've already forced them to make that choice by
7 answering number 2?

8 A. No. I've merely recorded their impression
9 of what they think is going on in the ad. And
10 because what they think is going on in the ad is the
11 ad is generating support or opposition for a
12 candidate, they can then turn and complete a series
13 of questions that ask about the candidates who
14 support or opposition is being generated -- for whom
15 support or opposition is being generated.

16 Q. So having forced the coder to make a
17 decision on question 6, you think you made it easier
18 for them to answer question 7 through 19?

19 A. Having asked the coder to make a decision
20 on question 6, I believe that I've made it easy for
21 them.

22 Q. Okay. Thank you. I think we were talking
23 about who added this question 6, Dr. Krasno, and we
24 got led astray by what question 6 did.

25 A. I added it myself.

31 (Pages 118 to 121)

<p style="text-align: right;">Page 122</p> <p>1 Q. Do you spell the word judgment with an E?</p> <p>2 A. You do in some dictionaries.</p> <p>3 Q. I'm asking if you do.</p> <p>4 A. I have been known to, yes.</p> <p>5 Q. Why is particular candidate in bold</p> <p>6 letters?</p> <p>7 A. Because we wanted to make certain that the</p> <p>8 coders paid special attention to the appearance of</p> <p>9 candidates in these ads, so that an ad that said</p> <p>10 simply -- sort of expressed a partisan direction like</p> <p>11 Vote Republican for Change would not clear up the</p> <p>12 coder confusion about favored candidates and so forth</p> <p>13 because no candidates were involved.</p> <p>14 MS. BUCKLEY: Could you read that back?</p> <p>15 THE REPORTER: "Answer: Because we wanted</p> <p>16 to make certain that the coders paid special</p> <p>17 attention to the appearance of candidates in these</p> <p>18 ads, so that an ad that said simply -- sort of</p> <p>19 expressed a partisan direction like vote Republican</p> <p>20 for change would not clear up the coder confusion</p> <p>21 about favored candidates and so forth because no</p> <p>22 candidates were involved."</p> <p>23 BY MS. BUCKLEY:</p> <p>24 Q. So you put particular candidate in</p> <p>25 boldface so you could draw the students' attention to</p>	<p style="text-align: right;">Page 124</p> <p>1 "There's room for ambiguity at a few points on the</p> <p>2 instrument (e.g. the distinction between a</p> <p>3 characterization and a 'theme'), but Ken and I felt</p> <p>4 we could deal with those things most effectively</p> <p>5 while briefing the coders. We'll obviously have to</p> <p>6 write up a short description of those briefings to</p> <p>7 settle any lingering questions."</p> <p>8 Do you see that, Dr. Krasno?</p> <p>9 A. Yes.</p> <p>10 Q. Did you brief the coders?</p> <p>11 A. To my knowledge, we did not. It turns out</p> <p>12 that there was less ambiguity than I feared.</p> <p>13 Q. As a matter of fact, they were not trained</p> <p>14 at all, were they?</p> <p>15 A. To my knowledge, that's correct.</p> <p>16 Q. I take it, then, you did not write up any</p> <p>17 short description for the coders, is that right?</p> <p>18 A. Right.</p> <p>19 Q. Towards the bottom of the second to the</p> <p>20 last paragraph, you're talking about some of the</p> <p>21 technical difficulties you testified about earlier</p> <p>22 about zipping and unzipping files and the like.</p> <p>23 At the end of that paragraph, you write,</p> <p>24 "To prevent coder fatigue -- or whatever one might</p> <p>25 call a situation when a coder does dozens of similar</p>
<p style="text-align: right;">Page 123</p> <p>1 look for a particular candidate, is that what you're</p> <p>2 saying?</p> <p>3 A. Because I wanted them to answer the</p> <p>4 question with respect to candidates, not with respect</p> <p>5 to something else.</p> <p>6 Q. I'm asking why the words particular capped</p> <p>7 date are emphasized. That's all. That's all I'm</p> <p>8 asking.</p> <p>9 A. And all I'm answering is because I wanted</p> <p>10 them to assess the question with regard to particular</p> <p>11 candidates.</p> <p>12 Q. You wanted them to be thinking of</p> <p>13 candidates when they answered this question, is that</p> <p>14 right?</p> <p>15 A. Yes, I wanted them to be thinking of</p> <p>16 candidates.</p> <p>17 Q. Did you discuss adding question 6 with</p> <p>18 Professor Goldstein?</p> <p>19 A. I'm sure I did.</p> <p>20 Q. Do you recall whether he had a view about</p> <p>21 the inclusion of question 6?</p> <p>22 A. No, I don't.</p> <p>23 Q. Going back to Krasno 11, Dr. Krasno, you</p> <p>24 say, in paragraph 2, after saying you were having</p> <p>25 several thousand of the coding instruments printed,</p>	<p style="text-align: right;">Page 125</p> <p>1 ads for the same candidate in a row -- we've created</p> <p>2 randomized lists of ads for them to work with. Thus,</p> <p>3 every coder will get a stack of forms, a copy of the</p> <p>4 list of campaign themes, a CD ROM (with all the ads),</p> <p>5 and a (shorter) list of story boards to look at."</p> <p>6 What did you mean by coder fatigue,</p> <p>7 Dr. Krasno?</p> <p>8 A. I meant a situation where a coder</p> <p>9 essentially falls into a pattern of answering and, at</p> <p>10 that point, stops paying as close attention to all of</p> <p>11 the story boards.</p> <p>12 Q. And the reason for the fear of coder</p> <p>13 fatigue was the sheer volume of candidates ads that</p> <p>14 were included in the sample, is that right?</p> <p>15 A. No, the reason for coder fatigue was the</p> <p>16 repetitiveness of the task involved, especially if</p> <p>17 people had to deal with essentially a group of very</p> <p>18 similar ads.</p> <p>19 Q. What group of similar ads were you</p> <p>20 concerned about?</p> <p>21 A. Well, they could have come from a</p> <p>22 candidate, they could have come from a party, they</p> <p>23 could have come from an interest group in some cases.</p> <p>24 Q. How many unique ads did the students code</p> <p>25 that were sponsored by candidates?</p>

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1 A. I don't have those numbers offhand but my
2 guess is probably something on the order of 15,
3 1,700, something like that.

4 Q. We're looking up to see if we have the
5 number of unique ads. I thought we were in the
6 vicinity of 2,100 or so from testimony yesterday but
7 don't take my word for it, Dr. Krasno. We will look
8 it up for you.

9 A. I should point out that at the time, we
10 didn't have a count because we hadn't begun coding.

11 Q. I'm sorry?

12 A. We did not have a count because we had not
13 begun coding.

14 Q. At the time of the memo that we've marked
15 as Krasno 11?

16 A. I believe -- are we talking about
17 Krasno 11 now? Yes, on Krasno 11, we had not begun
18 coding so we did not know -- we had a sense that we
19 had a big stack of ads but we did not know how many
20 of them would be candidate ads, how many of them
21 would be party ads, how many of them would be
22 interest group ads.

23 Q. So am I mistaken that at this point in
24 time -- did you not have the story boards at this
25 point in time?

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1 times."

2 Do you want to take a look at that,
3 Dr. Krasno, to make sure I've got the right number?

4 A. That's about what I'm -- except for the
5 typo.

6 Q. You're referring to the 2,100 figure?

7 A. Yes.

8 Q. As unique ads analyzed in 1998. Do you
9 know the proportion -- sitting here today, do you
10 know the proportion of ads that were candidate ads of
11 the 2,100?

12 A. The proportion of airings or the
13 proportion of story boards?

14 Q. Story boards.

15 A. Offhand, I don't know that.

16 Q. And you wouldn't know it for parties or
17 groups either?

18 A. No. I mean, I have an impression that it
19 was probably somewhere in the neighborhood of 15 to
20 1,700 for candidates and with the remainder divided
21 among parties and interest groups of course.

22 Q. Do you recall, roughly speaking, the total
23 number of unique group ads run in 1998 that you
24 analyzed for Buying Time 1998?

25 A. Not offhand, no.

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1 A. We had the story boards but we had not yet
2 begun coding the story boards.

3 Q. So you didn't know anything about the
4 story boards except you got a bunch of pictures in
5 the mail?

6 A. That's not what I said.

7 Q. I know that's not what you said, but
8 that's what I'm asking.

9 A. Then the answer is no.

10 Q. What did you have and what did you know
11 about them?

12 A. We did not know the distribution of the
13 number of story boards by candidates, by parties and
14 by interest groups.

15 Q. You had no idea?

16 A. We had some informed guesses but we did
17 not have a count because we had not counted them.

18 Q. Referring to Buying Time 1998 which I will
19 not be marking as an exhibit, I hope you all will
20 agree, page 7, the very top of the page, left-hand
21 column, "Using these data, we have analyzed political
22 advertising in the top 75 media markets (containing
23 more than 80 percent of U.S. residents, including ads
24 by candidates, parties, and interest groups totaling
25 over 2,100 separate commercials aired over 300,000

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1 Q. I take it sometime after April 2nd, '99,
2 which is the date of Krasno 11, the coding began at
3 the Arizona State University, is that right?

4 A. That's correct.

5 Q. Did you go out for the coding, Dr. Krasno?

6 A. No.

7 Q. Did anyone from the Brennan Center attend?

8 A. No.

9 Q. Did Professor Goldstein keep you posted as
10 to how it was going?

11 A. Only in general terms.

12 Q. What would he call and report?

13 A. I would usually call him and he would say,
14 it's going good.

15 Q. It sounds succinct. Did he tell you
16 anything more than it was, quote, going good,
17 unquote?

18 A. No.

19 Q. How long did it take the student coders to
20 do the coding?

21 A. My recollection is that they finished the
22 mass of the coding by May, by the end of May, and
23 that there was sort of a straggling group of story
24 boards that were sent to Professor Goldstein at
25 various times during the summer.

33 (Pages 126 to 129)

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1 Q. And when were the results of the coding
2 sent to the Brennan Center?

3 A. The results of the coding weren't sent to
4 the Brennan Center except as part of the merged data
5 set that the Brennan Center eventually received at
6 the end of September or beginning of October in 1999.

7 Q. So if we have the student coders coding in
8 the spring of '99 and a few straggly, I think is the
9 word you used --

10 A. Straggly, with a T.

11 Q. Straggly story boards being coded in the
12 summer of '99, what was causing the delay? Had the
13 data not yet been purchased or delivered from CMAG?

14 A. The data had not yet been purchased.

15 Q. And that was purchased in September?

16 A. Yes.

17 Q. And once it was purchased, I take it it
18 was delivered to Professor Goldstein, no?

19 A. Yes.

20 Q. And Professor Goldstein was then in charge
21 of merging the CMAG data with the student coding data
22 into one database, is that right?

23 A. Yes.

24 Q. Now, while the coding was going on and
25 before the CMAG data was delivered in September '99,

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1 Q. And that's after you left Brennan?

2 A. Yes.

3 Q. Was he working on Buying Time 2000 at the
4 time?

5 A. I assume that he was working on some CMAG
6 related project but I don't know what it was.

7 Q. Do you recall when you received the data
8 set from Professor Goldstein?

9 A. The 1998 data set?

10 Q. Correct.

11 A. I believe that the earliest versions came
12 at the end of September or the beginning of October
13 in 1999.

14 Q. And did you have someone assisting you on
15 your end with this project?

16 A. Yes.

17 Q. Who was that?

18 A. Daniel Seltz.

19 Q. And what did Mr. -- as between the two of
20 you, what did Mr. Seltz do as opposed to what did you
21 do?

22 A. I was responsible for data analysis, but
23 there were a variety of additional administrative and
24 other activities that Daniel took on usually at my
25 instruction and with my involvement. So those

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1 what were you doing, Dr. Krasno, in furtherance of
2 the Buying Time project?

3 A. I was trying to figure out what Buying
4 Time would look like in the absence of any data to
5 actually work with.

6 Q. And that's literally the physical layout
7 of Buying Time?

8 A. Well, it's the physical layout but, most
9 importantly, it's the content of the tables and
10 charts that we planned to run. So the first question
11 was, what should the different chapters cover. And
12 then within the different chapters -- and how should
13 they proceed. And from there, a variety of other
14 things.

15 Q. Did you ever go back and visit Professor
16 Goldstein at Arizona State again?

17 A. No.

18 Q. That was your last visit?

19 A. That was my first and only.

20 Q. Did you make any visits to Professor
21 Goldstein after he moved to the University of
22 Wisconsin?

23 A. I'm from Wisconsin. I was not working at
24 the Brennan Center. And I was in Madison visiting my
25 sister so I stopped in to see Professor Goldstein.

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1 involved things like organizing the policy committee,
2 communicating with Widemeyer-Baker, so forth.

3 Q. Are you proficient in the SPSS software,
4 Dr. Krasno?

5 A. Yes.

6 Q. Were you proficient when you received the
7 data set from Professor Goldstein?

8 A. Yes.

9 Q. How had you become proficient in that
10 software?

11 A. When I was a graduate student at the
12 University of California, Berkeley, I worked for the
13 data archive there and part of my duties were to
14 prepare data sets and help users across the campus
15 with them. So I had literally by that time logs
16 thousands of hours with SPSS.

17 Q. And did you teach Mr. Seltz how to operate
18 these programs?

19 A. Yes.

20 Q. Do you have a copy of the database that
21 Professor Goldstein forwarded to you in September of
22 '99 in the form in which he forwarded it to you then?

23 A. No.

24 Q. Why not?

25 A. Because storage space was at a premium in

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1 those days and we were -- the copies of the data set
2 were essentially multiplying as we were finding
3 missing data and trying to take care of ambiguities
4 and so forth. And eventually the earliest versions
5 of the data set were either stored on the zip disks,
6 which were outside of my control, or they were erased
7 at some point as they were superseded.

8 Q. What do you mean the zip disks were
9 outside your control? I thought you were in charge
10 of this project.

11 A. I was in charge of this project and the
12 zip disks at some point were in my office but then
13 when it was not my office, I no longer controlled
14 them.

15 Q. I'm sorry. I thought you were talking
16 about at the time. You attach a version of the 1998
17 database to your expert report.

18 Do you recall that, Dr. Krasno?

19 A. Yes.

20 Q. Where did you get it?

21 A. That was a version of the data set that
22 was eventually given to me by the Brennan Center
23 after my departure.

24 Q. And when was that?

25 A. My departure was in April --

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1 (Recess.)

2 BY MS. BUCKLEY:

3 Q. I think you told us before we went on the
4 break that you received the data set from Professor
5 Goldstein somewhere in September or so of 1999, is
6 that right?

7 A. I think I said late September or early
8 October.

9 Q. I'm sorry if I misspoke. And what did you
10 do when you got it? What did you do with it when you
11 got it?

12 A. I immediately began running some basic
13 cross tabs and frequencies to see what we had and how
14 we had it. So for example, one of the early things
15 that I did was I looked to see the number of ads run
16 each day of the year just to make sure that we
17 weren't missing any days.

18 Q. Good idea.

19 A. We were missing a couple of days and we
20 got those straightened out and so forth. We looked
21 for missing data to see whether we could reconcile
22 anything so that, in some cases, story boards were
23 coded but they weren't punched and we needed to have
24 those codes reflected in the data set.

25 In other cases, we didn't necessarily have

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1 Q. I'm sorry, let me correct myself. When
2 did the Brennan Center give it to you?

3 A. Maybe in June of 1999.

4 Q. A few months after you left? No, no, no.
5 I'm sorry, you left in 2000?

6 A. That's right, June of 2000. May or June
7 of 2000.

8 Q. And is that the only version of the
9 database that you have in your possession?

10 A. The data that I was sent was essentially
11 all of the files on my computer that were zipped
12 under several different -- and provided on several
13 different zip disks. It includes three version of
14 the data set, of which the one I provided is the most
15 up to date.

16 Q. So the older versions of the database that
17 are in your possession, custody and control have not
18 been produced in this litigation, is that right?

19 A. That's right, but in this case, the older
20 versions are maybe a week older. They do not date
21 back to September of 1999.

22 Q. Right. But you have three versions,
23 you've produced one of them, correct?

24 A. Yes.

25 MS. BUCKLEY: Let's take a short break.

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1 story boards for an ad that might have appeared.

2 Q. This was a database with a very large
3 amount of missing data, isn't that right?

4 A. No, this is a database that was a very
5 large database with a relatively small amount of
6 missing data. But because of the size of the
7 database, that involved a number of cases.

8 Q. Missing data wasn't a problem as far as
9 you were concerned in the 1998 database?

10 A. Generally speaking, the less missing data
11 the better. We had an acceptably small amount of
12 missing data and we had no evidence to suggest that
13 the missing data was of a particular sort or other.

14 Q. What other kinds of preliminary runs of
15 the database did you do in the nature of what you've
16 just described?

17 A. Well, we looked, for example, to see if,
18 in a simple way, we had the same answers for all the
19 story boards because in some cases, some of the
20 broadcast data might have become available later as
21 CMAG added another market to it and I wanted to make
22 sure that everything was merged properly so that if a
23 story board was identical, presumably the answers to
24 the questions within the story board would be
25 identical.

35 (Pages 134 to 137)

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1 So I did things like aggregate and take an
2 average of all of the numeric values of various codes
3 divided by cus title in the data set to make certain
4 that they were all whole numbers instead of
5 fractions.

6 Q. What kinds of changes did you make to the
7 database after you received it?

8 A. I don't know that I made any changes to
9 the database. I normally was in a position where I
10 was contacting Professor Goldstein in Arizona saying
11 we seem to be missing three days in August, can you
12 chase those down, or we have the story boards for
13 which some items are coded but other items are not,
14 can you chase that down and find out what happened.

15 Q. Did you examine any of the story boards
16 yourself to determine whether the coders had coded
17 the questionnaire correctly?

18 A. There wasn't time.

19 Q. Did you examine any of the group ads from
20 1998 to determine whether the coding had been done
21 correctly?

22 A. There wasn't time.

23 Q. And there wasn't time, you've told us,
24 because of the speed with which you were being asked
25 to produce the report, is that right?

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1 Q. And you had been advised or the Brennan
2 Center had been advised that that was the appropriate
3 window to best obtain publicity about the study, is
4 that right?

5 A. Yes.

6 Q. Did you agree with the decision to release
7 Buying Time in April of 2000?

8 A. Yes, I thought that more time would be
9 better but this was fine.

10 Q. You would have preferred more time but you
11 didn't object to it being released at this point in
12 time, did you?

13 A. Yes, that's correct.

14 Q. You did not object?

15 A. I'm sorry, that's correct.

16 Q. Buying Time 1998 reports, Dr. Krasno,
17 that -- and please correct me if my terminology is
18 wrong -- that there were only two unique ads which
19 were published by interest groups in 1998 that would
20 be captured by the requirements set forth in the
21 BCRA. I'm not quoting. I'm just trying to get us on
22 the same page.

23 Do you know the two unique ads issue that
24 I'm focusing on here?

25 A. I do but I --

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1 A. Yes.

2 Q. And what was the urgency, Dr. Krasno?

3 A. Well, as you're aware, we were trying to
4 attract some media attention with the results with
5 the report and given the primary, the primaries for
6 the 2000 election, we felt -- we were advised that
7 there were some periods where it was advisable or
8 there was a news hole to be filled and other periods
9 where we would never be noticed.

10 Q. And that's what you referred to in your
11 expert report as the, I believe it was the political
12 reality here? Let me see. I don't want to misquote
13 you. Let's mark as Exhibit 13 -- this is your
14 rebuttal report to the report of Professor James L.
15 Gibson. It's 20 pages long.

16 (Krasno Exhibit No. 13 was
17 marked for identification.)

18 BY MS. BUCKLEY:

19 Q. And I would refer you to page 3 of the
20 rebuttal, Dr. Krasno. On the top of the page,
21 beginning with the second sentence -- I guess it's
22 the third sentence. "The political calendar dictated
23 that the publication data Buying Time 1998 be in late
24 April 2000." Is that what you're referring to?

25 A. Yes.

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1 Q. Please put it in your own words, what the
2 two stands for.

3 A. It said that there were two unique ads
4 aired by interest groups in 1998 that were rated by
5 coders as genuine issue ads and appeared within 60
6 days of the general election and mentioned a
7 candidate.

8 Q. When you first received the database from
9 Professor Goldstein in September of '99, were they
10 the only two ads that fell within that category as
11 reflected in the database?

12 A. At the point that we did the data analysis
13 that you've described, those were the only two ads
14 that we found.

15 Q. So when you got the data from Professor
16 Goldstein, there were only two?

17 A. When we did the analysis, there were only
18 two.

19 Q. Now, did the database change between the
20 date you got it and the date you did the analysis?

21 A. Well, we were correcting missing data
22 codes, for the most part, for approximately a month
23 to make certain that we were ready to go but I hadn't
24 done the analysis until I did it at that later date.

25 Q. Well, in correcting the codes, as you've

36 (Pages 138 to 141)

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1 described, did you change answers to question 6 for
 2 any of the story boards?
 3 A. Not to my recollection.
 4 Q. Not to your recollection?
 5 A. I don't recall doing that and I have no
 6 reason to believe that I did since it was never my
 7 intention to do so.
 8 Q. Did you ever discuss how certain story
 9 boards should be coded in response to question 6 with
 10 Professor Goldstein?
 11 A. The only question that we ever had, and I
 12 don't even recall the context of this, was the ad
 13 that mentioned Senators Kohl and Feingold from
 14 Wisconsin.
 15 Q. In 1998?
 16 A. In 1998.
 17 Q. And what do you recall about that?
 18 A. I recall that there was some confusion
 19 with the coders and I believe Ken may have asked me
 20 my opinion but I don't really recall whether I had an
 21 opinion and it wouldn't have mattered what it was
 22 because I wasn't interested in my opinion.
 23 Q. Whose opinion were you interested in?
 24 A. I was interested in Ken and the coders.
 25 Q. So I take it the confusion -- you said the

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1 have to go in and change the database in order to
 2 reflect that decision, no?
 3 A. It depends on how he had it coded in the
 4 database that he sent me.
 5 Q. Do you recall going into the database and
 6 changing the response to question 6 for the
 7 Feingold/Kohl add?
 8 A. I do not. And furthermore, when I looked
 9 to find a command file that did that, I could not
 10 find one.
 11 Q. What do you mean?
 12 A. Well, as I told you, I preserved all of my
 13 command files and the command files actually provide
 14 a record of any recoding that might have done on the
 15 fly in the course of generating results.
 16 Q. These are the command files that you
 17 identified earlier in the day?
 18 A. That's correct.
 19 Q. These are the command files that you
 20 didn't produce to us in this case, is that right?
 21 A. That's correct.
 22 Q. And I take it what you're telling me is it
 23 would give us a history of the kinds of changes you
 24 made if we had those files?
 25 A. It would give a history of some changes

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1 confusion was caused by some confusion between the
 2 student coders, is that what you said? Or we can
 3 read it back.
 4 A. I don't know the basis of this but the
 5 question was, did I recall discussing any ads, and
 6 that's the only ad that I recall discussing. It
 7 appeared six times in 1998, three before the 60-day
 8 window and three after.
 9 Q. And in Buying Time 1998, it was treated as
 10 a sham ad, is that right?
 11 A. It was treated as electioneering, yes. A
 12 sham ad, a sham issue ad.
 13 Q. For definitional purposes, you'll agree,
 14 going forward in this cross-examination, when I use
 15 sham issue ad and electioneering ad, they're
 16 interchangeable? Do you understand that to be the
 17 case?
 18 A. Yes.
 19 Q. Now, did you have this discussion with
 20 Professor Goldstein about the Feingold/Kohl abortion
 21 add before he sent you the database?
 22 A. I don't recall.
 23 Q. Well, if he had already sent you the
 24 database, Dr. Krasno, when you were having this
 25 discussion and you made some determination, you would

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1 that were made if you had those files but some of the
 2 process that I talked about of basically adding
 3 missing data and so forth would have been done in
 4 Arizona and sent to me in a new version of the
 5 database or an updated version of the database.
 6 Q. Did you ever ask Professor Goldstein to
 7 change answers to the students' coding of question 6?
 8 A. No.
 9 MS. BUCKLEY: Let's mark as Krasno
 10 Exhibit 14 a story board bearing the control numbers
 11 BRE 017985, BRE 017986 and it's a story board for ad
 12 number 1411 in 1998.
 13 (Krasno Exhibit No. 14 was
 14 marked for identification.)
 15 MS. BUCKLEY: And we will mark as Krasno
 16 Exhibit 15 a copy of the student questionnaire for ad
 17 number 1411.
 18 MS. BHATTACHARYYA: I'll note for the
 19 record that the ad number has been affixed to this
 20 exhibit by plaintiff's counsel but I have no reason
 21 to doubt it correctness.
 22 MS. BUCKLEY: I'm happy to go back and use
 23 an illegible copy of the ad which has it affixed by
 24 someone else but we just wanted to give everybody at
 25 least a running shot at being able to read it. I

37 (Pages 142 to 145)

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1 will represent to you, Ms. Bhattacharyya, that this
 2 is the story board for 1411.
 3 MS. BHATTACHARYYA: As I said, I had no
 4 reason to doubt its correctness. I just wanted to
 5 net that for the record.
 6 MS. BUCKLEY: Okay. Just trying to save
 7 some eyes here.
 8 (Krasno Exhibit No. 15 was
 9 marked for identification.)
 10 BY MS. BUCKLEY:
 11 Q. When you referred to the Feingold/Kohl
 12 abortion ad, Dr. Krasno, is this the ad that we've
 13 marked as Krasno 14, the ad you were talking about?
 14 A. Yes.
 15 Q. Do you remember looking at the ad when you
 16 had your conversation with Professor Goldstein?
 17 A. I'm sure I must have looked at the ad.
 18 Q. And after your conversation with Professor
 19 Goldstein, what discussion was made about the ad, if
 20 you recall?
 21 A. I have no recollection. I just recall
 22 having a discussion about the ad.
 23 Q. Directing your attention to Exhibit 15,
 24 which is the student coding sheet for ad 1411, look
 25 at question 6, if you would.

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1 unquote?
 2 MS. BHATTACHARYYA: Same objection as
 3 before.
 4 THE WITNESS: It's this student's
 5 perception that that's true. I don't know whether
 6 there were other coding sheets for the same ad.
 7 BY MS. BUCKLEY:
 8 Q. You've never seen the coding sheets, have
 9 you?
 10 A. I've not seen the coding sheets.
 11 Q. You don't know anything about the coding
 12 sheets, do you?
 13 A. I do know something about the coding
 14 sheets. I'm responsible for the printed text on
 15 them.
 16 Q. I'm sorry. You don't know anything about
 17 the completed coding sheets, you told us this
 18 morning?
 19 A. That's correct.
 20 Q. Do you recall Professor Goldstein telling
 21 you that the student had coded ad 1411 as a genuine
 22 issue ad?
 23 A. No. In your version of the database, is
 24 ad -- excuse me. In your version of the database as
 25 received from Professor Goldstein, do you know how ad

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1 A. Yes.
 2 Q. You see the student has circled the
 3 number 1, is that right?
 4 A. That is correct.
 5 Q. By circling the number 1, the student is
 6 saying that in his or her opinion, the purpose of the
 7 ad was to provide information or urge action, is that
 8 right?
 9 MS. BHATTACHARYYA: Counsel, I'm going to
 10 object at this point since there has been no -- it's
 11 not been established on this record that this is in
 12 fact the coding sheet that underlies the coding of
 13 this ad in the database.
 14 MS. BUCKLEY: Well, it was established
 15 yesterday.
 16 BY MS. BUCKLEY:
 17 Q. But you can go ahead, Dr. Krasno.
 18 A. 1 is circled and it says, provide
 19 information or urge action.
 20 Q. Now, does that mean that in the parlance
 21 that's used in Buying Time '98, that it should have
 22 been reported in -- let me strike that.
 23 Does that mean, in the parlance of Buying
 24 Time '98, that it is the student's perception at
 25 least that this is a, quote, genuine issue ad,

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1 1411 is coded in response to question 6.
 2 MS. BHATTACHARYYA: Objection.
 3 MS. BUCKLEY: In his version of the
 4 database, does he know.
 5 MS. BHATTACHARYYA: He testified he
 6 doesn't have the version of the database as received
 7 from Professor Goldstein.
 8 MS. BUCKLEY: All right.
 9 BY MS. BUCKLEY:
 10 Q. Strike that as received from Professor
 11 Goldstein.
 12 A. In the version of the database that I
 13 provided with my report, it's coded as 2, question 6.
 14 Q. Do you have any memory that in the
 15 database that you were sent by Professor Goldstein,
 16 it was coded as 1?
 17 A. No.
 18 Q. Would that surprise you?
 19 A. I don't know.
 20 Q. Do you recall how many ads -- strike that.
 21 I think we've identified the two unique
 22 ads that you and I spoke about a few minutes ago that
 23 were genuine issue ads as reported in Buying Time
 24 1998 that were aired within 60 days of the election
 25 that contained no magic words and that identified a

38 (Pages 146 to 149)

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1 candidate and that would be captured by the criteria
2 that had been adopted in the BCRA.

3 Do you recall that?

4 A. We said that there were two but we haven't
5 identified them.

6 Q. That's right. I'm asking you right now if
7 you can remember which two they were.

8 A. Yes.

9 Q. Which two were they?

10 A. They were an ad Called HMO Said No and an
11 ad that was called CCS No Matter Who.

12 Q. They are referenced in the appendix in
13 your opening report, are they not?

14 A. Yes.

15 MS. BUCKLEY: Let's mark as Krasno
16 Exhibit 16, Dr. Krasno's expert report in this
17 litigation. Well, let's mark the report as Krasno
18 Exhibit 16 and the appendix, which we had separately,
19 as Exhibit 17.

20 MS. SEALANDER: Counsel, the Commission
21 issued an errata to the appendix on Monday. Is that
22 errata reflected in this copy?

23 MS. BUCKLEY: No, it is not. If you can
24 tell me what page it reflects, I can tell you if I'm
25 going to question about it.

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1 Q. And I think you just told us a few minutes
2 ago that the two ads treated as genuine issue ads
3 within 60 days of the election in Buying Time 1998
4 were the first two listed here, correct?

5 A. Yes.

6 Q. Why do we need the third one, CENT/Braux,
7 on your appendix?

8 A. It appears that we did not notice that
9 that ad appeared in the 60 days before the election.

10 Q. And after the publication of Buying Time
11 '98, you noticed that?

12 A. In preparation for this case when I went
13 to redo the numbers to make certain they were
14 correct.

15 Q. So it is now your opinion that these three
16 ads should have been identified as the genuine issue
17 ads that aired within 60 days of the '98 election and
18 would be captured by the criteria since adopted in
19 the BCRA?

20 A. Yes.

21 Q. Dr. Krasno, you've already told us about
22 your discussions with Professor Goldstein and that ad
23 1411.

24 Do you know of any other group ads that
25 were aired during the 1998 election that there was

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1 MS. SEALANDER: It was the name of the
2 sponsors of one of the ads was incorrectly listed as
3 the National Right to Life folks in the original and
4 is in fact the National Pro Life Alliance.

5 MS. BUCKLEY: Okay.

6 MS. SEALANDER: In fact.

7 MS. BUCKLEY: I guarantee you that will
8 not be a subject of my questioning. And I accept the
9 errata that the Commission filed on Monday.

10 (Krasno Exhibit Nos. 16 and 17
11 were marked for identification.)

12 BY MS. BUCKLEY:

13 Q. I'm looking at Exhibit 17, Dr. Krasno,
14 your appendix, and you identify three ads on the
15 third page of your appendix which is headed C.
16 Calculating the BCRA'S Effect in 1998 Under Both
17 Buying Time Formulas.

18 Do you see that?

19 A. Yes.

20 Q. And the three hour ads are HMO Said No,
21 CCS/No Matter -- whatever.

22 A. I don't know why that R is like that.

23 Q. And something entitled CENT/Braux, is that
24 right?

25 A. Right, B-r-a-u-x.

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1 ever any discussion about as to whether they were
2 genuine ads or sham ads?

3 A. I know of no ads in which I was a part of
4 any discussion.

5 Q. You never had any such discussions with
6 Mr. Seltz?

7 A. No.

8 Q. You never had any such discussions with
9 Professor Goldstein?

10 A. That's correct.

11 Q. And as I believe you said before,
12 Dr. Krasno, you don't know whether you went in and
13 changed the code for ad 1411 after you received the
14 database or not, do you?

15 A. I know that I did not go in and change the
16 code.

17 Q. And do you know that Mr. Seltz did not go
18 in and change the code?

19 A. I'm almost entirely certain.

20 Q. Was he instructed not to do things like
21 that?

22 A. Not only would he have been instructed not
23 to do things like that but I'm not sure that he would
24 have felt comfortable doing it.

25 MS. BUCKLEY: Let's mark as Exhibit --

<p style="text-align: right;">Page 154</p> <p>1 BY MS. BUCKLEY:</p> <p>2 Q. While we're sorting through story boards,</p> <p>3 Dr. Krasno, and we have your exhibit in our hands.</p> <p>4 If you could go to table 7, you have a table in this</p> <p>5 appendix entitled Comparing Quintessential</p> <p>6 Electioneering Ads and Quintessential Issue Ads in</p> <p>7 the 1998 Election.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Is there a difference in your terminology</p> <p>11 as used on this table between a quintessential</p> <p>12 electioneering ad and an electioneering ad?</p> <p>13 A. I am not certain. I will have to take a</p> <p>14 few minutes to try to recall.</p> <p>15 Q. Sure.</p> <p>16 A. I'm sorry, you'll have to ask me the</p> <p>17 question again.</p> <p>18 Q. Yes. I'm trying to understand what you</p> <p>19 mean by quintessential electioneering ad as opposed</p> <p>20 to electioneering ad.</p> <p>21 A. This was parallel terminology from</p> <p>22 Professor Goldstein's report. What I mean by that is</p> <p>23 a quintessential electioneering ad is an ad about</p> <p>24 which there is no legal doubt that it is</p> <p>25 electioneering, therefore, it includes all ads by</p>	<p style="text-align: right;">Page 156</p> <p>1 the term on table 7 different from a genuine issue ad</p> <p>2 as you used the term in Buying Time '98?</p> <p>3 A. Yes, it would be, because there are issue</p> <p>4 ads, genuine issue ads defined in Buying Time 1998</p> <p>5 that did mention applicable candidates. The two that</p> <p>6 we've discussed that appears within 60 days of the</p> <p>7 election, the third that we discussed that I</p> <p>8 discovered later.</p> <p>9 Q. That's the CENT/Braux ad that you</p> <p>10 discovered in the course of preparing your expert</p> <p>11 report in this case?</p> <p>12 A. Yes. And a fourth that is mentioned in</p> <p>13 this report that appeared outside of the 30 day</p> <p>14 window.</p> <p>15 Q. And what's that ad?</p> <p>16 A. It's a genuine issue ad that mentioned the</p> <p>17 political candidate by name. I believe it's</p> <p>18 mentioned explicitly in the report because it's about</p> <p>19 Congressman Sununu in New Hampshire.</p> <p>20 Q. In this chart, Dr. Krasno, you have</p> <p>21 various columns over on the left, one of which is</p> <p>22 viewer perception. What viewers' perceptions are you</p> <p>23 reporting here?</p> <p>24 A. The viewers that we're talking about are</p> <p>25 the coders.</p>
<p style="text-align: right;">Page 155</p> <p>1 applicable candidates and all interest group ads that</p> <p>2 in this case have magic words in them.</p> <p>3 Q. Did you say parties in that answer when</p> <p>4 you meant candidate?</p> <p>5 A. I'm sorry, I think I -- I meant to say</p> <p>6 candidate. I don't know if I said parties.</p> <p>7 MS. BUCKLEY: Let's go back and read the</p> <p>8 answer.</p> <p>9 THE REPORTER: "Answer: This was parallel</p> <p>10 terminology from Professor Goldstein's report. What</p> <p>11 I mean by that is a quintessential electioneering ad</p> <p>12 is an ad about which there is no legal doubt that it</p> <p>13 is electioneering, therefore, it includes all ads by</p> <p>14 applicable candidates and all interest group ads that</p> <p>15 in this case have magic words in them."</p> <p>16 BY MS. BUCKLEY:</p> <p>17 Q. No, you got it perfectly correct and I</p> <p>18 just heard it wrong.</p> <p>19 A. That's a relief.</p> <p>20 Q. Now, what's a quintessential issue ad as</p> <p>21 you used the term in table 7, Dr. Krasno?</p> <p>22 A. A quintessential issue ad is an ad that</p> <p>23 only mentions issues and does not mention candidates.</p> <p>24 It's aired by an interest group.</p> <p>25 Q. Is a quintessential issue ad as you use</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. Those would be the student coders at</p> <p>2 Arizona State?</p> <p>3 A. Yes.</p> <p>4 Q. Is it your view that student coders at</p> <p>5 Arizona State is an appropriate sample if one wishes</p> <p>6 to measure the attitudes or perceptions of the</p> <p>7 average television viewer?</p> <p>8 A. They would not be an appropriate sample of</p> <p>9 the attitudes or perceptions of the average</p> <p>10 television viewer.</p> <p>11 Q. They would not be?</p> <p>12 A. Yes. But that's not what I've used them</p> <p>13 for.</p> <p>14 Q. That's fine, Dr. Krasno. That wasn't my</p> <p>15 question. Let's turn to about -- I don't know if</p> <p>16 your versions of the appendix are paginated but the</p> <p>17 one we were served is not so if you would go to --</p> <p>18 right after table 7, there is a page entitled</p> <p>19 Spreadsheet 1998 Formula.</p> <p>20 A. Yes.</p> <p>21 Q. My question is, why did you use a</p> <p>22 spreadsheet to perform these calculations,</p> <p>23 Dr. Krasno? Why didn't you use the database?</p> <p>24 A. I didn't use a spreadsheet to perform</p> <p>25 these calculations. I did use the database but I</p>

40 (Pages 154 to 157)

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1 provided these calculations in a spreadsheet form for
2 people who are reading this report so they would see
3 it and understand what happened.

4 Q. Have you, since the publication of Buying
5 Time '98, gone through and made changes in the
6 database to identify as to every airing whether a
7 federal candidate was mentioned in the particular
8 district in which it aired?

9 MS. BHATTACHARYYA: I'm sorry, was the
10 question since the publication of Buying Time '98?
11 Can you read the question back?

12 THE REPORTER: "Question: Have you, since
13 the publication of Buying Time '98, gone through and
14 made changes in the database to identify as to every
15 airing whether a federal candidate was mentioned in
16 the particular district in which it aired?"

17 THE WITNESS: No.

18 BY MS. BUCKLEY:

19 Q. In order to perform those calculations, as
20 a matter of fact, Dr. Krasno, as your expert report
21 says, you have to go outside the database, is that
22 not right?

23 A. You have to go outside the database.

24 Q. Because CMAG doesn't record or provide
25 information as to what candidate is identified in

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1 Q. No. It was much simpler than that. I may
2 not be able to talk about it in simple terms but it
3 was a simpler concept than that. As I have described
4 the cookie cutter issue as best I can, Dr. Krasno, I
5 take it that CMAG provides a list of airings but
6 there is nothing in the CMAG database that can permit
7 you to find out which particular candidate was
8 identified in which particular airing, is that right?

9 A. That's correct.

10 Q. And that's my only point. You can't go to
11 the database to find that information because CMAG
12 doesn't provide it, correct?

13 A. That's correct.

14 Q. So you have to go outside the database and
15 make inquiries, as you've discussed at great length
16 in your expert report, as to where particular ads
17 aired and what particular officeholder or candidate
18 was shown in them, is that right?

19 A. That's correct.

20 Q. And that is the sort of exercise that
21 you're going through here in this spreadsheet 1998
22 formula which we've been talking about in the
23 appendix to your report, is that right?

24 A. That's correct.

25 Q. And you do the same thing a few pages

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1 every airing of every ad, correct?

2 A. Because the coders were not asked to code
3 whether candidates were mentioned depending on their
4 response to question 6.

5 Q. I'm not talking about the coders. I'm
6 talking about CMAG. They don't even give you the
7 information to begin with, correct?

8 A. They do not provide content coding of the
9 data they provide.

10 Q. I'm not talking about the content coding.
11 I'm talking about the story board. As I understand
12 the CMAG technology, if a political advertisement
13 runs many times across the country and identifies
14 different candidates in the tag line, what you refer
15 to as a cookie cutter ad, that CMAG only captures one
16 or maybe two of those story boards but does capture
17 the airings for each one of what it perceives to be
18 that cookie cutter ad?

19 A. That is correct, but I don't agree with
20 your first statement.

21 Q. Okay. Why not?

22 A. Because as I understood it, you were
23 implying that CMAG data itself was supposed to
24 provide information about whether a candidate was
25 identified in an ad.

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1 later to what you call the 2000 formula, is that
2 right?

3 A. That's correct.

4 Q. All right. I think we have collected our
5 story boards and we'll mark as Krasno Exhibit 18 a
6 collective exhibit comprised of seven story boards
7 for the 1998 election. The story boards are numbered
8 2, 7, 11, 15, 16, 21 and 22.

9 (Krasno Exhibit No. 18 was
10 marked for identification.)

11 BY MS. BUCKLEY:

12 Q. Have you the exhibit in your hand,
13 Dr. Krasno?

14 A. I'm --

15 Q. We'll take them one at a time.

16 A. Okay.

17 Q. So you don't have to get coder fatigue in
18 looking at them. The first story board on this
19 collective Exhibit Number 18, Dr. Krasno, is ad
20 number 2 entitled AAHP/Look Out For the Lawyers.

21 And my question to you is, after you've
22 had a chance to review it, whether you ever had any
23 discussions with Professor Goldstein or anyone else
24 as to whether this particular ad should have been
25 characterized as a genuine issue ad or an

<p style="text-align: right;">Page 162</p> <p>1 electioneering ad.</p> <p>2 A. I did not have any discussions with anyone</p> <p>3 about the characterization of this ad.</p> <p>4 Q. Ever?</p> <p>5 A. I read about it in Professor Gibson's</p> <p>6 report.</p> <p>7 Q. Okay. That's not a discussion as far as I</p> <p>8 can tell. So you never had any discussions with</p> <p>9 anyone about this ad before today, is that right?</p> <p>10 A. That's right.</p> <p>11 Q. Let's take a look at ad 7, which is the</p> <p>12 next one in the pile.</p> <p>13 MS. BHATTACHARYYA: Susan, I take it when</p> <p>14 you ask these questions about discussions, you're</p> <p>15 excluding by implication any discussions he may have</p> <p>16 had with counsel?</p> <p>17 MS. BUCKLEY: I would be happy to exclude</p> <p>18 them in each question but I don't sort of sign on to</p> <p>19 the convention that if you talk to counsel, he can</p> <p>20 still say he never saw them before.</p> <p>21 BY MS. BUCKLEY:</p> <p>22 Q. I'll say, for each one of these ads,</p> <p>23 Dr. Krasno, if I ask you whether you've seen them</p> <p>24 before, you can exclude any discussions with counsel</p> <p>25 for this exhibit.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Did you ever have any discussions with</p> <p>2 anyone as to whether ad 11 should properly be</p> <p>3 considered an issue ad or an electioneering ad other</p> <p>4 than your counsel?</p> <p>5 A. No.</p> <p>6 Q. Let's try ad 15. Take a minute to read ad</p> <p>7 15, if you would, Dr. Krasno. Are you with me?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever have any discussions with</p> <p>10 Professor Goldstein as to how this ad should be coded</p> <p>11 in response to question 6?</p> <p>12 A. No.</p> <p>13 Q. Did you ever have any discussions with</p> <p>14 anyone else as to whether this ad should properly be</p> <p>15 considered a genuine issue ad or an electioneering ad</p> <p>16 other than your counsel?</p> <p>17 A. No.</p> <p>18 Q. In your opinion, as you sit here today,</p> <p>19 should this ad be treated as a genuine issue ad or as</p> <p>20 an electioneering ad?</p> <p>21 A. I believe this is an electioneering ad.</p> <p>22 Q. Why?</p> <p>23 A. For a number of reasons, the most obvious</p> <p>24 of which is that it features Newt Gingrich very</p> <p>25 prominently in the video ad. At the time, Gingrich</p>
<p style="text-align: right;">Page 163</p> <p>1 Let's take a look at ad 7, which is the</p> <p>2 second piece of paper in this exhibit.</p> <p>3 Dr. Krasno, have you ever had any</p> <p>4 discussions, other than with your counsel, about the</p> <p>5 coding of ad 7?</p> <p>6 A. No.</p> <p>7 Q. Ever talk to Professor Goldstein about ad</p> <p>8 7 at all?</p> <p>9 A. No.</p> <p>10 Q. Were you surprised to learn in Professor</p> <p>11 Gibson's report that ad 7 had been coded by the</p> <p>12 students as an issue ad?</p> <p>13 MS. BHATTACHARYYA: Objection,</p> <p>14 mischaracterization of the record.</p> <p>15 MS. BUCKLEY: It is a completely perfect</p> <p>16 characterization of Dr. Gibson's report.</p> <p>17 BY MS. BUCKLEY:</p> <p>18 Q. You can answer the question.</p> <p>19 A. I was surprised to find in Professor</p> <p>20 Gibson's report that this ad had been coded by a</p> <p>21 student in that way.</p> <p>22 Q. Let's turn to ad 11. Did you ever have</p> <p>23 any discussions with Professor Goldstein as to how</p> <p>24 ad 11 should be coded on question 6?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 165</p> <p>1 was a favorite target of Democratic candidates around</p> <p>2 the country.</p> <p>3 Q. So any ad that identified Gingrich is</p> <p>4 automatically an electioneering ad in your view?</p> <p>5 A. I didn't say that, but this is one of the</p> <p>6 things that suggest to me that this ad is an</p> <p>7 electioneering ad.</p> <p>8 Q. Anything else besides the presence of Newt</p> <p>9 Gingrich?</p> <p>10 A. Well, it refers to the Republican measure</p> <p>11 as a scheme which is a fairly pejorative noun or</p> <p>12 pejoratively flavored noun to use in an ad that makes</p> <p>13 me think that this is electioneering. It instructs</p> <p>14 people to tell the congressperson to essentially get</p> <p>15 behind something that everyone is behind.</p> <p>16 It's more or less accusing her of being</p> <p>17 opposed to apple pie and motherhood which is not a</p> <p>18 very favorable thing from Congresswoman Northup's</p> <p>19 point of view. It refers to past events, not</p> <p>20 necessarily future events in this ad. That's not</p> <p>21 true. I take that back. And it ends with a slogan,</p> <p>22 put Social Security first, which is very similar to</p> <p>23 campaign slogans used from the heyday of Claude</p> <p>24 Pepper onward in Democratic campaign advertising.</p> <p>25 Q. Does that offend you, Dr. Krasno?</p>

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1 A. Does what offend me?
 2 Q. This ad.
 3 A. No.
 4 Q. You said and then you took back that it
 5 talks about things that happened in the past. What
 6 did you mean by that?
 7 A. Well, it's purely impressionistic but I
 8 noted in my expert report with Professor Sorauf that
 9 typically you think about genuine issue ads that are
 10 essentially lobbying for a position as giving people
 11 a future activity to perform that would make people
 12 happy.
 13 Typically, though, electioneering ads tend
 14 to focus on the past and ask people to continue -- to
 15 stop doing the bad things, the many, many bad things
 16 that they have done previously.
 17 This ad talks about a pending Republican
 18 scheme and it's not as retrospective in its focus as
 19 I had first thought.
 20 Q. Now, if I were to tell you, Dr. Krasno,
 21 that this particular ad ran two to three days before
 22 a vote on a significant Social Security measure,
 23 would that change your mind as to whether it should
 24 be treated as a genuine issue ad or as an
 25 electioneering ad?

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1 A. No.
 2 Q. Let's take a look at the next one, 21,
 3 Dr. Krasno. AFLT/KY Lucas.
 4 And the question is, did you ever discuss
 5 with Professor Goldstein whether this ad should have
 6 been treated as an electioneering ad or a genuine
 7 issue ad?
 8 A. No.
 9 Q. Did you ever have a discussion with anyone
 10 else on that subject other than with counsel?
 11 A. No.
 12 Q. Can you tell from looking at this ad,
 13 Dr. Krasno, who ran it?
 14 A. It says, Tell him to sign the U.S. Term
 15 Limits declaration. I know that U.S. Term Limits is
 16 the name of an organization so I assume perhaps that
 17 it is them. I can't read the disclaimer at the
 18 bottom, although it might say Americans for Limited
 19 Terms.
 20 Q. It might.
 21 A. This is a second or third generation copy.
 22 This disclaimer was probably legible from the version
 23 that we first had.
 24 Q. As you sit here today, Dr. Krasno, what's
 25 your view about this ad? Is it a genuine issue ad or

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1 A. It would probably not change my mind.
 2 Q. Why not?
 3 A. Because the ad doesn't strike me as a
 4 genuine attempt to lobby Congresswoman Northup to
 5 express a particular point of view. It seems to be
 6 attempting to punish her for the view that she and
 7 her colleagues appear to hold.
 8 Q. How do we know from this ad what view
 9 Congressman Northup holds?
 10 A. I think it's because she is linked with
 11 the Republican Congress.
 12 Q. Let's take a look at the next ad, number
 13 16, Dr. Krasno, entitled AFLT/Stand Up For Us.
 14 And my question to you is, did you ever
 15 discuss with Professor Goldstein how this ad should
 16 be coded in response to question 6, whether as a
 17 genuine issue ad or as an electioneering ad?
 18 A. I had no discussions with Professor
 19 Goldstein.
 20 Q. About this ad?
 21 A. About this ad.
 22 Q. Have you ever had discussions with anyone
 23 else other than your counsel as to whether this ad
 24 should properly be considered a genuine issue ad or
 25 an electioneering ad?

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1 an electioneering ad?
 2 A. I think that it's an electioneering ad.
 3 Q. Why?
 4 A. Well, it basically calls Gex Williams some
 5 names that I don't think he would like to be called.
 6 He calls him a career politician and implies that he
 7 would not be interested in holding the line on taxes.
 8 In fact, it relates term limits to taxes. Both of
 9 these are essentially very common features of
 10 campaign ads run by candidates themselves.
 11 Q. You said, Dr. Krasno, in listing the
 12 factors that led you to conclude that this was an
 13 electioneering ad, that it calls Gex Williams, I
 14 think your quote is names that I don't think he would
 15 like to be called, unquote.
 16 What does that have to do with the
 17 determination as to whether it's electioneering or an
 18 issue ad?
 19 A. In my view, as I read this ad, that the
 20 clear intent of its sponsors was to criticize Gex
 21 Williams and to suggest to the people perhaps in his
 22 district or maybe elsewhere -- I don't know where the
 23 ad was aired -- that he was willing to raise taxes
 24 and that he was following the path of career
 25 politicians and was a career politician himself.

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1 That strikes me as a line that is more or less
 2 designed to help the election or defeat of a
 3 particular candidate, in this case, Gex Williams.
 4 Q. Let's take a look at ad 22, Dr. Krasno.
 5 ALTO/WI Tell Ryan. Did you ever have any discussion
 6 with Professor Goldstein as to whether this ad should
 7 be coded as an electioneering ad or a genuine issue
 8 ad?
 9 A. No, I did not.
 10 Q. Did you ever have any kind of discussion
 11 on that subject with anyone other than your counsel?
 12 A. No.
 13 Q. Is the only ad you ever recall discussing
 14 on the issue of how it should be coded the
 15 Feingold/Kohl abortion ad we discussed earlier?
 16 A. Yes.
 17 MS. SEALANDER: Counsel, is this a good
 18 time for a break?
 19 MS. BUCKLEY: Sure.
 20 (Recess.)
 21 BY MS. BUCKLEY:
 22 Q. I wonder if we could turn to your original
 23 report filed in case, Exhibit 16. Page 51 of your
 24 report, Dr. Krasno, you're talking about the increase
 25 in issue advocacy. And at the bottom of the carry

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1 A. I don't think so.
 2 Q. Page 54 of your report, footnote 128, you
 3 talk about your visit to the Ford Presidential
 4 Library. Do you see that, Dr. Krasno?
 5 A. Uh-huh.
 6 Q. And I take it you were going to the Ford
 7 Presidential Library to examine television
 8 advertisements for the 1976 campaign, is that right?
 9 A. I did not go to the Ford Library. I
 10 contacted the Ford Library and the Carter Library and
 11 asked them for videotapes of the ads that they ran in
 12 1976 on the theory that these were the ads that were
 13 on TV at the time that the Supreme Court decided the
 14 Buckley case.
 15 Q. And did the Carter Library provide you
 16 with any tapes?
 17 A. The Carter Library did not. They were
 18 unable to locate a copy of their ads.
 19 Q. But I take it that the Ford Presidential
 20 Library could locate copies of their ads, is that
 21 right?
 22 A. In an amazingly short amount of time.
 23 Q. And they forwarded you a videotape of ads
 24 of President Ford's campaign in 1976?
 25 A. Yes.

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1 over paragraph you say, "Issue advocacy has come to
 2 rival, and in some cases outpace, advertising by
 3 federal candidates."
 4 Do you see that? Last sentence of the
 5 carryover paragraph, 51.
 6 A. Is this the top of page 51 or the bottom
 7 of page 51?
 8 Q. It's the middle.
 9 MS. SEALANDER: Is it all right if I just
 10 point this out?
 11 MS. BUCKLEY: Yes.
 12 THE WITNESS: I see, yes.
 13 BY MS. BUCKLEY:
 14 Q. And my question to you is, can you
 15 identify for the record races where issue advocacy
 16 has outpaced advertising by federal candidates?
 17 A. The 2000 Presidential race, I believe
 18 that's true, and I think that it was also true in
 19 some congressional raises, particularly in 2000. I
 20 don't recall any examples in the 1998 cycle.
 21 Q. You can't think of any 1998?
 22 A. There may have been some but I don't
 23 recall any offhand.
 24 Q. Would they have been identified in Buying
 25 Time 1998 if there were?

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1 Q. And on examining those ads, you found that
 2 during the course of the 1976 Presidential campaign,
 3 at least on President Ford's side of the equation,
 4 that there was very little use of Buckley's magic
 5 words, is that true?
 6 A. That's correct.
 7 Q. Have you examined videotapes for any other
 8 campaigns historically?
 9 A. From 1976? No.
 10 Q. Have you looked at any others, like 1972
 11 or 1980?
 12 A. No.
 13 Q. Could you turn to page 56, Dr. Krasno,
 14 footnote 135. You say, "A commercial about the
 15 McCain/Feingold bill only identifies candidates when
 16 it appears in the home states of Senators McCain and
 17 Feingold, not when it appears elsewhere."
 18 And my question is, if a political
 19 advertisement referred to the McCain/Feingold bill
 20 but otherwise did not mention a candidate for federal
 21 office, is it your view that that advertisement would
 22 be an electioneering ad?
 23 A. It would not be an electioneering ad
 24 outside of Wisconsin and Arizona.
 25 Q. But in Wisconsin and Arizona, it would be?

44 (Pages 170 to 173)

<p style="text-align: right;">Page 174</p> <p>1 A. It depends on the context of the ad. I 2 would have to see the script, the story board. Are 3 you asking me to essentially code Q6 in my head? 4 Q. Sure. 5 A. I can't do that without a story board in 6 hand. 7 Q. Well, this hypothetical advertisement that 8 we're talking about is an advertisement about the 9 need for campaign finance reform and all it does is 10 talk about the issue of campaign finance reform, no 11 candidates are pictured. It's just about campaign 12 finance reform. But in the course of it, the 13 announcer refers to the McCain/Feingold bill and 14 that's it. 15 I'm afraid that I still cannot complete 16 that hypothetical because I don't think there are 17 enough details provided. How does it characterize 18 the McCain/Feingold bill? As an heroic effort to 19 stem the tied of special interest money, as a gross 20 assault on the First Amendment, on something else? 21 A. I don't know. 22 Q. Let's say it does both of those things or 23 either of those things. 24 A. Well, either of those things would suggest 25 to me that it might -- in this case, I would probably</p>	<p style="text-align: right;">Page 176</p> <p>1 your footnote means. Strike that. Page 59 of your 2 expert report, Dr. Krasno, if you would. 3 The first full paragraph begins, "The 4 logic of BCRA's approach for groups seems compelling. 5 At a minimum, advertisements intended to aide the 6 fortunes of a political candidate must identify that 7 candidate or his opponent and appear proximate to the 8 election. Any ad that fails to mention the favored 9 candidate or his opponent would likely be too obscure 10 to affect a public whose normal attention to politics 11 is short, as would an ad appearing more than two 12 months from Election Day." 13 Did I read that correctly, Dr. Krasno? 14 A. Yes. 15 Q. Now, do I understand, Dr. Krasno, that 16 you're observing here that if ads were run earlier 17 than two months before the election day and 18 identified a candidate, their impact would be far 19 less because people aren't paying attention at that 20 time? Is that the point of this statement? 21 A. That's largely the point, correct. 22 Q. I'm on page 61. In footnote 145, you 23 state, "Coders reported no problem determining 24 whether a candidate was identified in any spot. 25 Rather, the only source of confusion was whether an</p>
<p style="text-align: right;">Page 175</p> <p>1 say that that's an ad that would be coded as a 2 genuine issue ad by Q6 but I would need to see more 3 to be sure. 4 Q. So we have this imaginary ad which 5 essentially says there is this very interesting piece 6 of legislation that we all should be on the lookout 7 for and we all should think a long time about. It's 8 called McCain/Feingold. You'll be hearing about it 9 over the course of the next few months. Stay tuned. 10 Genuine issue ad or electioneering ad? 11 A. I would call that a genuine issue ad. 12 Q. But it's criminalized in the home states 13 of McCain and Feingold, as you understand it? 14 A. I never believe that I used the word 15 criminalized anywhere in this entire report. 16 Q. I didn't suggest that you did. I mean, 17 I'll put it in your words. Would it be permissible? 18 Would it be captured by BCRA in the home states of 19 Senators McCain and Feingold if that ad ran? 20 A. My understanding of BCRA is that it would 21 be. 22 Q. But only if Senators McCain and Feingold 23 were running for office, correct? 24 A. Yes. 25 Q. I think we're on the same page as to what</p>	<p style="text-align: right;">Page 177</p> <p>1 individual mentioned in an ad was a candidate or 2 someone else." 3 I don't understand how the first sentence 4 can be true in light of your observations in the 5 second. If there was no problem determining whether 6 a candidate was identified, how was there a source of 7 confusion as to whether an individual was a candidate 8 or someone else? 9 A. We found one ad from 1998 that mentioned 10 Cesar Chavez. It was mentioned as a genuine issue ad 11 and it was improperly -- questions Q7 and Q8 were 12 improperly coded and they described Cesar Chavez who 13 was being praised in a labor union ad for his 14 contributions to the labor union movement in 15 California as a candidate. 16 Q. So I take it that there was a problem at 17 least in that instance in determining whether a 18 candidate was identified in the spot? 19 A. Well, the problem was that the coder 20 should not have been answering the question at all 21 because they were instructed to skip ahead to 22 question 19. 23 Q. I'm not talking about the skip pattern. 24 I'm asking about the confusion as to whether an 25 individual mentioned in an ad was a candidate or</p>

<p style="text-align: right;">Page 178</p> <p>1 someone else, and you told us about the Chavez 2 example. And I'm trying to understand the difference 3 between that confusion and your statement in the 4 first sentence that coders reported no problem 5 determining whether a candidate was identified in any 6 spot. 7 A. I'm sorry, I'm not sure I understand the 8 question. 9 Q. How can you say on sentence 1 that there 10 was no problem and, in sentence 2, report a confusion 11 about whether an individual was a candidate or not? 12 That's my question. 13 A. Well, the coders reported no problem, 14 which is true, they reported no problem. Later on, 15 we determined one case of confusion that did not 16 relate to the question of whether the coders were 17 able to view somebody as a candidate or identify an 18 individual in the ad as the candidate or an object of 19 the ad but whether they were correct in assuming that 20 that person was in fact a candidate. In this case, 21 it fell into a situation when the coder should not 22 have been answering the question at all. 23 Q. You go on to say, "Advertisers may try to 24 circumvent this criterion by seeking ways to refer to 25 a candidate without clearly identifying him or her,</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. And therefore, advertisers are not likely 2 to do that in your view? 3 A. Advertisers are not likely to do that, 4 yes. 5 Q. Or candidates, in the case you just 6 mentioned? 7 A. I was assuming that this ad would have 8 come from an advertiser other than a candidate. 9 Q. I see. I don't understand, though, why 10 the goal, which seems to be embraced in this 11 footnote, is to reduce the impact of the ad on the 12 viewer. Why is that a good thing? 13 A. I don't understand why I've said it is a 14 good thing. 15 Q. All right. Well, you tell me, why are you 16 talking about the impact, the less certain their 17 impact? 18 A. I'm saying that the motion of identifying 19 a candidate in an ad is something that we presume to 20 be a sort of relatively fixed and stable 21 characteristic of a campaign ad in that a campaign ad 22 that attempts to circumvent that by referring to 23 candidates by allusion would be a much less effective 24 ad and unlikely to air. 25 Q. So therefore, you're arguing that it is</p>
<p style="text-align: right;">Page 179</p> <p>1 but the more obscure these references become, the 2 less certain their impact. In the end, we doubt many 3 advertisers will adopt this approach." 4 Do you see that? 5 A. Yes. 6 Q. What do you mean by the more obscure these 7 references become, the less certain their impact? 8 A. I mean that the more difficult it is to 9 perceive who the candidate is or who the object of 10 the ad is, the more difficult it will be for voters 11 or for viewers to determine how they should feel and 12 respond to a particular ad. 13 So in this case, if an ad doesn't refer to 14 a candidate by name but simply refers to the 15 candidate's husband and says this person has a wife 16 who is running for office, it becomes more difficult 17 for people to link that ad to the wife who was a 18 candidate. So I was thinking of Geraldine Ferraro 19 and her husband and the various ethical questions in 20 1984. 21 If someone ran an ad about Mr. Ferraro, 22 whatever his name was, it wasn't Ferraro, and hoped 23 to use that as an ad that people would associate with 24 Ferraro herself, I think that it would be a foolish 25 attempt.</p>	<p style="text-align: right;">Page 181</p> <p>1 less likely that advertisers will seek to circumvent 2 the criteria identified in BCRA about identifying a 3 federal candidate, is that where we're going? 4 A. In that way, yes. 5 Q. Now, if you go to page 64 of your expert 6 report, Dr. Krasno, and read to yourself the 7 paragraph which is the only full paragraph on that 8 page beginning with, "The practices of issue 9 advocates in 1998." 10 Is it fair to say that you are, in this 11 paragraph, offering alternatives to the ACLU as to 12 how the ACLU could have run an ad that wouldn't run 13 afoul of BCRA? 14 A. Yes. 15 Q. And one of the alternatives you offer is 16 that they could have urged the audience to contact 17 their representative without identifying the 18 candidate by name, is that right? 19 A. Yes. 20 Q. And that would have made it permissible 21 under BCRA, is that right? 22 A. It would have excluded it from being 23 treated as electioneering. 24 Q. Alternatively, you say the ACLU could have 25 run its spot earlier or later to avoid the 30 day</p>

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1 period before the primary. Is that right, if they
2 had just moved the window, that it would have been
3 captured by BCRA?

4 A. If they had moved the ad outside the
5 window, it wouldn't have been captured by BCRA.

6 Q. So you view that as an alternative to the
7 ACLU in running its ad in this instance, is that
8 right?

9 A. Yes.

10 Q. Then you go on to say, "If neither of
11 these options was appealing, the ACLU could have run
12 its ad with hard money and reported its expenditure
13 to the FEC. Finally, the ACLU might simply have used
14 mail, the Internet, print ads or phone banks to
15 deliver its message."

16 Do you see that?

17 A. Yes.

18 Q. And do you view those as adequate
19 alternatives to broadcast ads, Dr. Krasno?

20 A. I think for the most part, I do, in this
21 case.

22 MS. BUCKLEY: Let's mark as Exhibit 19 an
23 e-mail chain with the date on the top being March 9,
24 2000, bearing the control numbers BRE 013098 through
25 013100.

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1 Q. And the last chain in the e-mail is an
2 e-mail from you to Professor Goldstein expressing,
3 I'll say, disappointment and surprise. But then you
4 say, "Let's get a move on plan B." What was plan B?

5 A. I have no idea.

6 Q. Was Buying Time '98 ever published by
7 anyone else other than the Brennan Center?

8 A. No.

9 MS. BUCKLEY: Let's mark as Exhibit 20 a
10 multipage document bearing the control numbers
11 BRE 015964 through BRE 015965 followed by a number of
12 story boards attached thereto.

13 (Exhibit No. 20 was
14 marked for identification.)

15 BY MS. BUCKLEY:

16 Q. Are you finished with the document?

17 A. I haven't looked at the story boards yet
18 but I've read the e-mail exchange.

19 Q. Sure. That's fine. We'll get to the
20 story boards only if we need to.

21 First of all, you make references -- let's
22 start at the beginning. This e-mail chain begins, I
23 believe, Dr. Krasno, with an e-mail from you to Craig
24 Holman on March 19th, 2001. And that e-mail is
25 reflected on the second page.

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1 (Exhibit No. 19 was
2 marked for identification.)

3 BY MS. BUCKLEY:

4 Q. Are you finished reading?

5 A. Yes.

6 Q. Did there come a time, Dr. Krasno, when
7 you submitted Buying Time '98 to the Congressional
8 Quarterly for its consideration as to whether to
9 publish it or not?

10 A. Yes. Ken Goldstein knew this person,
11 James Headley, and suggested that I send him some PDF
12 files so that he would see some examples of chapters.
13 He suggested that he forwarded it to the library and
14 reference group to see whether they would be
15 interested and that is essentially how our
16 correspondence began.

17 Q. And did congressional quarterly staff
18 consider whether or not to publish Buying Time '98 as
19 far as you know?

20 A. I know as much as is in this e-mail, that
21 they might have done something.

22 Q. They eventually turned you down, isn't
23 that right?

24 A. They eventually said that they are not
25 going to pursue this project.

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1 Do you see that?

2 A. Yes.

3 Q. And then Craig responds to you in the
4 e-mail that is set forth beginning on about a third
5 of the way down the first page from Holman to you,
6 and then there is a tiny little e-mail on the top,
7 Holman to Nancy, forwarding on what he sent to you.

8 Do you see that?

9 Let's start with your e-mail to Holman.

10 Now, your e-mail refers to Q11 equals 2, Q11 equals
11 2. I won't read the whole thing but to begin, in the
12 2000 questionnaire, isn't it true, Dr. Krasno, that
13 what was question 6 in 1998 became question 11 in
14 2000?

15 Do you recall that? We'll be happy to
16 show it to you.

17 A. I think that that's correct.

18 Q. So Q11 is the question. I think we better
19 get it because actually the sequencing changes
20 between 1998 and 2000. So let's mark as Exhibit 21 a
21 copy of the 2000 coding sheet.

22 (Exhibit No. 21 was
23 marked for identification.)

24 BY MS. BUCKLEY:

25 Q. Now, if you turn to what we've marked as

47 (Pages 182 to 185)

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1 Exhibit 21, Dr. Krasno, about the third page -- well,
2 first of all, do you recognize this to be the coding
3 questionnaire for Buying Time 2000?

4 A. I've never seen Buying Time 2000.

5 Q. Did you have any role in preparing the
6 coding sheet for Buying Time 2000?

7 A. Sometime in the summer of 2000, I was
8 E-mailed by Ken with a draft of the questionnaire and
9 I did not respond to it. I don't remember what was
10 in the draft but I had a couple of suggestions but I
11 was only able to get them to him several weeks later
12 and at that point, the questionnaire had been put to
13 bed.

14 Q. Now, where were you at this point in time?
15 Where were you employed?

16 A. Well, I think physically I was visiting a
17 friend in California. At this point, I believe that
18 I would have been a fellow again at the Institute for
19 Social and Policy Studies at Yale.

20 Q. We haven't sort of filled in -- after
21 April of 2000, when you were terminated by the
22 Brennan Center, where were you employed after that?

23 A. In fact, I'm wrong. I began at the
24 institute in January of 2001. I had a nominal
25 affiliation with the center for American Politics and

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1 11, particular candidate is not in boldface and the
2 answers are flipped for 1 and 2. So I'll read the
3 whole thing. Question 11: In your opinion, is the
4 purpose of the ad to provide information about or
5 urge action on a bill or issue, or is it to generate
6 support or opposition for a particular candidate?
7 And the student coder can then choose among, one,
8 generate support or opposition for a candidate -- in
9 which case it would be treated as an electioneering
10 ad, correct?

11 A. Yes, number 1 would be treated as an
12 electioneering ad.

13 Q. The second choice the student has is,
14 provide information or urge action -- in which case,
15 it would be treated as a genuine issue ad, correct,
16 Dr. Krasno?

17 A. In some analyses, yes.

18 Q. And then the third choice is
19 unsure/unclear. And that's all the choices the
20 student's given. Do you recognize that to be an
21 almost identical version of Q6?

22 A. Yes.

23 Q. All right. Let's go back to Krasno 20.
24 And this is the e-mail that begins the chain from you
25 to Craig Holman. I will read it. "Craig, are you

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1 Citizenship at the University of Maryland for the
2 remainder of the 2000 year. But for the most part, I
3 was not employed at that time.

4 Q. And then in January of 2001, you began
5 your fellowship at the institute?

6 A. Yes.

7 Q. And that's where you are now?

8 A. Yes.

9 Q. And I didn't mean to interrupt you. I
10 think you were telling me that you were in California
11 when you had this phone call with Professor
12 Goldstein, or was it something else?

13 A. No, I received an e-mail from Professor
14 Goldstein.

15 Q. And you responded but the questionnaire
16 had already been put to bed?

17 A. I responded several weeks late.

18 Q. If you take a look at Exhibit 21, which is
19 attached to Buying Time 2000, and if you look at
20 question 11, you'll see that it is almost identical
21 to question 6 in 1998.

22 Do you want to take a look at that?

23 A. Yes.

24 Q. The changes, as far as I know them, just
25 so we're upfront as to each one, is that in question

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1 available later tonight or first thing tomorrow
2 morning for a conference call with Ken to discuss the
3 story boards I asked you about? After running the
4 correction files you sent Ken in their order I came
5 up with three ads -- 6/27, 1367, 2862 -- where Q11 =
6 2 and Q12/13 = mention; two ads -- 1389, 1709 --
7 where Q11 = 2 and Q12/13 is missing or wrong and I've
8 determined that a candidate was mentioned; and one --
9 2107 -- that I think should perhaps be coded as Q11 =
10 2. Several ads, aside from 2107, might be miscoded
11 on Q11 -- 1367 and 2862. All, of course, appeared in
12 the last 60 days.

13 "Plus, I'd like to hear which two real
14 issue ads you say are captured by M-F. As I said
15 before, I don't think we want to be contradicting
16 each other if possible.

17 "I'm most reachable at my cell." And then
18 you give a cell number. Signed, John Krasno.

19 Did I read that correctly, Dr. Krasno?

20 A. Yes.

21 Q. Dr. Krasno, I thought you told me earlier
22 today you never had any discussions with Professor
23 Goldstein about the coding of the story boards. Did
24 I misunderstand you?

25 A. I thought the question was about 1998.

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<p style="text-align: right;">Page 190</p> <p>1 Q. I see. So all of your answers earlier 2 today were only relating to 1998? 3 A. I thought that all the questions were all 4 relating to 1998. 5 Q. All right. Where were you in March of 6 2001, Dr. Krasno? Working at the Center for American 7 Politics? 8 A. In March of 2001, I was at Yale 9 University. 10 Q. Yes, I'm sorry. Why were you writing 11 e-mails to Holman about what was or was not a genuine 12 issue ad in March of 2001? 13 A. Because I had recently received a copy of 14 the data file from Ken and to satisfy myself and to 15 work on a memo that I wanted to send to Congress, I 16 was trying to do the same analysis that I had done in 17 1998 and repeated in 2000. 18 Q. Are you saying you raised the same kinds 19 of questions you raised here in 1998? 20 A. I'm saying that I didn't raise those 21 questions in 1998 because I was in a different 22 situation and not responsible for putting out a large 23 volume of data at the time. 24 MS. BUCKLEY: Can you read back that 25 answer?</p>	<p style="text-align: right;">Page 192</p> <p>1 A. There was a period where Professor 2 Goldstein was on vacation and he asked me to do a 3 little bit of data analysis for him because there was 4 a press release being prepared and he wanted to have 5 some numbers double checked. 6 Q. And did you double-check those numbers for 7 him? 8 A. Yes. 9 Q. What's a correction file, as you referred 10 to in this e-mail, Dr. Krasno? 11 A. Craig Holman had put together a file that 12 had some recodes that I think were based on 13 discussions he had with Ken of errors and he had 14 taken responsibility to essentially create the SPSS 15 command file to correct those errors. 16 Q. And do you know, Dr. Krasno, that there 17 were recodes for many ads on question 11? 18 A. I ran the files but I didn't pay much 19 attention to their content. 20 Q. You didn't pay much attention to their 21 content? 22 A. I did not pay much attention to their 23 content. 24 Q. Well, you paid a lot attention to it in 25 this e-mail. You have answered Q11 for every ad</p>
<p style="text-align: right;">Page 191</p> <p>1 THE REPORTER: "Answer: I'm saying that I 2 didn't raise those questions in 1998 because I was in 3 a different situation and not responsible for putting 4 out a large volume of data at the time." 5 BY MS. BUCKLEY: 6 Q. Who was responsible for putting out the 7 large volume of data in 1998? 8 A. In 1998, I was in the middle of the Buying 9 Time 1998 study. I didn't have time to sit back as I 10 did in 2000 and study the coding in as great a detail 11 as I did. In addition to that, I was not as familiar 12 with the data set since I hadn't been working with it 13 throughout this period. So I had some questions 14 myself about what was there. 15 Q. Why was the data set sent to you in the 16 first place? 17 A. Because Professor Goldstein agreed to do 18 so. 19 Q. For what purpose? 20 A. Because I had been involved in the CMAG 21 project and he felt that it was appropriate that I 22 continue to have access to the CMAG data to do my own 23 work. 24 Q. And did you assist Professor Goldstein in 25 his part of Buying Time 2000?</p>	<p style="text-align: right;">Page 193</p> <p>1 you're citing here? 2 A. There were three or 4,000 ads that were 3 included in the 2000 database. I managed to find I 4 think up to a half a dozen where I had a question and 5 I wanted to ask somebody who knew more about 6 it -- about it. 7 Q. How did you go about identifying the ads 8 you identified here from all of those ads in the 9 database? 10 A. Well, I believe that my e-mail is fairly 11 clear. I looked for ads where Q11 was 2 and Q12 and 12 13 were coded as the candidate having been mentioned. 13 I then found two other ads in going through the Q11 14 equals 2 set where I found that candidate mentions 15 were missing or, in this case, I said I thought they 16 might be wrong, and one where I thought that Q11 17 might be coded as 2 instead of whatever it was coded 18 as, which I assume was 1. 19 And then I found two other additional ads 20 that I had questioned him about because I wanted to 21 be certain that I understood the coding properly. 22 Q. Now, are you suggesting, Dr. Krasno, that 23 you did all of this as you were up at Yale in your 24 fellowship checking these codings for the 2000 study 25 and you had never done anything like this for 1998?</p>

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1 A. That's correct.
 2 Q. That's your testimony?
 3 A. Uh-huh.
 4 Q. How did you know how to do this?
 5 A. How did I know --
 6 Q. How did you know how to perform the
 7 analysis to figure out which ads which had been coded
 8 as genuine also had been coded as not mentioning a
 9 federal candidate or mentioning a federal candidate
 10 within 60 days?
 11 MS. BHATTACHARYYA: I'm going to object.
 12 I think that has either been a misunderstanding
 13 between the question and the witness or a
 14 mischaracterization of the witness' testimony. I'm
 15 not sure which one but you might want to start the
 16 series over.
 17 MS. BUCKLEY: Which series?
 18 MS. BHATTACHARYYA: This series of
 19 questions. When you're talking about analyses done
 20 previously, I think you're talking about two
 21 different things.
 22 MS. BUCKLEY: I have no idea what you're
 23 talking about, Rupa.
 24 MS. BHATTACHARYYA: I don't think he does
 25 either.

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1 MS. BUCKLEY: I don't understand you and
 2 he doesn't understand me so now we're in big trouble.
 3 MS. SEALANDER: Maybe you could rephrase.
 4 MS. BUCKLEY: Sure. That's a suggestion.
 5 BY MS. BUCKLEY:
 6 Q. In this e-mail, Dr. Krasno, you have
 7 identified three ads, 627, 1367 and 2862, where Q11
 8 was coded as 2, which meant they were coded as
 9 genuine issue ads, and questions 12 and 13, those
 10 that ask about whether a federal candidate is
 11 identified is coded as mentioned, which I take it to
 12 mean that in fact there was a federal candidate
 13 mentioned, is that right?
 14 A. Yes. If you look at Q12 and Q13, you'll
 15 see that it's different codes in different years and
 16 the question in Q12, it's Q12 equals 1, Q12 equals 2
 17 or Q12 equals 4. In the case of Q13, it's Q13 equals
 18 2, Q13 equals 3 or Q13 equals 4.
 19 Q. And those are the questions about whether
 20 an ad is -- whether a candidate is identified or not,
 21 is that right?
 22 A. Yes.
 23 Q. So looking at the new 2000 database which
 24 you had been sent, you do analyses, as I understand
 25 from this e-mail, to identify the ads that have been

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1 coded as 2 on Q11 and that also were coded as a
 2 candidate mentioned on either 12 or 13.
 3 Isn't that what's going on here?
 4 A. Yes.
 5 Q. My question is, you seem to suggest early
 6 in your testimony that you had never conducted such
 7 an analysis in 1998 because you didn't have any time.
 8 Did I misunderstand you?
 9 A. I did conduct an analysis like that which
 10 is reflected in Buying Time 1998. I didn't conduct
 11 this analysis and have discussion with Ken Goldstein
 12 about the coding of specific ads in 1998, with the
 13 exception of the ad that we discussed earlier today
 14 at number 1411.
 15 Q. Did you ever have the conference call that
 16 you were suggesting in this e-mail, Dr. Krasno?
 17 A. I don't think so. In fact, I'm certain
 18 that we did not.
 19 Q. Did you receive Dr. Holman's response
 20 which is attached?
 21 A. Yes.
 22 Q. Now, I take it from your e-mail that
 23 you're of the view that several ads, aside from 2107,
 24 might have been misquoted on Q11. Do you see that?
 25 A. I am of the view that they might have been

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1 miscoded.
 2 Q. And those are 1367 and 2862?
 3 A. Yes.
 4 Q. Because the codes have flipped in the
 5 years, Dr. Krasno, I want to make sure you're
 6 following me or I'm following you. As I read this
 7 e-mail, you were expressing the view at the time that
 8 2107 should have been coded as an issue ad, is that
 9 right?
 10 A. 2107 I think might perhaps be coded as an
 11 issue ad, should perhaps be coded as an issue ad.
 12 Q. 2107 is at the very back. I believe it's
 13 the Feingold/Kohl abortion ad.
 14 A. Is that what that ad is? I don't know.
 15 There are no numbers on this set.
 16 Q. Why don't you go through to -- the story
 17 boards are in the order in which they're referred to
 18 in the memo but I'll point you to 2107 and I bet your
 19 counsel will agree with me as to what it is. About
 20 five back, an ad entitled WI/NPLA Feingold Kohl
 21 Abortion 60. I'll represent to you in the documents
 22 that were produced to us that this was labeled ad
 23 2107.
 24 MS. BUCKLEY: Is there any debate about
 25 that, Colleen or Rupa?

50 (Pages 194 to 197)

<p style="text-align: right;">Page 198</p> <p>1 MS. SEALANDER: It's a one-page story 2 board and the center story board says three kids. 3 MS. BUCKLEY: Correct, and it's two pages. 4 THE WITNESS: But that's not the order in 5 which they're mentioned in this -- 6 BY MS. BUCKLEY: 7 Q. They're in the order in which they're 8 mentioned in Mr. Holman's e-mail. 9 A. They're in the order in which they're 10 mentioned in Mr. Holman's e-mail. 11 Q. The first one, Call Northrup, is 627. The 12 second one, Matheson Can't Decide, is 2862. The 13 third one, Langevin Abortion, is 1367. The fourth 14 one, WI/NPLA Feingold Kohl Abortion 60 is 2107. 15 The next one, VA/NPLA Robb Abortion 60 is 16 ad 2089 and it's two pages long. The next one is 17 RIPC Stocks Falling and that's ad 1709. And then I 18 think the last one is called Latham Farm Worker Bill 19 and that's ad 1389. Feel free to write on the top of 20 the exhibit, Dr. Krasno, because I don't want there 21 to be any debate. 22 A. I've already written on the exhibit. 23 Q. Good. So now we've got our numbers 24 straight and I think we've got our codes straight. 25 If you look at 2107, the Feingold/Kohl abortion ad,</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Both of them on 1367, right? 2 A. RIVW Langevin Abortion. 3 Q. Bingo. Why? 4 A. Because it's essentially a criticism of 5 Jim Langevin for his position on abortion and it 6 doesn't even ask him to do anything except to say 7 that he shouldn't take away our rights, which is a 8 particularly loaded way to phrase it. It strikes me 9 as a fairly clear cut example of an ad that's 10 attempting to undercut his support among women. And 11 among pro-choice men, for that matter. 12 Q. The same question for ad 2862, which is 13 the Matheson Can't Decide. 14 A. Well, Jim Matheson wasn't even a member of 15 Congress at the time that this ad appeared so it 16 seemed that they were actually arguing with him to 17 campaign in a different way which essentially 18 reinforced the notion that I had from reading this ad 19 and the language of the ad that it is fundamentally 20 an electioneering ad as well. 21 Q. So in your view, 2862 is an electioneering 22 ad? 23 A. If I had been coding it, that's what I 24 would have coded it. 25 Q. And that remains your view today?</p>
<p style="text-align: right;">Page 199</p> <p>1 if I'm reading the codes in your e-mail correctly, 2 Dr. Krasno, you're saying that you think 2107 should 3 perhaps be coded as a genuine issue ad, is that 4 correct? 5 A. That is correct. 6 Q. And you go on to say, aside from 2107, you 7 think several other ads might be misquoted on Q11 and 8 you refer to 1367 and 2862. 9 Do you see that? 10 A. Yes. 11 Q. And you say higher up in your e-mail that 12 they were coded as genuine issue ads or at least they 13 were quoted as Q11 equals 2. So I take it that 14 you're suggesting that 1367 is 2862, in your opinion, 15 should not have been coded as genuine issue ads, is 16 that right? 17 A. Yes, that is correct. 18 Q. Is it still your view, Dr. Krasno -- let's 19 take 1367 first. 1367, which is about three sheets 20 back, again, Langevin and abortion. 21 Is it still your view, Dr. Krasno, that 22 that should be coded as an electioneering ad whether 23 rather as a genuine issue ad? 24 A. To my reading, I would read this as an 25 electioneering ad.</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Yes. 2 Q. At precisely this point in time, 3 Dr. Krasno, Professor Goldstein had a conference call 4 with many people at the Brennan Center to discuss 5 various coding decisions for Buying Time 2000. 6 Did you participate in that call? 7 A. No. 8 Q. Were you ever informed of that call? 9 A. No. 10 Q. Do you know anything about that call? 11 A. No. 12 Q. Do you know how it is that it was 13 determined that the three ads that were ultimately 14 referred to as the genuine issue ads in Buying Time 15 2000 were selected? 16 A. No. 17 Q. You never even read Buying Time 2000, I 18 take it? 19 A. I was never sent a copy. 20 MS. BUCKLEY: Can we take a two-minute 21 break? 22 (Recess.) 23 MS. BUCKLEY: That completes my 24 questioning of Dr. Krasno at this time. I do reserve 25 all of plaintiffs' rights arising out of Dr. Krasno's</p>

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1 failure to comply with the document subpoena served
2 on him in August and, as we've learned today, there
3 are obviously relevant documents in his possession
4 which have not been turned over.

5 We will take whatever steps we believe are
6 appropriate but I, therefore, conclude that the
7 deposition is, in my view, suspended.

8 MS. BHATTACHARYYA: Just in response to
9 that, I do have a few questions of redirect but given
10 that today is the last day ordered by the court in
11 the discovery period in this case, I don't believe it
12 is appropriate to suspend this deposition since there
13 will be no opportunity to reinstitute it. But having
14 said that --

15 EXAMINATION BY COUNSEL FOR THE UNITED STATES
16 BY MS. BHATTACHARYYA:

17 Q. Dr. Krasno, I just have a few questions if
18 you'll bear with me. Can you describe briefly for
19 the record your areas of expertise, please?

20 A. I've written on public opinion, campaign
21 finance, congressional elections and campaigns
22 generally, I've done, as you know, work on
23 campaign -- the effect of campaign spending,
24 political parties and campaign finance.

25 Q. Are there any other areas with respect to

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1 respect to their answers to question 6?

2 A. I do not.

3 Q. You also answered some questions from
4 Ms. Buckley today regarding whether the attitudes of
5 Arizona State University students were representative
6 of the average TV viewing public.

7 Do you recall that?

8 A. Yes.

9 Q. What does the term attitude mean to you as
10 a political scientist?

11 A. Well, attitude as a particular meaning in
12 the context of survey research and in political
13 psychology, it's defined as a predisposition to
14 respond and typically in the sort of architecture of
15 people's minds, it's the broadest set of
16 predispositions that people have. So we discuss
17 attitudes in terms of attitudes towards broader
18 political questions like the democratic party or
19 one's feelings towards blacks or whites.

20 In this case, I couldn't say that Arizona
21 State students had attitudes that were representative
22 of the public.

23 Q. Was question 6 on the 1998 coding sheet
24 intended to measure the attitudes of Arizona State
25 University students?

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1 which you claim expertise?

2 A. I would also claim -- excuse me, I would
3 also claim some expertise on television advertising
4 and the media.

5 Q. Dr. Krasno, you had a discussion earlier
6 today with Ms. Buckley where you discussed the
7 emphasis that was placed on the words particular
8 candidate in the wording of question 6 on the 1998
9 coding sheet.

10 Do you recall that?

11 A. Yes.

12 Q. Can you tell me again why you chose to
13 emphasize the words particular candidate?

14 A. I wanted to make certain that coders
15 answered that question with regard to specific
16 candidates and not with regard to broader partisan
17 messages that they may see in an advertisement or
18 broader partisan manifestations.

19 Q. Did you intend by emphasizing the words
20 particular candidate to predispose the coders in any
21 way with respect to their answers to question 6?

22 A. No.

23 Q. Do you believe that by placing the
24 emphasis on the words particular candidate, there was
25 an effect of predisposing the coders in any way with

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1 A. No, it was intended to measure their
2 perceptions of the commercials themselves.

3 Q. And with respect to their perceptions, do
4 you believe that Arizona State University students
5 are representative of the average television viewing
6 public?

7 A. I do.

8 MS. BHATTACHARYYA: That's all I have.

9 Thank you, Dr. Krasno

10 EXAMINATION BY COUNSEL FOR THE
11 NATIONAL ASSOCIATION OF BROADCASTERS
12 BY MS. BUCKLEY:

13 Q. So let me see if I have this straight.

14 They're representative of the television viewing
15 public as to their perceptions but not as to their
16 attitudes, is that right?

17 A. Yes.

18 Q. So you believe that a sample of Arizona
19 University undergraduates asked to determine, in
20 their judgment, a purpose of an ad is going to be a
21 representative sample of an ordinary television
22 viewer, is that right? Is that what you're saying?

23 A. Yes.

24 Q. What differences are there between Arizona
25 undergraduate students and the ordinary television

<p style="text-align: right;">Page 206</p> <p>1 viewer?</p> <p>2 A. Well, to begin with, they're younger.</p> <p>3 Q. There is one.</p> <p>4 A. They're probably likelier to be wealthier.</p> <p>5 Q. Right.</p> <p>6 A. They may be more well to do.</p> <p>7 Q. Right.</p> <p>8 A. We don't know.</p> <p>9 Q. Anything else?</p> <p>10 A. They'll have more liberal attitudes on</p> <p>11 some questions like questions of personal conduct so</p> <p>12 typically university students are more liberal about</p> <p>13 things like abortion rights and the population as a</p> <p>14 whole.</p> <p>15 Q. Anything else?</p> <p>16 A. I could go on.</p> <p>17 Q. Please.</p> <p>18 A. They're less likely to be politically</p> <p>19 interested than the average viewer because they</p> <p>20 haven't been politically socialized in the same way.</p> <p>21 Q. Even if they're in a political science</p> <p>22 course, Dr. Krasno?</p> <p>23 A. Political science students are likely to</p> <p>24 be interested in politics because they're a</p> <p>25 self-selected group.</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Are you offering yourself in this case as</p> <p>2 an expert on survey methodology?</p> <p>3 A. I don't think that I'm offering myself as</p> <p>4 an expert on survey methodology.</p> <p>5 Q. I thought you told us this morning that</p> <p>6 you were an expert on the impact of BCRA, that that</p> <p>7 was the expertise you were offering us in this case.</p> <p>8 Did I misunderstand?</p> <p>9 A. I was asked to, as I understood it, assess</p> <p>10 what I felt the impact of BCRA would be on political</p> <p>11 parties in particular in this case, and then of</p> <p>12 course the electoral communications portion.</p> <p>13 Q. I didn't hear you incorrectly, did I?</p> <p>14 A. No.</p> <p>15 Q. That is what you said?</p> <p>16 MS. BUCKLEY: Subject to the caveat that I</p> <p>17 don't think this deposition is over because of the</p> <p>18 failure to comply with a validly issued subpoena,</p> <p>19 good evening to all.</p> <p>20 (Whereupon, at 6:17 p.m., the taking of</p> <p>21 the instant deposition ceased.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. Anything else that would distinguish</p> <p>2 undergraduates at the Arizona State University from</p> <p>3 your average television viewer?</p> <p>4 A. Nothing particularly relevant that comes</p> <p>5 to mind but I don't regard any of those things as</p> <p>6 particularly relevant to this issue.</p> <p>7 Q. You don't have any expertise in survey</p> <p>8 methodology, do you, Dr. Krasno?</p> <p>9 A. I do have some expertise in survey</p> <p>10 methodology.</p> <p>11 Q. What is that?</p> <p>12 A. I have been involved in studying public</p> <p>13 opinion and teaching public opinion courses for the</p> <p>14 last 12 years.</p> <p>15 My dissertation is about -- essentially</p> <p>16 uses public opinion data to compare Senate and House</p> <p>17 elections.</p> <p>18 Q. I'm sorry?</p> <p>19 A. To compare Senate and House elections. I</p> <p>20 did extensive work, including some work with survey</p> <p>21 design when I was a graduate student at Berkeley and</p> <p>22 working at the survey research center as we discussed</p> <p>23 this morning. Actually, I mentioned I worked for the</p> <p>24 data archive. The data archive was contained within</p> <p>25 the research center at Berkeley.</p>	<p style="text-align: right;">Page 209</p> <p>1</p> <p>2</p> <p>3 _____</p> <p>4 Signature of the Witness</p> <p>5 SUBSCRIBED AND SWORN to before me this _____ day of</p> <p>6 _____, _____.</p> <p>7</p> <p>8 _____</p> <p>9 Notary Public</p> <p>10 My Commission Expires: _____</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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