

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 18, 2002

21 Deposition of FRANK J. SORAUF, a witness
22 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

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<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 18, 2002, and 4 the proceedings being taken down by Stenotype by MARY 5 GRACE CASTLEBERRY, RPR, and transcribed under her 6 direction. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES (Continued): 2 3 On behalf of the Federal Election Commission: 4 COLLEEN T. SEALANDER, ESQ. 5 KEVIN DEELEY, ESQ. 6 Federal Election Commission 7 999 E Street, N.W. 8 Washington, D.C. 20463 9 (202) 694-1650 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<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 Senator McConnell and National 12 Association of Broadcasters: 13 FLOYD ABRAMS, ESQ. 14 EMILY ROSS, ESQ. 15 Cahill Gordon & Reindel 16 80 Pine Street 17 New York, New York 10035 18 (212) 701-3000 19 20 On behalf of the California Democratic Party: 21 JOSEPH E. SANDLER, ESQ. 22 Sander, Reiff & Young 23 50 E Street, S.E., Suite 300 24 Washington, D.C. 20003 25 (202) 479-1111</p>	<p>1 CONTENTS 2 WITNESS EXAMINATION BY COUNSEL FOR 3 FRANK J. SORAUF SENATOR MCCONNELL AND NATIONAL 4 ASSOCIATION OF BROADCASTERS 5 By Mr. Abrams 7 6 REPUBLICAN NATIONAL COMMITTEE 7 By Mr. Barnett 83, 197 8 FEDERAL ELECTION COMMISSION 9 By Ms. Sealander 196 10 11 Afternoon Session - Page 83 12 13 EXHIBITS 14 SORAUF EXHIBIT NO. PAGE NO. 15 1 - Article Entitled Caught in a Political 14 16 Thicket 17 2 - Article Entitled What Buckley Wrought 21 18 3 - Chapter from Behind the Oval Office 31 19 4 - Story Boards of Eight Advertisements 40 20 5 - Story Boards of Three Advertisements 40 21 by AFL-CIO 22 6 - Story Boards of Two Advertisements 47 23 Regarding Death Tax 24 7 - Story Board by NAACP 49 25</p>

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<p>1 PROCEEDINGS</p> <p>2 Whereupon,</p> <p>3 FRANK J. SORAU F,</p> <p>4 was called as a witness by counsel for Plaintiffs,</p> <p>5 and having been duly sworn by the Notary Public, was</p> <p>6 examined and testified as follows:</p> <p>7 MS. SEALANDER. This is Colleen Sealander</p> <p>8 from the Federal Election Commission and I just</p> <p>9 wanted to make a clarification about Mr. Sorauf's pay</p> <p>10 for this. In his report, we had indicated that he</p> <p>11 was not receiving any compensation and that's true</p> <p>12 Since then, however, he has asked for a</p> <p>13 \$750 stipend for appearing here today and the</p> <p>14 Commission is processing the paperwork on that, so I</p> <p>15 wanted to just make everybody aware.</p> <p>16 MR. ABRAMS: Thank you.</p> <p>17 EXAMINATION BY COUNSEL FOR SENATOR MCCONNELL</p> <p>18 AND NATIONAL ASSOCIATION OF BROADCASTERS</p> <p>19 BY MR. ABRAMS:</p> <p>20 Q. Shall I call you Professor Sorauf or</p> <p>21 Dr. Sorauf?</p> <p>22 A. Professor, Mister, either one. Doctor,</p> <p>23 no.</p> <p>24 Q. All right. Good morning, Professor</p> <p>25 Sorauf.</p>	<p>1 Q. Who was that?</p> <p>2 A. Colleen Sealander, I believe.</p> <p>3 Q. And what were you asked to do?</p> <p>4 A. I'm not sure that our conversation was</p> <p>5 quite that pointed originally. I think we talked</p> <p>6 about it. I should preface by saying I had written</p> <p>7 with Jonathan Krasno before for the Federal Election</p> <p>8 Commission, and I suppose in my mind the assumption</p> <p>9 was that I would prepare a similar memo for the</p> <p>10 defense in this case; that is to say, a defense that</p> <p>11 in effect examined the consequences for political</p> <p>12 parties for elections, for campaign finance of either</p> <p>13 the statute or the suit at hand.</p> <p>14 Q. What had you written before with</p> <p>15 Mr. Krasno?</p> <p>16 A. I had written a memorandum -- co-authored</p> <p>17 a memorandum for the Federal Election Commission in</p> <p>18 the Colorado case involving the federal regulation of</p> <p>19 coordinated expenditures by political parties, and I</p> <p>20 had written with John also on behalf of the state of</p> <p>21 Missouri in a follow-up to the Shrink case. I think</p> <p>22 it's the Lamb case, L-a-m-b, which I believe is still</p> <p>23 in lower federal courts. It too was a challenge to</p> <p>24 the constitutionality of Missouri's regulation of</p> <p>25 political party contributions.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. Have you ever appeared on behalf of any 2 entity or person challenging the constitutionality of 3 a campaign finance statute? 4 A. I do not believe I have. 5 Q. The Colorado case, is that what is 6 sometimes known as Colorado 1? 7 A. It was Colorado 2, I believe. 8 Q. Was it? 9 A. It was after the demand from the Supreme 10 Court. 11 Q. And you prepared with Mr. Krasno a 12 document entitled, Evaluating the Bipartisan Campaign 13 Reform Act? 14 A. --Yes, I do believe I did. 15 Q. What was the division of labor between the 16 two of you? 17 A. Well, I would say there were two divisions 18 of labor. One division was a quite simple one, that 19 John was going to do more work than I did, that he 20 was going to be in charge of the initial draft and 21 that we would be in touch on any substantive points 22 of the entire work. 23 The second division of labor was that I 24 would be more responsible for the thinking and the 25 outline and et cetera of the section on soft money</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No, I did not. 2 Q. Did you come to know what role Professor 3 Goldstein played in the preparation of those two 4 reports? 5 A. I had known something. Before I began 6 this enterprise, I was aware that Jonathan Krasno was 7 working with Goldstein. I met Goldstein once at a 8 political science meeting, talked with him about it. 9 I saw that I had a general idea of their 10 collaboration without being very specific, but I did 11 have a general idea before I started this project. 12 Q. And what was your general idea as to the 13 different roles of Professor Goldstein and 14 Mr. Krasno? 15 A. Well, Jonathan of course had the main 16 responsibility for Buying Time, at least the '98 17 version. In part it originated -- I believe it 18 originated as a part of a larger study of television 19 advertising that he was doing with Goldstein. But 20 certainly it's my understanding that Jonathan was the 21 principal author of Buying Time '98. 22 Q. You have written frequently about campaign 23 finance issues, have you not? 24 A. All the way back to the early '80s. 25 Q. You've published books as well as</p>
<p style="text-align: right;">Page 11</p> <p>1 because of my expertise and long time history of 2 writing on political parties, and John would be 3 primarily responsible for the section on issue 4 advocacy, electioneering communications. 5 Q. Are you the two of you, though, each 6 responsible for the totality of the document? 7 A. Yes. I certainly accept responsibility 8 for the totality of the statements. 9 Q. In the course of your work on this, did 10 you speak with anyone else other than Mr. Krasno and 11 people at the Federal Election Commission? Let me be 12 more specific. Did you speak to anyone at the 13 Brennan Center? 14 A. No, I did not. 15 Q. Did you speak with any of the authors of 16 Buying Time 1998 or Buying Time 2000 other than 17 Mr. Krasno? 18 A. No, I did not. 19 Q. Did you review any of the coding data used 20 for the preparation of those two reports? 21 A. You mean the Buying Time reports? 22 Q. Yes. 23 A. No, I did not. 24 Q. Did you review any of the forms filled out 25 by the students?</p>	<p style="text-align: right;">Page 13</p> <p>1 articles? 2 A. I've published two books on the subject, 3 yes. 4 Q. Do you view yourself as an expert on First 5 Amendment issues? 6 (Interruption.) 7 (Mr. Barnett enters deposition room.) 8 MR. ABRAMS: Will you read back the 9 question? 10 THE REPORTER: "Question: Do you view 11 yourself as an expert on First Amendment issues?" 12 THE WITNESS: Certainly not as a lawyer. 13 I am not a lawyer. As a political scientist, I've 14 had some interest in First Amendment issues of 15 various kinds, not limited to speech. Also I wrote a 16 book on the constitutional litigation of interest 17 group participation in litigating church/state 18 issues. 19 BY MR. ABRAMS: 20 Q. And in your writings, you have dealt with 21 some frequency, have you not, with First Amendment 22 issues? 23 A. Yes, I think I have, at various times. 24 Q. I want to take you back to the 1980s and 25 show you an article that you wrote and ask you a few</p>

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1 questions about it.
 2 A. Which one is it?
 3 Q. It's called Caught in a Political Thicket.
 4 A. My controversial article.
 5 Q. The Supreme Court and Campaign Finance. I
 6 will mark it as Sorauf Exhibit 1.
 7 (Sorauf Exhibit No. 1 was
 8 marked for identification.)
 9 BY MR. ABRAMS:
 10 Q. So I take you back to your youth,
 11 Professor Sorauf, and to 1986 and ask you --
 12 A. Back to my middle age.
 13 Q. Is this an article that you wrote?
 14 A. Yes, it is.
 15 Q. I want to ask you some questions about
 16 specific portions of the article. If at any time you
 17 want to read more deeply into it, because I will be
 18 moving around through the article, just let me know,
 19 and we can take a break to give you time.
 20 Focusing first on page 97, which is the
 21 first page of the article, referring to the Buckley
 22 versus Valeo case and its successor case, Federal
 23 Election Commission versus National Conservative
 24 Political Action Committee, you referred to, quote,
 25 the Supreme Court's ill-starred effort to reconcile

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1 independent spending for or against a candidate by
 2 any individual or group." Were you one of the
 3 observers whose amazement you are referring to here?
 4 A. Yes.
 5 Q. And could you refer now to page 110. On
 6 page 110, dealing with restrictions on independent
 7 spending, in the last paragraph on page 110, you
 8 wrote, "No scholar or journalist has yet established
 9 a causal relationship between campaign contributions
 10 and governmental preference for private economic
 11 interests." What did you mean by that?
 12 A. I was referring there to what had been at
 13 the time and remains pretty largely the case of an
 14 inability to show with any kind of empirical analysis
 15 of roll calls, et cetera, a causal relationship. It
 16 gets to the question that you can show a correlation
 17 but the problem is to go beyond establishing
 18 correlation to a causal relationship.
 19 Q. And in that respect, at the bottom of page
 20 110, you wrote, did you not, "Indeed, it is not
 21 especially difficult to show that, in some key and
 22 visible votes, members of the Congress support the
 23 position of people who give them money. Who would
 24 expect it to be otherwise? The analytical problem is
 25 one of determining cause and effect; that is, do the

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1 the First Amendment with the widely-felt need to
 2 regulate campaign finance, unquote.
 3 And my question to you is, do you agree
 4 that it is necessary in passing on acts of Congress
 5 in this area to seek to reconcile the First Amendment
 6 with the desire to regulate campaign finance?
 7 A. Do I think it is --
 8 Q. Do you personally --
 9 A. Do I personally?
 10 Q. Yes. Do you --
 11 A. Yes, personally I believe it's important
 12 to, yes.
 13 Q. And focusing on your views now, not the
 14 Court's, do you agree that it's necessary to consider
 15 both the needs of campaign finance and the demands,
 16 whatever they may be, of the First Amendment?
 17 A. Whatever they may be, yes.
 18 Q. You referred on page 99, on the bottom of
 19 the page on the right, to the Buckley decision as
 20 follows: "On the issues surrounding the regulation
 21 of congressional finance, the Court - to the
 22 amazement of many observers - upheld the limits on
 23 contributions to candidates, but struck down all
 24 limits on spending: spending by candidates from their
 25 own funds or from funds given to them, and

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1 votes follow the money or does the money follow the
 2 votes?" And that is what you just told us in
 3 different words, correct?
 4 A. More or less, yes.
 5 Q. You then went on and said, "Political
 6 scientists have another criticism of such studies,
 7 even of those that by sequences of events make a
 8 strong case for concluding that, at least in some
 9 instances, the vote has followed the money. It is
 10 that they are 'anecdotal'; the relationships are
 11 established or even merely alleged only in a very
 12 small number of dramatic, titillating instances.
 13 "Uncounted are the occasions in which
 14 there is no dramatic relationship or in which
 15 contributors, PACs for instance, lose in the
 16 congressional vote. Scholars have not found it easy
 17 to cope with the problem of trying to establish
 18 relationships between money and votes and larger
 19 numbers of roll calls in a congressional session.
 20 The most successful attempts have found only a small
 21 positive relationship."
 22 Is that still true?
 23 A. No, it isn't. I think it is much less
 24 true today. For one, a number of scholars have
 25 established some relationship. There is, for

<p style="text-align: right;">Page 18</p> <p>1 example, a very important study that appeared some 2 8-10 years ago in the American Political Science 3 Review that shows that there is a relationship 4 between receiving contributions and willingness to, 5 so to speak, quote, carry the ball, unquote, to 6 become an advocate for, to introduce amendments 7 favorable to, et cetera, within the legislative 8 process. 9 It's also true, I think, that not only has 10 scholarship changed since I wrote this some years 11 ago, but also events themselves have changed and I 12 think that the events, for example, of the -- I mean, 13 the whole magnitudes of contributions within the 14 political system, all of this creates a different 15 status quo than I was referring to when I wrote this 16 in the middle of 1980s. 17 Q. Could you refer now to page 116 on the 18 last full paragraph, about halfway up in the 19 paragraph, you said, "It is the electoral issues that 20 are increasingly salient, and nowhere is that clearer 21 than in the case of independent expenditures. The 22 Supreme Court is largely correct that these 23 expenditures do not raise serious questions of direct 24 influence on political decision making. But they do 25 raise troubling questions about the integrity of</p>	<p style="text-align: right;">Page 20</p> <p>1 indeed raise an issue of policy making." What was 2 the issue of policy making you were referring to? 3 A. The issue of -- I was referring to -- here 4 I believe I was referring to the issue of impact of 5 financial -- of spending on policy making, on 6 legislatures, primarily. 7 Q. Were you suggesting that if an 8 organization takes the position that it will engage 9 in campaign efforts to defeat members of Congress 10 with whom they are in policy disagreement, that there 11 is any impropriety in that? 12 A. I don't think I'm suggesting that, but I 13 am suggesting that it does raise the question of the 14 impact on public officials. And I guess I was 15 referring here also to what was at the time the 16 particular notorious case of NCPAC in the -- what was 17 it, 1980 senatorial elections in which they had 18 targeted, I believe, five Senators with a 19 particularly vigorous and really the first vigorous 20 foray of interest groups or groups into our electoral 21 politics. 22 Q. And did you find that disturbing? 23 A. I found it disturbing, yes. 24 Q. Did you also think that, at least in part, 25 it reflected the -- strike that. Let me start again.</p>
<p style="text-align: right;">Page 19</p> <p>1 American elections." 2 And that is what you wrote then, correct? 3 A. Yes, it is. 4 Q. And is that still true? 5 A. It is substantially still true for one 6 very important reason and that is that independent 7 expenditures, at least in federal elections, have 8 become far less important than they were when I wrote 9 here. They have been overtaken by the less regulated 10 and thus more desirable alternative of issue 11 advocacy. 12 Q. What did you mean by independent 13 expenditures as you used the term here? 14 A. The meaning of the statute; that is, 15 expenditures which would be made by a third party, an 16 individual or a group to support or to oppose a 17 candidacy of a federal officer which of course had to 18 be done in completely separate and independent 19 planning from the candidate or any representative of 20 the candidate, but which would also have to be 21 reported to the Federal Election Commission. 22 Q. In footnote 69, you wrote, "When NCPAC 23 threatens members of Congress with campaigns to urge 24 their defeat if they stray from its legislative 25 preferences - as it has done sometimes - it does</p>	<p style="text-align: right;">Page 21</p> <p>1 Did you also think that NCPAC was exercising its 2 democratic right of -- 3 A. Yes, I did. 4 Q. Let me finish the question. 5 A. Sorry. 6 Q. -- of urging people to support what they 7 thought was the right thing to do? 8 A. Yes, I did think they were. What troubled 9 me was the magnitude of it, the overwhelming force of 10 it in electoral politics, frankly. 11 Q. I now want to bring you a little more up 12 to date and show you an article that you wrote 13 entitled What Buckley Wrought, published in a book 14 called If Buckley Fell, and I'll mark that as Sorauf 15 Exhibit 2. 16 (Sorauf Exhibit No. 2 was 17 marked for identification.) 18 BY MR. ABRAMS: 19 Q. And can you tell us how you came to write 20 this article? 21 A. Well, I wrote it at the invitation of the 22 Brennan Center at New York University Law School. It 23 was an outgrowth of a conference that the Brennan 24 Center had and this is a redoing of the paper that I 25 presented for the conference.</p>

<p style="text-align: right;">Page 22</p> <p>1 It was intended by the director of the 2 center and the editor of this volume, Josh 3 Rosenkranz, it was intended as sort of an 4 introductory paper at the conference to give a sort 5 of overview of the development of the campaign 6 finance system after 1974. 7 And indeed I believe it serves sort of the 8 same purpose in the book; that is, it is the first 9 chapter and it is sort of an overview which then 10 leads the reader to subsequent chapters by various 11 lawyers, legal experts. 12 Q. Were there any defenders of Buckley versus 13 Valeo on the panel? 14 A. I would say that, to the best of my 15 recollection, there was nobody who was an across the 16 board defender of Buckley. There were levels, 17 different levels of disagreement with Buckley. I 18 don't recall that there was anybody who was 19 completely happy with Buckley. 20 Q. Would it be fair to say of yourself that 21 you were rather completely unhappy with Buckley? 22 A. Well, I was not entirely unhappy with 23 Buckley but I have been a critic of Buckley all the 24 way -- certainly that article in '86 reflects that, 25 so that I have been a long time critic of Buckley.</p>	<p style="text-align: right;">Page 24</p> <p>1 the words express advocacy. Is there any particular 2 reason for that? 3 A. I think the phrase express advocacy was 4 not widely used at that time, at least in the circles 5 I was writing with and for. 6 Q. Do you know if the words express advocacy 7 were the words chosen by the Supreme Court to use in 8 both Buckley and the Massachusetts Citizens for Life 9 case? 10 A. I don't recall. 11 Q. Could you direct your attention, please, 12 to page 39? 13 A. Okay. 14 Q. In fact, why don't we start on page 38. 15 You deal there, do you not, with the impact on the 16 states of Buckley and one particular impact and that 17 is with respect to ballot initiatives or referenda, 18 correct? 19 A. Uh-huh. 20 Q. And you state that the number of 21 initiatives, as well as the total of all kinds of 22 ballot issues is on the rise in the states. And you 23 then state on page 39, "By removing limits on giving 24 and spending in these campaigns, the siblings of 25 Buckley have made the most media intensive of all</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Could you direct your attention to page 2 19. On the bottom right, you refer to the Court's 3 narrowing in Buckley of the scope of FECA "in 4 response to arguments that it was unconstitutionally 5 vague in defining what constituted campaigning." 6 You also refer to the fact that "most 7 federal courts have hued to a very narrow and literal 8 interpretation of Buckley that comes down to whether 9 or not the magic words of advocacy are used." Did 10 the Supreme Court set forth the magic words of 11 advocacy in Buckley? 12 A. I must admit, my recollection is not 13 clear. There is a footnote, is it 42? A famous 14 footnote in Buckley in which the Court, in my 15 recollection, does refer to explicit, but I guess I 16 really should say any recollection of that footnote 17 is vague. 18 Q. Do you recall if the Court used the words 19 "magic words"? 20 A. No, I'm sure the Court did not use the 21 words. 22 Q. Do you recall if the Court said that only 23 particular words would constitute express advocacy? 24 A. I don't believe it did. 25 Q. I don't find reference in the article to</p>	<p style="text-align: right;">Page 25</p> <p>1 electoral campaigns into the least constrained. In a 2 short period, interests on both sides of a ballot 3 question must try to mobilize majorities almost from 4 point zero, for in these campaigns there are no 5 incumbents, no candidates with name recommendation, 6 and few anchors of party loyalty. 7 "The contesting coalitions target voters 8 who are as close to 'blank slates' as one finds in 9 American politics. Especially in the largest and 10 most populous states, these statewide campaigns are 11 likely to succeed, when contested, only with the 12 resources for massive media, billboard and direct 13 mail campaigns." 14 On one level, isn't it true that what 15 you've just described there is profoundly democratic? 16 A. Only in part. I mean, it is in part 17 democratic in the sense that participation is open. 18 I don't think democracy -- on the other hand, I don't 19 think democracy implies that issues need to be 20 unstructured, that they need to come without 21 background, that they should represent complex 22 issues, that voters frequently don't understand or 23 don't have any basis for understanding. 24 That would presume a kind of democracy 25 much more suited to the open places, the Agora of</p>

<p style="text-align: right;">Page 26</p> <p>1 ancient Athens, perhaps, but it doesn't apply very 2 readily, it seems to me, to a mass industrial 3 society. 4 Q. Is the visage of interests of both sides 5 of a ballot question trying to mobilize majorities 6 one way or the other on that -- 7 A. I'm sorry, where are you? 8 Q. I wasn't quoting completely. I'll start 9 again. I'm paraphrasing from the first full 10 paragraph on page 39. But I'm asking you, as you sit 11 here now, whether the visage of interests on both 12 sides of a ballot question trying to mobilize 13 majorities from point zero is not one that democratic 14 theorists would think is consistent with the notion 15 of broad participation in the formulation of public 16 policy by the public. 17 A. Again, I think it would depend on which 18 democratic theorists you're talking about. There 19 remains to this date a great debate among political 20 scientists and I think among journalists, lawyers as 21 well, over the wisdom of referenda and initiatives as 22 instruments of public policy making, which comes down 23 really to the question of a mass unstructured 24 democracy versus representative democracy. 25 Q. And those forms of public participation in</p>	<p style="text-align: right;">Page 28</p> <p>1 integrity of elections and the integrity of 2 representative processes. Buckley has had an impact 3 on the very nature of American democracy. The impact 4 began by diminishing the power of legislatures to act 5 on what are classic issues of a viable representative 6 democracy - the kind of indirect, representative 7 democracy that the Founding Fathers called a 8 republic. 9 "The First Amendment is by its nature 10 antigovernment ('Congress shall make no law...') but 11 it does not have to be applied in ways that ignore 12 the wisdom and judgment of elected legislatures in 13 the kinds of political issues they know a great deal 14 about." 15 First, the First Amendment has been 16 applied, has it not, in a variety of circumstances in 17 which elected legislatures had a significant degree 18 of knowledge about the topic that they were passing 19 on? 20 A. Well, you're referring outside of campaign 21 finance? 22 Q. Yes. 23 A. Yes. 24 Q. You wrote next, "The Court in Buckley 25 undermined legislative authority to regulate campaign</p>
<p style="text-align: right;">Page 27</p> <p>1 the formulation of policy were at one point in 2 American history viewed as reforms, were they not? 3 A. That is correct. 4 Q. And they were reforms that were enacted 5 for the ostensible purpose of giving the public the 6 chance to make the decisions on their own about 7 certain significant issues which might affect them? 8 A. The reform movement that supported them 9 made that claim, absolutely. 10 Q. And there were a number of political 11 scientists who at least at some time or other thought 12 that they were right? 13 A. That is correct, but that was almost a 14 century ago. 15 Q. That reform movement has come and gone? 16 A. Well, it had a brief resurgence just about 17 a decade or two ago. Several states I think adopted 18 initiatives. 19 Q. Could you direct your attention to page 60 20 where you reflect on the question that I've been 21 putting to you of the democratic character, pro and 22 con, of what we've been talking about. 23 I'm referring specifically to the second 24 paragraph on page 60 which I'll read as follows: 25 "Because campaign finance raises questions of the</p>	<p style="text-align: right;">Page 29</p> <p>1 finance in another way. It has, willy nilly, come 2 down on the side of a concept of democracy that very 3 much looks like the direct democracy of American 4 populism. Its decisions have stimulated extravagant 5 campaigns on a growing number of ballot issues in the 6 states. 7 "Furthermore, the issue ads it protects 8 and thus encourages become issue plebiscites, the 9 more so as the battles of issue ad versus issue ad 10 threaten to overshadow the campaign of the 11 candidates." 12 Can you give us an example of one of those 13 battles of issue ad versus issue ads that that may 14 come to mind as you sit here today? I should say 15 this is not a short answer test, so I will understand 16 if you can't think of one, but I would be interested. 17 A. One reason I'm having trouble thinking is 18 that the state in which I have lived for the last 40 19 years or so does not have initiatives and referenda 20 but I believe that California is the number one 21 example of massive expenditures on issues of 22 regulation of utilities, complex environmental 23 questions, et cetera, where I can't recall the exact 24 magnitudes of the sum spent pro and con, but these 25 have been massive media campaigns.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. And is it your view that the public is 2 unfit to understand their interests? 3 A. I think the public -- the issue for me 4 goes beyond the ability of the public to understand 5 their interests. They may have difficulty relating 6 the proposal to their interests. I think their 7 difficulty is even greater in understanding the 8 proposal itself and I think a campaign of this sort 9 is an ineffective educational device. 10 Q. But it is an educational device which has 11 claims within the concept of democratic theory, does 12 it not? 13 A. It makes claims within the framework of 14 democratic theory, yes. 15 Q. Well, even though you disagree with it, 16 don't you -- I'm sorry, strike that. Do you not 17 agree that the, quote, direct democracy of American 18 populism, unquote, which you write about, is a 19 legitimate if controversial theory of democratic 20 discourse? 21 A. I think it's legitimate. I think it is 22 put forward legitimately and by intelligent people, 23 yes. 24 Q. Now I'm going to turn to your report. The 25 questions that I'm going to ask you, Professor</p>	<p style="text-align: right;">Page 32</p> <p>1 BY MR. ABRAMS: 2 Q. I'm going to direct your attention to the 3 specific passages in this chapter that deal with the 4 nature of the advertisements themselves and then ask 5 you some questions about them. 6 Focusing first on page 140, Morris wrote 7 in paragraph 3, "In Arkansas, Clinton and I had 8 pioneered a new kind of paid media advertising. 9 Rather than advertising only in the weeks before an 10 election and sending out messages only about the 11 candidate, we advertised throughout the Governor's 12 tenure, not to promote his reelection but to 13 publicize his views on important legislative issues." 14 A little farther down he writes, "The key 15 was to advertise on legislative issues only, not to 16 promote Clinton's candidacy. By focusing on these 17 issues, Clinton could pass his program and build a 18 vast base of support. I wanted to use such 19 advertising to advance the President's legislative 20 program at the expense of the Republicans, hoping to 21 build national support as we had built local support 22 in Arkansas." 23 Focusing first on that material, is the 24 advertising that is described there -- and I 25 appreciate you don't have the advertising in front of</p>
<p style="text-align: right;">Page 31</p> <p>1 Sorauf, all will relate in one way or the other to 2 the second part of the report, and then you'll be 3 asked later on about the materials in the first part. 4 A. All right. 5 Q. So I would ask you to direct your 6 attention to page 50. That is the section in the 7 report, is it not, which deals with issue advocacy? 8 A. Yes. 9 Q. Now, you state, in the second full 10 paragraph, "The first candidate-oriented issue ads 11 were aired by the DNC in 1995 to promote President 12 Clinton." I'll go back to the sentence later. Those 13 issues ads, were they not, were ads about issues? Do 14 you recall? 15 A. I do not recall. 16 Q. Do you recall who the master mind was of 17 this campaign? 18 A. It sticks in my mind that it was -- 19 Q. Dick Morris? 20 A. Dick Morris, yes. 21 Q. I would like to mark as Exhibit 3 a 22 chapter from Dick Morris' book called Behind the Oval 23 Office and I'll ask you some questions about it. 24 (Sorauf Exhibit No. 3 was 25 marked for identification.)</p>	<p style="text-align: right;">Page 33</p> <p>1 you, but is the advertising as described and as 2 characterized by Mr. Morris advertising that seems to 3 be advertising about issues? 4 A. I think I would want to know a little bit 5 more than Mr. Morris tells us here. I would like to 6 know how closely these messages were timed to 7 elections, especially to a re-election campaign, et 8 cetera. I would also like to know the nature of the 9 discussion of issues, so that I would like to know 10 more before I made a judgment. 11 Q. Continuing, then, at page 141, Morris 12 writes in the second paragraph, "I wanted to do what 13 we had done in Arkansas: hammer home the differences 14 between the Democratic and the Republican legislative 15 and budget proposals. I knew that once voters 16 learned the specifics about the massive cuts in the 17 Republican budget and saw that Clinton wanted to 18 balance the budget too, but sensibly, they would 19 reject the Republican plan. 20 "In this way, we would win the political 21 center. Having established a position of strength 22 based on our legislative victories, we could deal 23 later with the specifics of winning the election." 24 And then at page 144, about halfway down, 25 he writes, "Our first ads were about the President's</p>

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1 refusal to cave in to congressional Republicans and
 2 repeal the ban on assault rifles. These featured one
 3 police officer describing how his partner had been
 4 gunned down by an assault weapon, and another police
 5 officer talking about how he had been shot by one
 6 during a routine traffic stop."
 7 And then the next paragraph, "The effect
 8 was electrifying. Our approval ratings and voter
 9 share zoomed where we advertised."
 10 Then at the bottom of the page, "In late
 11 August 1995, we began hitting Republican budget cuts
 12 in our ads and promoting the President's
 13 balanced-budget plan. These ads and their successors
 14 remained on the air, with only brief interruptions,
 15 until the Democratic Convention, after which our
 16 regular political ads picked up the slack. We
 17 created the first fully advertised Presidency in U.S.
 18 history, which led to an extensive record of
 19 legislative accomplishment."
 20 And two paragraphs down, "Our ads helped
 21 to explain the Republican budget cuts. More
 22 important, they elaborated the President's balanced
 23 budget proposal as an alternative. It would have
 24 been easy to publicize our opposition to the
 25 Republican cuts without doing any advertising. The

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1 press always comes to a fight, and a battle over cuts
 2 always makes the headline.
 3 "But our ads, showing that Clinton had an
 4 alternative, a better way of balancing the budget and
 5 cutting taxes, the ads worked well because they
 6 challenged the Republicans' monopoly on balancing the
 7 budget. Now the fight was not whether to balance but
 8 how to balance."
 9 I ask you to assume for purposes of our
 10 discussion that these ads ran well before the 1996
 11 election and that indeed they began in 1995 and that
 12 the advertisements that have been described in here
 13 all ran in 1995 right up to the Democratic Convention
 14 in 1996. And my question to you is this: Aren't
 15 these ads, as described by Mr. Morris, ones that can
 16 appropriately be characterized as issue ads?
 17 A. Again, I would certainly say that their
 18 timing is such as to give credibility to them as
 19 issue positions, rather than as campaigning. We
 20 still don't know much about the character of the
 21 text, the way in which the issue is dealt with, the
 22 way in which it is framed. Knowing nothing more than
 23 what I know here, it would appear that these were
 24 issue ads, yes.
 25 Q. And does it make a difference to you that

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1 the purpose of these ads was, as Mr. Morris said, to
 2 help to elect or re-elect President Clinton?
 3 A. Well, it does make a difference. That's
 4 Mr. Morris' post facto spin or statement. Whether
 5 that is intrinsic in the ads or not, I have no way of
 6 knowing.
 7 Q. Assume with me for the moment that the ads
 8 did not say vote for Clinton.
 9 A. I assume that.
 10 Q. And that the ads only focused on issues,
 11 but that the purpose of the ads was to prepare the
 12 public for an election campaign and ultimately one
 13 designed to re-elect President Clinton. Does that
 14 change your view as to whether the ads themselves
 15 should be considered issue ads?
 16 A. It's very hard to make that distinction,
 17 I'll admit. Incumbent Presidents always are
 18 preparing themselves for re-election and building the
 19 case for re-election. This is a somewhat novel way
 20 to do so and, as such, I suppose to some extent it
 21 blurs the distinction between issue ads and
 22 electioneering.
 23 Q. If you knew for certain that the only real
 24 purpose of these ads was to re-elect President
 25 Clinton, but that they said what Mr. Morris says they

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1 said; that is to say, focused on issues for the
 2 purpose of leading to the re-election of President
 3 Clinton, would you still characterize them as issue
 4 ads?
 5 A. Provided that they were, say, three, four
 6 months, five months before the election?
 7 Q. Yes.
 8 A. Yes.
 9 Q. Why is that?
 10 A. Because they dealt primarily with issues,
 11 as Mr. Morris explains. I have not seen them.
 12 Q. So would it be fair to say that if an ad
 13 deals primarily with an issue, that you think it fair
 14 to characterize it as an issue ad even if the purpose
 15 is electoral in nature?
 16 A. I think it depends on the timing, it
 17 depends on the extent to which it is merged with an
 18 appeal to support a candidate.
 19 Q. What Mr. Morris says here is that this was
 20 all a subliminal effort to ready the public to vote
 21 for the re-election of the President.
 22 A. Yes. And in a certain sense, that of
 23 course undermines the explicit issue purpose of the
 24 ads themselves.
 25 Q. And what do you conclude, therefore, from

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1 that?

2 A. I conclude that it's a very slippery and

3 difficult business.

4 Q. If you could direct your attention to page

5 51 of your report. In the first full paragraph,

6 dealing with issue ads, you refer to viewers,

7 particularly in the most competitive districts,

8 seeing and frequently complaining about a "seemingly

9 endless stream of political ads." At the same time

10 you wrote, "Candidates struggled to regain control of

11 their own campaigns in the aftermath of ads, and they

12 also confronted a shrinking supply of airtime for

13 their own ads."

14 Focusing on the first part of that

15 sentence, candidates struggling to regain control of

16 their own campaigns, is it your view that candidates

17 have a right to determine what issues are discussed

18 during their campaigns?

19 A. I don't think in the legal sense they have

20 a right, but I think as an observer and a scholar of

21 campaigns, that it ill serves the public if

22 candidates don't have some control and some

23 responsibility for the campaigns being waged in their

24 name.

25 Q. And is it your view, then, that to the

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1 story boards. Have you seen any of those?

2 A. No, I haven't. I've heard the term story

3 board but I have not seen any.

4 Q. What they've done basically is to hire an

5 outside entity to take pictures from outer space of

6 advertisements that appeared in the top 75 markets in

7 the 2000 campaign. The photographs were taken every

8 3 or 3-1/2 seconds and so one sees at least the core

9 of what a viewer saw and the language. So I want to

10 show you a few and ask you your views on certain

11 issues.

12 (Recess.)

13 (Sorauf Exhibit Nos. 4 and 5

14 were marked for identification.)

15 BY MR. ABRAMS:

16 Q. I've marked as Exhibit 4, story boards of

17 eight advertisements that appeared on television.

18 And I represent to you that they appeared on

19 television within 60 days of the 2000 election. I

20 would like you to look through them first and then

21 I'll ask you some questions about them. So that the

22 record is clear, Exhibit 4 begins with an

23 advertisement the title of which, as stated on it, is

24 KY, Kentucky, COC, Chamber of Commerce, Jordan Big

25 Government RX Plan.

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1 extent third parties wish to speak through television

2 advertisements about the candidates and about issues

3 in the campaign, that as a matter of policy, that

4 should be subordinated to the candidates' need to

5 control their own campaigns?

6 A. Again, I think it's a question of the

7 quantity of the message outside their control. It

8 seems to be one of those subjects in politics where

9 quantitative differences ultimately become

10 qualitative.

11 And in this particular instance, it forces

12 candidates frequently into a defensive posture, it

13 gives an attack and -- an attack mode to the campaign

14 and it forces candidates to raise more money to

15 defend themselves against these kinds of ads.

16 Q. Do you believe that the government should

17 play a role with respect to whether campaigns have an

18 attack mode or not?

19 A. I don't really think there is any way the

20 government can deal with that kind of a question.

21 Q. Is that because of the First Amendment?

22 A. Because of the First Amendment, yes.

23 Q. I want to show you some advertisements

24 that ran in the 2000 campaign. What I'm going to

25 show you are what the Brennan Center refers to as

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1 A. Can I ask you a question?

2 Q. Yes.

3 A. I assume that that length is 30 seconds.

4 Q. That's correct.

5 A. Thank you.

6 Q. The next one is titled Kentucky/COC Jordan

7 Scaring Seniors RX. The third is titled

8 Minnesota/COC Luther Scaring Seniors RX. The fourth

9 is titled Ohio/COC/O'Shaugnessy Big Government RX

10 Plan. The fifth is titled Virginia/COC Robb Big

11 Government RX Plan. The sixth is titled

12 Minnesota/COC Luther Big Government RX Plan. The

13 seventh is --

14 A. All right.

15 Q. The seventh is titled Michigan/COC

16 Stabenow, S-t-a-b-e-n-o-w, Bad RX Plan. And the

17 eighth is titled Michigan/COC Stabenow RX Plan. And

18 I should tell you these titles are not ours and I

19 think not the Brennan Center's either, but are simply

20 placed on them by the entity that did the filming and

21 reporting of this to the Brennan Center.

22 MS. SEALANDER: These documents were

23 acquired from the Brennan Center?

24 MR. ABRAMS: Yes. All these were turned

25 over to us by the Brennan Center.

<p style="text-align: right;">Page 42</p> <p>1 BY MR. ABRAMS: 2 Q. These advertisements, as you have already 3 seen, Professor Sorauf, are extremely similar, 4 sometimes identical and that's why I put them 5 together. 6 Let me direct your attention to the first 7 one which has a picture of Eleanor Jordan and I ask 8 you to assume that Ms. Jordan was running for 9 Congress at the time this ad was broadcast. Now, my 10 question to you is this. Is this an advertisement 11 that deals with a significant public issue with 12 respect to the role of government in the area of 13 prescription drugs? 14 A. --In effect, your question is, is a 15 discussion of prescription drugs for seniors, et 16 cetera, a legitimate public issue, and the answer is 17 yes. 18 Q. And does this advertisement deal with the 19 role of government with respect to prescription 20 drugs? 21 MR. DEELEY: Professor Sorauf, if you need 22 time to read an ad while he's asking a question, feel 23 free to take that time. 24 THE WITNESS: Well, it deals with it in 25 the sense that it touches it and that it is referring</p>	<p style="text-align: right;">Page 44</p> <p>1 containing the pictures and words of advertisements 2 put on around the country by the AFL-CIO within 60 3 days of the 2000 election. 4 The first is entitled AFL-CIO/Kentucky 5 Fletcher PBR. The second is AFL-CIO/Call Clay Shaw. 6 The third is AFL-CIO/Kentucky Fletcher Pay For RX. 7 These three advertisements are not identical, so I'll 8 go through each one with you, focusing first on the 9 one titled AFL-CIO/Kentucky Fletcher PBR. Does that 10 advertisement as you read it contain an argument as 11 to the adoption of a patient's bill of rights? 12 A. Does it contain an argument relating to 13 patient's bill of rights, is that the question? 14 Q. Yes. 15 A. Yes, I think it does. 16 Q. And does it criticize a sitting 17 Congressman for being "on the wrong side" with 18 respect to the adoption of a patient's bill of 19 rights? 20 A. Yes. 21 Q. And is it your view that this 22 advertisement, if shown within 60 days of the 23 re-election bid of Congressman Fletcher, should be 24 impermissible for the AFL to run? 25 A. If it is within that 60-day period, I</p>
<p style="text-align: right;">Page 43</p> <p>1 to the public policy issue. The question of whether 2 -- the depth with which it deals with it is, I think, 3 the open question. 4 BY MR. ABRAMS: 5 Q. It's difficult to deal with an issue like 6 this in 30 seconds, isn't it? 7 A. I would agree. 8 Q. Do you believe, as a matter of public 9 policy, that it is important for groups to be able to 10 voice their opinions on significant matters of public 11 policy right down to and including election day? 12 A. That would depend on the circumstances in 13 which they do so. In the sense that we have 14 supported that section of BCRA, I would not support 15 it if it were linked with a candidate 15 days before 16 election. 17 Q. I want to understand what it is you would 18 not support. You would not support the freedom of an 19 organization to put this ad on television within 15 20 days of the election in which Ms. Jordan was running? 21 A. I would not favor that. 22 Q. Let me go on to the next one, the next 23 group of advertisements which have been marked as 24 Plaintiff's Exhibit 5. And I will say for the record 25 this exhibit is a collection of three story boards</p>	<p style="text-align: right;">Page 45</p> <p>1 would think that it would be covered by the 2 provisions of BCRA, yes. 3 Q. Putting aside whether it's covered by the 4 provisions of BCRA, I'm asking you if you believe 5 that an advertisement which takes a position on a 6 patient's bill of rights and criticizes a Congressman 7 for his position on the patient's bill of rights 8 should be precluded from being shown by the AFL 9 within 60 days of a federal election. 10 A. I'm saying I would consider this to be 11 electioneering and thus covered by the statute. And 12 since I support the statute, I support that coverage. 13 Q. When you say that you consider it to be 14 electioneering, do you also consider it an ad which 15 deals with a public issue and contains criticism of a 16 public official? 17 A. I think it does both of those things in a 18 very brief and a very rudimentary way. 19 Q. Is that because it's 30 seconds? 20 A. Well, in substantial part because it's 30 21 seconds, yes. 22 Q. Is there any direct advocacy here of the 23 election or defeat of Congressman Fletcher? 24 A. No, there is not. 25 Q. Focusing on the next page, the</p>

<p style="text-align: right;">Page 46</p> <p>1 advertisement titled AFL-CIO Call Clay Shaw, is this 2 an advertisement which deals with prospective 3 legislation with respect to seniors' prescription 4 benefits and which condemns a member of Congress for 5 his position on that? 6 A. My answer would be the same. It does 7 touch an issue, it does mention disapproval of a 8 Congressman but in both instances, in a very passing 9 and rudimentary way. 10 Q. Does the advertisement as you read it 11 endorse Congressman Shaw's opponent? 12 A. It does not do so explicitly. 13 Q. Not even in a rudimentary way, does it? 14 A. No. 15 Q. Could you turn now to the third 16 advertisement in this sequence which is titled 17 AFL-CIO, Kentucky Fletcher Pay for RX. And I'm going 18 to ask you the same questions. Is this an 19 advertisement which takes a position about the 20 desirability of guaranteed prescription benefits and 21 criticizes a sitting Congressman for his position on 22 that issue? 23 A. Again, my response is the same, that it 24 does both of those things but in a very passing and 25 rudimentary way.</p>	<p style="text-align: right;">Page 48</p> <p>1 call "the death tax" and both of them criticized then 2 candidate Stabenow for voting against getting rid of 3 that tax. 4 A. They both deal with a public policy issue 5 that they call the death tax, rather than the estate 6 tax. It isn't about the estate tax. It's about the 7 death tax. Whether those are the same thing, not 8 everybody knows, so that it deals with some version 9 of the estate tax issue and it does refer to Senator 10 Stabenow, yes. 11 Q. And it criticizes her for her position on 12 that? 13 A. Certainly. 14 Q. Does it say that people shouldn't vote for 15 her for that reason? 16 A. Well, I think it implies that, but it does 17 not say so explicitly. 18 Q. And it doesn't even say so in a 19 rudimentary way, does it? 20 A. No. 21 Q. By the way, do you think it is important 22 that organizations be free to speak out about issues 23 like the "death tax" and support it or denounce it as 24 they wish? 25 A. I believe they should have that right.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. And does this advertisement assert that 2 viewers should vote against Congressman Fletcher? 3 A. No, it does not. 4 Q. I want to turn now to a document I'll mark 5 as Exhibit 6. 6 (Sorauf Exhibit No. 6 was 7 marked for identification.) 8 BY MR. ABRAMS: 9 Q. Exhibit 6 is an exhibit containing two 10 story boards. 11 MR. DEELEY: Just so the record is clear, 12 this is Exhibit 6. 13 BY MR. ABRAMS: 14 Q. I'm sorry, Exhibit 6. The first is titled 15 Michigan/COC, referring to Chamber of Commerce, 16 Stabenow Death Tax and the second is Michigan/COC 17 Stabenow Death Tax 2. 18 Now, would it be fair to say that both of 19 these advertisements take a position on the estate 20 tax and that both of them criticize then candidate 21 Stabenow for voting against "getting rid of the death 22 tax"? 23 A. Did that question apply to both of these? 24 Q. Yes, it did. I'm asking if both of them 25 took a position about getting rid of what the ads</p>	<p style="text-align: right;">Page 49</p> <p>1 I'm not sure that I believe it should be unlimited 2 within the context of an election. 3 Q. I'm going to mark now as Exhibit 7, a 4 single page story board. 5 (Sorauf Exhibit No. 7 was 6 marked for identification.) 7 BY MR. ABRAMS: 8 Q. This one was put on the air by the NAACP 9 and is titled "Bush Hate Crimes." This 10 advertisement, does it not, criticize then Governor 11 Bush for allegedly refusing to support hate crimes 12 legislation and urges him to do so in the future, 13 correct? 14 A. Yes. 15 Q. And is the adoption of hate crimes 16 legislation a significant public issue? 17 A. Yes, it is. 18 Q. And is the ability to engage in advocacy 19 with respect to hate crimes legislation a matter of 20 significance, as you view it? 21 A. Yes. 22 Q. And does this advertisement urge the 23 public to vote for Al Gore or against George W. Bush? 24 A. No. 25 Q. I refer next to what I will mark as</p>

<p style="text-align: right;">Page 50</p> <p>1 Exhibit 8. 2 (Sorauf Exhibit No. 8 was 3 marked for identification.) 4 BY MR. ABRAMS: 5 Q. Exhibit 8 consists of story boards of two 6 60-second ads. The first is titled WI, that is 7 Wisconsin, NPLA Feingold Kohl Abortion 60 and the 8 second is titled VA, Virginia, NPLA Robb Abortion 60. 9 And I think you'll see that they're almost identical. 10 Could you have a look first, while I wait, at the 11 first one? 12 A. The first one? 13 Q. The first one is two pages. 14 A. Oh, I see. It's two pages. 15 Q. Yes. 16 A. All right. 17 Q. I'll ask you to assume that this ad was 18 paid for by the National Pro-Life Alliance and that 19 that is a group that is opposed to partial birth 20 abortions and that it ran in Wisconsin within 60 days 21 of the federal election there in which Senator 22 Feingold was a candidate in 2000. 23 My question is, is this 60-second ad one 24 which strongly condemns partial birth abortion and 25 urges the two Wisconsin Senators to change their vote</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Assuming that it was -- that it ran 2 within -- 3 Q. Yes, I'm asking you to assume that. 4 A. And I would, before I answer -- to be 5 positive, I would like to see it. I would like to 6 have some sense about the images, how long they ran, 7 et cetera. I would like to hear the narration. 8 Looking at it this way, I have none of 9 those kinds of nuances, none of those kinds of cues 10 that the reader would ordinarily have. From the 11 limited basis of what I see on a sheet of paper, I 12 would say yes, it would be covered by BCRA. 13 Q. Well, I don't mean to ask you whether you 14 think it's covered by BCRA. I mean to ask you if -- 15 A. Sorry. 16 Q. -- if you, as you sit here today and read 17 it, conclude that it is a pure issue ad. 18 A. I don't think it is a pure issue ad when 19 the name of the Senators appear. 20 Q. And do you believe that this advertisement 21 should be barred if paid for by a corporation 22 entitled the National Pro-Life Alliance and shown 23 within 60 days of the Wisconsin election? 24 A. Yes. 25 Q. Why is that?</p>
<p style="text-align: right;">Page 51</p> <p>1 and to oppose partial birth abortion by legislation? 2 A. Let me say preliminarily, the conspicuous 3 misprint in the transcription, exposed instead of 4 disposed, raises a question in my mind of the 5 accuracy of the narrator. But assuming that it is 6 accurate, it does deal with the question of abortion 7 and it does mention two Senators from Wisconsin, yes. 8 I also have no way of knowing from these 9 story boards how long the attribution at the end ran. 10 Did it run for one second, three seconds, five 11 seconds? 12 Q. I'm sorry, by the attribution at the end, 13 what do you mean? 14 A. Below -- 15 Q. Paid for by? 16 A. Paid for by, yes. 17 Q. And is that something that you would want 18 to know in order to analyze the advertisement? 19 A. To analyze it more generally, yes, I would 20 like to know that. To answer your specific 21 questions, they could be answered within the context 22 before us. 23 Q. Let me broaden the question, then, now. 24 Do you view this advertisement as an issue 25 advertisement?</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Because, for all of the reasons I stated 2 before. I think these are -- they become 3 electioneering and I think as such, they are and 4 ought to be subject to limitation, in terms of their 5 reference to candidates and in terms of the time of 6 their running. 7 Q. You mentioned earlier that you cannot 8 have, from the face of the story board alone, the 9 kind of nuances and cues that would otherwise be 10 available if you saw the ad, correct? 11 A. I would prefer to see the ad, yes. 12 Q. Now, is it your understanding that under 13 the statute, under BCRA, that those nuances and cues 14 are really irrelevant? 15 A. I'm not a lawyer and I must say I don't 16 know that much about the statute or about rules that 17 have been developed to enforce it. 18 Q. I'll mark as Exhibit 9 an exhibit with 19 three story boards. The first is titled 20 PLANP/California Bilbray Right to Choose. The second 21 is titled Virginia/NA Davis Friends Disagree 22 Abortion. And the third is titled RI, Rhode Island, 23 WV Langvin, L-a-n-g-v-i-n, Abortion. 24 (Sorauf Exhibit No. 9 was 25 marked for identification.)</p>

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1 THE WITNESS: Just the first page?
 2 BY MR. ABRAMS:
 3 Q. Why don't you read all three, please.
 4 Would it be fair to say that all three of these ads
 5 take a strongly expressed view on the issue of
 6 abortion or a woman's right to choose and criticize a
 7 sitting member of Congress or candidate for Congress
 8 with respect to that issue?
 9 A. Yes, but with one caveat, that that
 10 assumes that there is just one pro-choice issue and I
 11 think, for example, the first one deals with several
 12 pro-choice issues.
 13 Q. Subject to that caveat?
 14 A. It does reflect a pro-choice position.
 15 Q. And it does criticize a candidate for
 16 federal office?
 17 A. Yes.
 18 Q. And in at least two cases, a Congressman,
 19 for his position on that issue?
 20 A. Or issues, yes.
 21 Q. Those issues are very significant issues
 22 which are often discussed in a very heated way, are
 23 they not?
 24 A. Yes.
 25 Q. And they certainly are issues on which a

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1 voter could make a decision as to who to vote for,
 2 correct?
 3 A. Yes.
 4 Q. Are they issues that you believe are
 5 important for public debate to thrive?
 6 A. Yes, but it doesn't seem to me in these
 7 ads the issue was discussed. The Congressman's
 8 position is made clear but there is no discussion of
 9 an issue.
 10 Q. Do you think it's important for people to
 11 be able to discuss the position of Congressmen about
 12 public issues?
 13 A. Yes, I do.
 14 Q. And is that what these ads do?
 15 A. In a very basic way, yes.
 16 Q. You've written a lot about the nature of
 17 our society and the potential impact of campaign
 18 finance proposals and their impact on our society,
 19 correct?
 20 A. Uh-huh.
 21 Q. The first ad, the Bilbray ad, condemns
 22 Congressman Bilbray for a number of votes of his with
 23 respect to the issue of a woman's right to choose
 24 over the years, correct?
 25 A. Uh-huh.

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1 Q. You have to say yes.
 2 A. Yes.
 3 Q. Do you think it's important for the public
 4 to be informed about how a sitting Congressman has
 5 voted on the issue of a woman's right to choose?
 6 A. I do indeed.
 7 Q. Do you think it's important that people be
 8 permitted to urge others to call a Congressman to
 9 urge him to change his votes and to condemn a
 10 Congressman for his votes?
 11 A. I do, but I would prefer that the call be
 12 a more informed call than is reflected in these ads.
 13 Q. And is that because these ads are two
 14 sensationalistic?
 15 A. Not necessarily. They don't further any
 16 discussion of the issue, it seems to me.
 17 Q. They do assert, do they not, a position on
 18 the issue?
 19 A. They do assert a position, correct.
 20 Q. And they pass judgment on members of
 21 Congress for their position on the issue, correct?
 22 A. Yes, they do.
 23 Q. Do you know if one of the purposes of a
 24 group like Planned Parenthood is to do just that, to
 25 comment on the issue of a woman's right to choose and

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1 to criticize people who don't share their views on
 2 that issue?
 3 A. Yes.
 4 Q. I'll mark as Exhibit 10 a single story
 5 board under the heading YCL, the Young Christian
 6 League, Gore Nuclear Attack.
 7 (Sorauf Exhibit No. 10 was
 8 marked for identification.)
 9 BY MR. ABRAMS:
 10 Q. This is a pretty hard hitting ad, isn't
 11 it?
 12 A. Well, yes.
 13 Q. It's an angry ad? How would you
 14 characterize it?
 15 A. I'm not sure how I would characterize it.
 16 Perhaps panicked, paranoid, rather than angry.
 17 Q. Is the advocacy here within the tradition
 18 of political advocacy?
 19 A. Let's say that it's at the outer fringes
 20 of our traditions of advocacy somewhere.
 21 Q. Do you know if this ad would have fallen
 22 under BCRA if Vice President Gore's name were not on
 23 it?
 24 A. But Vice President Gore's name is on it.
 25 Q. Yes, it is. I'm changing the hypothetical

<p style="text-align: right;">Page 58</p> <p>1 now.</p> <p>2 A. All right.</p> <p>3 Q. Suppose the ad had said, "Your family and</p> <p>4 100 million other American families are vulnerable to</p> <p>5 nuclear attack within less than five years. That's</p> <p>6 the Clinton peace dividend from their sandbagging our</p> <p>7 missile defense program and from Clinton giving</p> <p>8 weapons and classified information to our enemies.</p> <p>9 Make survival, not surplus, your number one issue."</p> <p>10 A. And assuming that it ran in 2000?</p> <p>11 Q. Yes, assuming it ran in the year 2000 when</p> <p>12 President Clinton was not running for re-election.</p> <p>13 A. As a non-lawyer, I would assume that it</p> <p>14 would not be covered.</p> <p>15 Q. I'm now asking you, not as a lawyer or as</p> <p>16 a non-lawyer, but as a distinguished political</p> <p>17 scientist, do you think that an ad like this, if you</p> <p>18 take out the Gore name, should be encompassed -- I'm</p> <p>19 not asking you whether it is -- whether it should be</p> <p>20 encompassed within a statutory framework which makes</p> <p>21 criminal, corporations spending money on</p> <p>22 advertisements within 60 days?</p> <p>23 A. No, I don't think it should be</p> <p>24 incorporated.</p> <p>25 Q. Why is that?</p>	<p style="text-align: right;">Page 60</p> <p>1 electioneering component, it should be subject to</p> <p>2 regulation, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that's true, is it not, regardless of</p> <p>5 what it says about political or social issues?</p> <p>6 A. Correct.</p> <p>7 Q. And it's true, is it not, regardless of</p> <p>8 the language used, so long as it's used with the name</p> <p>9 of a candidate, and it's within the requisite time</p> <p>10 period?</p> <p>11 A. I believe that's correct under the</p> <p>12 statute.</p> <p>13 Q. We'll mark as Exhibit 11, an exhibit which</p> <p>14 contains six story boards relating to gun control.</p> <p>15 The first one is titled CO, Colorado, CPF Tancredo,</p> <p>16 T-a-n-c-r-e-d-o, Columbine. The second is titled</p> <p>17 Handgun/Bush Guns Don't Belong. The third is titled</p> <p>18 Handgun Martin Sheen. The fourth is titled NM, New</p> <p>19 Mexico, CPF Wilson and NRA. The fifth is titled FL,</p> <p>20 Florida, CPF Putnam Gun Record and the sixth is</p> <p>21 titled OH, Ohio, CPF Tiberi, T-i-b-e-r-i, Gun Lobby.</p> <p>22 (Sorauf Exhibit No. 11 was</p> <p>23 marked for identification.)</p> <p>24 THE WITNESS: Just the first one or all of</p> <p>25 them?</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Because it gets you into the area of</p> <p>2 evaluating the substance of speech and the ideas and</p> <p>3 I don't at the moment -- I don't see this as -- with</p> <p>4 the Gore name removed, I don't see it as</p> <p>5 electioneering.</p> <p>6 Q. And now put the Gore name back in the way</p> <p>7 it really was, and assume that it did run within 60</p> <p>8 days of the 2000 election. Then do you see it as</p> <p>9 electioneering?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Do you also see it as a sort of political</p> <p>12 commentary?</p> <p>13 A. Do you mean political commentary on the</p> <p>14 decisions of the Clinton-Gore Administration?</p> <p>15 Q. Yes.</p> <p>16 A. Again, in a very rudimentary sense, yes.</p> <p>17 Q. Would it be fair to say that an</p> <p>18 advertisement can be both electioneering in the sense</p> <p>19 that you've used the term and contain an expression</p> <p>20 of political and social views on some issue?</p> <p>21 A. I think that's always a possibility, yes.</p> <p>22 It's one that our report addresses and how to deal</p> <p>23 with it.</p> <p>24 Q. Well, the way you deal with it, is it not,</p> <p>25 is to say that so long as it has what you view as an</p>	<p style="text-align: right;">Page 61</p> <p>1 BY MR. ABRAMS:</p> <p>2 Q. Why don't you take your time and read all</p> <p>3 of them to yourself. Now, all these advertisements</p> <p>4 deal in one way or another, do they not, with the</p> <p>5 issue of gun control?</p> <p>6 A. Yes.</p> <p>7 Q. And that issue, too, was a significant one</p> <p>8 in the 2000 election, was it not?</p> <p>9 A. Significant is a strong word. It was a</p> <p>10 visible issue, yes.</p> <p>11 Q. And there are many people, are there not,</p> <p>12 who decide who to vote for based on a candidate's</p> <p>13 position on gun control?</p> <p>14 A. There are large numbers, yes.</p> <p>15 Q. And each of these advertisements deal with</p> <p>16 a candidate's supposed position on gun control and</p> <p>17 passes judgment on the behavior of that candidate,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. I'll mark as Exhibit 12, a single story</p> <p>21 board titled AFL-CIO Call Charles Bass.</p> <p>22 (Sorauf Exhibit No. 12 was</p> <p>23 marked for identification.)</p> <p>24 BY MR. ABRAMS:</p> <p>25 Q. And this advertisement --</p>

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1 A. I'm sorry, I haven't had a chance to read
 2 it yet.
 3 Q. I'm sorry.
 4 A. All right.
 5 Q. This advertisement, does it not,
 6 articulates an AFL position on the issue of federal
 7 safety standards and condemns a Congressman for what
 8 the AFL claims is his wrong-headed position on that
 9 issue?
 10 A. It deals primarily with OSHA type issues,
 11 especially repetitive motion injuries, yes.
 12 Q. And dealing with that issue, it criticizes
 13 Congressman Bass for his position, correct?
 14 A. Yes.
 15 Q. And it doesn't say, does it, vote against
 16 Congressman Bass?
 17 A. It does not.
 18 Q. I'll mark as Exhibit 13, two
 19 advertisements about schools. One titled
 20 Michigan/COC Stabenow Against Local Schools and the
 21 next titled MI/MIWV, Abraham Failed Michigan
 22 Children.
 23 (Sorauf Exhibit No. 13 was
 24 marked for identification.)
 25 BY MR. ABRAMS:

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1 Clean Water is the title.
 2 (Sorauf Exhibit No. 14 was
 3 marked for identification.)
 4 BY MR. ABRAMS:
 5 Q. And does this advertisement express a view
 6 about the position of the senatorial candidates in
 7 Virginia about certain environmental issues in a
 8 fashion which criticizes now Senator Allen and speaks
 9 favorably of the record of then Senator Robb?
 10 A. In a very cursory way, yes.
 11 Q. And this ad also sends the viewer to other
 12 Sierra Club information, does it not?
 13 A. There is a click-on, yes.
 14 Q. As we've been going over this array of
 15 ads, I've been thinking back to the sentence that I
 16 quoted to you and asked you about at the very
 17 beginning of our discussion today, in which you spoke
 18 of the need to reconcile the First Amendment with the
 19 widely felt need to regulate campaign finance.
 20 Looking at all these ads, do you have any
 21 qualms at all about the First Amendment loss that
 22 would be entailed by saying that none of these ads
 23 could safely appear in the form that I've shown them
 24 to you within 60 days of a federal election?
 25 MR. DEELEY: Objection to the

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1 Q. Now, these two advertisements with respect
 2 to opposing candidates for the Senate in Michigan
 3 take conflicting positions, do they not, on the
 4 record of the candidates with respect to education?
 5 A. Yes.
 6 Q. And the first one from the Chamber of
 7 Commerce criticizes the Democratic candidate, now
 8 Senator Stabenow, and the second one is the then
 9 Senator Abraham from the other perspective, correct?
 10 A. Correct.
 11 Q. Education as well was a serious issue in
 12 the campaign, was it not?
 13 A. Yes, but in some specific way or another.
 14 Q. Well, was it commonplace around the
 15 country that a candidate's real or perceived position
 16 about education was discussed as a basis for voting
 17 for or against the candidate?
 18 A. Yes.
 19 Q. And neither of these advertisements says
 20 that the viewer should vote for or against Stabenow
 21 or for or against Abraham, does it?
 22 A. Correct.
 23 Q. And the last one I'll ask you about is
 24 Exhibit 14, which is a Sierra Club advertisement
 25 which I'll mark as Exhibit 14, Sierra Virginia Robb

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1 characterization.
 2 BY MR. ABRAMS:
 3 Q. You can answer.
 4 A. Well, it seems to me that you asked, do I
 5 have any qualms. Yes, I have qualms and it seemed to
 6 me that they have to be resolved here in a great
 7 clash of constitutional imperatives. One recognizes
 8 the importance of free speech. I believe I do. One
 9 recognizes that under certain circumstances, there
 10 are limits to it.
 11 And whenever one makes that difficult
 12 decision, I, at least, have qualms, yes. But I think
 13 there are circumstances and times under which that
 14 difficult decision must be made. I think we have in
 15 the past at various times made it, not always wisely.
 16 I think one should be attentive to the implications,
 17 but I think the decision eventually has to be made.
 18 Q. And you believe, do you not, that the
 19 Buckley decision provided too much in the nature of
 20 First Amendment protection in striking the balance,
 21 is that correct?
 22 A. My major criticism of Buckley is really
 23 not so much with the balance it struck on First
 24 Amendment issues, but the way it stated the balance
 25 and stated the legislative interest purely in terms

<p style="text-align: right;">Page 66</p> <p>1 of corruption or the appearance of corruption. 2 Q. I understand that. You do conclude in 3 this report, do you not, that in Buckley, the Court 4 essentially provided absolute First Amendment 5 protection in a fashion that you thought -- 6 A. I don't recall having said that in the 7 report. 8 Q. The remaining questions I have all relate 9 to the report itself and my thought is just to go 10 through it chronologically and when we get to what I 11 had in mind, I'll ask you about it. 12 A. All right. 13 Q. Directing your attention to page 52, in 14 line 2, speaking of advertisements or commercials 15 that appear on television, you wrote, "If these 16 commercials are campaign ads, they should certainly 17 be treated the same way that the law treats other 18 campaign ads, but if they are genuine discussions of 19 policy issues, there is no need to regulate them in 20 the same manner." 21 Isn't it true that the 30 ads that I've 22 just shown you have elements of both? 23 A. They have elements of both but I would say 24 in none of them did I see a genuine discussion of 25 policy issues.</p>	<p style="text-align: right;">Page 68</p> <p>1 scientist, one sort of advertisement from another, 2 you rely heavily, do you not, on the intention of the 3 party who put the ad on? 4 A. Not only the intention but the substance 5 of the ad itself and the distinction that Buying Time 6 makes in various categories is also one that depends 7 on whether or not a candidate is mentioned. 8 Q. Did you find close, a hard call, your own 9 determination as you looked at the last 30 ads as to 10 whether they fall on the campaign ad side or policy 11 side? 12 A. Some more than others, I thought. 13 Q. And some as well, you've already told us, 14 had elements of both, is that fair? 15 A. Yes. 16 Q. On page 53, you refer in the last sentence 17 of the carry over paragraph to the "Vital First 18 Amendment question faced by the sponsors of BCRA as 19 they attempted to create a means to objectively 20 define candidate-oriented issue ads without 21 unintentionally regulating pure issue ads." Now, 22 what do you mean by a pure issue ad? 23 A. Again, I think the usage here reflects the 24 usage again in the Buying Time studies, that is, ads 25 that do not mention a candidate.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. But do you mean genuine in a scholarly 2 sense? 3 A. No, I mean just in an informative sense. 4 Q. And is that because all of the 5 advertisements contain too brief or transient or 6 unenlightened views of the topics they were talking 7 about? 8 A. They certainly were transient and brief, 9 but I think in many instances at least they were 10 electioneering. The purpose was to create an ad that 11 was in effect going to have an impact on the 12 campaign. 13 Q. And is that in your view the way that we 14 should distinguish between what you characterize as 15 campaign ads and genuine discussions of policy 16 issues? Is the way to determine it the intent of the 17 party that put the ad on? 18 A. Intention is difficult to prove. The 19 statute deals with the problem by avoiding it, I 20 would assume, and sets criteria that are more 21 objective for determining. 22 Q. In fact, the statute doesn't look at 23 intention at all, does it? 24 A. To the best of my knowledge, it does not. 25 Q. But as you distinguish, as a political</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. So your definition of a pure issue ad is 2 one which does not mention a candidate? 3 A. I believe that's the distinction that 4 results in the categorization in Buying Time, but 5 John Krasno is more accurate and more qualified than 6 I, to address that question. 7 Q. And if an issue ad has elements of both, 8 commentary on a public issue and a desire to affect 9 the public election, do you conclude that the balance 10 must always be struck in favor of saying that it is 11 electioneering, if those two factors are present? 12 A. The statute decides that, the Congress has 13 decided that. 14 Q. And is it your understanding that the 15 Congress has decided that whatever the character or 16 quality or language of an advertisement which refers 17 to a public issue, that so long as it refers to a 18 candidate by name within 60 days in the appropriate 19 area, that it is electioneering? 20 A. That is my understanding of the law. 21 Q. And now putting aside your understanding 22 of the law and focusing on your expert commentary to 23 us of your own views, isn't it true that -- I think 24 you've answered that. I'll move on. 25 MS. SEALANDER: May I make a lunch</p>

<p style="text-align: right;">Page 70</p> <p>1 inquiry? 2 MR. ABRAMS: Yes. 3 BY MR. ABRAMS: 4 Q. Referring to page 53, at the bottom of the 5 page, the report states that only 10 percent of 6 candidate ads aired in 2000 would qualify as 7 electioneering, using the magic words test. And you 8 mean by that, do you not, that only 10 percent of the 9 ads paid for by the campaigns of candidates used 10 language such as vote for, elect, defeat or the like? 11 A. Correct. 12 Q. And you say next that the remaining 90 13 percent could have been categorized as issue 14 advocacy, had a party or group sponsoring them and 15 that "in short, the magic words test improperly 16 categorizes candidate ads 9 times out of 10." 17 Do you mean by that that because every ad 18 that is paid for by a candidate is subject to 19 regulation, that the same regulation is appropriate 20 with respect to third parties commenting on the 21 issues that may arise in the election? Let me ask 22 you a hypothetical which will make it easier. 23 Suppose a Senator running for re-election 24 has his campaign pay for an ad within 60 days of the 25 election taking a position about Iraq. That is</p>	<p style="text-align: right;">Page 72</p> <p>1 there, in that reality? 2 A. Inconsistent in what sense? I'm puzzled. 3 Q. You said the magic words test only applies 4 to third parties and not to candidates? 5 A. Correct. 6 Q. Is there anything wrong with that? 7 A. The only thing that's wrong that we 8 argue is that the distinction is a distinction 9 without a difference; that informed people in at 10 least two studies have found that the presence or 11 absence of those words is a poor discriminator for 12 determining electioneering as they see it as ordinary 13 citizens. 14 Q. And in those studies, the individuals 15 being polled viewed these ads as extremely similar, 16 indeed all but identical, did they not? 17 A. Well-- 18 Q. Whoever they came from? 19 A. Well, similar in the sense that wherever 20 they came from, the magic words were used very 21 rarely. 22 Q. Right. But you don't need a study for 23 that, do you? 24 A. Well, things that now are obvious weren't 25 obvious at the time the study was made. I think that</p>
<p style="text-align: right;">Page 71</p> <p>1 subject to regulation, is it not, under the act still 2 in effect now? 3 A. Yes. 4 Q. And suppose a third party puts an ad on 5 within 60 days of an election, not dissimilar from 6 the sort of ads you've just seen but which refers to 7 Iraq and refers by name to the Senator. Are you 8 saying that as a matter of logic, the same rules 9 ought to apply to both, to the senatorial ad and the 10 third party ad? 11 A. Not necessarily the same legislation or 12 restriction to both. 13 Q. It doesn't follow, does it, that simply 14 because certain language and indeed any language of a 15 campaign of someone running for office is subject to 16 regulation, that third party speech ought to be 17 subject to the same regulation? 18 A. But I don't understand that to be the 19 issue with the so-called magic words test. As I 20 understand, the magic words test applies -- 21 so-called, applies only to non-candidate, non-party 22 ads. 23 Q. It doesn't apply at all to candidates? 24 A. That's correct. 25 Q. And there is nothing inconsistent, is</p>	<p style="text-align: right;">Page 73</p> <p>1 there was a widespread belief that the magic words 2 were used. I think it's been reflected in federal 3 court decisions that have upheld it as a 4 discriminating test, and I think it took some 5 empirical studies to show that it was a test that did 6 not distinguish. 7 Q. In my question, I meant not to focus on 8 whether the "magic words" were used often by 9 candidates. I was focusing on what I understood you 10 to have referred to with respect to the two studies 11 and the public understanding of what the 12 advertisements were saying. Did I misunderstand you? 13 I thought you were saying that there were two studies 14 that showed not what the ads said but the public 15 understanding of them. Perhaps I misunderstood what 16 you said. 17 A. I was referring there to the people in the 18 study who were asked to evaluate the ads and I was 19 referring both to Buying Time and the so-called 20 coders in Buying Time and to the respondents in the 21 Magleby, M-a-g-l-e-b-y, study. 22 Q. And what conclusion of the coders were you 23 referring to? 24 A. I don't know where we are. 25 Q. Let me ask it in a different way.</p>

<p style="text-align: right;">Page 74</p> <p>1 A. Yes, I've forgotten what the context was. 2 Q. Were you referring to the judgments of the 3 coders about the purpose of the ads? 4 A. About whether or not they were 5 electioneering? 6 Q. Yes. 7 A. Yes. 8 Q. On page 55, about line 7, you say -- let 9 me just interject that we are going to take 10 Mr. Krasno's deposition in a few days. 11 A. Good. 12 Q. I just want you to know. It says, "Coders 13 correctly regarded virtually all ads by candidates 14 and parties as electioneering." My question to you 15 is, do you believe that there can be a party ad 16 within 60 days which is not electioneering? 17 A. I could, as a hypothetical exercise, 18 imagine one. I think it would not be very likely. 19 Q. In order to determine if a party ad was 20 electioneering, you would have to see the ad, 21 wouldn't you? 22 A. Yes. 23 Q. On page 56, you refer to the fact that 24 candidate ads and what you characterize as candidate 25 oriented issue ads tended to cover the same themes.</p>	<p style="text-align: right;">Page 76</p> <p>1 to change their opinion on some matter. 2 Candidate-oriented issue ads are overwhelmingly 3 retrospective in that they look back in time to 4 characterize candidates' previous actions, 5 occasionally using these evaluations to speculate 6 about their future behavior." 7 What should one conclude from that? 8 A. Well, one should conclude, I think, that 9 this is one additional way in which the two kinds 10 differ. One should conclude that candidate-oriented 11 issues frequently or overwhelmingly, as the footnote 12 says, look at past performance, voting records in a 13 legislative body, et cetera. 14 Q. But assuming that to be true, what's the 15 problem? Is there something wrong about looking 16 backwards to characterize candidates' behavior? 17 A. I don't think so. And I think this is 18 purely a case of two scholars writing -- putting in 19 the footnote an interesting scholarly finding. 20 Q. That will turn me immediately to my next 21 page. 22 A. I'm surprised how rarely we did it. 23 Q. On page 60, you deal with the question of 24 what percentage of issue ads appeared within 60 days 25 of the general election and identified a federal</p>
<p style="text-align: right;">Page 75</p> <p>1 And you offer certain percentages in those two 2 categories. 3 Then you said, "By contrast, pure issue 4 ads stood out a bit for their content. The most 5 popular themes in these spots," and then you start to 6 go through them. And the first two there were health 7 care and Medicare. And they're the same ones, were 8 they not, that were the top issue in the candidate ad 9 and the candidate-oriented ad? 10 A. Well, with the exception of education. 11 Q. With the exception of education, correct? 12 A. Correct. 13 Q. Now, some of the other issues that were 14 discussed with greater frequency in third party ads 15 included the environment, trade, taxes and China, 16 correct? 17 A. Uh-huh. 18 Q. Is there anything troubling to you about 19 the fact that these subjects were discussed in ads on 20 television directed at the public? 21 A. Not in general. 22 Q. Page 57, footnote 138, the report 23 concludes that "Pure issue ads are largely 24 prospective in their emphasis, either asking viewers 25 to lobby officeholders regarding a future action or</p>	<p style="text-align: right;">Page 77</p> <p>1 candidate, and that's what had been regulated as 2 federal electioneering. 3 A. Can you please cue me on the line, the 4 beginning of the line? 5 Q. Why don't we start with the second line. 6 You're referring to both the 1998 data and 2000 data. 7 A. Yes. 8 Q. And you focused on the coder's assessment 9 of the purpose of the ads. 10 A. Uh-huh. 11 Q. Now, first of all, the coders didn't know 12 the purpose of the ads, did they? 13 A. They had no prior knowledge of the 14 purpose. 15 Q. And they had no empirical data other than 16 the ads themselves, correct? 17 A. That's my understanding. 18 Q. Now, the next line down says that only a 19 small fraction of the airings of ads, 6 percent in 20 one year and 3 percent in the next, appeared within 21 60 days of the general election, and the like. What 22 conclusion should one reach from that? Why does one 23 want to know the answer to the question of what 24 fraction appeared? 25 A. To answer the opening sentence of that</p>

<p style="text-align: right;">Page 78</p> <p>1 paragraph. 2 Q. And that deals with whether the statute 3 sweeps in an unacceptable amount of genuine issue 4 speech, correct? 5 A. Correct. 6 Q. Have you read Professor Gibson's expert 7 report? 8 A. I tried to read it and I did not succeed 9 very -- it involves a detail of statistical modeling 10 and analysis that is beyond me. 11 Q. Do you recall if you read and focused on 12 his conclusion that if the 1998 study had adhered to 13 the coders' determinations as opposed to that of 14 Professor Goldstein, over 60 percent of ads that 15 appeared in the last 60 days would have been 16 unacceptably swept into the electioneering category? 17 A. In truth, I don't remember that. 18 Q. On page 61, line 3, referring to the 19 Brennan Center study, you state, "Critics will surely 20 complain that this analysis depends on subjective 21 judgments made by coders about the purpose of the 22 commercials." My question is, those judgments were 23 indeed entirely subjective, were they not? 24 A. The judgments were not entirely the 25 judgments -- let me say, in order to answer</p>	<p style="text-align: right;">Page 80</p> <p>1 period before the primary, right? Did you see 2 that? 3 A. (Witness nodding.) 4 Q. As someone that's read a good deal of 5 First Amendment law as well as campaign finance law, 6 do you know whether the Supreme Court has ever affirmed 7 the notion that a speaker can be told to speak 8 earlier or later rather than when he wants to speak? 9 A. I do not know the law on that subject. 10 Q. Reference is also made to the proposition 11 that there was no need to identify Speaker Hastert by 12 name. 13 A. Yes. 14 Q. And the argument is made that the point 15 could have been gotten across without mentioning his 16 name, correct? 17 A. Correct. 18 Q. Why did you use Speaker Hastert's name in 19 your report? 20 A. Quite honestly, that's really a question 21 of draftsmanship and of course the draftsman of this 22 section was John Krasno. I rather suspect, infer, 23 that the answer is, to give it more specificity since 24 that was the issue that had been raised. But it 25 doesn't -- he doesn't have any substantive meaning</p>
<p style="text-align: right;">Page 79</p> <p>1 that question, I would really have to know what 2 the instructions were that were given to the 3 coders. 4 Q. And you don't know that? 5 A. And I really don't know those 6 instructions. I've never seen a copy of the coding. 7 Q. Did you ever see the grant application 8 made by the Brennan Center for the funds to do the 9 study? 10 A. No. 11 Q. And do you know what the Brennan Center 12 said the purpose of the study would be? 13 A. No. 14 Q. Were you shown any submissions in this 15 case by the National Rifle Association? 16 A. No. 17 Q. Or by the American Civil Liberties Union? 18 A. No. 19 Q. On pages 61 through 64, there is a 20 discussion of an advertisement that the American 21 Civil Liberties Union ran in Speaker Hastert's 22 district. Do you recall that? 23 A. I recall it. 24 Q. And on page 64, you state that the ACLU 25 could have run a spot later to avoid the 30-day</p>	<p style="text-align: right;">Page 81</p> <p>1 per se. 2 Q. But you were talking about Speaker Hastert 3 so you used his name, correct? 4 A. Yes. To clarify, he was mentioned in the 5 advertisement that we were talking about. 6 Q. I think I'm almost done. Page 76 refers 7 to funds from corporation and union treasuries. Do 8 you believe that unions should be permitted to speak 9 out about public issues of significance to their 10 members all the time, 365 days a year? 11 A. Not without some regulation which already 12 exists under FECA. 13 Q. Is it your understanding that unions 14 currently, before BCRA, are permitted to take public 15 positions and spend unlimited sums in doing so with 16 respect to their views on the adoption of 17 legislation, say, of relevance to their members? 18 A. I believe, subject again -- it's my 19 understanding that the law requires them to make 20 reports under certain circumstances of political 21 communication to their members. 22 Q. And is it your understanding that it is 23 legal, however, for them to spend unlimited sums in 24 speaking publicly through advertisements about, say, 25 pending legislation?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. That is my impression, yes. 2 Q. And do you disagree with that element of 3 preexisting law as a matter of public policy? 4 A. No. 5 Q. And that's because, is it not, it's 6 important for unions to be able to have their say 7 about these issues, is it not? 8 A. But it's important also because in terms 9 of your question, it is communication with its 10 membership. 11 Q. Well, suppose we go more broadly now. 12 Beyond membership, into communication with the public 13 at large, a union ad which mentions no candidate but 14 which speaks about the adoption of a raise in the 15 minimum wage, do you believe a union ought to be able 16 to speak out as much as it wants whenever it wants to 17 whatever degree it can afford urging a raise in the 18 minimum wage? 19 A. Yes. 20 Q. And why is that? 21 A. First Amendment, freedom of speech. 22 MR. ABRAMS: Thank you very much. 23 (Whereupon, at 1:00 p.m., the deposition 24 in the above-entitled matter was recessed, to 25 reconvene at 2:00 p.m., this same day.)</p>	<p style="text-align: right;">Page 84</p> <p>1 tribulations. Professor Sorauf, would it be fair to 2 say that you're a proponent of political parties? 3 A. Yes and no. I am a proponent in the sense 4 that I believe in their importance and their 5 centrality to the democratic process. When you talk 6 about being a proponent of political parties, you get 7 into a debate within political science that puts me 8 on the side of being a proponent and yet a sometime 9 critic. 10 Q. You believe, then, in the importance and 11 centrality of political parties in our democratic 12 system of government? 13 A. Yes. 14 Q. And what is the importance and centrality 15 of political parties in your view? 16 A. It has to do with -- that centrality 17 results from the parties' role or function in 18 organizing political loyalties in the minds of 19 voters, in the parties' abilities to frame issues in 20 a way that simplifies them into a simple set of 21 choices for voters. They organize officeholders, 22 legislatures. They are, after all, the main labels 23 on most of our ballots that identify candidates. 24 All of this is kind of a central 25 organizing capacity or role that I think needs to be</p>
<p style="text-align: right;">Page 83</p> <p>1 AFTERNOON SESSION 2 (2:07 p.m.) 3 Whereupon, 4 FRANK J. SORAUF, 5 the witness testifying at the time of recess, having 6 been previously duly sworn, was further examined and 7 testified further as follows: 8 EXAMINATION BY COUNSEL FOR 9 THE REPUBLICAN NATIONAL COMMITTEE 10 (Sorauf Exhibit No. 15 was 11 marked for identification.) 12 BY MR. BARNETT: 13 Q. Professor Sorauf, my name is Tom Barnett 14 and I'm representing what we call the RNC parties in 15 this action. 16 A. Okay. 17 Q. It's nice to meet you. 18 A. Nice to meet you. 19 Q. And I know you've been through this this 20 morning but I'll reiterate that if any of my 21 questions aren't clear, please let me know and I'll 22 try to reiterate them. 23 A. I will. 24 Q. And I'll do my best not to talk over you 25 so we can spare the reporter the trials and</p>	<p style="text-align: right;">Page 85</p> <p>1 played somewhere by someone in every representative 2 democracy. And it is, certainly in the western 3 world, customary that that place be taken by 4 political parties. 5 Q. And what are some of the problems that you 6 see if nobody is there to play those roles? 7 A. We don't have very many examples in what I 8 would call industrial societies. They all have 9 political parties. The main danger, it seems to me, 10 in the experience that we have in some parts of the 11 world is single party systems which become 12 autocratic, dictatorial and become nothing more than 13 the mobilization of mass approval. 14 Q. Something like Saddam Hussein's recent 15 unanimous proclamation? 16 A. Yes. 17 Q. But go ahead. 18 A. No, no, I'm finished. 19 Q. That's the main danger, though? Are there 20 other potential down sides if you don't have somebody 21 playing the role that you described? 22 A. You can have, in some parts of the world, 23 a political disorganization. I suppose in a -- it's 24 very hard to compare the industrialized western world 25 with the pre-industrialized world but we see in</p>

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1 Afghanistan a political system in which there are no
 2 national organizations. There are a series of local
 3 loyalties, local warlords and absence of any kind of
 4 national centers of political organization.
 5 Q. Too much factionalization can be a bad
 6 thing?
 7 A. Absolutely.
 8 Q. And indeed, some of our Founding Fathers
 9 were concerned about too much factionalization, were
 10 they not?
 11 A. Some were. And some, like James Madison,
 12 made a virtue of necessity.
 13 Q. I think you also talk, if I'm not
 14 mistaken, about parties -- and maybe you meant to
 15 include this already. I'm just not sure. But
 16 parties serving the role of moderating extreme views
 17 and trying to develop a consensus or a majority in
 18 the population?
 19 A. That is especially true where there are
 20 two dominant political parties which control the
 21 choices, the realistic choices, the realistic
 22 possibility of winning a majority or majority
 23 coalition and who in that competition tend to bring
 24 the politics closer to the center.
 25 Q. And do you view the United States as

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1 turnout.
 2 Q. So you view that the local parties or even
 3 the state parties as playing a central role in this
 4 process?
 5 A. Absolutely.
 6 Q. And you think it would be better for our
 7 democracy of -- well, strike that. You've answered
 8 that. Just to be clear, do you also see that the
 9 national parties play a beneficial role as well as
 10 the state and local parties?
 11 A. Yes, I do.
 12 Q. And would that role differ from the roles
 13 played by the state or local parties?
 14 A. Yes, I think so. It's of course a long
 15 way further from any kind of local activism.
 16 National parties also tend, especially the national
 17 committees of the parties, tend to become essentially
 18 the parties of Presidential politics or predominantly
 19 the parties of Presidential politics and, to that
 20 extent, unique in the same sense that the Presidency
 21 itself is unique in this country.
 22 Q. Well, is it your view that the national
 23 parties are only concerned with Presidential
 24 politics?
 25 A. No. Obviously there are two legislative

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1 having such a two-party system?
 2 A. Indeed I do.
 3 Q. So would it be fair to say that you view
 4 the Republican and Democratic parties as serving a
 5 vital role in our democracy?
 6 A. Yes.
 7 Q. And that it would be, in your view, a bad
 8 thing if those parties were to go away?
 9 A. Yes.
 10 Q. Do the parties also have an effect on
 11 participation in the political process?
 12 A. Yes.
 13 Q. What would that effect be?
 14 A. It's not easy to answer in a simple way.
 15 I think part of it is just simply the clarification,
 16 the creation of two options out of 30, 40, 50, et
 17 cetera, that makes understanding the political world
 18 more easier for the less educated, the less
 19 political, et cetera.
 20 In part I think it has to do also with
 21 their ability to mobilize political leadership. It
 22 seems to me increasingly clear, for example, that one
 23 of the things that's happened is that the decline of
 24 local party leadership and local party activists
 25 probably is a contributing factor to declining voter

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1 committees in both parties which have really quite
 2 different roles.
 3 Q. And let's leave aside the legislative
 4 political committees for the moment and let's focus
 5 on the RNC and the DNC. Is it your view that their
 6 only concern is Presidential politics?
 7 A. No.
 8 Q. What other concerns would they have?
 9 A. At various times, concerns for the
 10 well-being of state and local parties even down to an
 11 involvement and a concern for state legislative
 12 politics, if they will affect redistricting or other
 13 decisions that have an impact on the national party
 14 committees.
 15 Q. You would like to see the state and
 16 local parties engage in more grass roots mobilization
 17 and political participation efforts, would you
 18 not?
 19 A. Yes, I would.
 20 Q. And if the national parties were able to
 21 support those state and local efforts, would you view
 22 that as a positive thing?
 23 A. I would view it as positive if they did
 24 it.
 25 Q. Exactly. That's my question.

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1 A. As opposed to being able to do it.
 2 Q. Yes. Assume for the moment that a law
 3 were passed that would prohibit the national parties,
 4 the DNC, the RNC, from engaging in any political
 5 activity within a given state. Would you have a view
 6 as to whether that was a good thing or a bad thing
 7 for our political process?
 8 A. I think to answer that question, I would
 9 have to know more about the situation. I mean, it's
 10 hard for me to imagine and all I can imagine is
 11 something that doesn't seem to me to have any reality
 12 to it.
 13 Q. Well, a law that's passed that says the
 14 RNC or the DNC is not able to spend any money in the
 15 state of Connecticut for political participation or
 16 political activities of any sort.
 17 A. And your hypothetical is that this law
 18 would be passed by the Connecticut legislature?
 19 Q. No, the U.S. Congress.
 20 A. Well, I think that's -- it's hard for me
 21 to imagine the Congress passing such a law. If it
 22 did, I think I would disapprove of it.
 23 Q. It would prevent the RNC or the DNC from
 24 supporting the Connecticut state and local parties,
 25 for example?

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1 A. I would think that any law that Congress
 2 makes on party finance ought to have a wider
 3 applicability than one single state.
 4 Q. Is that your only concern with such a law?
 5 A. That's the primary one.
 6 Q. You wouldn't have --
 7 A. Again, I would have to know more about the
 8 law and the situation.
 9 Q. Well, there is no more to the law and the
 10 situation. That's it. You would have no concern
 11 about the --
 12 A. I would have concern about a general law,
 13 yes, that applied to all 50 states.
 14 Q. Well, let's focus for the moment on one
 15 state. You would have no concern about the inability
 16 of the DNC to support the Connecticut Democratic
 17 Party?
 18 A. Or the parties of any other state, is
 19 that --
 20 Q. Well, we can approach it that way if you
 21 prefer.
 22 A. I would certainly want to see a
 23 considerable justification for it. Without any
 24 positive justification, I couldn't support such a bit
 25 of legislation.

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1 Q. And why not?
 2 A. Because I think that becomes, in nature, a
 3 severe enough intrusion into settled political party
 4 institutions that it needs some overpowering
 5 justification.
 6 Q. And is it likely that the citizens of the
 7 state would be harmed by not being able to receive
 8 the support of or hear the views of the national
 9 political parties?
 10 A. I'm not sure that they would be all that
 11 hurt by it. I think the major objection would be the
 12 rights of political association.
 13 Q. In what way? Can you explain?
 14 A. Well, it disrupts the traditional party
 15 hierarchy that's developed for well over a century.
 16 Q. And by the hierarchy, you mean the party
 17 organized at the local, at the state and then at the
 18 national level?
 19 A. Yes.
 20 Q. And that it's important for those
 21 different levels of party organization to be able to
 22 interact with one another?
 23 A. I think it's inevitable that they do.
 24 Q. Well, do you think it's a good thing or a
 25 bad thing that they interact?

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1 A. I think that they interact in both good
 2 and bad ways.
 3 Q. You mentioned a right of association. Do
 4 you view that as an important right?
 5 A. I consider it important, but not absolute.
 6 Q. And do you consider the parties
 7 interacting at the different levels as part of that
 8 right of association?
 9 A. I haven't ever thought about that. I
 10 would have to have a concrete example, I think, to
 11 resolve that.
 12 Q. Well, let's take the example of the
 13 members of the RNC sitting down with the leaders of a
 14 particular state Republican Party to plan efforts for
 15 funding and then executing get out the vote voter
 16 registration drives.
 17 A. And this is absent any financial
 18 considerations, any transfers of money?
 19 Q. We'll leave that aside. And I'm not
 20 talking now about whether such a restriction might
 21 have a countervailing justification. I'm focused on,
 22 first of all, whether there would be an initial harm
 23 that you see?
 24 A. What harm I would see, it would seem to me
 25 the devil is in the details.

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<p>1 Q. What more details do you need?</p> <p>2 A. I need to have some justification for it,</p> <p>3 some context.</p> <p>4 Q. Assume there is no justification.</p> <p>5 Congress just on a whim decided to do it.</p> <p>6 A. Then I would disapprove.</p> <p>7 Q. And why would you disapprove?</p> <p>8 A. Again, for the same reasons that I stated</p> <p>9 before, that this is an infringement on the operation</p> <p>10 of well-established institutions and relationships</p> <p>11 and that I don't think that the Congress should</p> <p>12 legislate arbitrarily and without justification in</p> <p>13 this area.</p> <p>14 Q. And does that include, in your view, an</p> <p>15 infringement on a right of association?</p> <p>16 A. Yes.</p> <p>17 Q. Are you familiar with the political</p> <p>18 philosophy sometimes referred to as progressivism?</p> <p>19 A. Do you mean historic progressivism, that</p> <p>20 is, from the progressive movement?</p> <p>21 Q. Yes.</p> <p>22 A. I am.</p> <p>23 Q. Have you ever heard of it referred to as,</p> <p>24 or a variant of it called neoprogressivism?</p> <p>25 A. I'm not sure that I am. Is that</p>	<p>1 aftermath of great depressions, bank panics and</p> <p>2 economic chaos of the 1890s. In Wisconsin, which is</p> <p>3 the state I grew up in, the strength of the</p> <p>4 progressive movement was directly related, in the</p> <p>5 counties of Wisconsin, to the per capita income of</p> <p>6 the farmers in the county. It was the poor part of</p> <p>7 the state.</p> <p>8 Q. Were the followers of the progressive</p> <p>9 movement characterized by a suspicion of big business</p> <p>10 and special interest?</p> <p>11 A. No, they were organized to oppose the</p> <p>12 interests of big business, the banks, the railroads,</p> <p>13 the big grain elevator owners.</p> <p>14 Q. Maybe I didn't speak clearly. I meant</p> <p>15 to say were the followers of the progressive</p> <p>16 movement suspicious of big business and special</p> <p>17 interest?</p> <p>18 A. Yes.</p> <p>19 Q. And basically in this context, at least,</p> <p>20 and in their view, big is bad?</p> <p>21 A. Certainly big was bad, yes.</p> <p>22 Q. And they thought that the government</p> <p>23 should be serving the interest of the ordinary person</p> <p>24 as opposed to big business and special interest?</p> <p>25 A. Yes.</p>
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<p>1 associated with Herbert Crowley?</p> <p>2 Q. We can use progressive. That's fine.</p> <p>3 A. All right.</p> <p>4 Q. Let's focus on that. How would you</p> <p>5 describe that, what the progressive movement is?</p> <p>6 A. Well, the progressive movement is many</p> <p>7 things in many states and the progressive movement in</p> <p>8 Alabama was quite different from the progressive</p> <p>9 movement in Wisconsin. But I think the progressive</p> <p>10 mainstream at the end of the 19th and the first 20,</p> <p>11 30 years of the 20th century was essentially a</p> <p>12 successor to the populist movement of an attempt to</p> <p>13 democratize American political institutions, to</p> <p>14 create openness in the political processes.</p> <p>15 It was progressivism that brought us the</p> <p>16 direct primary, for example. It was a movement that</p> <p>17 was anti-political party to a considerable extent.</p> <p>18 It identified political parties with urban bosses and</p> <p>19 some rural bosses also and was a very --</p> <p>20 progressivism I think was closely associated with the</p> <p>21 nonpartisan movements in various ways, that is,</p> <p>22 making local offices other than party offices, et</p> <p>23 cetera.</p> <p>24 Its appeal was largely to the economically</p> <p>25 disadvantaged people of those regions in the</p>	<p>1 Q. And to some extent, they perceived that</p> <p>2 whether or not there is any factual basis for it;</p> <p>3 that's just their world view?</p> <p>4 A. That was their world view and within</p> <p>5 their -- they had a factual basis often within their</p> <p>6 own experience; that is, they had -- many of them had</p> <p>7 had difficult experiences with the railroads, with</p> <p>8 grain brokers, with banks, et cetera, so that I think</p> <p>9 it's fair to say that many of the progressive</p> <p>10 followers had some life experience that related to</p> <p>11 their choice of progressivism.</p> <p>12 Q. But not necessarily for all?</p> <p>13 A. Not necessarily, no.</p> <p>14 Q. And would you disagree with the statement</p> <p>15 that the progressivists tended to be suspicious of</p> <p>16 big business and special interest regardless of</p> <p>17 whether they had a factual basis in the particular</p> <p>18 case?</p> <p>19 A. That's a very iffy question. Logic tells</p> <p>20 me there undoubtedly were some that didn't have much</p> <p>21 of a factual basis.</p> <p>22 Q. Now, you referred to this as a historical</p> <p>23 movement. Are there elements of progressive thought</p> <p>24 in our current culture and society?</p> <p>25 A. There are, but I think it needs to be said</p>

<p style="text-align: right;">Page 98</p> <p>1 that they are probably less visible, more attenuated 2 now than at any time in the 20th century. 3 Q. But would you agree with me that a 4 majority of the leading American journalists reflect 5 persistent progressive bias? 6 A. This gets to the question of the alleged 7 liberal bias of American journalism and I'm not sure 8 that I would agree with it if one looks at all of 9 American journalism. It tends to be true, with the 10 exception of The Wall Street Journal, it tends to be 11 true of elite publications but when you get to small 12 city and small town America, I'm not sure you find it 13 that obvious. 14 Q. - But at least with respect to the elite 15 journalists in our country, other than The Wall 16 Street Journal, you find that it is true? 17 MR. DEELEY: Objection, vague. 18 MS. SEALANDER: You may answer. 19 THE WITNESS: One can find it but I think 20 by this time, progressivism has been transmuted in 21 many people's world view by other later experiences. 22 The New Deal, by civil rights movements, et cetera, 23 so that its effect seems to me to be attenuated and 24 sort of residual. 25 (Sorauf Exhibit No. 16 was</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. There is another paragraph to the quote, 2 if you would. 3 A. Second paragraph, "The way to save 4 America, the progressives proclaimed, is to reform 5 our political system: First, let the muckraking 6 press dig up and publish all the sordid facts about 7 the greed and lawlessness of the special interests, 8 so that honest citizens will know the full extent of 9 the evil they do.... Finally, when the system is thus 10 reformed and purified, it will no longer be the tool 11 of the special interests but will become what it is 12 meant to be: The people's instrument for promoting 13 the general welfare." 14 Q. Now, you quoted this Mr. Ranney in your 15 article and in your words, you go to say, "In short, 16 the media bring a particular understanding to the 17 events and relationships in American politics and to 18 the ways of influence and decision making in American 19 government. Their political world-view, moreover, 20 colors the way they view and describe political 21 reality. It also defines the political 22 responsibility of the press in reporting that 23 reality; contemporary investigative reporters are in 24 many ways the grandchildren of the progressive 25 muckrakers." Did you write those words?</p>
<p style="text-align: right;">Page 99</p> <p>1 marked for identification.) 2 BY MR. BARNETT: 3 Q. Let me show you what's been marked as 4 Sorauf Exhibit 16. Do you recognize this document? 5 A. Yes, I do. 6 Q. Is this an article that you wrote? 7 A. Yes, it is. 8 Q. You published in 1987? 9 A. That's correct. 10 Q. I've reproduced here certain portions of 11 the article and I direct you to pages 26 and 27. And 12 if you would for me, just read aloud for the record, 13 starting at the bottom. There is a quote from - 14 A. Austin Ranney. 15 Q. It begins, progressive journalists. And 16 could you just read the quote for the record? 17 A. "As Ranney explains, 'progressive 18 journalists and political activists believed that the 19 recent core of America consists of the ordinary good 20 citizens who genuinely seek what is good for the 21 general welfare. The great enemies of society are 22 the big political machines, the business 'trusts,' 23 and the other special interests that try to advance 24 their selfish goals at the public's expense by buying 25 elections and corrupting public officials.'"</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Oh, I did. 2 Q. Did you believe those words at the time 3 you wrote them? 4 A. I'm sure I did. 5 Q. Do you believe them now? 6 A. Less so than I did at this time. It is, 7 what, 20 years ago? 8 Q. It's 1987. 9 A. 15 years ago. I probably wrote them about 10 17 years ago. And the context in which I deal here 11 is not the sum total of American journalism - 12 Q. No, we'll get to that in the next 13 paragraph. 14 A. But one specific area. 15 Q. And indeed you move on in the next 16 paragraph. It says, "What little survey data we have 17 on the attitudes and outlooks of journalists support 18 these observations. A 1979-1980 survey of 'media 19 elites' (240 journalists and broadcasters at the 20 'most influential media outlets') provides systematic 21 evidence of these persistent progressive values." 22 Now, again, those are your words, correct? 23 A. Those are my words. 24 Q. And you certainly believed them at the 25 time?</p>

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1 A. I did.
 2 Q. And do you believe them today?
 3 A. I would -- if I were rewriting this piece,
 4 I would not use the word progressive. I'm not sure
 5 what word I would use. I think it is less true
 6 today, but then the progressive influences are less
 7 pervasive in our politics, as, for example, the whole
 8 loss of the social economic issue between our two
 9 political parties. But there it is.
 10 Q. The thrust of this article was to talk
 11 about the media reporting of our campaign finance
 12 system specifically, was it not?
 13 A. Yes, it was. And to be critical of it.
 14 Q. And to be critical of it and indeed to
 15 suggest that there was a systemic bias in the
 16 reporting of at least the leading or elite
 17 journalists at that time in our society, is that
 18 correct?
 19 A. That's correct.
 20 Q. If you flip over to page 28, do you see
 21 the top of the page there, it says, "Systematic bias
 22 and political assumption, finally, meet in an
 23 analytical conundrum. The systematic bias of
 24 newspaper publishing dictates that newspapers print
 25 stories that their readers want to read.

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1 was a factual basis for such a view, is that not
 2 correct?
 3 A. It's not quite correct because I think
 4 that they were doing so in the '80s not so much out
 5 of a sense of taking another swipe at big business
 6 vested interest, et cetera. as there was an
 7 absorption at that time with the entry of interest
 8 groups and especially PACs into electoral politics
 9 and it was really a -- just a simple almost knee jerk
 10 reaction against the entry of big money into campaign
 11 politics.
 12 Q. You defined in the article the slanted
 13 perspective as a progressivist view, do you not?
 14 A. I did. I did that.
 15 Q. And the definition of progressivism that
 16 you quoted refers to progressivists as enemies of big
 17 political machines, the business trusts and other
 18 special interests, does it not?
 19 A. Yes.
 20 Q. So let's look at the conclusion of your
 21 article on page 41. The first sentence of the
 22 conclusion says, "There is substantial evidence in
 23 these three instances of the effect of both
 24 systematic professional bias and a pervasive
 25 neoprogressive outlook on the reporting of American

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1 "But then does the press publish the story
 2 because readers have been conditioned by previous
 3 reporting to accept and believe such accounts, or
 4 does it publish the story because of its conviction
 5 that it represents truth and reality. And is there
 6 in fact really any difference? Ultimately the
 7 progressive view of reality becomes a part of -- or
 8 is at the very least reinforced by -- the imperatives
 9 of publishing a newspaper."
 10 Those are your words, correct?
 11 A. Those are my words written in the 1980s.
 12 You will find similar words in a couple of other
 13 articles I wrote at about that time. It was when I
 14 was on something of a mini-crusade to try to
 15 criticize the way newspapers were dealing with the
 16 campaign finance question. It was a time when the
 17 New York Times started to call soft money sewer money
 18 and in which I thought that the elite newspapers of
 19 the country were not reporting in a very useful way
 20 the issues of campaign finance. And I wrote those
 21 words in that context.
 22 Q. And when you say they were not reporting
 23 in a useful way, that's because they were seeking to
 24 portray big business and special interest in a
 25 negative light to some extent, whether or not there

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1 campaign finance. Indeed, the two appear to work in
 2 tandem." Those are your words?
 3 A. Yes, they are.
 4 Q. And you believed them at the time you
 5 wrote them?
 6 A. Yes.
 7 Q. And the three instances you're referring
 8 to are three particular campaign finance stories that
 9 you studied in depth?
 10 A. Correct.
 11 Q. And you found a series of factual errors
 12 in those three stories, is that correct?
 13 A. Not so much factual errors as omissions or
 14 not writing about stories.
 15 Q. A slanting?
 16 A. Well, a slanting sometimes by omission as
 17 well as commission.
 18 Q. And a slanting in a particular and
 19 consistent direction, correct?
 20 A. If by direction you mean one defined by
 21 American politics, no. It's essentially an
 22 anti-money slant.
 23 Q. Well, it's essentially a progressivist
 24 slant?
 25 A. It's a progressivist slant which doesn't

<p style="text-align: right;">Page 106</p> <p>1 necessarily relate to the divisions of the American 2 party system. 3 Q. And just as an example, if you look down 4 in the third full paragraph, in the middle of the 5 paragraph, you say, "Nonetheless, the directions of 6 the errors in reporting and the front-page display of 7 the story reflected without challenge political 8 assumptions of neoprogressivism." Again, those are 9 your words? 10 A. Yes. 11 Q. And did you believe them when you wrote 12 them? 13 A. Yes. 14 Q. --Let's look at the very end because I think 15 you make another point. If you look at the last 16 paragraph on page 42 where it begins, "More 17 important, perhaps, is the manifest importance of 18 even the elite media being aware that their world 19 view is not the only credible one. Indeed, in their 20 neoprogressive commitments they run a certain risk of 21 succumbing to the failing of the progressives 22 themselves: their ability to see 'interest' anywhere 23 but in the most powerful circles of American politics 24 and, consequently, their inability to see it within 25 themselves and their friends." Again, your words?</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I did. 2 Q. And you wrote this or it was at least 3 published in 1992? 4 A. I wrote it in 1991. 5 Q. For now, I would like to look at 189. 6 Under the heading that says Reality and Reform, it 7 says here, "Even the experts and activists find it 8 difficult to reach a judgment about American campaign 9 finance. The mass public necessarily comes to its 10 understandings about it without any profound 11 knowledge, often without even basic information. 12 "Citizens are compelled to watch the 13 shadows projected on the vast wall in front of them. 14 They take their conclusions and judgments as they see 15 them in the dance of distorted images. Of necessity, 16 their judgments are the judgments of those who 17 project the images." 18 Again, those are your words? 19 A. Those are my words. 20 Q. And -- 21 A. And I've been criticized in at least one 22 book review for not acknowledging Plato in the 23 allusion to the platonic imagery. 24 Q. Well, I appreciate that. I think I've 25 seen that reference in another section of your</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Absolutely. 2 Q. And you believed them when you wrote them? 3 A. Yes. 4 Q. And the point here is that at least the 5 journalists that are the subject of your article here 6 are perhaps unaware that they have a bias in the 7 reporting that they are creating? 8 A. Yes. 9 Q. Now, also you talk about whether there are 10 certain areas of our society that are more or less 11 susceptible to being taken in by the bias that we've 12 just been discussing. Do you recall ever discussing 13 that? 14 A. No. 15 Q. Is it fair to say that -- well, why don't 16 we just look to that. 17 (Sorauf Exhibit No. 17 was 18 marked for identification.) 19 BY MR. BARNETT: 20 Q. I ask you to look at what's been marked 21 Sorauf Exhibit 17 and ask if you recognize -- I'll 22 tell you, these are excerpts again from a 23 publication. And do you recognize the publication? 24 A. Yes, I do. 25 Q. Did you write this?</p>	<p style="text-align: right;">Page 109</p> <p>1 writing so I know that you're aware of it. But we'll 2 stipulate that it's there. In any event, you 3 certainly believed these statements when you wrote 4 them? 5 A. I did. 6 Q. Are you not talking here again about 7 judgments and perceptions that the mass public is 8 receiving from the media in the United States? 9 A. Receiving in part from the media and in 10 part from other sources. 11 Q. But the media would be part of that? 12 A. Yes. 13 Q. And you talk about distorted images 14 because the image of the campaign finance system that 15 the public perceives may be distorted from its 16 reality? 17 A. Yes. 18 Q. And your reference here -- I don't know if 19 you've studied or not -- that the public is generally 20 not very knowledgeable about the details of the 21 current campaign finance system? 22 A. That was certainly true when I wrote this, 23 yes. 24 Q. Do you know if it's true today? 25 A. I know with less secure data, but I think</p>

<p style="text-align: right;">Page 110</p> <p>1 it's probably true. Public opinion polls show that, 2 newspaper polls show that, readership polls of 3 newspapers show that the stories on campaign finance 4 are one of the least well read stories in the 5 newspapers, even when they appear prominently on the 6 front page. 7 And reporters, incidentally, who write 8 about campaign finance tell me they always want to 9 get off the campaign finance beat because who wants 10 to write stories that not very many people read. 11 Q. So it's probably safe to say that the -- 12 A. It probably is true. 13 Q. -- the American public does not have a 14 deep or thorough understanding of the current 15 campaign finance system? 16 A. I think that's probably true. 17 Q. And that at least a portion of their 18 perception of that system is created by the American 19 media, is that fair? 20 A. Yes. 21 Q. I would like to move forward and I'm not 22 going to mark this as an exhibit. Do you recall 23 writing an article for the Columbia Law Review that 24 was published in May of 1994? 25 A. I could never forget it. It was the worst</p>	<p style="text-align: right;">Page 112</p> <p>1 withdrawn it, regardless of the problems it created 2 for the editors. 3 Q. And just to be clear, I understand the 4 regret but you ultimately did not ask for it to be 5 withdrawn? You were persuaded by the editor? 6 A. Ultimately I withdrew my request to have 7 it withdrawn. 8 Q. Let me read you something and you can tell 9 me whether that's part of your original writings or 10 part of the article that you regret. In the article, 11 it talks about the Buckley decision and there is a 12 sentence here that reads, "And if the Court 13 misunderstood the agenda of reform in 1974 as 14 pivoting on literal corruption, the reform agenda of 15 the 1990s is driven as much by populist demonologies 16 as it is by the realities of contemporary political 17 influence." 18 A. That may have been a fragment of mine. I 19 am not at all sure. I've explained to you about I 20 just don't really know. It may have been the 21 conflation of several sentences. However, it was 22 written at a time when reform was largely dominated 23 by the rhetoric of Common Cause with its slogan, "The 24 Best Congress Money Can Buy" and it was a reform 25 movement at its time that I was writing about that</p>
<p style="text-align: right;">Page 111</p> <p>1 publishing experience of my life and it led to my 2 refusing to write any more for law reviews edited by 3 student editors. I will say, in all honesty, this is 4 one piece that has been published under my name that 5 I am very reluctant to take responsibility for 6 because it was mangled repeatedly in the editing and 7 publishing process. And what's more, I regret very 8 much that I did not withdraw it from publication. 9 Q. But you did not withdraw it from 10 publication? 11 A. I did not. I was prevailed upon by a very 12 persuasive editor in chief and I -- 13 Q. Of the law review? 14 A. Of the law review, and I accommodated him. 15 Q. And this would be the article entitled 16 Politics Experience and the First Amendment, The Case 17 of American Campaign Finance? 18 A. Yes, that's the article. It was part of a 19 symposium that the Columbia Law Review put out. 20 Q. And you viewed it as within your right to 21 have it withdrawn, is that fair to say? 22 A. By the time they had hacked it up, it was 23 late and I got apologies and I never faced, I guess, 24 the final question of whether I had a right or didn't 25 have a right. In retrospect, I regret not having</p>	<p style="text-align: right;">Page 113</p> <p>1 did really trade on demonologies. 2 Q. And what do you mean by demonologies in 3 that context? 4 A. Essentially, I think I mean sort of a 5 grotesque simplification of what I earlier called 6 neoproggressivism. 7 Q. And you thought that the Common Cause 8 slogan "The Best Congress Money Can Buy" was part of 9 that demonology? 10 A. Yes, I did. 11 Q. And if I'm following that, then, the 12 Common Cause suggestion that Congress was being 13 bought was not really with adequate factual 14 foundation? 15 A. I don't think that Congress has been 16 massively bribed, no. 17 Q. There is another sentence in here that's 18 talking about a great divergence between the mass and 19 the elite and it says, "As for the reformers and 20 their organizations, they often prefer, perhaps even 21 develop, their own view of reality simply because it 22 makes them necessary and thus assures their political 23 futures." 24 Is that part of this same process of 25 demonologies that you were just describing?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. I think so. 2 Q. And coming back to a point I raised 3 earlier, to the extent that the media and perhaps 4 others are creating demons in the minds of the 5 public, would you agree with me that that's easier to 6 do on a subject where the public has relatively 7 little knowledge of its own? 8 A. I would agree, and I would add to that, 9 agreement that it also is easier when the public has 10 the demons in their minds and in their consciousness. 11 Q. And you would agree with me that the 12 campaign finance system is a subject, as we discussed 13 earlier, that the public does not have very much 14 detailed knowledge of on its own? 15 A. That's true. And it also has attached to 16 it, of course, in progressive terms, the curse of 17 bigness, big money. 18 Q. And as you I think said in one of your 19 earlier articles, it's difficult to tell whether 20 that's there because it's there or whether it's been 21 created by years of reporting that it's there, is 22 that true? 23 A. Yes. 24 Q. If I can turn to your report for just a 25 moment, that's been marked as Sorauf Exhibit 15. If</p>	<p style="text-align: right;">Page 116</p> <p>1 finance system? 2 A. Yes. 3 Q. And you believe that the legislation 4 addresses those issues? 5 A. Those not being all of the problems but 6 some of the major problems, yes. 7 Q. And what I want to understand is if we 8 could dial back the clock to 1987, whether we would 9 still have those problems to such a degree that you 10 think reform would be necessary. 11 A. I don't know which is more difficult, 12 projecting the future or projecting one's self back 13 into the past. I think -- if I were to answer 14 that -- let me answer that just on the surface. I 15 think that the campaign finance system in 1987 had 16 many fewer problems, as I perceive them, than it does 17 in 1992. 18 Q. And you say in your report here that the 19 intent of the reformers was not to break new ground 20 relative to what existed back in 1988. Is that your 21 perception? 22 A. Yes. 23 Q. But in fact, they did go further than 24 that, did they not? 25 A. They went further because, of course, in</p>
<p style="text-align: right;">Page 115</p> <p>1 you look at page 81, there is a statement in there 2 that says you basically would like to return the 3 world to how it existed with respect to soft money, 4 prior to 1988. Do you see that statement? 5 A. I see that statement, yes. 6 Q. Put another way, if we could turn back the 7 clock and put things as they were in 1988, you 8 believe that campaign finance reform would not be 9 necessary? 10 A. But this particular sentence is preceded 11 by a sentence that says it is evident from the 12 congressional record that fixing the holes, et 13 cetera, and then that sentence begins, "Their goal," 14 referring I assume to Congress, members of Congress, 15 "was not to break," et cetera. 16 Q. Well, I'm asking your view. 17 A. My view? I think to some extent that is, 18 regardless of what may have been the intention of 19 members of Congress, that is to some extent what the 20 piece of legislation that they wrote, if upheld, 21 would accomplish. 22 Q. And you've -- 23 A. And we support the legislation. 24 Q. And you have identified a number of 25 problems, as you see it, in the current campaign</p>	<p style="text-align: right;">Page 117</p> <p>1 1988, there wasn't much soft money. 2 Q. But there was some non-federal money in 3 the system, is that true? 4 A. Limited amounts and we didn't really know 5 how much. The reporting of the amounts doesn't begin 6 until '91, I believe, by the FEC. 7 Q. And that's one thing I'm trying to 8 understand is, you talk a lot in the report about the 9 growth in non-federal money or what you call soft 10 money. At what point did that become a serious 11 enough problem that we should -- that Congress is 12 justified to step in and fix it? 13 A. I can answer that, I think, only in terms 14 of my own perspective. My own views about soft 15 money, which I expressed in '88, '89, '90 in 16 relatively moderate terms because the problem I saw 17 then was relatively moderate. 18 My view, I think, if I reached a watershed 19 in my view, it was after the '96 elections and the 20 data on the enormous jump in soft money raised by the 21 national party committees, transfers to the states 22 and the beginnings of the use of it for issue 23 advertising. 24 Q. Well, if we go back to the early 1990s, 25 I'm not sure moderate problem is the word I would</p>

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1 use. You in fact saw some benefits from soft money
 2 at that point in time, did you not?
 3 A. Because at that time the sums were low and
 4 we didn't really have much data. Remember, anything
 5 I published in '91, '92 had been written a year
 6 before, at least. And at that time, it appeared that
 7 the parties were using soft money for party building,
 8 for strengthening themselves as political parties.
 9 Not much was being transferred to the states.
 10 And as far as we could tell from those
 11 very -- the first very inadequate reports on
 12 transfers, it was being used by state parties for
 13 essentially party building so that the first wave of
 14 it at a relatively low level appeared to be
 15 relatively benign. Granted -- and also the sums
 16 given to the parties were nowhere nearly of the
 17 magnitude that they began to reach in the middle
 18 '90s.
 19 Q. And again, you say benign now but at the
 20 time, you were saying it was positive, were you not?
 21 A. I may have.
 22 Q. And at that time, provided that the
 23 amounts contributed were reasonably moderate and that
 24 the parties were using the non-federal money for
 25 party building activities, you viewed that as a

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1 political parties from running candidate-oriented
 2 issue ads. in your terminology, but permitted them to
 3 raise non-federal money that could only be used for
 4 grass roots get out the vote party building
 5 activities at the state and local level, that would
 6 address the problems that you identify in your
 7 report, would it not?
 8 A. Well, it wouldn't address all of them. It
 9 wouldn't address the unlimited large contributions to
 10 the parties.
 11 Q. So let's modify our hypothetical.
 12 Congress tells the national political parties that
 13 they cannot use -- they can raise non-federal money
 14 but they cannot use it for candidate-oriented issue
 15 ads and they can only raise it in limited amounts,
 16 and you can decide what the amount limit is.
 17 A. Without getting into details, let me try
 18 to answer your question in general terms. Would I
 19 ever have proposed solving the problem of soft money
 20 by simply limiting its amounts and its purposes? And
 21 I think that was a feasible, rational way of dealing
 22 with the problem.
 23 I think that as a feasible, rational way
 24 of dealing with the problem, it became more and more
 25 difficult as the magnitudes of the sums and the

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1 positive thing for our democracy?
 2 A. To the extent that that's what was being
 3 done, I did have a positive view of it, yes.
 4 Q. And had that continued to be the case, if
 5 we had not had the dramatic growth in the latter part
 6 of the 1990s and the growth in what you've referred
 7 to as issue ads or candidate-oriented issue ads, it's
 8 likely that you would have never had a problem with
 9 non-federal money being given to the political
 10 parties in that way, is it not?
 11 A. If the amounts of money had stayed, say,
 12 at '90 or '92 levels and they had been used primarily
 13 for party building, I suspect I would not have the
 14 views that I have today.
 15 Q. And what would your views be under those
 16 circumstances?
 17 A. My views would be that at that level, I
 18 wouldn't rule out the possibility that some -- these
 19 are all hypothetical. I wouldn't rule out the
 20 possibility that there had been some development of
 21 issue ads but I think there would not have been the
 22 same development. I suspect that had it stayed at
 23 that level, that we wouldn't have had a reform bill.
 24 Q. So if, instead of the BCRA, Congress had
 25 passed a statute that prohibited the national

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1 involvement in issue ads developed. But a number of
 2 people, and I think I did in at least one publication
 3 consider the possibility of dealing with soft money
 4 by limiting soft money rather than by abolishing it.
 5 And I think under the circumstances of
 6 limited size and use, I think that would have been a
 7 rational legislative strategy. It was one that the
 8 Congress did not choose, but I think it would have
 9 been defensible, yes.
 10 Q. And it would have largely addressed the
 11 problems that you identified?
 12 A. It would have addressed them in 1992's
 13 terms, yes.
 14 Q. It would address them today, would it not?
 15 A. It would address them. The question is
 16 how successfully would it address them. And I think
 17 it's -- to some extent it's a question -- I hate to
 18 resort to cliches but it's essentially the problem of
 19 putting the genie back in the bottle at this point.
 20 I don't know whether such limitations on an operation
 21 that is as complex and reaches so much of our
 22 campaigning, whether that's feasible
 23 administratively.
 24 Q. Have you studied whether that particular
 25 approach would address those problems as well as the

<p style="text-align: right;">Page 122</p> <p>1 BCRA? 2 A. No, I have not. 3 Q. Do you have an opinion on that issue? 4 A. It would take me a while to think and to 5 parse it all out. As I've told you already, my first 6 reaction is that it's possibly too late, but I've 7 never really given it a lot of thought because it's 8 not been a real question. We were producing this 9 against a very short deadline and I did not diverge 10 into hypothetical questions. 11 Q. And just to be clear, I'm not being 12 critical that you may not have thought about that 13 issue. I'm just trying to work through it with you. 14 A. I know. 15 Q. But such an approach would have certain 16 benefits, would it not? For example, if you allowed 17 the national political parties to raise non-federal 18 money but limited its use to true grass roots party 19 building activities that you testified earlier you 20 think were good for our democracy, and if as a result 21 of that we had more party building activities, that 22 would be a good thing in your view, would it not? 23 MR. DEELE: Objection, 24 mischaracterization. 25 BY MR. BARNETT:</p>	<p style="text-align: right;">Page 124</p> <p>1 what's been marked as Exhibit 18 and I'll tell you 2 this is again excerpts from a publication entitled 3 Party Politics in America, particularly regarding 4 chapter 17. Do you recognize this document? 5 A. No, I don't. And let me explain why I do 6 not. This edition of the book I had nothing to do 7 with. You may fairly ask then, why is my name on the 8 edition as the second author, not the first author 9 but as the second author, and the answer is, because 10 the publisher wanted it there for marketing purposes. 11 And so the agreement by which I sold my 12 copyright, in effect, to Paul Beck to take over the 13 book was mediated by our publisher who had, God 14 knows, a real interest in selling copies of the book 15 and et cetera. And they thought that my name should 16 remain on it, so that the sixth edition was Sorauf 17 and Beck even though Beck did all the work. The 18 seventh edition was Beck and Sorauf even though Beck 19 did all the work. So I regret to say that I've not 20 read this edition. 21 Q. You didn't review it at all before it was 22 published? 23 A. I did not review it at all because I told 24 Paul Beck that if he would agree to take over this 25 book, that I would not look over his shoulder at all.</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. You can answer. 2 A. It's awfully hard for me to -- among other 3 things, I'm not sure I know how a partial limitation, 4 how easily it could be enforced, adjudicated. How do 5 we guarantee that the money will be used for party 6 building. I see an administrative morass. I would 7 have to think more about it, but I do have some 8 immediate reservations. 9 Q. Well, setting aside the administrability 10 of it, you would consider increased party-building 11 activities to be a good thing, would you not? 12 A. Yes. And in this report, we have in 13 general done so. 14 Q. I think you've been very consistent on 15 that. 16 MS. SEALANDER: Tom, you might want to 17 have a break in the next few minutes, whenever it is 18 convenient for your questioning. 19 MR. BARNETT: This is probably a good 20 time. Why don't we go off the record. 21 (Recess.) 22 (Sorauf Exhibit No. 18 was 23 marked for identification.) 24 BY MR. BARNETT: 25 Q. Professor Sorauf, I ask you to look at</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Well, why don't we ask you to look over 2 his shoulder for a moment. 3 A. All right, with that on the record. 4 Q. No, I understand that. Let's look at page 5 467. And why don't I let you, because you're not 6 familiar with this -- under -- it says the new 7 service parties. Just read down to the bottom of the 8 page. You can read it to yourself. 9 A. All right. 10 Q. I should ask, who is Paul Beck? 11 A. He is a professor of political science and 12 chairman of the department of political science at 13 Ohio State University. 14 Q. Do you know him personally? 15 A. Yes, I do. 16 Q. Do you respect his scholarship? 17 A. I do indeed, yes. 18 Q. Looking at page 467, there is discussion 19 here about the new service parties. 20 A. Yes. 21 Q. And essentially how the parties have seen 22 at least a -- I don't know if resurgence is 23 overstating it but some improvement in the period 24 leading up to this publication in 1992. 25 And then, as an example, it says here,</p>

<p style="text-align: right;">Page 126</p> <p>1 "The infusion of soft money into the state party 2 organizations, particularly in 1988, enabled them to 3 step up their role in political campaigns. The 4 spread of two-party competition into formerly 5 one-party strongholds has surely accelerated these 6 trends, as more than a modicum of party organization 7 now is required in many locales just to keep up with 8 the competition." 9 Are you familiar with the phenomenon that 10 he's discussing here? 11 A. I'm familiar with it and it's terribly 12 easy to second guess somebody more than 10 years 13 after the fact. This again was written probably in 14 '90 or '91. The publication lag is also that long, 15 and also publishers like to date a book for the 16 coming year so that it doesn't age as fast. 17 Q. Sure. 18 A. Sort of like horses. But notice that he 19 says, in the quotation that you've read, "The 20 infusion of soft money into the state party 21 organizations, particularly in 1988, enabled them to 22 step up their role in political campaigns." That 23 could very well be taken to mean in their funding of 24 candidates. I don't think that necessarily means a 25 strengthening of party organizations at the local</p>	<p style="text-align: right;">Page 128</p> <p>1 A. This characterization I think was much 2 more valid at the time that it was written. It's 3 been overtaken by events, by all that's happened in 4 the intervening 10-11 years. 5 Q. Over on 469, I just want to be clear, he 6 puts a quote in here from a Walter Dean Burnham. 7 A. Uh-huh. 8 Q. And if you wouldn't mind just reading that 9 quote aloud. It's the bottom of 469 over to 470. I 10 would like you to read it and then comment on whether 11 you agree with it or not. 12 A. All right. "Political parties, with all 13 their well-known human and structural shortcomings, 14 are the only devices thus far invented by the wit of 15 western man that can, with some effectiveness, 16 generate countervailing collective power on behalf of 17 the many individually powerless against the 18 relatively few who are individually or 19 organizationally powerful. 20 "Their disappearance as active 21 intermediaries, if not as preliminary screening 22 devices, would only entail the unchallenged 23 ascendancy of the already powerful, unless new 24 structures of collective power were somehow developed 25 to replace them, and unless conditions in America's</p>
<p style="text-align: right;">Page 127</p> <p>1 level. 2 And in fact, what he refers to as service 3 parties was a term of art, as we say, somewhat widely 4 used about this time to describe the political 5 parties in effect getting bigger by joining the 6 campaigns and that produces exactly the phenomenon we 7 are talking about in our report of local parties 8 becoming, in effect, service organizations and even 9 service of candidates. 10 Q. And he also talks in here about hiring 11 skilled professionals? 12 A. Yes. 13 Q. Which you talk about in your report? 14 A. Yes. 15 Q. Which you view as a bad thing? 16 A. Well, to the extent that they are 17 subcontractors who take over some of the 18 responsibilities of a local party, yes, we do view it 19 as a bad thing. 20 Q. Whereas Professor Beck describes it here 21 in a positive light, does he not? 22 A. Much more. 23 Q. So you would basically disagree with 24 Professor Beck in this description or 25 characterization?</p>	<p style="text-align: right;">Page 129</p> <p>1 social structure and political culture came to be 2 such that they could be effectively used." 3 Q. Thank you. And my question is whether you 4 agree with that description or not. 5 A. I think it overstates the role and the 6 competence of political parties. You asked earlier 7 about, was I a proponent or a supporter of political 8 parties. Burnham is one of the classic spokespersons 9 who believe in, more than I do, the transcendent 10 importance of political parties to a political system 11 and this reflects that point of view. 12 I can't say that I disagree with any of 13 the direction of his comments but I think it is too 14 extreme. It oversimplifies the struggle that the 15 political party engages in in this great to-do with 16 organized interests. It tends, as some people from 17 this school -- other people also from this school in 18 political science, it tends to overemphasize the 19 organizational power of interest groups and organized 20 interests of any kind. It creates an impression of a 21 political party sort of standing at the flood gates 22 of democracy, which I think is excessive. 23 Q. I would ask you to direct your attention 24 to the next paragraph where Professor Beck is 25 discussing this position more generally and in more</p>

<p style="text-align: right;">Page 130</p> <p>1 muted terms. If you could just read it to yourself 2 and tell me when you're done. 3 If I'm following this correctly, he's 4 suggesting that the political parties are at least 5 one means by which the poor and perhaps less educated 6 aspects of our society are empowered. Is that a fair 7 characterization? 8 A. I think so, yes. 9 Q. And would you agree with that 10 characterization as a general matter? 11 A. I would put it just a little bit 12 differently than maybe even Paul does. Political 13 parties create the kinds of cues and symbols and 14 organizing that makes it possible for less 15 sophisticated, less educated people to be somewhat 16 effective in politics. And I think that's true. And 17 that's one of the importances, it seems to me, of 18 political parties. 19 Q. And does Professor Beck suggest at the end 20 here that the decline in participation in the 21 political process has come disproportionately from 22 the lower status and less educated Americans? 23 A. Yes, he does. 24 Q. And he associates that perhaps with a 25 weakening of the political party system?</p>	<p style="text-align: right;">Page 132</p> <p>1 well, can you briefly summarize how you define 2 corruption? 3 A. I think we have defined it in a number of 4 noncontradictory ways. It's clear that we do not 5 want to define it in terms of quid pro quo bribery. 6 Q. You would include that as a potential 7 aspect of corruption? 8 A. Yes. But by no means the whole of 9 corruption. 10 Q. And just to be clear, your report really 11 doesn't focus on quid pro quo corruption? 12 A. It does not. And in fact, it makes a 13 comment at one point that political scientists lack 14 the means by which to observe and determine such 15 things. 16 Q. And you don't offer any evidence that 17 there is quid pro quo corruption going on in our 18 current system? 19 A. We do not. 20 Q. So your focus is on the other aspects of 21 corruption as you define it? 22 A. Correct. 23 Q. And could you define those other aspects? 24 A. Well, philosophically, I think we have 25 taken a broader view of corruption. In semantic</p>
<p style="text-align: right;">Page 131</p> <p>1 A. Yes, he does, in that last sentence. 2 Q. And would you agree or disagree with his 3 assessment? 4 A. I think I would agree with it. It's a 5 moderate statement. He doesn't say it all comes 6 from, just that it comes disproportionately from. 7 Beck is a very distinguished scholar, far more than 8 I, of American voting behavior. That is his 9 specialty. And I think this paragraph is in effect 10 written by a very authoritative expert on the 11 American electorate and the American voter. 12 Q. And you take it to mean that in his 13 assessment, one of the principal reasons for 14 declining voter participation is a weakening of the 15 political party system? 16 MS. SEALANDER: Objection, 17 mischaracterizes Professor Sorauf's testimony. 18 BY MR. BARNETT: 19 Q. You can answer. 20 A. I go back to that last sentence. He says, 21 "That may be one reason why the turnout declines." 22 I'll stick with his wording there. 23 Q. Let's turn back to your report. 24 A. All right. 25 Q. In your report, you define corruption --</p>	<p style="text-align: right;">Page 133</p> <p>1 terms, we don't think of it just as being limited to 2 quid pro quos. We're using it in the broad sense of 3 the term of the debasing or altering the nature of, 4 unsatisfactorily or destructively, the same way that 5 people talk in every day usage of the corrupting of 6 American morals or American values, et cetera. 7 I think that is a standard usage and it's 8 far more extensive than quid pro quo bribery. I 9 think when it comes to the particular mechanics, we 10 talk about corruption, for example, in terms of the 11 kind of heightened access, indeed, even the new 12 channels of access that large contributions bring to 13 the donors and to the legislative process. 14 Q. And can you elaborate on what you mean by 15 heightened access? 16 A. I mean greater opportunities to present a 17 case, to talk to important people who will make 18 public policy, especially in the Congress, to 19 persuade them, additional opportunities to persuade 20 them, to be known to them, to interact with them 21 socially. I think it also has to do with the 22 increasing amounts and size of their contribution, 23 especially the soft money aspect. 24 Q. In what way? 25 A. I think we've said at least once that</p>

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1 giving 50 times X creates more access than giving X.
 2 We haven't put it that way, but that's essentially
 3 the point we've made.
 4 Q. It's not your position, is it, that soft
 5 money contributions are the only way that political
 6 participants can get access to federal officials, is
 7 it?
 8 A. It is not.
 9 Q. Are there other ways to obtain access of
 10 which you're aware?
 11 A. There are others ways.
 12 Q. Such as?
 13 A. Well, giving hard money.
 14 Q. Do you think hard money contributions
 15 provides access?
 16 A. Yes.
 17 Q. Is there anything wrong with that?
 18 A. I think there is something wrong with it
 19 if it gives the donor a greatly increased number of
 20 channels of representation in the political system.
 21 Q. So should the Congress abolish all hard
 22 money contributions so that we can avoid the problem
 23 you just described?
 24 A. No. I think Congress has legislated
 25 reasonable contribution limits.

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1 A. I think that's a speculative kind of
 2 scenario that I just don't see as a real one.
 3 Q. And why is it so hard for you to imagine?
 4 A. Because somebody has to pay for campaigns.
 5 Q. People can pay for it out of their own
 6 pockets.
 7 A. That would, I think, not be desirable.
 8 Q. People need to be able to raise money from
 9 others?
 10 A. People need to be able to conduct a viable
 11 campaign for the purposes of an informed electorate.
 12 Q. The ability to raise money and to spend
 13 money for political purposes raises the level and the
 14 scope and the amount of debate on candidates and
 15 issues, is that a fair statement?
 16 A. Yes, though not necessarily in a
 17 completely linear relationship. But some money is
 18 necessary for a campaign, yes.
 19 Q. And that's what I'm driving at. Is there
 20 a benefit to allowing contributions that weighs
 21 against prohibiting all contributions?
 22 A. That is one of the major arguments against
 23 a compulsory public funding system, which some
 24 countries in the world have.
 25 Q. And those benefits are factors that you

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1 Q. Why shouldn't we abolish all hard money
 2 contributions?
 3 A. I think as a matter of public policy, to
 4 encourage it as a legitimate form of political
 5 activity, regulated contributions are probably
 6 desirable. I think also there are all kinds of
 7 pragmatic political questions. If not by private
 8 contributions, how are we going to finance campaigns.
 9 I think it is better to have regulated campaigns
 10 supported with enforcement and disclosure than not to
 11 have any.
 12 Q. So you think there are countervailing
 13 considerations here that need to be balanced?
 14 A. Well, as a political reality, in getting
 15 through any kind of regulation through the Congress,
 16 they have to be balanced.
 17 Q. I'm not talking about the political
 18 reality. I'm talking about if you were able to
 19 design the rules, would you just eliminate hard money
 20 contributions?
 21 A. That would have to be a mandatory system
 22 of public funding. It seems to me that's what you're
 23 talking about.
 24 Q. Well, for the moment, I'm just talking
 25 about eliminating all hard money contributions.

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1 would weigh against the harm that you see from
 2 contributions even at the hard money levels, is that
 3 fair?
 4 A. It wouldn't be necessary to weigh them at
 5 today's levels but if somebody proposed -- and in
 6 fact, I have opposed proposals to cut back the hard
 7 money limits that a few of the sort of populist
 8 organizations have pursued in this country and I have
 9 opposed those. And I have opposed them as trying to
 10 return campaign finance to the Stone Age.
 11 Q. Well, when you say it would not be
 12 necessary to weigh them at current levels, I'm not
 13 sure I understand what you mean by that.
 14 A. Well, at the present levels which can
 15 sustain viable campaigns.
 16 Q. And you think that the benefits of
 17 contributions at those levels far outweigh any
 18 perceived harm so that there is no close weigh-in
 19 that has to be done?
 20 A. I certainly -- let me put it this way. I
 21 certainly, before BCRA was passed, I certainly did
 22 not advocate a reduction in the contribution levels
 23 to campaigns for Senate and House.
 24 Q. And what about contributions to the
 25 political parties?

<p style="text-align: right;">Page 138</p> <p>1 A. I did not advocate cutting those back 2 either. 3 Q. And do you know what the contribution 4 limits are to political parties? 5 A. I think it's 20,000 a year, isn't it? 6 Q. And what it will be under the BCRA? 7 A. I must admit that part of the statute I'm 8 not clear about. I know there has been an increase. 9 Q. Assume that it's \$25,000 a year. 10 A. All right. 11 Q. And is it your opinion that contributions 12 to the RNC or the DNC of \$25,000 a year can create an 13 appearance of corruption? 14 A. I think we have long ceased to worry about 15 contributions of 25,000 in the face of the soft money 16 contributions many times that figure. And I am 17 comfortable with that level. 18 Q. Does it buy access? 19 A. It probably buys some access. 20 Q. And does that create an appearance of 21 corruption? 22 A. I think at that level, not a great 23 appearance of corruption. 24 Q. Why is that? 25 A. I think in terms of today's politics, I</p>	<p style="text-align: right;">Page 140</p> <p>1 lower end of the scale, if you will? 2 A. We're talking about non-federal? 3 Q. Non-federal contributions. 4 A. I would be less worried about those, much 5 less worried about those, surely. And in fact, if 6 they're way down on the bottom of the scale, I would 7 wonder why they haven't been counted as hard money 8 contributions. 9 Q. Well, that's a separate question. But you 10 said that we've -- I think you said long since ceased 11 to worry about contributions at or below the \$25,000 12 level? 13 A. In view of all that's happened in the last 14 few years, yes. 15 Q. So the non-federal contributors below the 16 \$25,000 level you would not be worried about? 17 A. I would be much less worried about. I 18 wouldn't say absolutely not worried about because 19 there may be a record of additional contributions, et 20 cetera, but by and large, I don't think that's the 21 major public policy problem. 22 Q. And you think it's the large contributors? 23 A. I think it's the larger contributors, yes. 24 Q. And if you had to draw a rough line, is it 25 25,000, is it 50, is it a million, is it 500,000?</p>
<p style="text-align: right;">Page 139</p> <p>1 think that \$25,000 to a national party committee 2 doesn't make somebody an elite contributor. It 3 doesn't even get you into one of the big clubs. 4 Q. Do you know what the average non-federal 5 contribution is to the national political parties? 6 A. To the national party committees? 7 Q. Yes. 8 A. No, I don't know what it is. 9 Q. Do you want to hazard a guess? 10 A. No, I don't think I do. 11 Q. Would you guess that it's above 25,000? 12 A. Yes. Well, the average, that is the 13 numerical average? 14 Q. Right. 15 A. I think it's probably less than that but I 16 would like to know what the magnitude, say, of the 17 top 5 or 10 percent is. 18 Q. And it's the top 5 or 10 percent that you 19 would be worried about? 20 A. I assume, without a lot of information, I 21 assume that the curve rises very sharply. 22 Q. Well, let's assume that it does and it's 23 the top 5 or 10 percent that you would be worried 24 about. You would not be worried about the 25 non-federal contributions of the people down on the</p>	<p style="text-align: right;">Page 141</p> <p>1 A. I think that depends very much on other 2 circumstances. 3 Q. What circumstances? 4 A. The access of the individual, the 5 individual's prior contribution record, other 6 considerations. 7 Q. I think we started down this road -- I 8 don't think you answered it. If you did, I 9 apologize. There are other ways to get access to 10 federal officials besides making campaign 11 contributions? 12 A. Sure. 13 Q. Such as what? 14 A. Write them a letter. 15 Q. What else? 16 A. I can write my Congressman and get a 17 response, not necessarily from him but from his 18 office. 19 Q. Other ways? 20 A. Personal conversations, joint memberships 21 that people have, a fellow Mason, a fellow Roman 22 Catholic, et cetera. There are two examples. 23 Q. Are there other ways? 24 A. Working for the person in his or her 25 campaign for public office.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q. Say I have a lot of money but I don't have 2 a personal relationship with somebody on the Hill. 3 Can you think of another way I could get access to 4 have my views on a particular issue heard? 5 A. Nothing springs to mind now. 6 Q. Does the term lobbyist refresh your 7 recollection? 8 A. All right, yes. Thank you. Lobbyists, 9 certainly. And in fact, for many institutional 10 contributors, both hard and soft money, both direct 11 or through PACs, it seems to me that their activities 12 in campaign finance are auxiliary to their lobbying 13 activities. 14 Q. Do you know how much money is spent on 15 lobbying activities? 16 A. I do not. 17 Q. Do you know whether it's more or less than 18 is spent on campaign contributions? 19 A. I do not. 20 Q. To your knowledge, the BCRA does not do 21 anything to limit access through lobbyists, does it? 22 A. That's correct. To the best of my 23 knowledge, it does not. 24 Q. There are other reasons. There are a lot 25 of special interest groups out there who represent,</p>	<p style="text-align: right;">Page 144</p> <p>1 subcontracting by national political parties. And I 2 guess it's not just national. It's also state and 3 local parties. 4 A. Yes. 5 Q. Why is that a problem? 6 A. I think that is a problem in part because 7 it ultimately robs the political party, the state or 8 local political party organization of a major 9 function, of a major role in campaigns. I think it's 10 a problem, as we argue in the paper, for the parties 11 simply because it's taking the easy way out and 12 frequently produces less effective campaigning. 13 Q. You think face-to-face campaigning is more 14 effective? 15 A. Yes, indeed. And all the scholarship that 16 we know concludes that that's so. 17 Q. And you think if the parties engaged in 18 more face-to-face activity, that they would be better 19 off and more successful in achieving their goals? 20 A. We do. 21 Q. And you think that the current leaders of 22 the parties are completely unaware of this fact? 23 A. That I have no way of knowing. 24 Q. Well, you've been able to figure this out 25 in your mind at least, correct?</p>
<p style="text-align: right;">Page 143</p> <p>1 for example, people with a common view on a certain 2 issue? 3 A. Uh-huh. 4 Q. The Sierra Club on the environment? 5 A. Uh-huh. 6 Q. If a member of the Sierra Club calls a 7 member of Congress, are they likely to get a hearing 8 of some sort? Strike that. If a leader of the 9 Sierra Club calls a member of Congress, are they 10 likely to get a hearing of some sort? 11 A. I think the chances would be good. It 12 would probably be dependent to some extent on the 13 nature of the constituency of the member of Congress. 14 I'm not sure it would get you into somebody who's 15 district was downtown Philadelphia. 16 Q. No, but if you were an official with the 17 AFL-CIO, might it? 18 A. That official would have no problem. 19 Q. You would agree with me there are a lot of 20 ways that you can get access to federal officials? 21 A. I do agree. 22 Q. And that many of those ways have nothing 23 to do with campaign contributions? 24 A. I agree. 25 Q. You talk in your report about</p>	<p style="text-align: right;">Page 145</p> <p>1 A. Yes. 2 Q. And you've looked at studies that you say 3 are more effective when there is face-to-face 4 contact? 5 A. Yes. 6 Q. And that's public information? 7 A. Yes. 8 Q. And you think the parties are just unaware 9 of this information out there? 10 A. No, I don't think they're unaware. 11 Q. Is it possible the parties have made a 12 judgment that the methods they are employing are more 13 effective, more cost-effective? 14 A. That certainly is a logical possibility. 15 Q. But you just disagree with that judgment? 16 A. If that's what they have done, yes, we 17 disagree with that judgment. 18 Q. And I guess what I'm trying to understand 19 is, we have a potential disagreement on a particular 20 judgment here. Is it the government's role to decide 21 who's got the better judgment? 22 A. No. 23 Q. Should the government be trying to force 24 parties to engage in more grass roots voter 25 participation efforts not using subcontractors?</p>

<p style="text-align: right;">Page 146</p> <p>1 A. I don't think it has and I don't think it 2 should.</p> <p>3 Q. Well, your report spends a lot of time 4 trying to justify the BCRA on the grounds that it 5 will be good for the parties in the long run.</p> <p>6 A. Uh-huh.</p> <p>7 Q. But that's not the government's role to 8 decide what's good for the parties in the long run, 9 is it?</p> <p>10 A. All I'm saying is that I really don't 11 think that that was a consequence intended by -- or a 12 major goal of the legislation intended by the 13 Congress.</p> <p>14 Q. That may or may not be, but what I'm 15 trying to understand is, you spend a significant 16 portion of the report setting that out there as a 17 potential benefit.</p> <p>18 A. We do. We do see it as a potential 19 benefit.</p> <p>20 Q. You would agree with me that moving in 21 that direction would be contrary to the wishes of the 22 current party leadership?</p> <p>23 A. Again, I'm not that privy to the wishes of 24 the current party leadership.</p> <p>25 Q. Is there anything that legally bars the</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. It was not intended?</p> <p>2 A. No, I don't think so.</p> <p>3 Q. How do you define tough love, then?</p> <p>4 A. As in effect referring to decisions that 5 may be unpleasant but which will have a satisfactory 6 or desirable outcome.</p> <p>7 Q. But there is some element of forcing 8 someone to make an unpleasant decision, is there not?</p> <p>9 A. There is in any legislation, yes.</p> <p>10 Q. But you would agree, then, I sense, that a 11 paternalistic approach by the government to the 12 parties is not necessarily a good thing?</p> <p>13 A. I don't see any paternalism in this 14 legislation.</p> <p>15 Q. That's not my question. My question is, 16 if the government adopted a paternalistic approach to 17 the parties and tried to decide what was best for 18 them, that that would be a bad thing?</p> <p>19 A. I don't think it would be desirable.</p> <p>20 Q. The government should not be dictating to 21 the parties how they should run their operations?</p> <p>22 A. Well, the government or the Congress and 23 the President do have a right to regulate a campaign 24 finance system. In doing so, they may dictate to the 25 political parties, yes, about what they can do and</p>
<p style="text-align: right;">Page 147</p> <p>1 party leadership from hiring more canvassers to go 2 out and engage in face-to-face activity?</p> <p>3 A. Not so far as I know.</p> <p>4 Q. And might we infer that they've decided 5 that they prefer to do what they're doing, to the 6 extent -- and I should say I don't necessarily agree 7 that they're not doing that.</p> <p>8 A. I'm always reluctant to infer motives or 9 thought processes that I don't know of firsthand.</p> <p>10 Q. But the effect on the parties, the tough 11 love that you talk about is not a justification for 12 the BCRA, is it?</p> <p>13 A. No.</p> <p>14 Q. And in fact, tough love is a paternalistic 15 concept, isn't it?</p> <p>16 A. I guess to some extent we use that simply 17 in an ironic sense, in a sense of ordinary American 18 usage, et cetera. I wouldn't read too much into it.</p> <p>19 Q. Well, you used the term. Doesn't it mean 20 that you know better than the individual at stake 21 what's best for them and, by tough love, you're going 22 to force them to do it even though they don't want 23 to?</p> <p>24 A. Well, I suppose it has that implication. 25 It certainly wasn't intended, I don't think.</p>	<p style="text-align: right;">Page 149</p> <p>1 what they cannot do.</p> <p>2 Q. Let's look at page 86 for a second.</p> <p>3 MS. SEALANDER: Let's go off the record. 4 (Discussion off the record.)</p> <p>5 BY MR. BARNETT:</p> <p>6 Q. On page 86, the paragraph that starts on 7 the page says here, "The situation in 2003, should 8 BCRA be upheld, will be different in one respect from 9 earlier times: the sheer amount of money in the 10 parties' coffers. The hard money receipts of the 11 parties are several times larger than they were a 12 decade ago. The largest part of this money (after 13 expenses) has gone to candidate-oriented issue 14 advocacy in the past two election cycles. With that 15 option off the table, parties will face intense 16 pressure to find useful ways to spend their hard 17 money."</p> <p>18 What do you mean by, with that option off 19 the table?</p> <p>20 A. With the option of candidate-oriented 21 issue advocacy.</p> <p>22 Q. If the parties are using hard money, can't 23 they run candidate-oriented issue advocacy?</p> <p>24 A. I think they can.</p> <p>25 Q. Under your understanding of the BCRA, if</p>

<p style="text-align: right;">Page 150</p> <p>1 the parties are using 100 percent hard money, is 2 there some prohibition on their running 3 candidate-oriented issue advocacy? 4 A. No, I don't think there is. 5 Q. So that option is not off the table, is 6 it? 7 A. It would appear not, unless I am 8 forgetting something. The afternoon is getting long. 9 I think it probably should be -- that clause or that 10 phrase is unfortunate. 11 Q. And the sentence or the phrase that 12 follows on to that no longer follows, that the 13 parties will have extra money to find use for, isn't 14 that correct? 15 A. That follows. 16 Q. And so from your perspective, at least, 17 you would -- I'm just trying to see how far this 18 tracks through. The entire discussion about where 19 this money may be redirected to really should be 20 stricken? 21 A. Well, at the very least, it should be 22 modified. 23 Q. And how would you modify it? 24 A. Well, I'm not sure. 25 Q. But you would agree that the premise that</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Yes. The question is, do I see -- 2 Q. Isn't it likely that in the long run, 3 those committees will have fewer financial resources 4 available to them under the BCRA than would have been 5 available under the current campaign finance system? 6 A. I think certainly that's true for the 7 short run. In the long run, it becomes very 8 speculative. I mean, hard money contributions have 9 been increasing very sharply and I think one can 10 only -- I can only project the short run. 11 Q. Political parties prefer to raise hard 12 money rather than soft money, don't they? All else 13 equal, I should say. 14 A. All else being equal, yes. 15 Q. Because you can use hard money for more 16 purposes? 17 A. For more purposes, correct. 18 Q. And to the best of your knowledge, the 19 political party committees would be raising as much 20 hard money now as they could, isn't that fair to say? 21 A. I wouldn't conclude that. It seems to me 22 that it may very well be the case that soft money is 23 easier to raise because it can be raised in larger 24 chunks and that, therefore, at the moment, they may 25 prefer to raise soft money simply because the</p>
<p style="text-align: right;">Page 151</p> <p>1 there is some amount -- 2 A. Extra pool. 3 Q. -- extra pool of money with no future use 4 is invalid? 5 A. Yes, I believe, unless I have forgotten 6 something, I believe that is so. 7 Q. Let's turn more generally to the point 8 about what impact the BCRA is likely to have on the 9 financial resources available to the national 10 political party committees. You would agree with me 11 in the short run there is going to be a substantial 12 reduction in the funds available to those parties, 13 would you not? 14 A. Yes. 15 Q. And isn't it almost certain that in the 16 long run, there will still be fewer resources 17 available to those parties under the BCRA than would 18 have been the case under existing campaign finance 19 laws? 20 A. This includes the monies that had been 21 transferred to the states, the soft money that had 22 been transferred to the states? 23 Q. I'm talking about all of the money that 24 the RNC and the DNC and the NRSC and the DSCC and the 25 other two legislative caucus committees raise.</p>	<p style="text-align: right;">Page 153</p> <p>1 fund-raising costs are lower. 2 Q. And in fact, they're substantially lower 3 for raising soft money than hard money, is that not 4 true? 5 A. I believe so. 6 Q. So if you have to replace your soft money 7 with hard money, it's more expensive to do, dollar 8 for dollar? 9 A. Yes. 10 Q. So you have to more than just replace the 11 gross receipts? 12 A. Yes. 13 Q. Is that fair? 14 A. But my point is that just because the 15 party is raising the present level of hard money does 16 not necessarily mean that that is all of the hard 17 money that it could be raising presently. 18 Q. I understand your point. 19 A. That they may have left some part of an 20 undefined mine unmined in order to go and mine the 21 other vein. 22 Q. Have you studied the question of whether 23 or not the parties can raise more hard money? 24 A. No, I have not. 25 Q. Have you studied the way in which they</p>

<p style="text-align: right;">Page 154</p> <p>1 raise hard money to day?</p> <p>2 A. I've studied it to some extent, but not</p> <p>3 intensively.</p> <p>4 Q. Do you know what the average cost of</p> <p>5 raising a hard money dollar is?</p> <p>6 A. No, I don't.</p> <p>7 Q. Do you know what the marginal cost under</p> <p>8 the current system is of finding a new donor to</p> <p>9 increase the revenues for the RNC?</p> <p>10 A. No.</p> <p>11 Q. Would it surprise you to learn that the</p> <p>12 RNC loses money on every new donor that it finds;</p> <p>13 that it costs more money to find and persuade that</p> <p>14 donor to join their pool than they receive, at least</p> <p>15 in the first year?</p> <p>16 A. It surprises me.</p> <p>17 Q. Would you agree with me that there are</p> <p>18 likely diminishing returns as you try to raise more</p> <p>19 and more hard money?</p> <p>20 A. Yes. Depending, of course, on the method</p> <p>21 of raising it.</p> <p>22 Q. What do you mean by the method?</p> <p>23 A. Well, it seems to me that the diminishing</p> <p>24 returns would probably be greater if one raised it,</p> <p>25 say, in a broadly cast mail solicitation than in a</p>	<p style="text-align: right;">Page 156</p> <p>1 as they would have or could have raised if the</p> <p>2 existing campaign finance laws had stayed in effect.</p> <p>3 do you?</p> <p>4 A. I'm sorry, would you rephrase that</p> <p>5 question?</p> <p>6 Q. Sure. We've been talking about what may</p> <p>7 happen to the national political party committees</p> <p>8 under the BCRA as opposed to what would happen if the</p> <p>9 BCRA does not go into effect.</p> <p>10 A. Right.</p> <p>11 Q. And my question is whether you have any</p> <p>12 evidentiary basis for assessing or predicting that</p> <p>13 the national political party committees could raise</p> <p>14 as much money under the BCRA as they would have</p> <p>15 raised under the current system.</p> <p>16 A. No.</p> <p>17 Q. Let's focus a little bit more broadly for</p> <p>18 the moment. It's not just the national political</p> <p>19 party committees that are going to lose money under</p> <p>20 the BCRA, but the state and local parties are going</p> <p>21 to lose money as well, is that correct, in the short</p> <p>22 run?</p> <p>23 A. In the short run, most of them will.</p> <p>24 Q. For example, the transfers of non-federal</p> <p>25 money from the national parties to the state parties</p>
<p style="text-align: right;">Page 155</p> <p>1 more personal solicitation.</p> <p>2 Q. And even if there are more cost-effective</p> <p>3 ways of raising hard money now, of which the</p> <p>4 parties were aware, wouldn't you think it would be</p> <p>5 likely that they would be employing those methods</p> <p>6 now?</p> <p>7 A. In the most efficient of all worlds, yes.</p> <p>8 Q. And your supposition that they may be</p> <p>9 leaving pockets unexplored is that there may be pockets</p> <p>10 that they're likely unaware of or methods that</p> <p>11 they're unaware of?</p> <p>12 A. Or that they have deemed as too expensive</p> <p>13 to explore under present conditions with the</p> <p>14 available alternative of soft money.</p> <p>15 Q. And likely more expensive than the methods</p> <p>16 that they're using today?</p> <p>17 A. Might be.</p> <p>18 Q. If they knew about them today and they</p> <p>19 were less expensive, it would seem a little</p> <p>20 improbable that they would select a more expensive</p> <p>21 method of raising the money, wouldn't it?</p> <p>22 A. Yes.</p> <p>23 Q. But in any event, you have no basis for</p> <p>24 making a judgment that the national political party</p> <p>25 committees will raise as much money under the BCRA</p>	<p style="text-align: right;">Page 157</p> <p>1 will disappear?</p> <p>2 A. Yes.</p> <p>3 Q. And in recent years, election years,</p> <p>4 that's been in the hundreds of millions of dollars?</p> <p>5 A. Correct.</p> <p>6 Q. And that will disappear. So the state</p> <p>7 parties will either need to make do with fewer</p> <p>8 resources or find a replacement for those funds, is</p> <p>9 that fair?</p> <p>10 A. Yes.</p> <p>11 Q. And they will have to do so on their own</p> <p>12 and without the help of the national political party</p> <p>13 committees, is that true?</p> <p>14 A. Without the help, that is, without the</p> <p>15 financial transfers from the national party</p> <p>16 committees, but it may very well be that they could</p> <p>17 get other help from the national party committees.</p> <p>18 Q. Such as a letter of -- fund-raising letter</p> <p>19 on their behalf?</p> <p>20 A. Yes, or sending prominent people to help</p> <p>21 them in fund-raising. There are a number of ways</p> <p>22 that the national party committees could help the</p> <p>23 state and local parties.</p> <p>24 Q. And you wouldn't see any problem with</p> <p>25 letting the national political parties provide such</p>

<p style="text-align: right;">Page 158</p> <p>1 help?</p> <p>2 A. It's already going on.</p> <p>3 Q. And there is no reason to prevent the RNC,</p> <p>4 for example, from sending out a fund-raising letter</p> <p>5 for a state candidate on behalf -- strike that.</p> <p>6 Let me focus on the state party for the</p> <p>7 moment. To prevent the RNC from sending out a</p> <p>8 fund-raising letter, let's say to the citizens of New</p> <p>9 Jersey asking them to send money to the New Jersey</p> <p>10 Republican Party so that they can support their state</p> <p>11 candidates and state party-building activities?</p> <p>12 A. There is no statutory -- or rule,</p> <p>13 provision or rule of this Commission that I know of</p> <p>14 that would make that illegal.</p> <p>15 Q. And setting aside for the moment whether</p> <p>16 there is such a rule, you don't see any need for such</p> <p>17 a rule, do you?</p> <p>18 A. No, I don't.</p> <p>19 Q. And if there were such a rule, would you</p> <p>20 view that as a good rule or bad rule?</p> <p>21 A. That's a question I haven't thought about.</p> <p>22 Q. Or a neutral rule.</p> <p>23 A. And all of its implications. At the</p> <p>24 moment, I don't see any problem with it.</p> <p>25 Q. Now, when the states lose these hundreds</p>	<p style="text-align: right;">Page 160</p> <p>1 for by non-federal money. I would like you to set</p> <p>2 that aside for the moment and focus on the other</p> <p>3 things that are paid for with non-federal money. Do</p> <p>4 you know what those are?</p> <p>5 A. Primarily registration drives, get out the</p> <p>6 vote drives.</p> <p>7 Q. Other things? Administrative expenses?</p> <p>8 A. Yes, administrative expenses, certainly.</p> <p>9 Q. Contributions to state and local --</p> <p>10 A. State and local candidates, yes. And</p> <p>11 that's all I can think of.</p> <p>12 Q. And indeed, I believe it's over half of</p> <p>13 the non-federal expenditures is spent for something</p> <p>14 other than media buys, is it not?</p> <p>15 A. Offhand, I can't remember the data.</p> <p>16 Q. We can come back in a moment. Why don't</p> <p>17 we mark this as Exhibit 19.</p> <p>18 (Sorauf Exhibit No. 19 was</p> <p>19 marked for identification.)</p> <p>20 BY MR. BARNETT:</p> <p>21 Q. And I'll just tell you that this is an</p> <p>22 excerpt from a declaration from somebody with the</p> <p>23 Republican National Committee and in here he sets</p> <p>24 forth disbursements for state and local election</p> <p>25 activity in odd year elections under the RNC account</p>
<p style="text-align: right;">Page 159</p> <p>1 of millions of dollars in non-federal funds from the</p> <p>2 national political party committees, presumably they</p> <p>3 will go out and try to raise more money on their own.</p> <p>4 Is that a fair inference?</p> <p>5 A. Yes.</p> <p>6 Q. At the same time that the national</p> <p>7 political parties are out there also trying to raise</p> <p>8 more hard money to make up for some of the</p> <p>9 substantial shortfall from the soft money ban. Is</p> <p>10 that a fair inference?</p> <p>11 A. Correct.</p> <p>12 Q. You expect there to be more competition</p> <p>13 for campaign contributions?</p> <p>14 A. I think there will be more competition.</p> <p>15 How much there will be; that is to say, how much the</p> <p>16 state and local parties will be going after the same</p> <p>17 sources as the national party committees are, I have</p> <p>18 no way of knowing.</p> <p>19 Q. But it's certainly plausible that that</p> <p>20 will further increase the cost of raising the</p> <p>21 political contributions?</p> <p>22 A. It's possible.</p> <p>23 Q. Now, in the report, you discuss the</p> <p>24 non-federal money, soft money, at some length and, in</p> <p>25 particular, you focus on issue advocacy that's paid</p>	<p style="text-align: right;">Page 161</p> <p>1 which is a non-federal account. Are you familiar</p> <p>2 with those accounts?</p> <p>3 A. Roughly, but not in any detail.</p> <p>4 Q. We don't need detail. And you see here</p> <p>5 set forth, in 1999, for a variety of states listed,</p> <p>6 transfers to state parties, contributions to state</p> <p>7 and local candidates, direct spending amounted to</p> <p>8 about \$5.6 million? Do you see under total, under</p> <p>9 1999?</p> <p>10 A. I see, under the total column. I don't</p> <p>11 know what the column direct spending means.</p> <p>12 Q. Well, I believe that would be direct</p> <p>13 spending by the RNC on political activity in the</p> <p>14 state.</p> <p>15 A. I see. All right.</p> <p>16 Q. And in 2001, there was over \$15 million in</p> <p>17 expenditures by the RNC from its non-federal account</p> <p>18 in the various states listed.</p> <p>19 A. Uh-huh.</p> <p>20 Q. What problem do you see with permitting</p> <p>21 the RNC to raise non-federal money in individual</p> <p>22 contribution amounts of no more than \$25,000, to</p> <p>23 reference our earlier conversation, and using that</p> <p>24 money in the way set forth in this chart in Exhibit</p> <p>25 19?</p>

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1 MR. DEELEY: Objection, misstates
 2 testimony.
 3 THE WITNESS: Do I go ahead and answer?
 4 BY MR. BARNETT:
 5 Q. Yes.
 6 A. These are non-federal funds?
 7 Q. Correct.
 8 A. It's not in the labeling.
 9 Q. The RNSCC account --
 10 A. Is non-federal, I see, okay. Now, the
 11 question is --
 12 Q. Sure. Let's focus -- first of all, do you
 13 see any problem of the kind identified in your report
 14 with permitting the RNC to make these kinds of
 15 expenditures in odd year elections?
 16 A. Do I see any problems? You mean just in
 17 terms of my judgment, not in terms of statutes?
 18 Q. I'll focus you even more. I will say, do
 19 you see any problem or negative impact on the federal
 20 campaign process of permitting the RNC to make such
 21 expenditures in odd years, and let's assume that
 22 there were no federal candidates on any of the
 23 ballots at issue in any of these states in the two
 24 years.
 25 A. But to a certain extent, the answer to

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1 Q. Let's assume for a moment that the
 2 contributions could not be raised in amounts of more
 3 than \$25,000.
 4 A. I would still have difficulties with it.
 5 Q. And what's the problem?
 6 A. I think these are sums of a magnitude and
 7 a good deal of this money would go to state
 8 legislative candidates, I assume. And I think
 9 that's -- I have some worry about the impact of that
 10 on state legislative politics.
 11 Q. Let's say a good portion of this is going
 12 to the state parties themselves to use for a variety
 13 of activities.
 14 A. Yes. That's the column on the left.
 15 Q. Yes. Do you have concerns with that
 16 column?
 17 A. Fewer than I do about the contribution to
 18 candidates.
 19 Q. Well, what's your concerns with the column
 20 on the left?
 21 A. Just simply the concerns that I have about
 22 the origin and the magnitudes of the sums.
 23 Q. Now, I'm trying to focus now, not on your
 24 personal concerns, but what legitimate concerns you
 25 think the U.S. Congress has with respect to the

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1 your question is in the major premise that these are
 2 off year. I do have some difficulty with this degree
 3 of intervention into state and local politics by
 4 national party committees.
 5 Q. And what's your problem with that?
 6 A. My problem with that is that it
 7 contributes to the weakness of state and local party
 8 organizations. In this case, the Republican Party.
 9 And that it takes a very meaningful role in the
 10 nomination and support for candidates away from the
 11 local party systems.
 12 Q. Now, that's a judgment that you
 13 individually are entitled to take as to whether it's
 14 good to have the national parties active or --
 15 A. You asked me, so --
 16 Q. I understand that.
 17 A. Okay.
 18 Q. And I'm just trying to orient the
 19 conversation. But I want to focus on whether or not
 20 you think the U.S. Congress has a legitimate interest
 21 in prohibiting these kinds of expenditures.
 22 A. Yes, I think they do.
 23 Q. And how so?
 24 A. In part because of the unregulated nature
 25 of the contributors.

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1 expenditures in the column on the left, the transfers
 2 to the state parties and whether the U.S. Congress
 3 has a sufficient interest to prohibit such
 4 expenditures.
 5 A. One interest that the Congress has is the
 6 integrity of the entire regulatory system.
 7 Q. And how is that impacted by the transfers
 8 from the RNC to the state parties in an odd year
 9 election in which there are no federal candidates on
 10 the ballot?
 11 A. Among other things, the transfers -- the
 12 distinction between federal activity and federal
 13 campaigns and activity and state and local
 14 candidates' campaigns is very difficult to maintain.
 15 Q. Well, for these years, for these
 16 expenditures, there were no federal candidates.
 17 A. There were, in effect, for example, I
 18 would suspect that some of the Hill committee
 19 transfers were attempts to support certain candidates
 20 who will become candidates eventually, nurtured for
 21 congressional candidacies. It involves attempts to
 22 influence redistricting, reapportionments. It has
 23 effects on federal politics.
 24 Q. And you think that fact would be
 25 sufficient to warrant the U.S. Congress prohibiting

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1 such expenditures if it deemed that to be the proper
 2 course?
 3 A. I think that would be one reason, yes.
 4 Q. Do the states have an interest in this
 5 activity?
 6 A. In which activity?
 7 Q. The election of candidates to state
 8 office.
 9 A. Yes.
 10 Q. They have a pretty direct interest, don't
 11 they?
 12 A. Yes.
 13 Q. Do you think their interest is more direct
 14 than the U.S. Congress' interest?
 15 A. I don't understand the drift of the
 16 question.
 17 Q. Well, you identified an interest that the
 18 U.S. Congress had in this activity and testified that
 19 you thought that interest could be sufficient to
 20 justify Congress prohibiting these expenditures. I'm
 21 now asking you whether or not the states have, the
 22 state governments have an interest.
 23 A. Oh, the state governments, not the state
 24 parties.
 25 Q. No, the state governments have an

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1 Congress interest supersedes the state interest
 2 despite its indirectness?
 3 A. At the moment, I don't. I see that as a
 4 difficult question in federalism and I've really
 5 never thought very much about that question.
 6 Q. So you have no view as to how much weight
 7 should be given to the state interests in electing
 8 state candidates in years where there are no federal
 9 candidates on the ballot?
 10 A. It's just a subject that I need to think
 11 more about. Maybe we need a break.
 12 Q. We can take a break if you want.
 13 A. As I said, it's a question I've never
 14 thought about, it's a difficult question.
 15 Q. Though it is a question that's presented
 16 by this statute and I think -- I'm trying to probe
 17 and understand whether or not you think there is any
 18 room for the state interest here.
 19 MS. SEALANDER: Objection. He's answered
 20 that question. And he's asked for a break, so why
 21 don't we do that, Tom.
 22 MR. BARNETT: I said we could take a break
 23 and he continued. So why don't we take a break and
 24 we'll pick it up when you come back.
 25 THE WITNESS: All right, fine.

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1 interest.
 2 A. Yes, I do.
 3 Q. It's a fairly direct interest, is it not?
 4 A. Yes.
 5 Q. It's more direct than the U.S. Congress
 6 interest that you identified, is it not?
 7 A. I would say that it is.
 8 Q. And under your understanding of our system
 9 of government, there needs to be some accommodation
 10 between the federal interest and the state interest,
 11 wouldn't you say?
 12 A. There has to be accommodation certainly if
 13 both levels are interested, but this is -- we're
 14 talking -- in the case of the states, we're talking
 15 about an interest that's rarely been displayed in
 16 very serious regulation of party activity.
 17 Q. Well, I'm trying to understand whether or
 18 not -- you've agreed with me that the state
 19 governments have an interest?
 20 A. I do indeed, which I wish they would
 21 pursue with greater attention than they have.
 22 Q. That's fine. And you've testified that
 23 you believe that the U.S. Congress has an interest?
 24 A. Yes.
 25 Q. Do you have a view as to whether the U.S.

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1 (Recess.)
 2 BY MR. BARNETT:
 3 Q. Maybe this will simplify things a little
 4 bit. If it's your testimony today that you have just
 5 simply not thought about whether the raising and
 6 spending of non-federal money by the RNC in the
 7 manner set forth here implicates significant state
 8 interest or how that should balance with federal
 9 interest, that's fine.
 10 A. May I ask for clarification?
 11 Q. Yes.
 12 A. I'm not sure, in the premise to your
 13 question, I'm not sure what it is that the
 14 Congress -- what action of the Congress you're
 15 talking about. Are you talking about the action of
 16 the Congress to deny the national committees the
 17 ability to raise the soft money to send to the
 18 states?
 19 Q. I'm talking about a rule that prevents the
 20 RNC from either raising or sending such money to the
 21 states.
 22 A. You mean a law?
 23 Q. A law, yes.
 24 A. Then it isn't a direct regulation of the
 25 state parties.

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1 Q. It's a regulation of the national parties.
 2 A. Of the national parties.
 3 Q. Right.
 4 A. Well, then the Congress is not regulating
 5 state parties.
 6 Q. But is it your view that the states have
 7 no interest in what the national parties do with
 8 respect to state elections?
 9 A. I think the states oftentimes have an
 10 interest in what the Congress does because it often
 11 will have an impact on them. And I think in this
 12 case, they probably do have a very great interest in
 13 what the Congress has done, but that I think is not
 14 an unusual circumstance.
 15 Q. And let me just understand that. The
 16 states have an interest in deciding how campaigns for
 17 state offices are run, is that fair?
 18 A. I think they do have, not only an
 19 interest, but they also have -- in every state
 20 that I know of, they have legislative competence to
 21 act.
 22 Q. And they have the right -- I just want to
 23 be clear on this. At least within some sphere, they
 24 have the right to decide how participants in
 25 campaigns for state offices will act?

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1 A. Yes.
 2 Q. And that includes deciding how, not only
 3 state parties will act in state elections, but how
 4 national parties will act in national elections?
 5 A. I don't think state legislatures have that
 6 right. I think, for example, the attempt of my state
 7 to control -- in a case that reached federal courts,
 8 to regulate congressional elections from the state
 9 was declared by some federal court to -- in conflict
 10 with the law of Congress which supersedes.
 11 Q. And I may have misspoke. I meant to talk
 12 about a state's legislatures having authority to
 13 control or regulate how national parties act in
 14 elections for state offices.
 15 A. To the best of my knowledge, no state does
 16 that, but I can't say that -- I don't know what all
 17 the 50 states do on the subject.
 18 Q. I'm not focusing so much on what they do
 19 but on what they have the authority to do or -- let
 20 me ask it this way. They have an interest in how
 21 national political parties act in state elections for
 22 state office?
 23 A. I think they do have an interest. Whether
 24 or not that interest is preempted by any
 25 congressional statutes is a question for lawyers.

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1 Q. And have you thought about whether the
 2 interest of, for example, New Jersey in its 2001
 3 elections for state offices with no federal
 4 candidates on the ballot has a greater or lesser
 5 interest in how that campaign is run than the U.S.
 6 Congress?
 7 A. Greater or lesser, I really don't know.
 8 In the narrow sense, New Jersey of course has the
 9 greater interest in state elections and how they are
 10 run than, I believe, than the Congress does in a
 11 specific sense.
 12 But at the same time, I'm aware that the
 13 nature of these transfers, the distinction between
 14 federal and non-federal seems to me to become
 15 elusive. The use, for example, in an off year, the
 16 use of soft money, say, transferred from a national
 17 committee to register voters can very well impact
 18 very directly, and be intended to, on the next year's
 19 congressional elections or Presidential election.
 20 Q. Is there any other federal interest you
 21 can identify?
 22 A. Offhand, I don't think of another one.
 23 Q. And in your view, is there any area of
 24 activity with respect to state elections for state
 25 candidates that should be the sole province of the

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1 state governments to regulate, as opposed to the U.S.
 2 Congress?
 3 A. Well, I'm not sure that the question of
 4 congressional authority ought to be defined that way
 5 in the exercise of its responsibilities. It is
 6 legitimate for the Congress to legislate in ways that
 7 achieve the federal goals and in ways that are as
 8 efficient and that are as difficult to bypass as
 9 possible.
 10 Q. And I'm just asking -- and you may not
 11 have a thought about it and you may not have an
 12 answer, but I'm asking whether, in evaluating state
 13 elections and campaigns for state offices in states
 14 and in years where there is no federal candidate on
 15 the ballot, is there any aspect of that activity that
 16 in your view should be the sole province of the state
 17 governments?
 18 A. I think at the moment my impression is
 19 that the state governments are the only ones that are
 20 exercising any -- for example, exercising control
 21 over contributions to state candidates.
 22 Q. And I'm not asking what they are doing.
 23 I'm asking about the scope of authority and whether
 24 they have any sphere of authority that is not subject
 25 to being overridden by the U.S. Congress.

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1 A. That I can't answer.
 2 Q. Let's just go back for a minute, make sure
 3 it's clear. Let's mark this as Exhibit 20.
 4 (Sorauf Exhibit No. 20 was
 5 marked for identification.)
 6 BY MR. BARNETT:
 7 Q. And I'll just represent to you this is an
 8 excerpt from one of the reports that one of our
 9 experts filed that sets forth RNC disbursements from
 10 its non-federal accounts in the 2000 election cycle.
 11 And it shows that over half, 67 percent of those
 12 disbursements were transfers to the state parties.
 13 Do you see that?
 14 A. I'm not entirely sure. My --
 15 Q. Can you not read it?
 16 A. May I -- is this one part of the pie?
 17 Q. Well, I was reading this.
 18 A. This is the 67 percent, in other words?
 19 Q. Yes.
 20 A. And this is 28.
 21 Q. Yes.
 22 A. Thank you.
 23 Q. That's 26, I think.
 24 A. 26, yes.
 25 Q. I know you've looked generally at some of

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1 Q. Regardless of the source, is my
 2 understanding.
 3 A. All right. But again, I'm having trouble
 4 understanding -- this is a universe of money. Does
 5 this count as non-federal disbursements, anything
 6 that the state parties raise under their own state
 7 laws purely for state and local candidates?
 8 Q. My understanding is that it does. And
 9 let's assume that it does for now.
 10 A. All right. So that non-federal here is
 11 both national soft money and it is state money that
 12 would not meet the qualifications of federal hard
 13 money?
 14 Q. Well, you're getting into some details and
 15 nuances that I'm not going to be able to answer.
 16 A. Okay.
 17 Q. But let me ask you whether you can answer
 18 this. You have made some estimates in your report
 19 about the amount of non-federal money in the system
 20 that is spent on issue ads?
 21 A. Yes.
 22 Q. And we can go back to the report, but I
 23 think this shows the same thing, that a majority of
 24 the non-federal money is spent for something other
 25 than media advertising?

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1 these figures. Do you have any reason to disagree
 2 with that figure?
 3 A. No, I have no reason to disagree.
 4 (Sorauf Exhibit No. 21 was
 5 marked for identification.)
 6 BY MR. BARNETT:
 7 Q. I show you what's been marked Exhibit 21.
 8 This is another chart or pie graph from the same
 9 expert report talking about state party non-federal
 10 disbursements in the 2000 election cycle. And it
 11 shows that 44 percent were spent on media, which
 12 would include issue ads, as you describe in your
 13 report. And the remaining 56 percent on
 14 mobilization, grass roots, fund-raising, unidentified
 15 and administrative and overhead expenses.
 16 A. May I ask for one clarification?
 17 Q. You certainly may.
 18 A. The title, state party non-federal -- does
 19 it make sense for me to think of that as national
 20 party non-federal disbursements to state parties?
 21 Q. No. It's disbursements by the state
 22 parties but for non-federal --
 23 A. It's the use of their non-federal money.
 24 Q. Right.
 25 A. Regardless of where -- is this --

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1 A. Yes.
 2 Q. Do you agree with that?
 3 A. I agree that that's what it shows on the
 4 pie chart. I'm still a little uncertain exactly what
 5 money this pie chart describes.
 6 Q. Well, let's -- and it may take me a moment
 7 because I'm not sure I have it marked in your report
 8 but you talk in your report about the percentage that
 9 is used for media and issue ads. My recollection is
 10 it was 30-some percent.
 11 A. Could be.
 12 Q. Does that sound right?
 13 A. I don't recall where it is.
 14 Q. Why don't we leave that for now because I
 15 don't want to waste too much time. But you don't
 16 have any reason to disagree with the assessment that
 17 a majority of non-federal money raised from whatever
 18 source is used for a purpose other than media?
 19 A. In the abstract, I don't have any reason
 20 to, other than my uncertainty about what the sum
 21 total is.
 22 Q. And is it consistent with your
 23 understanding that a substantial portion of state
 24 political party financial resources are obtained from
 25 the national political parties?

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1 A. Yes.
 2 Q. And in some individual states, it's over
 3 50 percent of their resources, is it not?
 4 A. Yes.
 5 Q. And if the states lose -- strike that.
 6 When the states lose those national party funds when
 7 the BCRA goes into effect, they will have to cut back
 8 on their activity substantially if they are unable to
 9 replace those funds, will they not?
 10 A. If by activity you include the buying of
 11 issue ads, yes, they will have to.
 12 Q. And indeed, if they replace none of the
 13 funds, they're likely to have to cut back
 14 substantially on all of their activities, are they
 15 not?
 16 A. Yes.
 17 Q. And would it surprise you to learn that if
 18 they're unable to replace those funds, that it could
 19 threaten the viability of at least some of the state
 20 political parties?
 21 A. It would surprise me. I think that the
 22 record of political parties in this country has been
 23 one of inventiveness, flexibility, innovation.
 24 They've responded to a number of regulatory
 25 challenges and I don't see that they will -- I would

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1 positive thing if that \$20 million is eliminated?
 2 A. No.
 3 Q. You view that as a negative?
 4 A. I view that as a negative.
 5 Q. You talk in your report about the
 6 targeting of campaign funds on a relatively few
 7 number of races and you view that as a negative force
 8 on our democratic process, is that correct?
 9 A. I think that's correct.
 10 Q. And why is that?
 11 A. For a number of reasons. It puts enormous
 12 pressure on a small number of races either for the
 13 Congress, for the House or for the Senate. It
 14 involves an enormous concentration of resources in a
 15 relatively small number of districts and states in
 16 the country. It means that large numbers of
 17 congressional districts and states are in effect out
 18 of a national campaign or partially out of a
 19 campaign. It means that a large number of
 20 challengers receive little or no help from their
 21 political parties. Well, that gives you a few
 22 reasons.
 23 Q. Now, if it turns out to be the case that
 24 the political parties have fewer financial resources
 25 under the BCRA than they do today, just assume for a

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1 be very surprised to think of them as on the verge of
 2 elimination or collapse.
 3 Q. In your report, I think you identify
 4 approximately \$20 million that you say -- that is of
 5 non-federal money that's spent on grass roots
 6 party-building activity that you were able to
 7 identify?
 8 A. Yes.
 9 Q. Do you recall that?
 10 A. I do. It was Krasno's analysis of data,
 11 right.
 12 Q. Tell me if I'm wrong, but in reading your
 13 report it was my impression that that \$20 million was
 14 spent in a useful and productive way in your opinion.
 15 A. I don't think the data -- Krasno's data
 16 show that it was useful or productive. It simply
 17 shows that it was spent on mobilization.
 18 Q. Fair enough. But you suggest that you
 19 wish that they had spent more of it in that
 20 direction, do you not?
 21 A. Yes.
 22 Q. And so you were at least happy that they
 23 had spent the \$20 million, were you not?
 24 A. Yes.
 25 Q. And nonetheless, do you view it as a

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1 moment that that turns out to be true, isn't it
 2 likely that the targeting of races will become even
 3 more intense as budgets are tighter and priorities
 4 have to be set with higher thresholds?
 5 A. That does not seem to me to be inevitable.
 6 For one thing, at least in the short run, the effect
 7 of the statute would be to cut back the amount of
 8 money available for campaigns. And I don't think
 9 that it necessarily follows -- it might very well be
 10 the case -- to rephrase, it might very well be
 11 the case that parties would cut back their investment in
 12 the target districts.
 13 Q. I don't follow your logic now.
 14 A. If they have, in the short run, less hard
 15 money, they may see the marginal value of spending of
 16 very scarce resources in a few targeted districts as
 17 not being attractive or efficient.
 18 Q. There wouldn't be more of a premium on
 19 taking funds away from races that are not close and
 20 directing them to races that are close?
 21 A. I think they would run a risk of making
 22 some of those districts competitive.
 23 Q. And?
 24 A. And possibly vulnerable. One can imagine
 25 various scenarios, and I must admit it's speculative,

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1 but I don't think that it's inevitable that they will
 2 continue to be as concentrated.
 3 Q. But it is possible that that could be the
 4 effect?
 5 A. It is possible.
 6 Q. And at the end of the day at least you
 7 personally aren't overly troubled if the parties end
 8 up with less money under the BCRA than they would
 9 have had otherwise if it reduces the amount of money
 10 in politics, at least to a certain level, and keeps
 11 the cost of campaigns down?
 12 A. Let me put it this way. I would not be
 13 unduly concerned if the level of funding available to
 14 the candidates declined.
 15 Q. Or the funding available to the political
 16 parties either?
 17 A. I would be more concerned about the
 18 parties than I would be about the present level of
 19 candidate spending.
 20 Q. And why is that?
 21 A. Because I would like to maintain the
 22 viability and encourage the greater viability of
 23 state party and local party organizations, which I
 24 think is a major cause for worry in American
 25 politics, despite the affluence of the last decade or

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1 that private special interest groups for the
 2 moment -- we talked a lot about parties but for
 3 now, set parties aside. Think about special
 4 interest groups, NARAL, Sierra Club, National
 5 Taxpayers Union, the NRA. You're familiar with those
 6 types of groups?
 7 A. I'm not familiar -- yes, I am. I don't
 8 know what BNRA is.
 9 Q. The NRA.
 10 A. Yes, indeed.
 11 Q. Or the NEA.
 12 A. Yes.
 13 Q. Is it your understanding that under the
 14 BCRA, those groups will be able to run
 15 candidate-oriented issue ads outside of the 30 and
 16 60-day windows prior to primary and general
 17 elections?
 18 A. That's my understanding.
 19 Q. And is it your understanding that they
 20 will be able to use non-federally regulated money to
 21 pay for those ads?
 22 A. I believe so.
 23 Q. That they can raise in unlimited amounts?
 24 A. I believe that's the case.
 25 Q. From corporations?

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1 so.
 2 Q. And you wouldn't want to do anything that
 3 would further threaten the state and local party
 4 system?
 5 A. We have said in our report, that we are
 6 concerned for the political parties and we do not
 7 think that the statute would pose those kinds of
 8 problems.
 9 Q. If you just give me a moment, I want to
 10 regroup.
 11 A. Sure.
 12 (Pause.)
 13 BY MR. BARNETT:
 14 Q. Professor Sorauf, I think you've made
 15 fairly clear that you view disclosure as something
 16 that is desirable in our political campaign system,
 17 is that correct?
 18 A. Yes. We do in this document.
 19 Q. And it is, as a general matter, better for
 20 political activity to be undertaken in ways that are
 21 such that the public can see who is paying for the
 22 activity and who is involved in the activity?
 23 A. Yes.
 24 Q. Now, under the BCRA, I think you talked
 25 a little bit about this this morning but you recall

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1 A. I don't think from corporations.
 2 Q. Outside of the windows?
 3 A. Well, I have to admit that I'm not sure.
 4 Q. That's fine. And that they can use that
 5 money that they can raise from at least individuals
 6 in unlimited amounts to run candidate-oriented issue
 7 ads?
 8 A. Outside of the time limits.
 9 Q. Outside of the windows, correct?
 10 A. Yes.
 11 Q. Are you aware of any obligation that they
 12 have to report their contributors?
 13 A. No, I'm not.
 14 Q. Are you aware of the reporting obligations
 15 of the national political party committees?
 16 A. Yes.
 17 Q. Do you know that they report all receipts
 18 that they bring in from whatever source and identify
 19 the source for at least contributions over, I think,
 20 \$200?
 21 A. Yes.
 22 Q. And they report all of their
 23 disbursements?
 24 A. Yes.
 25 Q. So that if the RNC, for example, were

<p style="text-align: right;">Page 186</p> <p>1 to run an issue ad, it would be paid for with 2 funds the source of which had been disclosed to the 3 public? 4 A. Yes. 5 Q. Would you agree with me that if, under the 6 BCRA, private special interest groups began -- strike 7 that. Not began. Would you agree with me that if, 8 under the BCRA, private special interest groups 9 continue and/or even increased their 10 candidate-oriented issue advocacy, to supplant issue 11 advocacy that used to be done by the national 12 political parties, that that would be a negative 13 event for our political system? 14 A. -- That's a very complicated question, as I 15 see it. To some extent, it gets to the very 16 fundamental realities of a change in American 17 politics and that is the growth of organized interest 18 groups in American society and their accompanying 19 entry increasingly into the American process. 20 Gone are the days when interest groups 21 merely lobbied and the electoral process was the 22 unchallenged realm of the political parties. And I 23 don't see any way of rolling that back, whether or 24 not I am happy with the consequences. 25 I think, however, that some of the papers</p>	<p style="text-align: right;">Page 188</p> <p>1 preferable alternative because it is more transparent 2 and because it is limited in sums of money. 3 I think it's possible that some of those 4 interest groups, especially the ones that are -- not 5 the ones you mentioned, but the shadow groups, the 6 front groups will fold because they exist now largely 7 because they are not transparent. But I think 8 perhaps there will be some increased interest group 9 activity, but I don't think it is a zero sum game, 10 that the lost of the parties is going to be the gain 11 of the interest groups. 12 Q. Are you aware of public reports of some of 13 these special interest groups actively pursuing 14 non-federal donors to the political parties? 15 A. I have heard that it is going on, yes. 16 Q. And they at least are going to try to step 17 into the breach, if you will? 18 A. I'm sure that some of them will. 19 Q. And before we're too dismissive about 20 their likelihood of success, they have raised money 21 to run candidate-oriented issue ads already, have 22 they not? 23 A. Yes. 24 Q. You cite some estimates in your report? 25 A. Yes.</p>
<p style="text-align: right;">Page 187</p> <p>1 I have read in this case, for example, Sydney Milkis, 2 M-i-l-k-i-s, has a view of the power and the 3 virulence and the strength of interest groups which 4 is somewhat unsupported. At least I would not 5 support it. I think there are inherent weaknesses in 6 interest groups. I think it's by no means guaranteed 7 that the people who saw it profitable to give money 8 to political parties would automatically switch it to 9 interest groups. Interest groups in many ways are 10 less effective. 11 The interest group system, moreover, is -- 12 as another one of the participants has argued -- are 13 subject to an interest group pluralism; that is, the 14 countervailing power of other interest groups, in 15 ways that political parties are not. James Madison 16 balance of factions, as he called it, applies much 17 more to interest groups in today's politics than it 18 does to our political parties because there are only 19 two of them of consequence. 20 So I don't see automatically the interest 21 groups rushing in to this vacuum. I think it's 22 possible that some money will go to them. I think 23 some money very well may go to the more regulated and 24 more transparent activity of PACs, which I personally 25 think is a -- is for the political system a</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. Can you remember what the amount of money 2 you estimated these private interest groups spent on 3 issue advocacy in, I think it was the 2000 election 4 cycle? 5 A. I don't remember the exact figure. 6 Q. Is it in the hundreds of millions of 7 dollars? 8 A. I wouldn't be surprised. 9 Q. So we have evidence now that they are able 10 to raise money, non-federal money for 11 candidate-oriented issue ads, is that fair? 12 A. Yes. 13 Q. So we know it's possible? 14 A. Yes. 15 Q. But your view is you're not sure how much 16 more they can raise? 17 A. That's right. 18 Q. But clearly there are those out there 19 who view it worthwhile to contribute to the 20 special interest groups for candidate-oriented issue 21 ads? 22 A. Yes. 23 Q. And would you agree with me that in 24 raising money to fund issue ads, the national 25 political parties who will have to use 100 percent</p>

<p style="text-align: right;">Page 190</p> <p>1 hard money will be at a disadvantage to the special 2 interest groups who can raise it in non-federal 3 unlimited chunks? 4 A. Well, I'm not sure I know how much the 5 disadvantage will be, because I think that it will 6 still be the case that political parties will be a 7 much more desirable avenue for many donors. 8 Q. Do you have a view one way or the other? 9 A. Do I have a view -- 10 Q. As to whether or not the political parties 11 will be at a disadvantage in raising funds for 12 candidate-oriented issue ads? 13 A. It depends on which donors you're talking 14 about. 15 Q. In the aggregate. 16 A. In the aggregate, I'm not sure how it will 17 balance out. But I can think of instances in which 18 donors, especially donors who are associated with 19 lobbyists and have an interest in congressional 20 relations would much prefer to give money to a party 21 committee, especially a legislative party committee 22 than they would to give to an interest group for 23 issue ads. 24 Q. But my question is in the aggregate. 25 A. In the aggregate, I'm not in a position to</p>	<p style="text-align: right;">Page 192</p> <p>1 And I think you say in here, "The total of 2 \$2.6 billion" in hard money "over these 10 years is 3 clearly sufficient to maintain the current, paltry 4 investment in party building or even a much more 5 expansive program. The money is available; parties 6 have lacked the incentive or control to spend it on 7 themselves." 8 You would agree with me that whatever 9 money is taken from that hard money pool and moved 10 over to party building, as you describe here, would 11 be taken from other uses? 12 A. Yes. 13 Q. And that it would force the parties to 14 choose between those uses? 15 A. Yes. 16 Q. On page 43, just to pin this down, this 17 first full paragraph, you're addressing the parties 18 spending soft money expenditures. 19 A. Correct. 20 Q. And you conclude that 33.4 percent was 21 spent on media of one sort or the other. 22 A. Correct. 23 Q. So the majority of the soft money was 24 spent for purposes other than issue ads, is that 25 correct?</p>
<p style="text-align: right;">Page 191</p> <p>1 estimate. 2 Q. I think we can turn to the report. My 3 expectation is that we've covered most of it. On 4 page 21, if you look at the carry over paragraph, the 5 sentence that says, "That means, of course, that 6 banning soft money will not restore public confidence 7 to its highest levels." Are you with me there? 8 A. I see the sentence. 9 Q. You still stand by that sentence, I 10 assume? 11 A. Well, I need to see the context. 12 Q. Take your time to read it. 13 A. All right. 14 Q. So obviously the sentence is fairly 15 straightforward. You're saying it will not 16 completely restore public confidence but, in fact, 17 you don't have any evidentiary basis that allows you 18 to prove that it will improve, necessarily, public 19 confidence at all, do you? 20 A. It is -- as your question suggests, it's 21 speculative. 22 Q. At the bottom of page 38, carrying over to 23 page 39, you're talking about essentially what will 24 happen with the loss -- to the parties with the loss 25 of soft money.</p>	<p style="text-align: right;">Page 193</p> <p>1 A. That is correct. 2 Q. And if the parties lose that non-federal 3 money, they will be cutting back on not just issue ad 4 activity, but all of the other activity that they 5 used -- strike that. I think that's going too far. 6 If they lose the non-federal money, they will have to 7 cut back not only on their issue ad activity but at 8 least some of their other activities that they have 9 engaged in? 10 A. Yes. 11 Q. Let's go to page 52, the end of the carry 12 over paragraph. We're talking about issue ads here. 13 It says, "The answer is critical, for if these 14 commercials are campaign ads they should certainly be 15 treated in the same way that the law treats other 16 campaign ads, but if they are genuine discussions of 17 policy issues, there is no need to regulate them in 18 the same manner." 19 What problem is it that you see with the 20 national party committees being able to raise 21 non-federal funds for genuine issue ads or genuine 22 discussions of policy? 23 A. I don't see an issue. The statute doesn't 24 regulate, except in the window. 25 Q. Well, for the national political parties,</p>

<p style="text-align: right;">Page 194</p> <p>1 I'm talking about permitting the party to raise, in 2 unlimited contribution amounts, money that would be 3 used for pure issue ads that do not reference any 4 candidates in any way, shape or form. 5 A. All right. The only problem I have with 6 that is in the contributions, the sources of the 7 unlimited contributions. 8 Q. And why is that such a problem if the 9 money is being used for pure issue advocacy? 10 A. I think to some extent whoever controls 11 the issues controls a great deal in American 12 politics. I think the issue discussion is not a 13 philosophical seminar. It has political 14 consequences. 15 Q. So if the private special interest groups 16 control the issue ad discussions, they will control 17 much of what goes on in American politics? 18 A. But they don't necessarily control in 19 magnitude or -- they don't necessarily control in the 20 same magnitude and, furthermore, we have some kind of 21 system of pluralism, interest group pluralism that 22 may, in many instances, provide some countervailing 23 voice. 24 Q. When you say not the same magnitude, 25 they're not spending as much money to control the</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. In ways similar to the ways the parties 2 could through their issue advocacy, or is it 3 different? 4 A. On the question of issue advocacy, I think 5 it's fairly similar. 6 Q. I believe that I am finished. 7 A. Thank you. 8 Q. Professor Sorauf, I appreciate your 9 patience. 10 A. Thank you. 11 MS. SEALANDER: We may want to do a little 12 redirect. 13 MR. BARNETT: That's what I was just about 14 to ask. 15 MS. SEALANDER: We'll take a break. 16 (Recess.) 17 EXAMINATION BY COUNSEL FOR 18 THE FEDERAL ELECTION COMMISSION 19 BY MS. SEALANDER: 20 Q. Professor Sorauf, this morning Mr. Abrams 21 showed you a series of story boards from 22 advertisements, I think. At one point Mr. Abrams 23 said 30 or maybe 30-some different advertisements and 24 asked you a series of questions about a number of 25 them.</p>
<p style="text-align: right;">Page 195</p> <p>1 issue? 2 A. Not individually. 3 Q. In the aggregate? 4 A. In the aggregate, but they are very 5 diverse in the aggregate. 6 Q. In the aggregate, they are spending a 7 large amount now? 8 A. Yes. But they are many different groups. 9 Q. I understand that. And under the BCRA, it 10 may be that the political parties will be spending 11 even less on issue advocacy while the interest groups 12 are spending more, correct? 13 A. That's possible, but it's speculative. 14 Q. So you are concerned if the political 15 parties can raise money in unlimited amounts and 16 can control the issue debate but you're not concerned 17 if private special interest groups can raise money 18 in unlimited amounts and can control the issue 19 debate? 20 A. I'm sorry if I said that, but I would be 21 concerned by interest groups. All that I'm saying is 22 that I don't think that it's automatic that the soft 23 money will go to interest groups. But yes, I think 24 interest groups can constitute a very important 25 source of political influence, yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 And in response to at least a couple of 2 those, you indicated, I think at one point, that you 3 were not in favor of letting a certain ad be run or 4 at another point that the group in question didn't 5 have the right to run that ad. And it sounded to me 6 as if you were suggesting that you were interested in 7 suppressing speech. Is that the case? 8 A. No. I neglected to say that I recognize 9 the right to run the ad with soft money -- I mean, 10 with hard money but not with soft money. And I'm 11 glad to make that clear. 12 MS. SEALANDER: I have nothing further. 13 FURTHER EXAMINATION BY COUNSEL FOR 14 THE REPUBLICAN NATIONAL COMMITTEE 15 BY MR. BARNETT: 16 Q. Why don't I just clarify that that would 17 be part of the balancing that I think Mr. Abrams 18 asked you about, between the interest that you're 19 trying to serve with the restriction and the First 20 Amendment interest on free speech? 21 A. That's correct. 22 MR. BARNETT: Let me just finally thank 23 you again. You have been very patient. 24 THE WITNESS: Thank you. 25 MR. BARNETT: We certainly appreciate</p>

<p style="text-align: right;">Page 198</p> <p>1 that.</p> <p>2 THE WITNESS: Nice to meet you.</p> <p>3 (Whereupon, at 5:56 p.m., the taking of</p> <p>4 the instant deposition ceased.)</p> <p>5</p> <p>6 _____</p> <p>7 Signature of the Witness</p> <p>8 SUBSCRIBED AND SWORN to before me this _____ day of</p> <p>9 _____, _____.</p> <p>10</p> <p>11 _____</p> <p>12 Notary Public</p> <p>13 My Commission Expires: _____</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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