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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

SENATOR MITCH McCONNELL, et al., :
 Plaintiffs, : CIVIL ACTION
 v. : NO.02-CV-582
 FEDERAL ELECTION COMMISSION, et al., : CKK, KLH, RJL
 Defendants : Consolidated
 - and - : Action

SENATOR JOHN McCain, SENATOR :
 RUSSELL FEINGOLD, REPRESENTATIVE :
 CHRISTOPHER SHAYS, REPRESENTATIVE :
 MARTIN MEEHAN, SENATOR OLYMPIA SNOWE, :
 SENATOR JAMES JEFFORDS, :
 Intervenors. :

-----X

Washington, D.C.
 Wednesday, October 16, 2002

Deposition of DONALD L. FOWLER, a witness
 herein, called for examination by counsel for
 Republican National Committee in the above-entitled
 matter, pursuant to notice, the witness being duly
 sworn by MARY GRACE CASTLEBERRY, a Notary Public in
 and for the District of Columbia, taken at the
 offices of Swidler Berlin Shereff Friedman, 3000 K

Page 2

1 Street, N.W., Washington, D.C., at 10:06 a.m.,
 2 Wednesday, October 16, 2002, and the proceedings
 3 being taken down by Stenotype by MARY GRACE
 4 CASTLEBERRY, RPR, and transcribed under her
 5 direction.
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Page 3

1 APPEARANCES:
 2
 3 On behalf of the Republican National Committee:
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1 PROCEEDINGS
 2 Whereupon,
 3 DONALD L. FOWLER,
 4 was called as a witness by counsel for Republican
 5 National Committee, and having been duly sworn by the
 6 Notary Public, was examined and testified as follows:
 7 EXAMINATION BY COUNSEL FOR
 8 REPUBLICAN NATIONAL COMMITTEE
 9 BY MR. CARVIN:
 10 Q. Good morning, Mr. Fowler. My name is Mike
 11 Carvin. I represent the Republican National
 12 Committee in this case. Have you ever been deposed?
 13 A. Yes.
 14 Q. How often?
 15 A. Well, in a certain period of my life,
 16 frequently, but not in the recent years, not in the
 17 last two or three years.
 18 Q. So you understand that the court reporter
 19 needs a verbal response rather than a nod?
 20 A. Yes.
 21 Q. And if there is any question I ask you
 22 that you're not clear about, please ask me, I'll see
 23 if I can clarify it. Is that okay?
 24 A. Yes.
 25 Q. Okay. I would like to mark as Fowler

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1 Exhibit 1 the declaration in this case.
 2 (Fowler Exhibit No. 1 was
 3 marked for identification.)
 4 BY MR. CARVIN:
 5 Q. Is Exhibit 1 the declaration you filed in
 6 this case, Mr. Fowler?
 7 A. It appears to be, yes.
 8 Q. If you could turn to paragraph 15 on page
 9 6, please. The second sentence in that paragraph
 10 says, "National parties in the past transferred hard
 11 and soft money to state parties with key federal
 12 elections, so that state parties could use the money
 13 in legal ways that inevitably affected the federal
 14 elections." Is that correct?
 15 A. Yes.
 16 Q. Then the next sentence goes on, "In the
 17 1996 election cycle, the DNC transferred money to
 18 Democratic state parties and states with key
 19 elections were close. State parties which received
 20 these funds paid for the spots that ran in their
 21 states with this money using media firms that
 22 produced them and handled the media buys." Is that
 23 also correct?
 24 A. Correct.
 25 Q. My first question is, what did you mean by

Page 7

1 spots? Was that broadcast?
 2 A. Television spots.
 3 Q. Television advertisements?
 4 A. Yes.
 5 Q. And did those advertisements refer to
 6 federal candidates?
 7 A. Yes.
 8 Q. And were they broadcast within 60 days of
 9 a general election?
 10 A. Yes. Oh, probably not. I think not. I'm
 11 sure not.
 12 Q. So they were not broadcast at any time
 13 within 60 days, meaning --
 14 A. My memory is clear that they were not but
 15 before I would want to be absolutely -- give you an
 16 absolute answer, I would want to check that but it's
 17 my memory that those spots were not broadcast after
 18 sometime in August.
 19 Q. And I take it they weren't broadcast
 20 within 30 days of the primary in those states?
 21 A. Well, essentially there were no primaries
 22 that year because President Clinton had little or no
 23 opposition so there were no contested primaries.
 24 Q. And those ads inevitably affected the
 25 federal elections, in your view?

Page 8

1 A. I think those ads had the effect of
 2 improving President Clinton's general posture and
 3 status with the voters. I want to go back to the
 4 question about were these broadcast within 30 days of
 5 primaries. Before I gave you an absolute answer on
 6 that, I would want to check because in some
 7 circumstances in some states, they might not have
 8 been. In others, they might have been, depending on
 9 state law and what was going on in the states and I
 10 don't remember the details of that.
 11 Q. Fair enough. But I take it the purpose of
 12 these ads was not to help President Clinton in the
 13 primaries since he didn't have opposition?
 14 A. That is correct, yes.
 15 Q. And I would now like to ask you about
 16 get-out-the-vote activities by state parties or
 17 others. Do you think that has, in federal election
 18 years, an influence or effect on federal elections?
 19 A. It's designed to.
 20 Q. And does it have that effect?
 21 A. It depends on how good it is. Assuming
 22 that it has the desired effect, yes.
 23 Q. And do you believe that those
 24 get-out-the-vote activities have more or less of an
 25 effect than broadcast advertisements which mention

Page 9

1 the federal candidate within 60 days of a general
 2 election?
 3 A. That's very difficult to draw a conclusion
 4 because voters are inundated with all sorts of
 5 political messages close to an election and it's
 6 difficult to know precisely what touches a voter,
 7 motivates a voter or gets his or her attention. They
 8 are certainly complimentary and designed to achieve
 9 the same result but to quantify that or even to
 10 compare those two I think would require some pretty
 11 careful analysis. My guess is that -- this is
 12 guessing. This is a somewhat educated guess -- that
 13 the telephone calls, the get-out-the-vote efforts
 14 probably do not persuade many people. Those kinds of
 15 activities motivate people to go vote who might
 16 otherwise not vote. I think television probably has
 17 more persuasion power. That's an opinion and not a
 18 demonstrable fact.
 19 Q. And I take it, then, the point you're
 20 making is that elections are decided by two things.
 21 One is candidate preference and the other is how many
 22 people actually show up?
 23 A. Correct.
 24 Q. And turn-out, your educated guess, is more
 25 affected by the get-out-the-vote activities than

Page 10

1 candidate preference?

2 A. Marginally, yes.

3 Q. And during your tenure at the DNC or your
4 involvement in democratic party politics, have you
5 ever sought to analyze the effectiveness of broadcast
6 ads within 60 days of a general election in terms of
7 the outcome on elections?

8 A. I don't recall any specific research that
9 focused on a 60-day time period. As you know,
10 television spots are subject to testing before
11 they're broadcast and they're subject to testing
12 through public opinion polls after they're broadcast.
13 Some are good and some not so good and some are
14 persuasive and some aren't. That much I have a sense
15 of but in terms of any kind of precise measurement of
16 60 days prior to the election, I don't know of any
17 research that's done that but you would have to
18 assume that if they were good, they would have effect
19 60 days prior to election or 30 days prior to
20 election or 90 days.

21 Q. Fair enough, so let me withdraw from my
22 question the 60-day limitation. Did you do any
23 analysis about the effectiveness of broadcast
24 advertisements that mentioned a federal candidate in
25 terms of the impact on elections?

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1 A. Uh-huh.

2 Q. What was --

3 A. It's a fairly precise, I won't call it
4 science but art that poll administrators and media
5 consultants try their very best to calculate and
6 prepare broadcast spots that are persuasive, and some
7 are and some aren't. But on the whole, you would
8 have to assume that if campaigns spend millions of
9 dollars on these broadcast spots, advertisements,
10 that they do have a positive effect.

11 Q. And do you have a sense of how often they
12 have a beneficial effect on a candidate?

13 A. To quantify that would be -- I couldn't do
14 it with the data that I have in my head.

15 Q. Okay. Fair enough. Getting back to the
16 get-out-the-vote activities by state parties or
17 others, would that also benefit non-federal candidates?

18 A. Yes.

19 Q. And do you have a sense of the proportion
20 to which those get-out-the-vote activities would
21 benefit non-federal candidates versus federal
22 candidates?

23 A. No. They're designed -- most of the
24 efforts that I'm associated with or I'm acquainted
25 with are designed to increase the vote for all

Page 12

1 candidates on a party ticket, both federal and state
2 and local.

3 Q. And this is not a quiz but do you recall
4 from your experience the FEC allocation formulas for
5 things like get-out-the-votes, at least in general
6 terms?

7 A. I never knew them and I never wanted to
8 know them. I know they're very complicated and they
9 relate to, in a very general way, to the proportion
10 of -- the number of federal candidates versus the
11 number of state and local candidates. It's a
12 complicated formula and it varies in the significant
13 ways, in some cases even within a single state.

14 Q. Did you ever seek to determine whether
15 those proportional formulas accurately reflected the
16 proportional benefit to non-federal versus federal
17 candidates?

18 A. I have no data. I've never seen data like
19 that. The assumption is that they would beneficially
20 affect both categories.

21 Q. Now I would like to ask you about voter
22 registration drives. And again, this would be either
23 state parties or others engaging in it. But with
24 respect to parties, when typically would they
25 concentrate most of their efforts on voter

Page 13

1 registration? What time period?

2 A. If you assume the general election is in
3 November like it is, obviously, most of the voter
4 registration efforts take place in the spring and
5 summer.

6 Q. Do voter registration efforts within, say,
7 four months of the general election have more impact
8 on federal elections than voter registration efforts
9 done before that, in your mind?

10 A. The practice and art of voter registration
11 is very imprecise. When parties undertake voter
12 registration, they do it to beneficially affect all
13 the candidates of the party. And voter registration
14 efforts vary in their effectiveness according to age,
15 education, the anticipated closeness and importance
16 of the elections in November, all of those things.
17 This is an opinion and not a provable fact but most
18 voter registration efforts except in very specific
19 cases rarely achieve their goals.

20 Q. Why is that?

21 A. Because it's so difficult to get people
22 who are not registered to go register.

23 Q. And then how about getting people who are
24 registered for the first time to turn out at the
25 polls. Is that difficult as well? Is a new

4 (Pages 10 to 13)

Page 14

1 registrant less likely to vote?
 2 A. There are other factors that affect who
 3 goes to the poll. It's education and political
 4 interest and age and things like that more so than
 5 the length of time that they've been registered. In
 6 some constituencies, newly registered people vote in
 7 just as high numbers and percentages as people who
 8 have been on the rolls for a while, but it varies. I
 9 don't think there is any precise answer to that.
 10 Q. And when you say voter registration
 11 efforts are unsuccessful, do you have a benchmark for
 12 what would be a successful voter registration effort,
 13 or how would go about assessing that?
 14 A. Well, it would be dependent upon how much
 15 money you invested in it and how much time and
 16 resources in people terms. In a County of 100,000
 17 people, if you had a voter registration effort and
 18 you found a thousand people who were on your side and
 19 you got them on the rolls, that would be successful.
 20 Q. And I take it being a democrat, you were
 21 more interested in registering people you thought
 22 would vote democratic than otherwise?
 23 A. Yes.
 24 Q. And how would you go about making that
 25 calculation? In South Carolina, would you look at

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1 the racial makeup of the voters?
 2 A. Well, again, it's more art than science
 3 but there are techniques of determining where people
 4 live who might vote for you. People who do this
 5 actively consult the results from precincts from the
 6 last three or four -- preceding three or our
 7 elections and they calculate the percentages of vote
 8 for Democrats and for Republicans and in those
 9 precincts and areas that are more Democratic, those
 10 are better targets. There are also some other
 11 concerns, other factors that relate. If you're
 12 dealing with an area that has recently experienced an
 13 influx of new residents, that would be a good target
 14 group. There are a lot of -- age sometimes makes a
 15 difference in university communities. Race certainly
 16 is a relevant factor.
 17 Q. And I take it race is a relevant factor
 18 because African Americans are a traditional
 19 Democratic core constituencies?
 20 A. African Americans, Hispanics, or at least
 21 two groups of Hispanics, places of -- communities
 22 that have a high Jewish population. Of course in
 23 terms of voter registration, you don't need much
 24 encouragement in those communities, the last named
 25 community, the Jewish population.

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1 Q. And do you have a sense of whether or not
 2 these voter registration efforts have more or less
 3 effect on federal elections than broadcast
 4 advertisements that refer to a federal candidate?
 5 A. I don't have any data or any reasonable
 6 basis for judgment on that. I could philosophize
 7 about it and talk about it but I don't have any real
 8 basis for giving you a direct response to that.
 9 Voter registration and get-out-the-vote efforts, it's
 10 commonly thought if they're done well and if they are
 11 successful, can increase or improve the percentage of
 12 vote by two to three percent. If you're dealing with
 13 a constituency of 100,000 voters and you have a good
 14 voter registration -- or 100,000 people and you have
 15 a good voter registration effort and a good
 16 get-out-the-vote effort, out of that 100,000 people,
 17 you might get 50,000 voters and those two joint
 18 efforts could probably produce you somewhere between
 19 1 and 2,000 additional voters in which a close race
 20 could make a difference.
 21 Q. And is there any way of comparing that 1
 22 to 3 percent to the effect that these broadcast
 23 advertisements have?
 24 A. I don't know anybody who has ever tried to
 25 deal quantitatively with that kind of comparison.

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1 People who are expert in the use of media,
 2 television, do keep track of the movement in voter
 3 opinion during and after what is called in the
 4 business a flight of media, a particular -- you know,
 5 a week or two weeks of using a particular spot or set
 6 of spots and they calculate the effect on the voters.
 7 And that's reasonably precise. It's within a margin
 8 of error of a few percentage points and so that's
 9 measurable. But I know of no study anywhere where
 10 there has been a comparison of voter registration,
 11 voter get-out-the-vote efforts as opposed to
 12 broadcast media.
 13 Q. Fair enough. And I take it that these
 14 voter registration efforts like the get-out-the-vote
 15 drive would benefit non-federal as well as federal
 16 candidates?
 17 A. Potentially, sure.
 18 Q. Is there any distinction between the
 19 effect it would have on federal candidates versus
 20 non-federal candidates in terms of voters?
 21 A. You can reason into an effect, but again,
 22 I don't know of any data that's sought to demonstrate
 23 this. Voter registration and get-out-the-vote is an
 24 attempt to affect the turn-out and the vote for all
 25 the candidates of a party. Most television

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1 advertising is done on behalf of an individual
 2 candidate, whether that candidate be running for
 3 sheriff or president. And so you could conclude that
 4 a spot for a candidate for sheriff will have more
 5 impact on the sheriff than on other people in the
 6 same ticket. When you deal with a candidate at the
 7 top of the ballot, governor, senator or president,
 8 some people conclude that there is a trickle down
 9 effect but the people who tried to demonstrate that
 10 have been frustrated. It's the so-called coat-tail
 11 effect. It's something that people talk about a lot
 12 but people who study it carefully have reached
 13 different conclusions.
 14 Q. And I could give you examples but I'm
 15 trying to focus on generic advertisements that don't
 16 mention a specific candidate that say vote Democratic
 17 or get out and vote. Is that something you're
 18 familiar with?
 19 A. I'm familiar with the concept. It's rarely
 20 done. At least in my experience, it's rarely done.
 21 Q. And is that true of all state parties?
 22 A. I said in my experience. I'm sure
 23 somewhere in the last several years, some state party
 24 has run that kind of television ad. I think most
 25 state parties, if they had \$10,000 to spend on

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1 television -- talking about a state party now, for a
 2 generic ad, or putting that into an effective
 3 get-out-the-vote effort, they would probably go with
 4 the latter.
 5 Q. And I think your answer was on
 6 advertisements. Now I'm going to switch a little bit
 7 to either mailings or print media where they make a
 8 generic pitch to get out and vote Democratic. Are
 9 you familiar with those kinds of efforts?
 10 A. Yes.
 11 Q. And are those typically done within 60
 12 days of elections, to your knowledge?
 13 A. Yes.
 14 Q. And with respect to those, do you have a
 15 view as to whether or not those kinds of efforts have
 16 more or less of an impact on federal elections in
 17 federal election years than the candidate-specific
 18 broadcast advertisements we were discussing previously?
 19 A. In federal elections?
 20 Q. I just want to make it clear, when I say
 21 federal elections, I'm talking about elections where
 22 there is a federal candidate on the ballot --
 23 A. I understand your term but I'm not sure I
 24 understand what you want me to compare. The generic
 25 mailings with television advertising for a specific

Page 20

1 candidate?
 2 Q. Yes. And I think maybe my question was a
 3 little confusing. Let's start first with a
 4 television advertisement that mentions a federal
 5 candidate --
 6 A. Okay.
 7 Q. -- versus a generic mailing. Do you have
 8 an opinion as to which one of those has more impact
 9 or influence on a federal election?
 10 A. The same federal election that is being
 11 advertised on television or some other federal
 12 election that's held at the same time? I mean, you
 13 could have a candidate for president and a candidate
 14 for the senate and a candidate for the U.S. House of
 15 Representatives in the same geographic area, in the
 16 same precinct.
 17 Q. These are good clarifications so let's --
 18 A. So I don't know what you're precisely
 19 asking me to compare. But let me risk this opinion,
 20 that a television ad for an individual candidate
 21 would have more effect on the public than I think a
 22 generic print piece.
 23 Q. For that candidate?
 24 A. For that candidate. Perhaps not for the
 25 other two federal candidates or state candidates.

Page 21

1 Q. That would be my next question. Factoring
 2 out that specific candidate, do you have a view as to
 3 whether or not other candidates of the same party
 4 would be more affected by a broadcast ad that
 5 mentions a different candidate versus the generic
 6 mailing or print ad?
 7 MR. HAMILTON: When you say generic, you
 8 mean a print ad that does not mention that specific
 9 candidate?
 10 MR. CARVIN: Fair. That's correct.
 11 MR. HAMILTON: I think the last question
 12 he answered assuming that the mailing did mention the
 13 candidate.
 14 THE WITNESS: I know what you're getting
 15 at, at least I think I do. In the business, there is
 16 a common assumption, never proved to my knowledge,
 17 that one mailing has very little effect on voters;
 18 that if you're going to use mailing or, for that
 19 matter, most any kind of print media, you're going to
 20 have to do multiple hits. And the same is true for
 21 television. I mean, one spot has no particular
 22 effect. So if you assumed an equal number of spots
 23 for a federal candidate and an equal number of
 24 mailings, generic mailings, my guess, without data to
 25 support my guess, is that the mailing would help

Page 22

1 those federal candidates who did not appear in the
 2 spot but the spot would have helped the federal
 3 candidate who is advertised more. So you would have
 4 a differential effect.
 5 BY MR. CARVIN:
 6 Q. Fair enough. Do you have a view as to
 7 whether mailings that mention candidates as part of
 8 the generic effort to get people to support the
 9 democratic slate are more or less effective than
 10 mailings that don't mention candidates?
 11 A. Again, I have an opinion about that and
 12 that opinion is that the ones that mention candidates
 13 would have more effect than the one that just says
 14 vote Democratic.
 15 Q. Is the conventional wisdom that
 16 personalizes it and gets people more motivated if
 17 you're actually talking about --
 18 A. There is another purpose in that too.
 19 When you do generic pieces, you have 10 candidates on
 20 the front of the postcard or whatever you send, many,
 21 many voters don't know the names or the identity of
 22 the down ballot candidates and that mailing helps
 23 those down ballot candidates individually as well as
 24 collectively. I mean, who knows who is running in
 25 seat 3 for the school board? Very few people.

Page 23

1 Q. So you have the marquee value higher up on
 2 the ballot. People in that will have some trickle
 3 down effect for the people lower on the ballot?
 4 A. And one of the things you do in those kind
 5 of mailings is to better acquaint the voters with
 6 those down ballot people and associate them
 7 presumably with a popular person at the top of the
 8 ticket, be that a governor or president. I will
 9 venture this opinion too which I think is relevant.
 10 There is little differentiation between political --
 11 in political planners' minds between a popular
 12 governor and a popular president, one a federal
 13 candidate and one a state candidate. So the
 14 political judgment would be based on who the person
 15 on the top of the ticket is, not on whether it's a
 16 federal candidate.
 17 Q. What about ads that refer solely to a
 18 state or local candidate. You may have touched on
 19 that earlier.
 20 A. You mean a television ad or a print?
 21 Q. Television ads now that refer solely to a
 22 state or local candidate. Do you think -- I think
 23 you've answered this -- that that has an effect
 24 generally on federal elections or just --
 25 A. Marginally.

Page 24

1 Q. And would the marginal effect be the one
 2 you described earlier, that people might turn out and
 3 then vote for other candidates on the same party?
 4 A. Yes.
 5 Q. And how about door hangers, slate cards,
 6 are you familiar with those terms?
 7 A. Uh-huh.
 8 Q. And those typically things that will list
 9 the full field of candidates for a particular party
 10 and say get out and vote? Are we talking about the
 11 same thing?
 12 A. Yes.
 13 Q. And again, do you have a view as to
 14 whether or not that has an effect on federal
 15 elections, assuming that at least one of the people
 16 mentioned is a candidate for federal office?
 17 A. You assume or presume perhaps is a better
 18 word that those kinds of efforts do have a beneficial
 19 effect but it is extremely difficult to measure the
 20 effect of something like that as opposed to a
 21 television ad or as opposed to television banks or
 22 whatever other kind of techniques you use. I just
 23 couldn't quantify an answer to that.
 24 Q. Fair enough. I'll try and make this
 25 specific. It's my understanding, correct me if I'm

Page 25

1 wrong, that you're a long time supporter of the NAACP?
 2 A. Correct.
 3 Q. And to your knowledge, do they engage in
 4 voter registration or mobilization efforts?
 5 A. It depends on where you're talking about
 6 now. Generally much less than they used to do.
 7 Q. Used to when?
 8 A. In the '60s and '70s.
 9 Q. And why is that?
 10 A. The organization has moved on -- let me
 11 say before I get into responding to questions about
 12 the NAACP, I claim no special knowledge of their
 13 operations. At one time I was intimately involved
 14 in -- in one period of my life I was intimately
 15 involved with what they were doing but that's been
 16 several decades ago so I claim no special knowledge
 17 of their internal operations, although I still
 18 support the goals and aims of the organization.
 19 The question was, to what extent do they
 20 engage in voter registration? I will try to give you
 21 a balanced answer to this. And this is an answer
 22 that's primarily based on a southern perspective as
 23 opposed to perspective in California or New York or
 24 Michigan or somewhere. During the civil rights
 25 revolution in the '60s, particularly in the '60s --

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1 well, it actually began in the '50s but particularly
 2 in the '60s and extending somewhat into the '70s,
 3 there was a huge pent-up desire on the part of
 4 African Americans to register and vote and they were
 5 prohibited through various techniques. Some de jure
 6 and some just political practice. And as those
 7 barriers fell, this great pent-up desire created a
 8 flood of registration and political activity because
 9 they could.

10 After a period of a decade or more or
 11 less, most of the people who felt that pent up desire
 12 had registered and become full participants in the
 13 process.

14 The single thing that affects -- and this
 15 is demonstrable and hard data. The single
 16 thing/factor that affects registration, political
 17 interest and several other factors that relate to
 18 political activity and sense of effectiveness is
 19 education. And the African-American population
 20 generally but particularly in the south has a lower
 21 level of attained education than in most of the rest
 22 of the country and also than white people do and so
 23 you sort of hit a base that was very difficult.

24 I used to, could cite you dollars and
 25 cents as to how much it would take to register

Page 27

1 somebody but I can't do that. The numbers have left
 2 me. But by comparison, in those early years when
 3 this movement was really moving, you could register a
 4 voter for 50 cents and after 15 years, it cost \$5.
 5 It's just the effort that was necessary to do it. So
 6 yes, the NAACP has been active in that but they don't
 7 do it much anymore because it takes so many
 8 additional resources and they have other things on
 9 their agenda. But I don't speak for the NAACP.

10 Q. Fair enough.
 11 A. I want to make that clear.
 12 Q. Fair enough. Let's use South Carolina.
 13 Is there still a gap between African Americans and
 14 whites in South Carolina in terms of registration or
 15 turn-out, to your knowledge?
 16 A. The African-American population in South
 17 Carolina is 30 percent. The registration is 27
 18 percent and the turn-out in a given election varies
 19 somewhere between 22 and 25 percent. That's the
 20 total universe of population, registered voters,
 21 turn-out.

22 Q. And the 30 percent reflects total
 23 population or voting age population?
 24 A. Total population.
 25 Q. Do you know the relevant number of --

Page 28

1 A. Voting age population? No, I don't.
 2 Q. Do you know if --
 3 A. My guess is that it would be slightly
 4 lower than that because the African-American
 5 population tends to be younger.

6 Q. And how about the rest of the South. Do
 7 you know the comparable numbers?
 8 A. I cannot cite you detailed data for the
 9 other southern states but I am confident that the
 10 same kind of relationships exist between total
 11 population, registration, percent of the total vote.

12 Q. And how about the AFL-CIO. Do you know if
 13 they engage in voter mobilization or registration
 14 effort?
 15 A. They do, actively, yes.
 16 Q. Are you aware of any other groups that
 17 engage in voter registration or mobilization for
 18 supporters of whatever particular policy they're
 19 advancing?
 20 A. Depending on the circumstance, the
 21 location, the election, whatever, almost any special
 22 interest group that one can identify that has a
 23 political interest from time to time have done this.
 24 Everything from the League of Women Voters to NOW to
 25 the Moral Majority to the NRA. All of these groups

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1 from time to time have engaged in that kind of activity.
 2 Q. And have you ever -- I'm sorry.
 3 A. And in broadcast advertising as well.
 4 Q. And have you now, on voter registration or
 5 mobilization, have you ever compared the
 6 effectiveness of their attempts at voter
 7 registration/mobilization versus that of state or
 8 national parties?
 9 A. Those special interest groups?
 10 Q. Yes.
 11 A. You get an almost infinite variety of
 12 effectiveness depending on the location, the year,
 13 the election, the people who are in charge of it. I
 14 don't have any generalized answer to that.

15 Q. Fair enough. Now I'm switching back to
 16 broadcast advertisements, television, radio or cable,
 17 that refer to a clearly identified federal candidate.
 18 Do you have a view as to whether or not ads run more
 19 than 60 days prior to the elections are more or less
 20 effective than ads run within 60 days of a general
 21 election?
 22 MS. BREGMAN: Let me just object on the
 23 basis of the testimony going beyond the scope of the
 24 witness. You may answer if you have a view.
 25 THE WITNESS: Broadcast advertising -- I

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1 don't mind answering it. Broadcast advertising is
 2 done for different purposes. And a spot that's run
 3 60 days, 120 days, 90 days before the election,
 4 generally speaking, has a different purpose than a
 5 spot run 15-30 days before the election. The ones
 6 that are run a longer distance, a longer time prior
 7 to the election generally has a broadly educational
 8 purpose to acquaint you with the candidate and what
 9 he or she has done and so forth.

10 Now, when you get somebody who has been in
 11 office in a particular jurisdiction for 15 or 20
 12 years, that's not as important. The stuff that's
 13 done, the advertising that's done closer to the
 14 election is generally tailored more specifically to a
 15 concern that might persuade voters who have not made
 16 up their mind and encourage them to vote for the
 17 candidate who is sponsoring the ads and to go vote.
 18 There is a difference in emphasis. And so a general
 19 effect, I don't know. If you do a real bad job of
 20 the early television, you're going to have a much
 21 tougher job at the end. If you do a better job
 22 early, you've laid a more favorable basis for doing a
 23 good job at the end. If you do a lousy job at the
 24 end, much of what you've done early just goes to
 25 naught. So it's pretty complicated in terms of,

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1 again, trying to quantify an answer.
 2 BY MR. CARVIN:
 3 Q. Could you turn to paragraph 13 of your
 4 declaration, please? And please read the entire
 5 paragraph but my questions frankly will be the
 6 portion that's on the top of page 6. Have you had an
 7 opportunity to review it?
 8 A. Uh-huh.
 9 Q. The sentence I'm interested in is the
 10 first full sentence on the top of page 6. And you
 11 state there, "If the courts should strike this
 12 provision," referencing the provision that limits
 13 issue ads within 60 days of a general election or 30
 14 days of a primary, "the role of special interest
 15 groups will be greatly enhanced and the role of the
 16 parties would be significantly diminished." Do you
 17 see that?
 18 A. Uh-huh.
 19 Q. And I was wondering why that would be so?
 20 A. To answer that would require or will
 21 require me to review some view of my perspective on
 22 politics generally. One is, one view is that we
 23 don't have to spend nearly as much money as we do
 24 collectively in order to provide the public with an
 25 adequate basis for making a decision in elections. I

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1 think there is -- we just don't need all the money
 2 that we spend. We spend it all primarily because
 3 consultants promote their wares to candidates and one
 4 candidate buys it or one party buys it and the other
 5 party doesn't -- responds in self defense. So that's
 6 kind of a basic premise that I begin with.

7 I believe that political parties should be
 8 competitive. I believe that one party should be more
 9 competitive than the other but I believe that
 10 political parties should be competitive. And I think
 11 that having two competitive political parties is very
 12 healthy for the society. Having political parties
 13 healthy and functional I think is more beneficial to
 14 the general political system than having special
 15 interest groups spend a lot of money because special
 16 interest groups do speak with a narrow -- from a
 17 narrow perspective.

18 The one thing that commends political
 19 parties and their general role in the system is that
 20 they do take a general view of issues. And as a
 21 consequence, I think that political parties and their
 22 specific candidates should be the prime leaders in
 23 campaigns. If other groups -- and keep in mind that
 24 this refers to groups and not necessarily
 25 individuals. If other groups are permitted to spend

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1 lots of money and parties are limited, the other
 2 groups could easily -- or might -- change that.
 3 Other groups might sort of throw a shadow over
 4 parties and the parties would not be as effective as
 5 they could be. And therefore, I think that the
 6 authors of this legislation were very wise in
 7 adopting this particular combination of provisions
 8 where they permit parties, I think, to have enough
 9 money to make their case and limit these special
 10 interest groups from overwhelming them with money and
 11 advertising in the campaign, near the campaign. So I
 12 think that's a very good balanced approach.

13 Q. And you stated, I think, that court
 14 approval of the entire PCRA would clearly be in the
 15 interest of political parties and the political
 16 system in general. And I think I understand why it
 17 would be in the interest of political parties but can
 18 you tell me why it would be in the interest of the
 19 political system in general?
 20 A. Because of what I said earlier, that
 21 parties represent the broad political interest of --
 22 or a much broader political interest to present to
 23 the voters than special interest groups do. If the
 24 parties with a broad perspective are overwhelmed by
 25 particular and specialized interest, I think that it

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1 could skew the information flow in the campaign, skew
 2 it in a negative way.
 3 Q. And therefore, decrease this moderating
 4 influence that the parties have over --
 5 A. Yes.
 6 Q. And how about more specifically, in your
 7 experience, do political parties tend to support
 8 challengers more than special interest groups or PACs
 9 as opposed to incumbents? What I'm thinking about,
 10 to be specific, is it's my operative assumption that
 11 political parties are trying to achieve majorities
 12 and that's why they're spending money, so that they
 13 might take more of a risk on a challenger or somebody
 14 who is not so assured a victory, whereas the groups
 15 are seeking more access, frankly, and therefore tend
 16 to focus on people who they think will ultimately
 17 hold office. Has that been consistent with your
 18 experience?
 19 A. I don't think I can give you a direct
 20 answer to your question. Incumbents, despite some
 21 political myth, always have an advantage over
 22 challengers. Very rarely does a party ever promote
 23 or recruit a challenger for an incumbent office.
 24 Parties do recruit candidates where they have
 25 vacancies, and that's true from top to bottom,

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1 although generally you don't have to recruit people
 2 to run for president.
 3 Q. Right. I don't mean to interrupt you, but
 4 wouldn't they also mount challengers if there was an
 5 incumbent of the opposing party?
 6 A. Yes, that's what I mean. If there is a
 7 vacancy on their ticket. If congressman X is a
 8 Republican, there would be a motivation for Democrats
 9 to recruit a challenger there and vice versa. But to
 10 be absolutely clear, if congressman X is a Democrat,
 11 almost never does the Democratic party go out and
 12 recruit somebody and run against him unless it's
 13 James Traffiant or somebody like that.
 14 So in frequency, parties don't recruit
 15 challengers to incumbents of their own party. They
 16 do recruit challengers to incumbents of the other
 17 party. Special interest groups have a different
 18 perspective. It's more narrow. But rarely, at least
 19 to my experience, does a special interest group go
 20 out and try to recruit somebody to run against an
 21 incumbent. What they do do is choose between two
 22 candidates and focus their fire and their resources
 23 for or against a candidate depending on what their
 24 preference is. So that's the dynamic I think between
 25 special interest groups and parties.

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1 Q. And just to make sure I understand your
 2 point in this. If the courts struck down this
 3 provision, the parties would still be able to spend
 4 hard money, federal money, on broadcast
 5 advertisements. Wouldn't that be an effective
 6 counterweight to the special interest groups spending
 7 unlimited or soft money for those advertisements?
 8 A. It's harder to raise hard money than it is
 9 soft money and there are limitations on how much hard
 10 money you could raise.
 11 Q. Why is it harder to raise hard money?
 12 A. Because it's personal money.
 13 Q. As opposed to corporate or union money?
 14 A. Yes. Person or PAC money. And there are
 15 limitations on how much you can give -- how much a
 16 PAC can give and how much an individual can give to
 17 the party and to the candidate. Special interest
 18 groups, there is no limitations. The sky is the
 19 limit.
 20 I will volunteer this too just for the
 21 record. The reason I put that in there is that some
 22 attorneys -- and I am not an attorney -- some
 23 attorneys have suggested to me that this provision
 24 about limiting special interest groups or outside
 25 groups, whatever title you want to give them, does

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1 not reach constitutional muster. This is a
 2 limitation on groups. It is not a limitation on
 3 individuals. I think it's perfectly appropriate in a
 4 democracy, perfectly within constitutional limits to
 5 limit what groups do. I think groups are different
 6 from individuals. So I put that in there to make the
 7 point but I didn't want you or anybody else to think
 8 that I think that provision is unconstitutional. I
 9 put that in there because it is a concern.
 10 Q. Right. But I take it your concern is not
 11 just that it's -- well, I don't want to put words in
 12 your mouth. I take it one of your concerns is that
 13 if these special interest groups, not individuals,
 14 are allowed to spend unlimited soft money for ads or
 15 other communications that affect federal elections
 16 and parties are limited to the tougher hard money,
 17 that that would put parties at a disadvantage
 18 relative to the special interest groups?
 19 A. Yes.
 20 Q. Let me give you an example. I understand
 21 that in -- I believe this overlaps your tenure at the
 22 Democratic National Committee -- that in late '95 and
 23 early '96, the AFL-CIO targeted I believe 75
 24 vulnerable Republicans and ran a series of ads
 25 criticizing them and the party. Do you recall that?

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1 A. I don't recall the number. I think that I
 2 recall that effort. Yes, I recall that effort but
 3 that's not unusual for them to do. They do that in
 4 most elections.
 5 Q. Right. And I guess my question would
 6 be -- I know this hurt Republicans so you may have a
 7 conflict of interest. But if they ran a similar
 8 campaign prior to 60 days before a general election
 9 and the Republican party could not respond with soft
 10 money, wouldn't that put the Republican party at a
 11 disadvantage relative to, I'll call them a special
 12 interest group, the AFL-CIO in this case?
 13 A. It would put the candidate at a disadvantage.
 14 Q. Is that a concern of yours about how this
 15 statute could work?
 16 A. That is the concern I've expressed in
 17 that, yes.
 18 MR. CARVIN: I want to go off the record
 19 for a second.
 20 (Discussion off the record.)
 21 (Recess.)
 22 BY MR. CARVIN:
 23 Q. Mr. Fowler, I would like to ask you about
 24 paragraph 6 on page 2 of your declaration, please.
 25 The second sentence in that paragraph says, "Many

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1 contributors of large sums of money - both
 2 Republicans and Democrats - gain access to party and
 3 governmental officials that they otherwise would not
 4 have." Do you see that?
 5 A. Yes.
 6 Q. And what I would like to explore with you
 7 is what you mean by access. And this I believe is
 8 referenced in paragraph 8 of your declaration where
 9 you note that government officials participate in
 10 raising large contributions from interests that have
 11 matters pending before executive agencies, the
 12 Congress and other government agencies. So is one
 13 form of access that these special interests will meet
 14 government officials at events where large
 15 contributions are raised?
 16 A. Well, there are two aspects of that. One
 17 is what you said, you have events and the
 18 contributors and people come and the officials come,
 19 it's an opportunity to talk and be friends. But I
 20 think the more important access is what is gained
 21 after the event with the knowledge that these people
 22 make large contributions and, therefore, the
 23 officials respond because of that. It's not that
 24 there aren't other matters involved in the decision
 25 to see somebody or hear somebody's plea but money is

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1 certainly one.
 2 Q. And so the more important access would be
 3 the follow-up to these fund-raising events. Do I
 4 have that right?
 5 A. Yes.
 6 Q. And I understand that. I'll get to that
 7 in a second but I would like to break it down. How
 8 typically would government officials participate in
 9 raising large contributions?
 10 A. They would attend fund raisers.
 11 Q. And those would be dinners?
 12 A. Dinners, cocktail parties, golf outings.
 13 There is a whole variety of things that people like
 14 to do and whatever they like to do, you try to fit
 15 fund-raising into those functions and activities.
 16 Q. And at those events, have you seen large or
 17 donors press their views on federal office holders or
 18 candidates concerning matters pending before the
 19 executive or legislative branches of the federal
 20 government?
 21 A. Well, I've seen large donors talking with
 22 officials. I can't testify to specific language but
 23 understanding that they are talking about their
 24 business, if you will. At the event, though, in most
 25 cases, to my experience, if they talk about business

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1 at these social events, it's limited. The more --
 2 the lengthier conversations and the more substantive
 3 conversations are generally held at a later point in
 4 time.
 5 Q. My impression is that at those kinds of
 6 events, the conversation tends to be more informal
 7 and less substantive. Is that a fair impression?
 8 A. Yes.
 9 Q. And can you recall any specific instances
 10 out of all of these fund-raising events that you've
 11 attended where somebody did make a substantive
 12 presentation or argument to a federal candidate or
 13 office holder at the event itself?
 14 A. I don't know how you define that exactly
 15 but I don't think I have ever witnessed a
 16 circumstance where anybody made a case to a federal
 17 office holder at an event like that that was
 18 sufficient to dispose of it. I mean, I've never seen
 19 a candidate or an office holder say, oh, yeah, that's
 20 all right, we'll do that, at one of these events.
 21 They talk about it but nothing -- it's not pointed
 22 toward a decision at that point.
 23 Q. And how about the next sentence in
 24 paragraph 8 where it says, "Party officials who are
 25 not themselves elected officials offer to large money

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1 donors opportunities to meet with senior government
 2 officials." And I'm not clear in that sentence
 3 whether or not, when you say they offer them an
 4 opportunity to meet, whether you're referring to open
 5 public programs that the national committees will
 6 have where, if you're a large donor, there will be
 7 briefings by certain candidates as part of what I
 8 think they call donor maintenance, or are you
 9 referring to party officials actually calling
 10 congressman X and saying, John Smith would like to
 11 meet with you Tuesday at 2 o'clock to discuss
 12 telecommunications legislation?
 13 A. What I'm referring to is that party
 14 officials are actively involved in contacting people
 15 who might make large contributions and inviting them
 16 to the events where these governmental officials will
 17 be. That's how --
 18 Q. Are you aware -- I'm sorry.
 19 A. Yes, that's what I mean.
 20 Q. So are you aware of an instance where an
 21 official of a national committee has actually set up
 22 a meeting, a particular meeting between a congressman
 23 or a senator or executive branch official with a
 24 large donor to discuss substantive matters?
 25 A. I have myself on occasion suggested to

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1 governmental officials that they meet with someone.
 2 I've never actually set up an appointment.
 3 Q. How many times have you done that, to the
 4 best of your recollection?
 5 A. It's not a great many. I don't know.
 6 Q. Less than five?
 7 A. Less than a dozen maybe.
 8 Q. Are you aware of any other officials with
 9 Democratic or Republican national committees that
 10 have suggested to a federal office holder or official
 11 to meet with someone?
 12 A. I cannot cite you specifics now. It's
 13 commonly understood that that is a practice that goes
 14 on in both parties. The Republican party, when I was
 15 at the DNC, had a weekend or a couple-of-day event
 16 where the contributors, the more money they made, the
 17 higher level of congressional official they could
 18 meet with. And I assumed that they were successful
 19 because they raised a lot of money. But I don't know
 20 of -- I mean, I'm just not privy to information, how
 21 many appointments Barbara set up with Bob Dole or
 22 anything like that because I don't have that
 23 information.
 24 Q. Let me make sure I'm clear on this
 25 Republican party. This was a weekend event or

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1 two-day event that they discussed in their mailings
 2 and that sort of thing.
 3 A. Uh-huh.
 4 Q. And I take it there was a group of people
 5 meeting with the various federal officials that
 6 attended this event?
 7 A. And the more you contributed, the more
 8 senior the official was.
 9 Q. And so therefore, that would be the kind
 10 of meeting that a fund-raising or donor maintenance
 11 event. Are you aware of any circumstance where they
 12 set up a meeting at someone's office to discuss a
 13 matter pending before --
 14 A. I wouldn't be privy to that information.
 15 Q. And I take it that you did so on occasion?
 16 You suggested that a federal official of some kind
 17 meet with a large donor?
 18 A. I have suggested to some people that an
 19 individual had an interest in meeting. I've never
 20 set up an appointment.
 21 Q. And did all of those individuals -- were
 22 all of those individuals soft money contributors?
 23 A. I don't know. I don't know. Some of them
 24 were, I'm sure.
 25 Q. Did you ever set up a meeting with

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1 somebody who contributed hard money to the Democratic
 2 National Committee?
 3 MS. BREGMAN: Objection, unclear.
 4 Exclusively hard money or both?
 5 MR. CARVIN: We'll take it one at a time.
 6 THE WITNESS: Most of the big contributors
 7 contributed both kinds of money. They contributed
 8 more hard money than they did soft money simply
 9 because you could.
 10 BY MR. CARVIN:
 11 Q. The relevant cap at that time was \$20,000
 12 for individuals?
 13 A. Yes, to a party, and total 25 per year.
 14 Q. And in these instances where you did
 15 suggest that an individual had an interest in a
 16 meeting, did any or all of them contribute hard
 17 money?
 18 A. I don't know. I don't have that detailed
 19 level of memory. Most of our large contributors
 20 contributed a combination of hard and soft money.
 21 Q. And how would that work? Would they give
 22 \$20,000? If somebody gave you \$50,000, then 20,000
 23 of that would be counted as hard money?
 24 A. If there is any combination of them, they
 25 might give you 20,000 hard and 50,000 soft. There

1 was no pattern or formula.
 2 Q. And when you were suggesting these
 3 individuals had an interest in that meeting, did you
 4 a distinction in your own mind between whether they
 5 were hard money or soft money contributors?
 6 A. No.
 7 Q. And can you tell me the government
 8 officials to whom you made this suggestion?
 9 A. As I stated, it was a dozen or fewer but
 10 specifics, I'm not --
 11 Q. Can you recall any at this time, any
 12 government officials?
 13 A. Any single government official? I can
 14 remember more by -- well, actually, the one that I
 15 can remember most clearly was a very small
 16 contributor, not a large contributor. He was a
 17 president of a university over in Maryland who had
 18 some interest in securing a grant for their
 19 engineering department and it was somebody in the
 20 Department of Energy but I don't remember exactly
 21 who.
 22 Q. And can you recall if you ever set up or
 23 suggested a meeting with a legislative official, a
 24 member of the House or Senate?
 25 A. I don't recall that I did. I want to

1 qualify that by saying that I might have. I do not
 2 recall any specific one.
 3 Q. And how many of these suggested meetings
 4 actually occurred, to your knowledge?
 5 A. I don't know. I do not know.
 6 Q. You do give an example in paragraph 11 and
 7 I would like to ask you about that if I could. I'm
 8 going to ask you a few questions. Perhaps it makes
 9 sense for you to review the document.
 10 A. Go ahead. That's okay.
 11 Q. You say that at the request of an old
 12 friend whom I admired and respected, I met with some
 13 of the leaders of the Minnesota tribes who opposed
 14 the casino, correct?
 15 A. Correct.
 16 Q. Can you tell me who that --
 17 A. Pat O'Connor.
 18 Q. Pat O'Connor?
 19 A. Uh-huh.
 20 Q. Is he a lobbyist?
 21 A. He's an attorney in Minneapolis. Whether
 22 he's a remembering administered lobbyist or not, I
 23 don't know.
 24 Q. And you had known him for a long time?
 25 A. He was 20 years -- well, longer than that.

1 25 years ago the treasurer of the Democratic National
 2 Committee and that's how I knew him.
 3 Q. And do you know whether he was on a
 4 retainer to the tribe in Minnesota?
 5 A. I do not.
 6 Q. Would you have informed the White House
 7 officials of the meeting if the leaders of the tribe
 8 had not contributed money to the Democratic National
 9 Committee?
 10 A. When I did that, I didn't know that they
 11 were contributors.
 12 Q. So there was no connection between their
 13 contributions and your effort to facilitate the
 14 meeting?
 15 A. That's correct.
 16 Q. Do you know if any leaders of the
 17 Minnesota tribe donated over \$20,000 to the
 18 Democratic National Committee?
 19 A. I have been told that they did.
 20 MR. HAMILTON: I want to make sure I
 21 understand your question. When you say leaders of
 22 the tribe, are you talking about individuals making
 23 the contribution or are you talking about the tribe
 24 in some way making a contribution? I want to make
 25 sure I just understand your question.

1 BY MR. CARVIN:
 2 Q. And let's clarify that. Your statement
 3 says some individuals in the tribe were supporters of
 4 the Democratic party.
 5 A. They told me they were at that meeting.
 6 Q. After you scheduled the meeting?
 7 A. Mr. O'Connor scheduled a meeting and at
 8 the meeting, they told me they were supporters. They
 9 didn't tell me whether they were political supporters
 10 or financial supporters.
 11 Q. Oh, okay.
 12 A. Let me say something general about this.
 13 I don't know if you've read my testimony about this
 14 or the report of the Thompson committee but there is
 15 a lot in those two documents that frame things very
 16 differently than my memory and I do not in any sense
 17 accept as valid the representations in the Thompson
 18 report or in the allegations or assertions of other
 19 people who have spoken to this.
 20 Q. And those assertions in the report or
 21 elsewhere sought to suggest linkage between donations
 22 to the Democratic National Committee and your
 23 actions?
 24 A. Uh-huh.
 25 Q. And you reject those assertions?

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1 A. Yes. Contributions.
 2 Q. Fair enough.
 3 A. Yes.
 4 Q. And even now in retrospect, do you know
 5 whether or not these individuals in the tribe
 6 contributed more than \$20,000 to the Democratic
 7 National Committee?
 8 A. I know it to this extent, that people in
 9 our finance division told me, after this meeting
 10 that's referenced here and after I made the contact
 11 with the person at the white house, that these people
 12 had and did or will -- I'm not sure what the proper
 13 tense is -- make contributions to the DNC.
 14 Q. Can you recall the amount?
 15 A. No. I've read various amounts and they
 16 seem to differ.
 17 Q. Okay.
 18 A. It was a substantial amount. It wasn't
 19 \$100 or a \$1000. It was more than that.
 20 Q. Fair enough. And you say, in the last
 21 sentence, "While I did not know it at the time, I
 22 later learned that representatives of both sides in
 23 this issue had contacted almost every member of the
 24 Wisconsin and Minnesota Congressional delegations as
 25 well as Administration officials." Do you know

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1 whether anyone from the Indian tribes in Wisconsin
 2 had made contributions of any kind to any Democratic
 3 national party committee?
 4 A. I don't know.
 5 Q. Did that affect their ability to contact
 6 the members of the Wisconsin and Minnesota
 7 congressional delegations?
 8 MS. BREGMAN: Objection, calls for
 9 speculation and lacks foundation.
 10 THE WITNESS: In a temporal sense; that
 11 is, the sequence in which these things happened, what
 12 I assert here at the bottom, the last two sentences,
 13 I learned after I had done what I did with respect to
 14 this case. There were assertions and allegations on
 15 the part of some people or I should say I think more
 16 appropriately speculation that I did what I did
 17 because of a contribution. There was also
 18 speculation that I did what I did -- or what I did
 19 was definitive in this case and it clearly was not.
 20 That's just hogwash. And I put that in there. It's
 21 something I've contended every time I've talked about
 22 this case. This was a widely disputed case and the
 23 assertion, one, that I did what I did because of
 24 finances is clearly erroneous. And the assertion
 25 that what I did was definitive is equally as

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1 erroneous, I think, because these people were talking
 2 to anybody they could put their hands on, both sides.
 3 BY MR. CARVIN:
 4 Q. And with respect to the one side, the
 5 Wisconsin tribe, do you know whether they had made
 6 any contributions to any Democratic committees?
 7 A. No, but their lobbyist came to see me
 8 subsequently. He's an old friend of mine. I can't
 9 think of his name right now but he did. So both
 10 sides were plowing the ground.
 11 Q. From the DNC perspective or the White
 12 House perspective or the federal executive branch
 13 perspective, was greater access granted to the
 14 Minnesota tribes with respect to this controversy
 15 than the representatives of the Wisconsin tribes, to
 16 your knowledge?
 17 A. The only effort anybody ever made to see
 18 me representing the Wisconsin tribe, I set up an
 19 appointment, had the appointment, had a long
 20 discussion with this guy. I wish I could remember
 21 who the guy was. He's been around here a long time.
 22 Q. Who did you contact at the White House?
 23 A. Harold Ickes.
 24 Q. And in addition to that example -- and I
 25 know this was a while ago -- and the example of the

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1 person from the University of Maryland, can you
 2 presently recall suggesting to any government
 3 official an interest in somebody having a meeting?
 4 A. I think the only other one that I can
 5 remember is a guy who wanted to come to a luncheon
 6 with the First Lady and he didn't get in. And I knew
 7 he was a big contributor and everybody else knew he
 8 was a big contributor but he didn't get in.
 9 Q. Do you --
 10 A. I want to be clear that I'm not saying
 11 that those are the only three because as I said
 12 earlier, there were fewer than a dozen. Those are
 13 the ones that I remember.
 14 Q. Fair enough. Did you have a mechanism for
 15 keeping congressional leaders regularly informed
 16 about who the soft money donors were to the DNC?
 17 A. No.
 18 Q. Are you aware --
 19 A. The congressional leaders frequently
 20 attended these functions and they could see who was
 21 there, but I did not. There was no system set up.
 22 Q. And at these functions, I take it that
 23 there was both hard money contributors and soft money
 24 contributors at most of these functions?
 25 A. I think that's a fair statement. It might

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1 not be literally true but it's generally correct.
 2 Q. And are you aware of any legislative
 3 leader who uses soft money donations to the
 4 Democratic National Committees as a criteria for
 5 people they would meet with?
 6 A. Soft money per se exclusively? I don't
 7 know of any legislators that exclusively use
 8 contributions of any kind as a criteria for whom they
 9 will meet. It is just a matter of observable fact
 10 that if you stay around this town for any period of
 11 time, that if someone who makes a substantial
 12 contribution calls, they're much more likely to have
 13 their calls returned than somebody who doesn't. And
 14 I think it's naive to think that's not the case.
 15 It's not criminal but that is the case.
 16 Q. And that's, for example, Congressman
 17 Gephardt's practice?
 18 A. I have no idea as to what his criteria for
 19 establishing meetings.
 20 Q. Well, can you list, say, five congressmen
 21 who use substantial contributions as a reason --
 22 A. I cannot mention any specific one but I
 23 know it's my experience and being around this town
 24 that when a substantial contributor calls, his call
 25 is returned.

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1 Q. And can you give me one example of any
 2 legislator who has ever done that?
 3 A. Any specific example, no, with names
 4 attached, no.
 5 Q. Would you ever lobby a member of Congress
 6 or an executive branch official to implement a policy
 7 desired by a soft money donor?
 8 A. Would I or did I?
 9 Q. Fair enough. Did you ever do that?
 10 A. Well, I'm a registered lobbyist so I do.
 11 I mean, not based on soft money but I --
 12 Q. That's fair enough. Were you lobbying
 13 while you were --
 14 A. No. I was specifically precluded from
 15 doing that when I was the chair.
 16 Q. And so just to clarify the record, my
 17 question now focuses on when you were chairman of the
 18 Democratic National Committee. Did you ever lobby a
 19 member of Congress or an official of the executive
 20 branch to implement a policy desired by a soft money
 21 donor?
 22 MS. BREGMAN: Objection, unclear.
 23 THE WITNESS: I have made statements about
 24 what I did and I've given you three examples of what
 25 I did.

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1 BY MR. CARVIN:
 2 Q. Right. And I take it at that time you
 3 were facilitating meetings in the manner you've
 4 described. Now I'm asking you sort of a level beyond
 5 that, either in terms of meetings with individuals or
 6 more generally you were aware of a policy desired by
 7 a soft money donor. Did you advocate that policy to
 8 any member of the executive branch or the legislative
 9 branch?
 10 MR. HAMILTON: Can I clarify that
 11 question? The chairman of the DNC might have policy
 12 objectives. Some of those policy objectives may be
 13 shared by a number of donors, hard money donors or
 14 soft money donors. Is the better question whether
 15 you did it because somebody was a soft money donor?
 16 MR. CARVIN: That's a fair clarification.
 17 BY MR. CARVIN:
 18 Q. Did you ever advocate a position with a
 19 member of Congress or a member of the executive
 20 branch because, in whole or in part, that policy
 21 objective was advocated by a soft money donor?
 22 A. No.
 23 Q. And just generally, in terms of -- let's
 24 forget about the soft money donors generally. Was
 25 the role of the chairman of the DNC to advocate

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1 policy positions for members of Congress or the
 2 executive branch during your tenure?
 3 A. No, except those that were in harmony with
 4 the President's program, and we advocated those not
 5 because of soft money donors but because they were
 6 the President's program.
 7 Q. Fair enough. Did you or any firm of the
 8 national party committee of which you're aware imply
 9 or state that they would withhold soft money
 10 donations or soft money expenditures if a legislative
 11 official didn't raise soft money for the parties?
 12 A. If a legislative official didn't raise
 13 soft money? I don't know that any legislative
 14 official has raised soft money for us.
 15 Q. Well, as I understood what you were saying
 16 before, that they would help participate in these
 17 fund-raising events --
 18 A. They would attend a function but they
 19 didn't solicit anybody. They were just there to be
 20 part of the group.
 21 Q. Fair enough. And if someone was less than
 22 active in that attendance, would you imply that the
 23 DNC would not expend its soft money in a manner that
 24 would help that official in a subsequent race?
 25 A. No.

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1 Q. Did you ever use the provision of
 2 withholding soft money expenditures as a means of
 3 inducing a legislative official to support any
 4 particular policy?
 5 A. No.
 6 Q. I take it that the DNC would spend money
 7 where they thought it was most useful in competitive
 8 races?
 9 A. Yes, right.
 10 Q. Were the expenditure decisions of the DNC
 11 or any of the national committees affected by the
 12 extent to which a federal office holder or candidate
 13 had participated in soft money fund-raising events?
 14 A. Not at all.
 15 Q. Are you aware of any informal
 16 understanding between the national political
 17 committees and soft money donors under which the
 18 donors could direct where their donations would be
 19 spent?
 20 A. That's illegal. No.
 21 Q. And I'm not talking about any formal
 22 agreement but was there some wink and nod agreement?
 23 A. None that I know of.
 24 Q. And was there ever an informal agreement
 25 between a candidate and any of the national political

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1 committees that I'm helping you raise soft money or
 2 attending a fund-raising event, therefore, I will get
 3 more soft money expenditures in my race?
 4 A. You're on a line of questioning which
 5 assumes a set of facts which just didn't exist, and
 6 if I may --
 7 Q. You may.
 8 A. Most of our money was spent on behalf of
 9 Presidential efforts. The money that we spent for
 10 candidates, either nonincumbents or incumbents for
 11 the House and the Senate, was in effect turned over
 12 to the DCCC and the DSCC and they made the decision
 13 as to where the money should go. We didn't make that
 14 decision.
 15 Q. And are you aware whether the DCCC and the
 16 DSCC had any of these formal arrangements we just
 17 discussed?
 18 A. No.
 19 MS. BREGMAN: No, you're not aware or no,
 20 they did not?
 21 THE WITNESS: Well, I'm not aware of any
 22 and I'm reasonably confident that they did not but I
 23 can't swear to that. I never had a conversation
 24 about it and they -- I mean, I know from long
 25 experience that they base their decisions on where

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1 they put their money on the electability of the
 2 candidate. It's not dependent on how much money that
 3 they might have raised or didn't raise.
 4 MS. BREGMAN: Can we take a five-minute
 5 break?
 6 MR. CARVIN: At the witness' convenience.
 7 (Recess.)
 8 BY MR. CARVIN:
 9 Q. My questions to this point have dealt with
 10 the national committees in Washington and now I want
 11 to switch the focus to state parties. Are you aware
 12 of any soft money donations to state parties? By
 13 that I mean donations that would exceed the source
 14 and amount limitations of the Federal Election
 15 Campaign Act which have led a federal officeholder to
 16 provide preferential access or treatment to that
 17 donor?
 18 A. A soft money contribution to a state party
 19 that led to a meeting or an appointment or
 20 conversation with a federal official, most
 21 contributions at the state level are made for
 22 purposes of supporting state officials. It would be
 23 rare that a state party would be the channel through
 24 which one would approach a federal official unless
 25 there was a personal relationship between, say, the

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1 chair of the state party and some congressman and
 2 somebody within that state would say, hey, Mr. State
 3 chair, would you get me an appointment with
 4 Congressman Jones? That happens but it's not a
 5 regular route for making appointments with
 6 congressmen.
 7 Q. And are you aware of any circumstance
 8 where that has occurred?
 9 A. Well, when I was state chair, I made -- I
 10 suggested that congressmen meet with people in the
 11 state but that was just because I happened to know
 12 the congressman and it had nothing to do directly
 13 with the contribution.
 14 Q. And are you aware of anyone --
 15 A. Let me say the fact that I don't identify
 16 for you specific examples of where soft money
 17 contribution led to an appointment, led to a
 18 solicitation or advocacy of a particular policy -- I
 19 mean, I understand your purpose in asking those
 20 questions but I think it somewhat misses the point.
 21 I mean, if somebody said, Don, I'm going to give the
 22 DNC \$10,000 if you will make me an appointment with
 23 Congressman So or Cabinet Member So and I said, sure,
 24 come on, buddy, that's illegal. That's in effect a
 25 bribe. That's a quid pro quo and that just doesn't

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1 happen. It never happened in my experience to
 2 anybody any time.
 3 There were -- occasionally somebody would
 4 vaguely suggest that and it just never happened and I
 5 said, we don't do business that way. But there is
 6 undeniably a nexus between large contributions and
 7 access or acquaintance with significant public and
 8 political officials through dinners, through parties,
 9 through briefings, through seminars. And to think
 10 that that nexus doesn't exist and to think that money
 11 is not a part of that I think is a bit naive.
 12 My experience, the way that happens is you
 13 have a fund raiser and the ticket is \$25,000 and the
 14 people go to these fund raisers and they meet whoever
 15 they want to meet and they follow up directly with
 16 those governmental officials. It's not that they
 17 channel that through the party. They come to the
 18 fund raiser in order to meet Congressman So or
 19 Cabinet Member Such and Such and they then
 20 themselves, based on that acquaintance gained at the
 21 event, seek their own access. And there is an
 22 inclination on the part of people, government
 23 officials, to grant that access.
 24 Q. That's fair enough, and I'm just trying to
 25 figure out exactly how this works. So let's make it

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1 a \$20,000 a plate dinner which would fall within the
 2 legal limits of contributions to a party. Would the
 3 same kind of meetings that you've just described take
 4 part at those events where people have paid enough
 5 money to be within the legal limits?
 6 A. If the ticket were \$20,000, you would
 7 probably not have a room larger than -- I mean, a
 8 number more than 50 or 60. I mean, that's just too
 9 high a ticket to have hundreds of people.
 10 And typically, when I was here, we would
 11 have it in a relatively small place where there was
 12 an opportunity to have conversation between whoever
 13 the political stars were, the principals were, and
 14 the 60 or 50 or 40 people who gave the \$20,000 and
 15 you would have a cocktail party and that would last
 16 an hour, then you would have a dinner and that would
 17 last an hour and 15 minutes, at the conclusion of
 18 which the President or somebody else would stand up
 19 and make remarks about what great things they're
 20 doing for America and in that two hours and 15
 21 minutes or two hours and a half, the 40 to 50 people
 22 there would have had an opportunity to talk to the
 23 political principals and if they thought it was
 24 worthwhile, they themselves would take the initiative
 25 to go to those officials. And it's the money that

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1 got them to the dinner and then it's their own
 2 initiative if it gets them the appointment.
 3 That's how the system works. It's not
 4 that somebody gives me \$20,000 and says, set me up an
 5 appointment.
 6 Q. And that was what I was trying to clarify,
 7 that when you say party officials allow large money
 8 donors an opportunity to meet, it would be the fact
 9 of these events rather than something more direct, is
 10 that correct?
 11 A. Yes.
 12 Q. And how many of these \$20,000 dinners --
 13 A. Oh, gee. How many did I go to?
 14 Q. Wasn't a typical dinner less than \$20,000?
 15 A. Mike, they ranged all the way from
 16 \$100,000 to 5,000. \$100,000 deal was a dozen people
 17 and the President. A \$5,000 deal was 200 people and
 18 the vice president and three or four cabinet people.
 19 And that's typically how it worked.
 20 Q. At those \$5,000 dinners, people would
 21 behave in the same manner you described previously,
 22 although the crowd may be somewhat larger, is that a
 23 fair summary?
 24 A. The crowd is larger, the opportunities for
 25 intimacy and conversation is much more limited and --

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1 well, it's \$5,000 versus 100,000 and so you don't get
 2 the same degree of access and intimacy. I mean, I
 3 don't know how much of my philosophy you want about
 4 this, but the fact that these things take place is
 5 not a crime.
 6 It's perfectly legal under our system and
 7 we all understand that. But to millions of
 8 citizens -- and this is proved from data and from
 9 polls, which I don't have with me but I think I could
 10 get you, and clearly anecdotally from my own
 11 experience, people just think that's not good and
 12 some people think it's crooked. I mean, that's the
 13 term they use. It's crooked. You're up there in all
 14 that crookedness.
 15 I had one friend of mine who is a judge at
 16 home who essentially blamed me or accused me of being
 17 a crook for participating in this process and I tell
 18 him it's not illegal, you have to do it to survive
 19 under the current laws. And people do have the
 20 notion -- some people have the notion that this is
 21 criminal corruption and some people just have the
 22 notion that it's political corruption without being
 23 criminal. I mean, I know it's not criminal. I know
 24 what the law is with respect to that.
 25 But I do think from my own philosophy that

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1 it amounts to a corruption of the process and that's
2 why I feel so strongly about that law. And I've
3 participated in it but on the other hand, you can't
4 disarm unilaterally even though I suggested that at
5 one point when I was the chair. It was a suggestion
6 that was not accepted.

7 Q. And I want to chat with you about that but
8 I just want to make sure I follow up. There is a
9 difference between perception and reality and I'm
10 asking you in terms of your personal knowledge and
11 your personal observations, did you or anyone you see
12 do anything that you considered crooked or corrupt?

13 A. No, absolutely not.

14 Q. And then to return to the state issue
15 because the nexus seems, in my mind, so much more
16 removed than what the national committees do. You
17 gave an example before when you were chairman of the
18 South Carolina party when you would call a member of
19 Congress that you knew. Were you making calls that
20 you otherwise would not have made because of the
21 amount of the large donation from the person that you
22 were chatting about with the congressman?

23 A. No. But here is the process, how the
24 system works. Now, when I was a state chair in South
25 Carolina, a thousand dollars was a huge contribution.

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1 It doesn't seem so large now. But if somebody
2 contributed \$500 or \$1,000 to the South Carolina
3 Democratic party, that was a small enough operation
4 so that I truly, I think, knew everybody who did
5 that. I didn't know everybody, not by any means, who
6 gave five or 20,000 or even \$50,000 to the DNC. I
7 knew most of them but I didn't know them all. But I
8 knew all of these people in South Carolina.

9 And I knew if Jim Hamilton gave the South
10 Carolina Democratic party a thousand dollars. And he
11 called me and said, can you get me an appointment
12 with Brian Donor, I would say, I will try. He would
13 not have said, nor did I ever hear anybody say, if
14 you had get me an appointment, I'll give you a
15 thousand dollars. That just did not happen. But
16 what I'm trying to say is there was this nexus that
17 because he gave a thousand dollars, I would talk to
18 him and listen to him and then --

19 BY MR. CARVIN:

20 Q. But Mr. Fowler, with respect, that's where
21 I want to press you. If Jim Hamilton who didn't
22 contribute 500 or a thousand dollars to the South
23 Carolina Democratic party had made that request for
24 you, would you behave in the same way for a person
25 that you knew was a friend and a supporter of the

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1 party?

2 A. Yes, but I am much more likely to know Jim
3 Hamilton who gave me a thousand dollars than Jim
4 Hamilton who gave me 25. That's the point.

5 Q. All right. Let me focus on that as well.
6 These people were motivated, I take it, because they
7 believed in the principals and objectives of the
8 Democratic party, correct?

9 MS. BREGMAN: Objection, no foundation.

10 THE WITNESS: People give contributions
11 for two reasons. Because they support the party and
12 because they like access.

13 BY MR. CARVIN:

14 Q. And how many people, in your estimation,
15 gave soft money contributions to the Democratic
16 National Committee to purchase access who would not
17 otherwise have given the money because they supported
18 the principles of the Democratic party?

19 A. As a general principle, I tell my students
20 that it's about 2 to 1. Two people give
21 contributions to parties and candidates because they
22 support them, they like them. One does it because of
23 access. I can't prove that and that's what I tell my
24 students.

25 Q. And that's talking about the DNC?

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1 A. That's just a general proposition.

2 Q. Now I'm asking if we're talking about a
3 state party, how many people are giving access in
4 those circumstances so they can facilitate access to
5 federal officeholders?

6 A. I can't say. When I was a state chair, I
7 did it. I don't know if I did it five times. It's
8 been 30 years. I don't know if I did it five times
9 or 100 times but I did it and I thought it was
10 perfectly appropriate to do it. But I do recognize
11 how that affects in a negative way many citizens'
12 view of the integrity of our political system.

13 Q. Well, if we're going to get back to the
14 perception, I'm not aware of any public opinion polls
15 or perception about how donations to state parties
16 was done to buy access to congressmen or senators.
17 Is that an accurate perception, that that's not the
18 typical route to get --

19 A. I know of no data that says that specific
20 proposition.

21 Q. And do you have a view as to whether or
22 not that is a corruption of the political system,
23 that donations to parties are done with the effect of
24 facilitating access to federal officeholders?

25 A. I think that's a small piece of it but I

18 (Pages 66 to 69)

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1 think you get the same general view of large
 2 contributions at the state level as you do at the
 3 federal level but when you connect state
 4 contributions to access to federal candidates, that's
 5 tenuous.
 6 Q. And I take it it's not so tenuous if
 7 you're talking about a state legislator or the
 8 governor of a state?
 9 A. Correct.
 10 Q. Are you aware of any spending decisions by
 11 the national party committees for soft money that is
 12 affected by soft money donations to state parties?
 13 A. No.
 14 Q. I'll just make it as broad as I can. To
 15 your knowledge, is there any correlation or
 16 connection between expenditure decisions by the
 17 national committees and donations to state parties?
 18 MS. BREGMAN: The national committee or --
 19 MR. CARVIN: -s.
 20 MS. BREGMAN: All committees.
 21 THE WITNESS: Say that again.
 22 BY MR. CARVIN:
 23 Q. Are you aware of any connection or linkage
 24 between the expenditure decisions by the three
 25 national committees and contributions to state

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1 parties?
 2 A. I can't cite you specific cases but the
 3 competition for money, particularly from the DCCC and
 4 the Democratic Senatorial Campaign Committee is
 5 intense and if a state party says, we need \$100,000
 6 for Senator Jones and we'll match it, that happens in
 7 some form.
 8 Q. Fair enough. And that's communications
 9 between the national and state party. I asked as
 10 broadly as I could so let me make it more specific.
 11 Are you aware of any linkage between expenditure
 12 decision by the three national committees and the
 13 fact that a candidate from the state raised money for
 14 the state party or a donor had given money to the
 15 state party and the donor or the candidate says, we
 16 want you to expend more money in the state?
 17 MS. BREGMAN: Objection, compound.
 18 BY MR. CARVIN:
 19 Q. As opposed to the state party?
 20 MR. HAMILTON: Did you understand that?
 21 That was a complicated question.
 22 MS. BREGMAN: Two questions.
 23 BY MR. CARVIN:
 24 Q. It was, and I was frankly trying to speed
 25 things up.

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1 MR. HAMILTON: And I appreciate that.
 2 THE WITNESS: I think what you asked, I
 3 think the statement I made a while ago is in response
 4 to that. There is a certain amount of trading off
 5 and matching and it can begin at the state level or
 6 at the federal level and that's customary.
 7 BY MR. CARVIN:
 8 Q. Yes. And I think I understood your first
 9 answer, which is there would be communications
 10 between the state party and the national parties
 11 where the extent of the expenditure by the state
 12 party could influence an expenditure decision by the
 13 national party. Do I have that correct?
 14 A. Uh-huh.
 15 Q. Now I'm thinking about a more complicated
 16 scenario. A senator from South Carolina raises money
 17 for the state party and then one of the national
 18 committees, in gratitude for that fund-raising,
 19 spends more money in South Carolina.
 20 A. I think the answer to that is yes because
 21 of the way the system works. And I think we might be
 22 splitting hairs here because there are various
 23 formula and techniques for the two congressional
 24 committees, the DCCC and the DSCC, to support
 25 candidates for Congress and the Senate. And I

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1 suspect that in some of the ways they conduct the
 2 negotiations, they do in fact do what you suggested.
 3 I mean, that would be one of the approaches to it.
 4 Now, for me to sit here and say, yes, that
 5 happened in Alabama in 1968, I can't.
 6 Q. You can't think of any specific examples?
 7 A. Well, in the Senate race in South Carolina
 8 this year -- I don't want this to get in the
 9 newspapers but what Alexanders who is the Democratic
 10 nominee gets from the DSCC is dependent upon -- not
 11 dependent upon but he agrees -- has agreed to raise
 12 so much money in order for the DSCC to match it. And
 13 some of that's soft and some of it's hard because
 14 there are certain uses of soft money in federal
 15 campaigns, as you know.
 16 Q. Okay. And the soft money he raises is
 17 going to the state party in South Carolina?
 18 A. Some of it goes to the coordinated
 19 campaigns which are controlled by the state party.
 20 Most of the time from a separate fund but they're
 21 controlled by -- legally they have to be controlled
 22 by the state party.
 23 Q. And I think we probably are splitting
 24 hairs so let me try it this way. A large donor from
 25 South Carolina gives a lot of money to the South

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1 Carolina state party. Are you aware of a
 2 circumstance where there was an informal or wink and
 3 nod agreement that because the donor had given money
 4 to the South Carolina party, the national committees
 5 would spend more money where that donor wanted them
 6 to?
 7 A. If Alexanders -- again, I'll be
 8 specific -- solicited that contribution for the state
 9 party, the DSCC would likely credit him that amount
 10 of money on what he agreed to raise. And that would
 11 determine in part how much money they give to his
 12 campaign.
 13 Q. And that's because they're coordinating
 14 things with the candidate, correct?
 15 A. That's correct.
 16 Q. And so I was trying to draw a distinction
 17 between -- now I have a donor. It won't work -- I'm
 18 thinking of Roger Milliken but since it's a
 19 Democratic party contribution it's probably not a
 20 good example. But could somebody like that who has a
 21 lot of money and decides to give it to a state party
 22 then have some kind of informal agreement with the
 23 national committee that you will now spend money in
 24 my state or to support my campaign, in other words,
 25 the donor?

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1 MS. BREGMAN: Speculation.
 2 THE WITNESS: I don't know.
 3 BY MR. CARVIN:
 4 Q. Have you ever heard of such a
 5 circumstance?
 6 A. No. I know Mr. Milliken. He's a good
 7 friend.
 8 Q. If you could turn, please, to paragraph
 9 15 of your declaration. I have a general question
 10 which I'll preface by reading the first two
 11 sentences. You state, "Except in very limited
 12 circumstances, the use of soft money by state parties
 13 for activities that affect federal elections should
 14 be severely restricted. National parties in the past
 15 transferred hard and soft money to state parties with
 16 key federal elections so that the state parties could
 17 use the money in legal ways that inevitably affected
 18 the federal elections."
 19 I guess my first question is, why does the
 20 fact that national party transfers were used in
 21 federal elections suggest to you that the use of soft
 22 money by state parties should be severely restricted?
 23 A. I don't know that I make that conditional
 24 statement. My first statement is that soft money
 25 should be limited -- contributions of soft money

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1 should be limited -- contributions to state parties
 2 of soft money should be limited in affecting federal
 3 elections because if you permitted state parties to
 4 spend soft money without limitations to support
 5 federal candidates, it would completely undermine any
 6 sort of limitation you had at the federal level.
 7 Q. So the idea is that if you limit soft
 8 money donations to the national parties, people would
 9 then start making contributions to the state parties?
 10 A. If there weren't a limitation on it, yes.
 11 Q. But the example you give is transferred
 12 from the federal parties to the state parties?
 13 A. Well, as the system currently works, the
 14 federal -- one or more of the federal parties make
 15 contributions to the state parties. The state
 16 parties match those contributions in some formula and
 17 they spend that money primarily for the coordinated
 18 campaigns, voter registration, get-out-the-vote and
 19 so forth on behalf of federal candidates. To permit
 20 state parties to spend soft money or to permit
 21 national parties to transfer soft money to state
 22 parties for federal candidates would just undermine
 23 the effectiveness of the proposed law or the law
 24 that's become effective in November.
 25 Q. And that would be a new phenomenon caused

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1 by the new ban on soft money?
 2 A. Right.
 3 Q. So are you aware under the current system
 4 of people making soft money donations to state
 5 parties as a way of circumventing any limitations to
 6 the federal committees or to otherwise channel money
 7 to them?
 8 A. Not as a way of circumventing
 9 contributions but certainly to enhance the impact of
 10 those contributions because in these cases, and I
 11 want to be specific about this. In this cases -- I
 12 want to be clear about it -- where the federal
 13 committees transfer money to states, they do it to
 14 aid federal candidates and the statements match that
 15 money frequently with soft money and that expands the
 16 total amount of money that can be spent on behalf of
 17 a federal candidate. And if you left that system in
 18 place, it would completely undermine the legislation
 19 that will become effective in November.
 20 Q. And so I'm clear, what if the state party
 21 was spending soft money for state and local
 22 candidates. Would that undermine the soft money
 23 legislation?
 24 A. Well, they can do that. At the first of
 25 this conversation, we talked a lot about mailers and

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1 generic this and generic that. If you permitted
 2 state parties to spend a lot of money for generic
 3 advertising that included federal candidates, you
 4 could obviate the effect of the BCRA.
 5 Q. Okay. I was talking about candidate
 6 contributions but let's switch to that. Let me make
 7 it as simple as I can. Some state elections, like in
 8 Virginia and New Jersey and Louisiana, are held off
 9 year, in different years than federal elections, is
 10 that correct?
 11 A. Kentucky, Virginia, Louisiana and
 12 Mississippi.
 13 Q. And let's assume that the Virginia
 14 Democratic party engaged in that generic advertising
 15 but only state and local candidates were on the
 16 ballot. Would that in any way create the appearance
 17 of corruption for federal candidates?
 18 A. I don't think it would have any effect on
 19 federal candidates. And I don't think the law
 20 affects state parties accepting money or spending
 21 money in those circumstances. It's just when federal
 22 candidates are on the ticket.
 23 Q. And I take it the difference is that in
 24 the federal years, some of the benefit goes to
 25 federal candidates as well as state candidates?

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1 A. If you had a television ad in a federal
 2 candidate's year, this year, and you said, vote
 3 Republican, vote for the Republican ticket and you
 4 spent a fair amount of money on that using soft
 5 money, and if that were in South Carolina, that would
 6 benefit Lindsey Graham. And if you said vote
 7 Democratic, that would benefit Alexanders.
 8 Q. But would it also benefit Governor Hodges
 9 and his Republican opponent?
 10 A. Absolutely, yes.
 11 Q. So it wouldn't exclusively benefit federal
 12 candidates?
 13 A. No, but it would benefit them.
 14 Q. Fair enough. And is your understanding of
 15 the FEC allocation formulas that exist now, without
 16 getting into the details, that they're trying to
 17 capture that proportional benefit to federal and
 18 non-federal candidates?
 19 A. It's my understanding of the law, of the
 20 BCRA, that that kind of generic ad would be
 21 prohibited with the new law.
 22 Q. Yes. And so I'm wondering, in your view,
 23 wouldn't some kind of proportional allocation --
 24 A. Oh, you're asking me an opinion, okay.
 25 Q. Wouldn't that avoid the undermining of the

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1 ban that you previously discussed if state parties
 2 could allocate between their federal and non-federal
 3 accounts for that kind of generic advertising?
 4 MS. BREGMAN: Beyond the scope of the
 5 direct testimony. Objection. Also calls for
 6 speculation.
 7 THE WITNESS: It's subject to abuse. You
 8 asked for my opinion.
 9 BY MR. CARVIN:
 10 Q. Can you give me an example of how -- I
 11 mean, what would be wrong with something that says,
 12 pick a number, you have to allocate 40 percent of the
 13 generic ad to your state soft money account and 60
 14 percent to your federal account. Wouldn't that avoid
 15 this notion that you could circumvent the soft money
 16 ban on the national part?
 17 MR. HAMILTON: I don't understand that
 18 question.
 19 THE WITNESS: I understand the question.
 20 My answer is that if you had that provision built in,
 21 it's subject to abuse and would be abused. People
 22 would figure out how to frame those generic ads to
 23 focus on federal candidates. I can't sit here and
 24 tell you how but I'm sure that would happen.
 25 BY MR. CARVIN:

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1 Q. You're a clever political strategist
 2 that's worked in these things and I'll give you a pop
 3 quiz. Sitting here today, can you think of how you
 4 could manipulate that to achieve --
 5 A. I don't think I could lay it out but I'm
 6 sure that you could find a way.
 7 Q. You can't think of one right now, though?
 8 MS. BREGMAN: Objection. That's asking
 9 for some sort of hypothetical. Maybe if we sat here
 10 for a couple of hours. But I think the witness twice
 11 answered the question and said he was sure it would
 12 happen.
 13 MR. CARVIN: I think he's answered the
 14 question. That's fine.
 15 BY MR. CARVIN:
 16 Q. Let me ask you this more generally. I
 17 take it from our prior discussion that one of the
 18 ways that access is provided is when the federal
 19 candidates or officeholders are involved in raising
 20 the soft money, correct?
 21 A. Yes.
 22 Q. And then we were talking just recently
 23 about how this spending could benefit federal
 24 candidates along with the state candidates. But
 25 would a soft money donation to a state party

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1 undermine the integrity of the process if a federal
 2 candidate wasn't involved in raising that money or a
 3 federal candidate didn't benefit from that money; for
 4 example, if the soft money was given directly to the
 5 gubernatorial campaign?
 6 A. I don't see how it would affect the
 7 federal candidates. And in that narrow frame, I
 8 don't think there is a problem with it. And I think
 9 that the law permits that.
 10 MR. CARVIN: Could we go off the record?
 11 MR. HAMILTON: Sure.
 12 (Discussion off the record.)
 13 (Recess.)
 14 BY MR. CARVIN:
 15 Q. Again, Mr. Fowler, on paragraph 15 of your
 16 declaration, you gave an example from the 1996
 17 election cycle where they transferred money to the
 18 democratic state parties in states where key
 19 elections were close. 1996 was obviously a
 20 presidential election year. Were the transfers made
 21 to states where the competition between President
 22 Clinton and Senator Dole was close or would this also
 23 involve other elections?
 24 A. This started before it was apparent that
 25 Senator Dole would be the nominee. This started in

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1 October of '95. And it went on with only minor
 2 interruption until I guess the end of July of '96.
 3 This was not an effort that affected every state and
 4 it was not continuous in those states where we did it
 5 so it was tailored to specific circumstances in given
 6 states. The impact or the presumed impact on the
 7 Presidential campaign was the number one criteria but
 8 if there were a race for governor or senate, that was
 9 a factor that became relevant and was taken into
 10 consideration.
 11 Q. And let's talk about -- you were not at
 12 the DNC in a non-Presidential cycle, right?
 13 A. That's right. I came in January of '95
 14 and left in January of '97.
 15 Q. In a non-Presidential election year, do
 16 you have any knowledge of whether or not the DNC does
 17 similar kinds of activities to aid gubernatorial or
 18 senatorial candidates?
 19 A. They do make contributions to assist state
 20 parties in those years and part of the criteria in
 21 selecting the states where they contribute their
 22 money is the degree to which there are gubernatorial
 23 races, senatorial races, the combination of those
 24 things. So they do make contributions in
 25 non-Presidential years that could affect a federal

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1 candidate.
 2 Q. Are you aware of circumstances where there
 3 was a competitive gubernatorial race but not
 4 competitive federal elections where the DNC would
 5 make transfers?
 6 A. I would have to think about that. I don't
 7 know. But in the abstract, they would likely do
 8 that. Or they might do it.
 9 Q. And then I don't want to mischaracterize
 10 what you said earlier but I think your assertion was
 11 that people who make substantial contributions would
 12 get their phone calls returned more readily or
 13 something like that?
 14 A. Uh-huh.
 15 Q. And when you say that, what if someone had
 16 made a substantial hard money contribution or would
 17 have been responsible for bundling hard money
 18 contributions, would they also in those circumstances
 19 be more likely to have their call returned?
 20 A. Yes. But moving from hard money to soft
 21 money changes at least for me the scope of the
 22 problems or the difficulty. Hard money is more
 23 limited or is limited, as you know. Soft money is
 24 not in its quantity. And I know that people, even
 25 wealthy people just are more inclined to take money

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1 out of the corporate treasury or the union treasury,
 2 for that matter, than they are out of their own
 3 personal accounts. And so the point I think there is
 4 that, sure, you can get a call returned by sending a
 5 hard money contribution but the scope of that kind of
 6 thing is significantly reduced when you move from
 7 soft money to hard money. You'll get less of that,
 8 what I consider undesirable feature to the system.
 9 I'm not naive. I don't think that this
 10 law will solve all the problems but I think it will
 11 reduce the scope and scale of the problem.
 12 Q. But I believe you were saying that the
 13 soft money contributions, for example, to the
 14 committee could range from 5,000 to \$400,000 from
 15 individuals?
 16 A. Uh-huh.
 17 Q. I take it if somebody gave a \$20,000 hard
 18 money contribution to, let's say the DNC, they would
 19 have equal or greater access than somebody who made a
 20 \$5,000 soft money contribution?
 21 A. Yes. But there would be fewer of them.
 22 Q. And how about in terms of your knowledge
 23 of candidates' responsiveness to contributions to
 24 their own campaigns. Are you familiar with the
 25 phenomenon where lobbyists will either bundle hard

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1 money contributions or serve as a host on a fund
 2 raiser for a particular candidate's campaign?
 3 A. Uh-huh.
 4 Q. And in those circumstances, is the
 5 candidate also likely to return the call of the
 6 lobbyist who is engaged in that activity?
 7 A. Yes. But again, it's a matter of scope
 8 and the number of people involved.
 9 Q. But candidates are rational actors and
 10 presumably they appreciate money going directly to
 11 them more than money that's going into sort of the
 12 large pile at the Democratic National Committee?
 13 A. That's correct.
 14 Q. And that's because they can control it and
 15 it directly benefits them, is that correct?
 16 A. Yes.
 17 Q. So in sum, you're not suggesting -- let me
 18 make the question clear. You're not suggesting that
 19 the problems of access are unique to soft money?
 20 A. I am not stating that the problems of
 21 access are unique to soft money. I am saying that
 22 soft money greatly expands that problem and makes it
 23 more pervasive in the political system.
 24 Q. And before we were chatting about access
 25 to federal candidates at these fund-raising events

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1 for political parties and things like that. To your
 2 knowledge, do federal candidates or officeholders
 3 also appear at fund-raising events for non-party
 4 advocacy groups to raise money for people like the
 5 Sierra Club or the National Organization of Women,
 6 that sort of thing?
 7 MS. BREGMAN: Objection, beyond the scope
 8 of direct.
 9 THE WITNESS: They do but it's much less
 10 frequent.
 11 BY MR. CARVIN:
 12 Q. And do the same opportunities for access
 13 to the candidates present themselves at those
 14 fund-raising events as would present themselves at
 15 the fund-raising events for parties you previously
 16 described?
 17 A. I'm not as familiar with those as I am
 18 with party fundraisers but to the extent that I am, I
 19 think the intimacy, the size of the crowd, that sort
 20 of thing is categorically different. Plus, it's my
 21 experience, and I think this is accurate and true for
 22 most of the fund-raising activities of these special
 23 interest groups, only the people who are already
 24 supportive of those organizations and entities get
 25 invited. It's not that there is some question as to

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1 their commitment at the Sierra Club or the National
 2 Right to Life group invites an elected official
 3 that's somebody who is already in the fold. That's
 4 not somebody who is likely to be hit up for something
 5 having to do with steel imports or whatever the issue
 6 might be. The point I'm making is that in those
 7 circumstances, it's the issue that's the guiding
 8 principle and not money.
 9 Q. Well, let me focus more specifically on,
 10 let's say the AFL-CIO engages in voter mobilization
 11 and get-out-the-vote activities for a particular
 12 candidate. Would that candidate, if elected, be more
 13 inclined to provide preferential access to the
 14 AFL-CIO because of the help he or she received during
 15 the campaign?
 16 A. Probably, but the AFL-CIO would probably
 17 not contribute to that person's campaign unless they
 18 were -- unless they knew that he or she supported
 19 their cause anyway.
 20 Q. So that would be an example, even if there
 21 is an appearance of preferential access tied to the
 22 money, that preferential access would have been
 23 granted because they share a common political view?
 24 A. I think so.
 25 Q. So let's say in my first hypothetical -- I

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1 don't know if these numbers are realistic. The
 2 AFL-CIO had spent \$500,000 on this get-out-the-vote
 3 activity. Does a \$500,000 contribution from the
 4 AFL-CIO to the DNC that's used for precisely the same
 5 kind of get-out-the-vote activities I just described
 6 create an appearance of the candidate who benefited
 7 granting preferential access to the AFL-CIO?
 8 A. There are two differences in the analogy
 9 that you're establishing. One is what I've already
 10 said, that for the special interest groups, the
 11 people who are invited to their events and most of
 12 the people who are beneficiaries of their largess are
 13 the people who are already for them. So it's kind of
 14 a closed system there. When you get to party
 15 contributions and candidate contributions generally,
 16 you create the opportunity for people who have their
 17 own special interest to lobby the governmental
 18 official. The harmony of issues agreement is not
 19 there and by going to a party or generally a
 20 candidate fund raiser, you get people from all walks
 21 of life coming in there and if they have large
 22 contributions, they are much more likely to have
 23 access to that party or that candidate than if you're
 24 dealing with an event sponsored by the AFL-CIO or the
 25 chamber or commerce or whatever it is because they

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1 contribute and they invite people characteristically
 2 to their events who are already for them. So they
 3 have, in most cases, nothing special to lobby this
 4 particular group of people for.
 5 Q. Let me make sure I understand you. I'm
 6 using the AFL-CIO as an example of a special interest
 7 group that has strong support to the Democratic
 8 party. The first question is, you say, in the one
 9 example, there is already --
 10 A. Issue agreement.
 11 Q. Issue agreement. And don't you think that
 12 the AFL-CIO is a substantial contributor to the
 13 Democratic party because there is preexisting issue
 14 agreement?
 15 A. Not on NAFTA.
 16 Q. Right.
 17 A. There are a number of points on which the
 18 AFL-CIO and the Democratic party would agree. Or a
 19 democratic president, for that matters. There are
 20 areas where they don't agree and NAFTA is one. And I
 21 would say that the AFL-CIO coming to a Democratic
 22 party event bringing a big check is not the same as
 23 David Bonior going to the UAW event in Michigan
 24 because David Bonior going to a UAW meeting in
 25 Michigan, he's already there, he's with them. When

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1 the AFL-CIO comes to the Democratic party, sure,
 2 there are areas of agreement but there are also areas
 3 of disagreement, NAFTA being the most obvious at this
 4 moment in time but there are others.
 5 To be specific, there are lots of areas of
 6 disagreement between the Clinton Administration and
 7 the AFL on welfare reform legislation and on -- there
 8 was another significant issue that escapes me right
 9 now. So what I'm saying is, the analogy between any
 10 special interest, AFL-CIO and a congressman or a
 11 senator at a meeting, receiving a contribution from
 12 them is different from the AFL-CIO or other interest
 13 groups coming to the Democratic party or to a
 14 Presidential fundraiser because you get a very
 15 different orientation as to why they give or what
 16 they might want out of the gift.
 17 Q. Right. But the AFL-CIO largely agrees
 18 with the Democratic party but they would disagree on
 19 an issue such as NAFTA. If the AFL-CIO devoted
 20 hundreds of thousands of dollars to a candidate's --
 21 to a get-out-the-vote effort that benefitted a
 22 federal candidate because they perceived him as
 23 wavering on NAFTA and were seeking to influence his
 24 views on that, wouldn't that be a more effective way
 25 of having agreement and access to the candidate than

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1 giving the \$500,000 to the DNC for similar
 2 get-out-the-vote activity?
 3 A. Yes, but they can't give that kind of
 4 money to federal candidates either under the existing
 5 law or the new law.
 6 Q. Right. But they could run generic phone
 7 banks, other efforts to turn out union members or
 8 people they know in a way that would directly benefit
 9 the federal candidate, couldn't they?
 10 A. Yes, but under the new law, they could do
 11 that only from their union PACs and could not use
 12 soft money contributions to do that.
 13 Q. Correct me if I'm wrong, I thought that
 14 they couldn't spend the union treasury funds on those
 15 broadcast advertisements but they could spend union
 16 treasury funds on phone banks and generic please turn
 17 out at the polls activities?
 18 MR. HAMILTON: I think I will make the
 19 obvious point that Mr. Fowler isn't a lawyer. He
 20 obviously has some familiar by with the Act but he's
 21 testifying from a layman's perspective of what the
 22 Act says and what it doesn't say.
 23 BY MR. CARVIN:
 24 Q. Fair enough. I'm not trying to quiz you
 25 on the Act. Do you perceive a potential appearance

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1 of corruption or undue influence over the candidate
 2 if the AFL-CIO does engage in substantial
 3 expenditures from its union treasury for
 4 get-out-the-vote activities that would benefit a
 5 federal candidate?
 6 A. Yes.
 7 Q. And is that appearance or problem similar
 8 to the appearance or problem you perceive with the
 9 AFL-CIO giving \$500,000 to the Democratic National
 10 Committee, or is it different?
 11 A. I would say in that case, beauty is in the
 12 eye of the beholder. It would make a difference from
 13 my perspective. Let me ask your question more
 14 seriously. I think the appearance of a \$500,000
 15 check is probably more offensive than grass roots
 16 political work, even though it might cost the same
 17 amount of money. The appearance.
 18 Q. From the public's perspective?
 19 A. Yes.
 20 Q. What about from the candidate's
 21 perspective. If the AFL-CIO gives a \$500,000 check
 22 to the DNC, that money could go a lot of different
 23 directions that may or may not benefit the candidate
 24 but if they spend an equivalent amount of money in
 25 the candidate's state that directly benefits him,

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1 presumably he would be more appreciative of that
 2 direct effort than the indirect benefit that he might
 3 get from the contribution to the DNC, isn't that so?
 4 MS. BREGMAN: Objection, beyond the scope
 5 of the direct and calls for speculation.
 6 THE WITNESS: The AFL-CIO I think, under
 7 the current law, and I don't know what the new law
 8 says on this point, can spend union treasury money
 9 only with its members and not with the general
 10 public.
 11 BY MR. CARVIN:
 12 Q. You mean to get its members out?
 13 A. Yes.
 14 Q. But that, in a number of states, has a
 15 very important impact on --
 16 A. Yes. Smaller areas and fewer
 17 congressional districts and states every election
 18 cycle. In Michigan, in Detroit, Wayne County, in
 19 Chicago, Cook County, yes, they still have a lot of
 20 input.
 21 Q. I'm just trying to get a sense of -- since
 22 the party acts as a buffer, if you will, when the
 23 AFL-CIO gives them the money in the sense that the
 24 party may not spend it on the candidate, if the
 25 AFL-CIO does engage in expenditures which

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1 get-out-the-vote then benefits a candidate, wouldn't
 2 the appearance in the second situation be worse than
 3 in the first situation?
 4 A. In my judgment, the appearance.
 5 Q. And when you were chairman of the DNC, did
 6 you ever solicit money to provide contributions to
 7 state and local candidates?
 8 A. Specifically? I don't think so.
 9 Q. In your mind, does --
 10 A. To the extent that we spent money at the
 11 state level, it was almost entirely with state
 12 parties and not with individual candidates.
 13 Q. And now I'm not talking so much about DNC
 14 spending money as sending out a letter. I have some
 15 letters from the chairman of the RNC that says, this
 16 is an important election for mayor or governor,
 17 please send some money to mayor or governor. In your
 18 mind, does that create this problem of preferential
 19 access to federal officeholders since the federal
 20 officeholder is not beneficiary of the solicitation?
 21 A. I don't think so but I don't think I ever
 22 did that, not that I would have any particular
 23 objection to it but -- I don't think I see the
 24 relevance of the question but I never did it so I
 25 don't --

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1 Q. How about -- I'm sorry.
 2 A. To the extent that I know about that kind
 3 of activity, it never involved big money. It's
 4 always relatively small amounts of money, both in
 5 terms of the sum and in terms of the individual
 6 contributions.
 7 MR. HAMILTON: Mike, do you want to take a
 8 break?
 9 MR. CARVIN: It's entirely up to you.
 10 (Recess.)
 11 BY MR. CARVIN:
 12 Q. During your tenure at the DNC, do you
 13 recall what the average soft money donation was?
 14 A. It would absolutely be a guess. I don't
 15 know.
 16 Q. And how about now, do you know what it
 17 would be now?
 18 A. No.
 19 Q. Do you know if it was less than \$20,000?
 20 A. Are you asking for the median or the mean?
 21 Q. I'll ask both.
 22 MS. BREGMAN: I think he said average.
 23 THE WITNESS: This is a guess, that the
 24 median would be less than 20,000. I think it would
 25 be less than 15 probably. The mean would be over 20,

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1 I would think, because there were some fairly large
 2 contributions, I mean, several hundreds of thousands
 3 of dollars.
 4 BY MR. CARVIN:
 5 Q. Do you have any idea of the comparable
 6 numbers for the Republican National Committee?
 7 A. No. The RNC raises more soft money than
 8 we do but in what sums, I don't know. The RNC raises
 9 more hard money too but I don't know what sums.
 10 Q. When I use the term issue ads, I'm using
 11 it as you refer to it in your declaration. Do you
 12 know what percentage of issue ads are done by parties
 13 as opposed to outside groups?
 14 MS. BREGMAN: Beyond the scope of the
 15 direct but you can answer.
 16 THE WITNESS: I don't have any intelligent
 17 opinion about the total. I do know that that varies
 18 from place to place and district to district
 19 depending on who the candidate is, what the
 20 circumstances are. In some places, you don't get
 21 many issue ads at all. In others, you're just
 22 overwhelmed with them. You're overwhelmed mostly in
 23 districts that are highly competitive.
 24 BY MR. CARVIN:
 25 Q. Do you have a view as to whether or not

1 the amount of issue ads by non-party groups will
 2 decrease after the BCRA?
 3 MS. BREGMAN: Objection. I'm not sure
 4 that doesn't call for some sort of legal conclusion.
 5 If you understand the question and have a view, you
 6 may understand.
 7 THE WITNESS: If the provision affecting
 8 issue ads is upheld, it will eliminate them. I mean,
 9 not eliminate them. It will significantly reduce
 10 them because most of those are done in reasonable
 11 proximity to elections.
 12 BY MR. CARVIN:
 13 Q. But they could use PAC money to run issue
 14 ads, is that correct?
 15 MS. BREGMAN: Objection, calls for a
 16 conclusion about what the law permits and doesn't
 17 permit. If you have an understanding of the
 18 provisions and can answer, you may go ahead.
 19 THE WITNESS: I don't know the answer. I
 20 simply don't know what the provisioning law is on
 21 that.
 22 BY MR. CARVIN:
 23 Q. Do you know that the parties can't use
 24 soft money to run issue ads at any time?
 25 A. Federal parties cannot, may not, period.

1 State parties may not in any circumstance that
 2 affects a federal candidate.
 3 Q. Do you have a view, in light of that
 4 answering, as to whether or not the advertisements
 5 referencing an identified federal candidate by
 6 parties will decrease after the BCRA is enacted?
 7 A. I would guess that it would. I want to
 8 reconsider that answer. I don't claim that this is
 9 comprehensive total knowledge but every issue ad I've
 10 ever seen, there has been almost no mention of party
 11 except on the tag line.
 12 Q. Right. But my question was as it
 13 mentioned candidates. Maybe I'm not being clear. Do
 14 you think the amount of ads run by parties, national
 15 or state, that mention federal candidates will
 16 decrease when the BCRA becomes effective?
 17 A. Yes. I misunderstood your question.
 18 Q. And I think in your declaration and
 19 otherwise, if you want to refer to paragraph 12, you
 20 say that the parties are locked in an arms race with
 21 each other where they fear being outspent and losing
 22 key federal and state locations. Paragraph 12.
 23 MS. BREGMAN: The first paragraph 12.
 24 MR. CARVIN: Are there two paragraph 12s?
 25 I'm sorry, you're right.

1 BY MR. CARVIN:
 2 Q. The first paragraph 12 at the top of page
 3 5.
 4 A. Well, there are two paragraph 12s.
 5 Uh-huh.
 6 Q. Did the parties believe that, during your
 7 tenure, that there was a correlation between the
 8 amount of money you spent on the race and your
 9 chances of winning?
 10 A. We believed that there was a correlation
 11 between how much we had as compared to how much
 12 Republicans had. That was the correlation, not so
 13 much the total sum but the relationship between what
 14 we had and what the Republicans had.
 15 Q. You wanted to stay competitive or
 16 equivalent with the amount of money that the
 17 Republicans were spending?
 18 A. Right.
 19 Q. And was that because you felt if you were
 20 outspent, that the chances of the Republican
 21 candidate being elected would be higher?
 22 A. There is a lot of evidence to that.
 23 Q. Was there a significant growth of soft
 24 money in the last 14 years or so?
 25 A. Yes.

1 Q. Do you have those figures in your head?
 2 A. No. They are readily available but I
 3 think this is correct that up through and including
 4 the '84 Presidential race, soft money was just a --
 5 it was hardly a concept that anybody understood. It
 6 gained some use in '88 but still not much. It really
 7 took off in '92. And I think that was -- well, this
 8 is speculation. I think that was more an evolution
 9 of lawyering than it was political skill. I mean, it
 10 was finding an interpretation of the '74 act that
 11 omitted it.
 12 Q. So I take it, then, that soft money is an
 13 important source of funding for the national parties
 14 at this time?
 15 A. Absolutely.
 16 Q. And when I say soft money in the state
 17 context, I mean money they raise that's not subject
 18 to federal limitations. Do you know the extent to
 19 which soft money is an important source of funding
 20 for state parties?
 21 MS. BREGMAN: Beyond the scope of the
 22 direct but you can answer.
 23 THE WITNESS: It varies widely from state
 24 to state. I don't have any general comprehensive
 25 view. In some states, they have much tougher

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1 legislation and laws than the '74 act before it was
 2 re-interpreted in the late '80s and '90s. I mean,
 3 the limitations are very strict. What has happened
 4 in some of those states is that they have found ways
 5 around those limits just as we did around the '74
 6 act.

7 BY MR. CARVIN:

8 Q. And how about transfers from the national
 9 parties to the state parties. Is that an important
 10 source of funding for the state parties?

11 A. On the democratic side, no, except in a
 12 very few cases. It's my understanding that when
 13 Haley Barbour was chair and his predecessors, that
 14 the RNC, in a general way, subsidized the operation
 15 of most state parties, most Republican state parties.
 16 That's a function of both the capacity to do it,
 17 financial capacity to do it and -- well, this gets
 18 into party stuff. The Republican party is much more
 19 of a federal organization. The Democratic party is
 20 much more of a confederate organization. The state
 21 parties have more independence legally in the way
 22 they do things. It's my understanding that the RNC,
 23 in its relations to the state Republican parties, can
 24 induce state parties to do things that you can't do
 25 in the Democratic party.

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1 So what I'm saying is both in terms of
 2 financial capacity and the traditions of governance
 3 within the party, one would anticipate that the
 4 Republican party would have more of a -- more
 5 generous and a more general system of the RNC
 6 subsidizing the state parties.

7 Q. Just so I'm clear, when you say more
 8 general, you mean they tend to coordinate more
 9 closely with the state parties than with --

10 A. And with more parties.

11 Q. And with more parties?

12 A. More states parties. They get closer to
 13 50 and they do it on a wider scale and they do it
 14 more generously. When Haley was the chair, at least
 15 for a while, the RNC paid the salary of the executive
 16 director of all the state parties. At least that's
 17 what I was led to believe and I think that's true.
 18 The Democratic party never did anything like that.
 19 So there is a difference between the parties there.

20 Q. And I know you don't know the precise
 21 numbers. Do you know the percentage of the DNC's
 22 budget that was soft money in '96 versus hard money
 23 in rough terms?

24 A. Give me a second. I can get close. It
 25 was approximately 2 to 1. 2 soft, 1 hard. This is

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1 in the two-year period, the two-year cycle, '95 and
 2 '96.

3 Q. Do you know the equivalent numbers for the
 4 RNC during that period?

5 A. I think that the relationship 2 to 1 was
 6 right but in both cases, it was a larger sum.

7 Q. And do you know the numbers for the 2000
 8 cycle?

9 A. No. I don't think they were materially
 10 different but I don't know that.

11 Q. Let's focus on 1996 when you were there,
 12 '95, '96. Do you know what percentage of soft
 13 money -- the question is, what was the soft money
 14 spent more? Do you know how it was broken down, the
 15 DNC's expenditures of soft money? And I'm thinking
 16 in terms of ads or state parties or get-out-the-vote.

17 MS. BREGMAN: Goes beyond the scope of the
 18 direct but you can answer.

19 THE WITNESS: There are limitations.
 20 There are some things you have to spend hard money
 21 for. I can't give you specifics on that but -- and
 22 there are some things that you can spend both hard
 23 and soft money for and indeed you have to spend some
 24 hard money. Generally speaking, in a non-election
 25 year, '95, you could spend 60 percent soft and 40

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1 percent hard. In an election year, it was just
 2 reversed. That's my memory.

3 BY MR. CARVIN:

4 Q. In light of those allocation formulas, do
 5 you know how much of however much soft money the DNC
 6 had, how much of that was devoted to broadcast
 7 advertisements versus transfers to state parties
 8 versus get-out-the-vote or administrative expenses?

9 A. For the issue ads, for the coordinated
 10 campaigns, for certain research activities that
 11 benefitted the federal candidates as well as the
 12 party generally, there was always a combination of
 13 hard and soft. And that was true for some salaries
 14 of employees, not all but some.

15 On the issue ads, including both years, I
 16 think we spent about 60 percent soft and 40 percent
 17 hard. I'm not sure of that.

18 Q. And would that work the same way whether
 19 you had transferred the money to the state parties
 20 and they ran the issue ad?

21 A. No. If you transferred the money to the
 22 state parties, you actually get a smaller requirement
 23 for hard money. That was one of the reasons for
 24 transferring it to the state parties.

25 Q. Right. And when you were referencing

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1 these ads that you ran in the '96 election cycle, was
 2 there some agreement with the state parties that they
 3 would spend it on ads before you transferred the
 4 money to them?
 5 A. Absolutely.
 6 Q. There was nothing improper or illegal
 7 about that?
 8 A. No.
 9 Q. And I take it one of the motivations was
 10 to take advantage of this different allocation
 11 formula?
 12 A. And I never did understand the provision
 13 in the law that permitted that but it was very
 14 closely and carefully checked out.
 15 Q. Do you know how much money either in '96
 16 or today state parties spent on voter mobilization
 17 efforts as opposed to other activities?
 18 A. How much?
 19 Q. Yes.
 20 A. State parties?
 21 Q. Yes.
 22 A. No. I mean, it varies all across the lot.
 23 It depends on what kind of races you have in the
 24 states and, in a Presidential year, what probability
 25 you have of carrying that state. All of those kinds

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1 of factors. I mean, in a state you know you're going
 2 to win or lose, you don't spend a lot of money there.
 3 You put all your money in the competitive states.
 4 And so in a state like South Carolina, neither the
 5 Democrats nor the Republicans would spend a lot of
 6 money because you knew who was going to win. It was
 7 sort of a waste of money from both sides. In a place
 8 like Missouri or Michigan, it's big bucks. But I
 9 don't know the sums.
 10 Q. Do you know generally whether or not state
 11 party spending for voter mobilization has increased,
 12 decreased or remained the same?
 13 A. It's increased substantially because the
 14 art, the practice of doing that has increased and it
 15 has greater effect now so you spend more money on it.
 16 Q. Is this what they call the ground game?
 17 A. Yes, the ground war.
 18 Q. The political lore I've heard is that the
 19 Democrats have been better at the ground game in '98
 20 and 2000 than the Republicans. Do you agree with
 21 that?
 22 A. Yes, my son ran it in 2000, so I do.
 23 Q. You have a conflict of interest.
 24 A. That is the general reputation. I put in
 25 a plug for my son but that is the general reputation.

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1 This is just talk and not really relevant. I don't
 2 know why that is because it used to be just the
 3 opposite. I mean, I don't know why Republicans have
 4 lost the edge on that because they used to have a
 5 better effort in that than we do. And I think it
 6 continues to this year as well, at least what I hear
 7 anecdotally from various states and I know it's the
 8 case in South Carolina.
 9 Q. When you were at the DNC, did you ever
 10 contribute money directly to state and local
 11 candidates, to your knowledge?
 12 A. Candidates? I don't recall spending a
 13 dime or contributing a dime to any candidates.
 14 Q. Do you know if the Republicans ever do
 15 that?
 16 A. We would contribute money to state parties
 17 with the understanding that they would use that money
 18 for a get-out-the-vote effort or something like that
 19 in a district where it was very competitive, but if
 20 you mean taking money out of the DNC treasury and
 21 putting it in candidate Jones' treasury, no.
 22 Q. Do you know if they do that today?
 23 A. I don't think so. I'm relatively sure
 24 they don't.
 25 Q. How about the Republicans? Do you know

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1 one way or the other?
 2 A. I don't think the Republicans ever did
 3 that. The money that goes to the candidates, as I
 4 said earlier, comes from the congressional
 5 committees, the RNSC or the RNCC and their
 6 counterparts of the Democratic side. That's where
 7 the money goes. From those committees is where the
 8 money gets to the candidates.
 9 Q. And how about -- you said before that some
 10 of the money would go to, say, get-out-the-vote.
 11 Would you sit down with the state parties and come up
 12 with what I think they called victory plans?
 13 A. This was a very elaborate undertaking and
 14 it had and has many moving parts to it and it's
 15 funded in a wide variety of ways. It's not only
 16 money from the DNC or the RNC and the state parties,
 17 it's money from individual candidates' campaign funds
 18 and money from allied groups. It's a very elaborate
 19 process.
 20 Q. How would the allied groups get into --
 21 A. Well, on the democratic side, the AFL-CIO
 22 and I would chip in \$50,000. They would have a seat
 23 at the table as to how the money was to be spent. On
 24 the Republican side, in South Carolina, the Christian
 25 Coalition would be a part of it and they would chip

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1 in money and they would have a seat at the table.
 2 Q. And they would spend that money directly
 3 or they would give it to somebody?
 4 A. This was for the -- in some very limited
 5 cases, for voter registration but more directly,
 6 comprehensive, for get-out-the-vote. But that has to
 7 be -- under the current law, that has to be run and
 8 controlled legally by the state party.
 9 Q. So would you meet with the state parties
 10 and kind of work out this coordinated game plan?
 11 A. It's very elaborate.
 12 Q. So everybody would understand if the DNC
 13 was chipping in, where that money would be going to
 14 as part of this game plan?
 15 A. Oh, absolutely.
 16 Q. And would you allocate between
 17 get-out-the-vote and administrative expenses, for
 18 example, and advertisements?
 19 MS. BREGMAN: Objection as going way
 20 beyond the scope of the direct.
 21 THE WITNESS: No advertising. This was
 22 just ground game.
 23 BY MR. CARVIN:
 24 Q. Could you, for example, pick up some of
 25 the administrative expenses of the state party as

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1 part of this effort, or was this all just
 2 get-out-the-vote?
 3 A. Just the cost that was directly related to
 4 get-out-the-vote, salaries of the people who worked
 5 and the office rent where your offices were.
 6 Q. I see. And how about direct mail or that
 7 kind of stuff. Would that be part of this?
 8 A. Comes out of that same program.
 9 Q. And do you know how much on average state
 10 parties spend on these direct mail pieces these days,
 11 what percentage?
 12 A. I couldn't break that down.
 13 Q. And when you were at the DNC, were you
 14 part of an aggressive fund-raising campaign?
 15 A. Yes. Very.
 16 Q. Did you try and identify every potential
 17 donor?
 18 A. Uh-huh.
 19 Q. And that would be true of hard money
 20 donors as well as soft money donors?
 21 A. Yes.
 22 Q. Sometimes, I take it, they were the same
 23 entity or person, would be hard money and soft money?
 24 A. If you had somebody who was really
 25 sympathetic or for that matter somebody who was

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1 really aggressive in pursuing their interests, they
 2 would conceivably max out on the hard and give above.
 3 Q. Was that rare?
 4 A. Relatively, yes.
 5 Q. How many individuals do you know that
 6 percentagewise would give the \$20,000 maximum?
 7 A. I don't know, but it's small. \$20,000 out
 8 of your own pocket is a lot of money, even for rich
 9 people. There are exceptions but that's a lot of
 10 money.
 11 Q. And did you use direct mail solicitation?
 12 A. This was an entirely different program.
 13 Direct mail -- and this is true of the RNC as well as
 14 the DNC -- is used to solicit contributions of under
 15 \$100. If you get a contribution over \$100 out of
 16 direct mail solicitations, it's a miracle. That's
 17 where -- I think this is right -- most of the hard
 18 money comes from. Because somebody sends you \$50,
 19 they don't send you \$50 on a corporate check, they
 20 send you \$50 out of their pocket. And both the RNC
 21 and the DNC do that and the RNC has been doing it
 22 consistently over a longer period of time and they
 23 raise a good bit more money than we do but we're
 24 catching up, but the RNC essentially funds their
 25 basic administrative cost out of that money, which is

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1 a huge accomplishment. But this money comes in 25,
 2 50, 75, sometimes 100, sometimes 10 or \$5. The
 3 average contribution of RNC I think is \$37 and the
 4 average contribution to DNC is \$22. And there are
 5 hundreds of thousands of those people.
 6 Q. So I take it the return on these direct
 7 mail solicitations is pretty small?
 8 A. 60 percent. Costs of about 40 percent.
 9 Q. If you could turn to paragraph 14 of your
 10 declaration, please. You make the point in this
 11 paragraph that national, state and local party
 12 committees raised \$741 million in the '99-2000
 13 election cycle. Is that hard and soft money you're
 14 referring to?
 15 A. It's hard money, I think.
 16 Q. Just hard money?
 17 A. Yes. Awful lot of hard money. A major
 18 portion of that came through President Bush's
 19 campaign because of the way he chose to fund his
 20 campaign. Over \$100 million of that comes directly
 21 from that one campaign.
 22 Q. And when you say chose it, he didn't
 23 accept the federal spending limits?
 24 A. In the nominating process. He did in the
 25 general election but in the nominating process, he

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1 didn't.
 2 Q. Do you know how much soft money at the
 3 national committees there was in the 2000 election
 4 cycle? Does 515 million sound right to you?
 5 A. No. That's much too high.
 6 Q. For all six committees?
 7 A. Oh, for all six? Now, keep in mind that
 8 this is national, state and local party committees.
 9 The six federal committees -- that sounds like a
 10 little -- are we talking about hard or soft money?
 11 Q. Soft.
 12 A. The soft money for the six federal
 13 committees --
 14 MS. BREGMAN: What is the question,
 15 whether that number sounds right to the witness? Is
 16 that the question?
 17 BY MR. CARVIN:
 18 Q. Do you know?
 19 A. That's in the ballpark. I don't know but
 20 that's in the ballpark. The DNC raised about 125 and
 21 the RNC about 175 and so that would be -- what would
 22 that be? 300,000?
 23 Q. 300 million.
 24 A. 300 million. And then the other four,
 25 that would be close.

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1 Q. Do you think there is a reasonable
 2 prospect that -- now just focused on the national
 3 committees -- can increase their hard money donations
 4 by roughly \$500 million?
 5 A. No.
 6 Q. So there will be a net loss of revenues
 7 for the national committees when soft money is
 8 banned?
 9 A. Right. But there will also be an increase
 10 in hard money too.
 11 Q. Do you have a reasonable estimate of how
 12 much that increase --
 13 A. There will be an increase for two reasons.
 14 One, the limits have been raised, as you know. So
 15 more people will give more. Plus the parties will
 16 focus proportionally -- they'll focus all of their
 17 efforts on raising hard money. And I give you one
 18 example. I can't give you a similar example on the
 19 Republican side but the DNC raises money in
 20 increments of less than \$100 and more than 5,000.
 21 Huge gap in there. Plenty of money out there but the
 22 DNC has never been organized enough to do that.
 23 They'll have to now. So they'll raise more money.
 24 If it's half of that \$541 million or whatever the
 25 figure is you used, I would be surprised, but it will

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1 be more than what it was in the '99-2000 cycle.
 2 Q. I'm sorry, I really didn't follow your
 3 point. They raise in increments less than 100 and
 4 more than 5,000? What point does that lead you to?
 5 A. We get a lot of small contributions and
 6 between \$100 and \$5,000, we raise virtually no money.
 7 And there are a lot of people out there in the world
 8 who will give a thousand dollars -- when I say we, I
 9 mean Democrats, DNC. But we don't ever ask them.
 10 George Bush proved how much money there is out there.
 11 Of course there is more on the Republican side than
 12 on our side. There are still a lot of people who
 13 will give you \$1,000 but we have never had an
 14 organization or structure in our program to solicit
 15 money at that level. We will now.
 16 Q. Well, where will you find these people?
 17 Presumably the DNC has been looking hard for hard
 18 money donors in the past?
 19 A. But it starts at \$5,000. There is no
 20 systematic solicitation for hard or soft money
 21 between \$100 and \$5,000 at the DNC.
 22 Q. But these direct mail solicitations will
 23 include a thousand dollars or --
 24 A. Nobody ever sends you a thousand dollars
 25 through the mail. When I say nobody, I don't mean

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1 that absolutely literally but realistically, nobody
 2 sends you a thousand dollars in the mail. If you get
 3 a check over \$100, it's rare.
 4 Q. And how about the increase in the
 5 contribution limits. You would just be going from 20
 6 to \$25,000. Is that your understanding?
 7 A. I think that would be more relevant to
 8 candidates than it would be to the party.
 9 Q. The increase in contribution limits?
 10 A. Uh-huh.
 11 Q. I was about to make the point, it's hard
 12 to figure out who that 20 to \$25,000 donor might be.
 13 A. Uh-huh.
 14 Q. So you wouldn't think that would be a big
 15 factor in terms of increasing the hard money for
 16 parties as opposed to candidates, the increased
 17 contribution limits?
 18 A. Say that again, I'm sorry.
 19 Q. You do not believe that the increased
 20 contribution limits will have a substantial effect on
 21 the increased amount of hard money for parties as
 22 opposed to candidates?
 23 MS. BREGMAN: Objection, lack of clarity.
 24 BY MR. CARVIN:
 25 Q. One of the previous that you previously

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1 alluded to for why they could raise for hard money
 2 was that the contribution limits would be raised.
 3 But do you think that raising the cap from 20,000 to
 4 25,000 will really have a material beneficial impact
 5 on the amount of hard money captured by national
 6 parties?
 7 A. Yes. Most of those people, not all, most
 8 of those people who give \$5,000 or more will give the
 9 party the max that they can, which is 2000, 2000 and
 10 a fraction, I think. Whatever. They'll give the
 11 max. In the past, at the DNC anyway, we didn't have
 12 any money there at that level so all of the people
 13 who gave us \$5,000 or more will give us \$2,000. And
 14 the money that we get from the direct mail
 15 solicitations will grow incrementally and some of the
 16 people -- I'm getting confused here. I stated that
 17 incorrectly.
 18 I believe with the redirected fund-raising
 19 effort, the DNC will identify a great many people who
 20 will give us \$2,000. That will be in addition, that
 21 will be a piece of money that we do not get now. All
 22 hard money. I think the people who currently give us
 23 5, 10, 15, 20,000 in hard money will continue to do
 24 that and some few of them will move up from 20 to 25.
 25 But I think that's a relatively small group of

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1 people. So if you look at the total hard money that
 2 we will get, I don't know why we would get less hard
 3 money between 5,000 and 25 than we have in the past.
 4 We will get that and maybe a little more. But I
 5 think we will pick up a great deal of hard money at
 6 the 2,000 and \$1,000 level simply because the DNC
 7 will have to solicit money at that level to replace
 8 the soft money.
 9 Q. Have you sought to estimate in any
 10 systematic way the increase in hard money that will
 11 be going to the national --
 12 A. I haven't. I have knowledge that somebody
 13 over at the DNC is doing that and I'm sure somebody
 14 at the RNC is too but I don't know what the figures
 15 are.
 16 Q. And how about the states. Do you think
 17 the states will be able to replace --
 18 A. I don't know. I understand the question.
 19 I have no idea. Some will and some won't because
 20 some state parties are effective and some aren't.
 21 Q. You say that -- two paragraph 12s again.
 22 A. Which paragraph 12? The one in the middle
 23 of the page?
 24 Q. The second paragraph 12 on page 5. You
 25 say that national parties can perform their important

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1 functions without large soft or hard money
 2 contributors, correct?
 3 A. Correct.
 4 Q. I guess the first question is, what do you
 5 mean by large in that sentence?
 6 A. 10, 15,000.
 7 Q. And what do you mean by their important
 8 functions in that sentence?
 9 A. As I said this morning, I believe that we
 10 spent a lot more money in this American political
 11 system than is necessary to inform the voters, than
 12 is necessary to give them enough information to make
 13 a rational decision. I can't be precise but I think
 14 that both national parties or all six national
 15 parties if you want to include the congressional
 16 parties can, with the hard dollar limitations that
 17 are currently established, that are established in
 18 the new legislation, can do the necessary research,
 19 do the necessary -- perform the necessary
 20 communications functions, buy the media, do the
 21 necessary grass roots voter registration,
 22 get-out-the-vote and conduct otherwise effective
 23 campaigns for half the money that we now spend.
 24 The Democratic governor in South Carolina
 25 this year is going to spend about \$7 million on

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1 television. I mean, I think that's vulgar. You
 2 don't have to spend that. They just spend it because
 3 it's there. It's not necessary to spend that much
 4 money. I don't know how many rating points that is
 5 but it's -- maybe it's 28,000 rating points. It's
 6 just huge television to buy. And let me finish.
 7 I think when you look at financing
 8 politics in America, you have to start with some
 9 appreciation of how much it takes to inform the
 10 public so that they can make rational decisions. I
 11 just think that's an absolute necessity in a
 12 democratic system. And you'll get people with
 13 different views and different ideas as to what that
 14 figure is and there are different ways to get to that
 15 point, that point of adequate education.
 16 You can spend all of the money through the
 17 parties or the candidates or you can require
 18 television stations to give you free time. I mean,
 19 there are all sorts of combinations of how that could
 20 be done. But somewhere there is a sum that's
 21 adequate and I think you should be rational, use
 22 common sense in trying to reach that sum, at least
 23 that sum. And I think that that sum is way below how
 24 much we currently spend and I think that it damages
 25 the political system to spend so much time pursuing

1 every last living dollar, mostly in big
 2 contributions, in order to do all of these things you
 3 want to do because in pursuing that money, great gobs
 4 of money, I think you cast great suspicions on the
 5 integrity of the political system. And so that
 6 statement says that you don't need as much money as
 7 we currently spend and that since we don't need that
 8 much money, we don't have to accept all those large
 9 contributions which create suspicions and taints our
 10 political system.
 11 Q. I understand your concern about the
 12 pursuing of the money but I would like to focus on
 13 the spending. Do you think that the parties these
 14 days spend too much money and indeed waste money on
 15 grass roots, voter registration and get-out-the-vote?
 16 A. I think they waste less money there than
 17 they do on television and on other kinds of
 18 electronic media.
 19 Q. And I take it that they don't spend enough
 20 to motivate the voters given the extraordinarily poor
 21 turn-out in the United States for elections, isn't
 22 that fair?
 23 A. Or persuade the voters.
 24 Q. Right. And so focusing on voter
 25 mobilization as opposed to advertisements, which I

1 want to leave to the side, is it really your view
 2 that there is just too much money spent on that
 3 function that's more than necessary to motivate
 4 voters and inform them to get out?
 5 A. I would say that there is less money, far
 6 less money wasted on get-out-the-vote/voter
 7 mobilization than there is on media and some of the
 8 other things the parties spend money on.
 9 Q. And when you say wasted, is it just
 10 inefficiencies inherent in an operation or is there
 11 some additional waste that you're referring to?
 12 A. You just repeat activities, programs,
 13 efforts for no benefit.
 14 Q. But I thought you had mentioned earlier
 15 that one mailing, for example, usually is not
 16 effective so there needs to be some follow-up to
 17 motivate and inform the voters. Is it your view that
 18 political parties today are just doing too much
 19 follow-up?
 20 A. No.
 21 Q. So I'm still puzzled as to where the waste
 22 comes in.
 23 A. The waste comes mostly in the media.
 24 Q. So let's switch to that. And I take it
 25 the idea is there that there is too many ads -- more

1 ads than are necessary to provide the voters with an
 2 intelligent understanding of the competing
 3 candidates, is that your point?
 4 A. Uh-huh.
 5 Q. And why then do candidates' parties waste
 6 money --
 7 A. Self defense.
 8 Q. Well, if you're getting the diminishing
 9 return and you've presented your case adequately in
 10 the case of Governor Hodges at \$4 million, why would
 11 a rational political or economic actor spend \$3
 12 million more even if his opponent was wasting his
 13 money by doing that?
 14 A. Because his opponent can smother his
 15 adequate message with a great flood of media and
 16 television.
 17 Q. So while, if I understand you correctly,
 18 4 million in my hypothetical would be enough to tell
 19 the voters of South Carolina about Governor Hodges'
 20 record, if your opponent is spending \$7 million more,
 21 you need to spend more money to counteract that
 22 message?
 23 A. That's right.
 24 Q. Do I have that right?
 25 A. That's correct.

1 Q. And the point is, if the parties
 2 unilaterally disarm or reduce their arms, then the
 3 voters will come out just as informed as they are in
 4 this escalating arms race?
 5 A. I don't think they will ever unilaterally
 6 reduce how much they spend, or I think they will
 7 spend all they can raise. The point is that the
 8 pursuit of enough money to outspend your opponent or
 9 to be competitive with your opponent requires you to
 10 raise so much of this money that you have to take
 11 these huge contributions and, in taking these huge
 12 contributions, you contaminate the system.
 13 Q. But if it's bilateral, if it's Republicans
 14 and Democrats reducing their expenditures, then the
 15 voters will still be adequately informed?
 16 A. Sure.
 17 Q. And I take it that's why you're concerned
 18 about a third entity, these outside groups being able
 19 to spend an unlimited amount because then they could
 20 drown out or smother the party expenditures on the
 21 airwaves. Do I have that correct?
 22 A. Uh-huh.
 23 MS. BREGMAN: Spend them on broadcast ads?
 24 THE WITNESS: Yes. But if there were no
 25 consequences to raising the money, I think you could

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1 let candidates spend anything they want to. But
 2 there are consequences to the ever more pressing
 3 requirements to raise larger and larger dollars and
 4 you have to take large contributions and I think that
 5 process is just reinforcing the suspicion that people
 6 have about the system, that the system is bought and
 7 paid for. And if you can adequately -- and I believe
 8 you can -- inform the public, give them the necessary
 9 data to make rational decisions and at the same time
 10 eliminate at least some or reduce some of this vulgar
 11 pursuit of money, I think that's good for the system
 12 and I think it deserves and requires our support.
 13 BY MR. CARVIN:
 14 Q. Now, but I take it what you're saying with
 15 respect to the issue ads is that the parties and the
 16 candidates would not communicate with voters as much
 17 but that the additional communication that's
 18 currently going on is, in your view, unnecessary?
 19 A. I--
 20 Q. Well, I will be spending less money in
 21 this hypothetical for ads. You agree with that, that
 22 there will be less?
 23 A. Yes.
 24 Q. But you nonetheless think the parties and
 25 the candidates are fulfilling their function in a

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1 democratic society because the additional money they
 2 are currently spending doesn't add to the voter's
 3 understanding? My question really is, if there is
 4 going to be less communication, then why wouldn't you
 5 have a less informed electorate because of that
 6 reduced communication?
 7 A. Well, if the towel is wet, it's not going
 8 to be any wetter if you put more water on it. And if
 9 you're in the process of putting more water on it,
 10 you somehow contaminate the surroundings, you
 11 wouldn't want to put more water on it. I don't think
 12 that more information is required for people to have
 13 the necessary information to make a rational decision.
 14 Q. And I take it that means that they have
 15 too much information now in the form of broadcast
 16 advertisements?
 17 A. Well, I don't know what too much
 18 information is. It's more than is necessary.
 19 Q. And did you raise as much money as you
 20 could at the Democratic National Committee?
 21 A. Sure did.
 22 Q. And when did you suggest limiting --
 23 A. In the summer of 1995.
 24 Q. Just so the record is clear, when did you
 25 suggest limiting contributions to the DNC to \$2,000

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1 or less?
 2 A. In the summer of 1995.
 3 Q. And who reviewed that recommendation?
 4 A. The President.
 5 Q. And did the President disagree with your
 6 recommendation?
 7 A. He did.
 8 Q. Did he give you reasons for that?
 9 A. It was just that he was not going to
 10 unilaterally disarm.
 11 Q. And given that system that existed in
 12 1996, did you agree with him then that more money was
 13 an important factor in electing candidates,
 14 democratic candidates?
 15 A. We had to be competitive and it took more
 16 money to be competitive.
 17 Q. So if the Republicans had raised less
 18 money, the Democrats could have gotten by with less
 19 money, but because they had more money, you needed to
 20 keep pace with them?
 21 A. That was the prevailing view.
 22 Q. Did you agree with that?
 23 A. I was not a free agent at that point.
 24 Q. Have you ever analyzed the amount of money
 25 that is necessary to create sufficient candidate or

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1 party advertisements to inform the electorate about
 2 the things they need to know to make an intelligent
 3 decision?
 4 A. The amount of money that is required to
 5 inform the electorate -- let me start over. The
 6 amount of information that's required to inform the
 7 electorate depends on when that information is
 8 supplied to the electorate, as well as other things.
 9 Who supplies it, the messengers, the message and all
 10 of that stuff. And you get huge disagreement among
 11 people who are in this business about what I'm going
 12 to say.
 13 There are a group of people, most of them
 14 like the people around this table who have fairly
 15 well thought out political philosophies and all of us
 16 right here know who we're going to vote for in 2004
 17 and not much of anything that's going to happen
 18 between now and then is going to change that. There
 19 are a whole lot of people out there who are not going
 20 to think about 2004 until September or October of
 21 2004 and if you spend a lot of these dollars way in
 22 advance of September and October 2004, it's just
 23 going to go -- be blown away. And so I think that we
 24 could spend -- a candidate, a party could spend the
 25 same amount of money now in September and October

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1 that they do and you would supply the public with
 2 just as much information as you're going to supply
 3 them with if you start in January of 2004.
 4 Q. Because they can marshal their resources
 5 and spend the money in the 60 days --
 6 A. When the people are paying attention.
 7 Q. And that's a couple of months before the
 8 election?
 9 A. Yes.
 10 Q. And if you did that, you would lose the
 11 process that served -- the function that is served by
 12 ads prior to that time which you previously described
 13 of educating and presenting the candidates' merits in
 14 a general way, would you not?
 15 A. For whatever good you would do, you might,
 16 but paid political ads are not the only source of
 17 political information in this country, as you know.
 18 You've got five 24-hour news networks and all of the
 19 other sources of information. I think that if you
 20 spent the amount of money you spend in September and
 21 October now in paid advertising, my own personal
 22 opinion, it would be fully sufficient to educate the
 23 public.
 24 Q. Let's talk about paid advertising. Have
 25 you studied the optimal amount of paid advertising by

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1 parties and candidates to inform the electorate or
 2 enhance your chances of -- maximize your chances of
 3 success?
 4 A. The answer to your question is no, I have
 5 never done any direct analysis on that but it's clear
 6 that whatever it would take would depend on a whole
 7 range of issues from the quality of the candidates to
 8 what constituency you're dealing with and the
 9 circumstances of the campaigns.
 10 Q. Do the national committee people who make
 11 these decisions view advertisements or
 12 get-out-the-vote/voter mobilization as more important
 13 factors of success?
 14 MS. BREGMAN: Than what?
 15 BY MR. CARVIN:
 16 Q. Between the two.
 17 A. I think on the whole, they would view
 18 advertising is more important.
 19 Q. Do you have a view as to whether or not
 20 they'll devote more hard money resources to
 21 advertisements in a manner that would detract from
 22 the dollars devoted to get-out-the-vote and voter
 23 mobilization?
 24 A. That would depend on the circumstance. I
 25 don't think there is any generalized answer to that.

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1 Q. And how about, in paragraph 17, you
 2 describe these voter mobilization campaigns. And the
 3 last sentence says that these efforts such as voter
 4 identification, voter registration, get-out-the-vote
 5 will have to be done more efficiently with lower
 6 overall expenditures. So you anticipate that there
 7 will be lower overall expenditures for the reasons
 8 we've discussed?
 9 A. Yes.
 10 Q. And how inefficient today are state
 11 parties at get-out-the-vote, voter identification,
 12 voter registration?
 13 A. My qualitative judgment would be that
 14 they're very inefficient. But it's not from lack of
 15 money.
 16 Q. It's failure of wit, not dollars?
 17 A. Wit and commitment.
 18 Q. What makes you think they're going to
 19 become smarter, or do you think they're going to
 20 become smarter and more efficient?
 21 A. Some will and some won't.
 22 Q. Could you turn to paragraph 12, please.
 23 A. Which one?
 24 Q. Oh, yeah, right. I keep forgetting. This
 25 one, I'm looking at the first paragraph 12 on page 5.

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1 You say that most wealthy individuals and special
 2 interest groups tend to favor Republican politicians,
 3 is that correct?
 4 A. Uh-huh.
 5 Q. And so if you ban contributions from
 6 wealthy individuals and special interest groups, that
 7 would hurt Republicans more than Democrats?
 8 A. I would not phrase it that way. I would
 9 say that it would help Democrats become more competitive
 10 with Republicans financially. Raising money in
 11 smaller amounts from a larger number of people would
 12 certainly strengthen the Democratic party.
 13 Q. Do you know Cathy Bowler, B-o-w-l-e-r?
 14 A. She's the executive director of the
 15 California Democratic party. Good friend.
 16 Q. Do you view her as a truthful, competent
 17 person?
 18 A. Yes. I don't agree with her on this,
 19 though.
 20 Q. Have you read her declaration in this
 21 case?
 22 A. I have not. I know what the general
 23 position of the California Democratic party is.
 24 Q. Do you discount their concerns, without
 25 going into details, that this legislation will have a

1 serious negative impact on their ability to engage in
2 voter mobilization and other important electoral
3 activities because of diminished funding?

4 MS. BREGMAN: I'll object on the ground
5 that the use of that particular plaintiff is not the
6 subject of the direct testimony of the witness.

7 THE WITNESS: California, as you know, is
8 a huge state and it takes more to do anything out
9 there than it does most anywhere else. They have,
10 over the years, developed -- and primarily due to her
11 work, have developed a more effective party in a
12 general sense. Nobody likes change. They've
13 effected it under one set of laws and I think they
14 want to keep that same set of laws because that's the
15 way they developed it.

16 California is a very rich state. I have
17 no doubt in my mind that they can raise, in
18 California, this is not true of other states, where
19 they can raise almost as much money, particularly for
20 get-out-the-vote and voter mobilization as they do
21 now and that's particularly true when you consider
22 the Levin amendments to this legislation because that
23 does give state parties, or those amendments give
24 state parties an opportunity to use some soft money
25 to do generic voter registration and voter

1 very quick. Mr. Fowler, I think you said earlier,
2 just before, that the parties were spending more on
3 voter mobilization. Did you say whether the portion
4 of their spending on voter mobilization has gone up
5 or stayed relatively the same? I might have just
6 missed it.

7 A. All campaign expenditures have gone up and
8 indeed new categories of expenditures have developed.
9 The Internet, for example, which is relatively
10 inexpensive but nevertheless it's a new expense.

11 Q. But the proportion relative to other
12 spending, has that been stable?

13 A. The proportion of money that is spent for
14 generic get-out-the-vote, voter mobilization and
15 media have stayed about the same. It's just that the
16 cost of both have gone up. But the proportion is the
17 same now as it was -- approximately the same now as
18 it was 20 years ago. And if anything, media has gone
19 up more, I think.

20 Q. So if we just focused on broadcast ads,
21 the issue ads, the proportion you think would be
22 greater than that has increased?

23 A. If you're talking about just issue ads --

24 Q. Yes, if we just tried to look at that.

25 A. Oh, there is no question that that has

1 mobilization. It does not permit, as I understand
2 it, the use of that money to promote any -- uniquely
3 promote any federal candidates but if you raise the
4 money, do general generic voter registration to the
5 extent that that's useful and general voter
6 mobilization, that gives the state party, I think,
7 adequate resources to do what they need to do.

8 BY MR. CARVIN:

9 Q. Would that be true of 76 to 86 percent of
10 the soft money donors to the California Democratic
11 party are giving more than \$10,000, the limit under
12 the Levin amendment?

13 A. I can't speak to the specifics of the
14 California party but -- I don't want to be critical
15 of my friend Cathy Bowler. I just disagree with her.

16 MR. CARVIN: Why don't we take one second,
17 if you could.

18 (Recess.)

19 MR. CARVIN:

20 Q. Thank you, Mr. Fowler. I have no further
21 questions.

22 EXAMINATION BY COUNSEL FOR INTERVENORS

23 BY MS. BREGMAN:

24 Q. I did have a couple of quick ones. The
25 witness does have to leave but I'll try and make them

1 gone up in the last decade or certainly 15 years,
2 it's gone up more than anything else, both in terms
3 of real dollars and percentages.

4 Q. Completely different subjects. I have
5 just a few questions but they are all over the map.

6 A. But that's just issue ads.

7 Q. Yes, I understand. You said early on
8 during the day, I believe, that you never
9 systematically made reports to members of Congress or
10 executive branch members about contributions to the
11 party. Is it your understanding that those members
12 of Congress or of the executive know who the big
13 contributors to the party are?

14 A. Anybody who raises money in this town or
15 nationally solicits from the same general pool. I
16 mean, there are techniques of identifying people who
17 have capacity to give and people who might be willing
18 to give and the people solicited by the DNC, the DCCC
19 the DSCC are all the same people. I say all the same
20 but there is huge overlap. And that is true for the
21 same three Republican committees and some people are
22 solicited by all six of those. So yeah, they know
23 who the big contributors are but it's not because we
24 tell them. It's just that they go through that same
25 experience themselves for their own committee or

1 individual candidacy purposes.
 2 Q. On a different subject, you were talking
 3 about the amount of information that is provided to
 4 voters that will allow them to become sufficiently
 5 educated to make what you think are appropriate
 6 political choices and you came up with an analogy
 7 about a wet towel and you mentioned that there would
 8 be -- it would be undesirable to put more water on
 9 the towel in light of the contamination that might
 10 result. And I was just going to ask you to elaborate
 11 on what the contamination that you referred to is.
 12 A. That's probably not a very good analogy
 13 but what I meant by that is that if a towel is wet,
 14 it's wet and you put water on it, it doesn't make it
 15 any wetter and the water might run off and damage
 16 something. But what I meant -- I mean, to take that
 17 analogy to campaign expenditures, I think that there
 18 is a level where the voters are, can be adequately
 19 informed and if you continue to pursue larger and
 20 larger amounts of money in order to pour more water
 21 on the towel, give more information or pseudo
 22 information, you have to resort to these, what I
 23 consider undesirable fund-raising techniques and,
 24 therefore, it contaminates the political system.
 25 Q. So you're not advocating less information.

1 You're simply saying that the price of that is the
 2 taint and these other problems that come with the
 3 additional spending?
 4 MR. CARVIN: Objection, leading.
 5 BY MS. BREGMAN:
 6 Q. You can answer.
 7 A. To try to quantify this is really
 8 difficult but there comes a point where people are
 9 adequately informed and just to pile on additional
 10 paid political spots does no good and it hurts the
 11 system because you have to spend so much time raising
 12 money and that has the undesirable aspects that we've
 13 talked about so much. And I want to come back to
 14 another point I made that I don't want overlooked and
 15 that is paid political advertising is in no way, no
 16 sense the only source of political information in
 17 America. You have huge quantities of information
 18 that pour out every day about candidates, about
 19 parties, about issues and I think there fully is a
 20 role for individual candidates and parties to
 21 advertise, to propagandize, to persuade. But clearly
 22 they don't have to do it all.
 23 Q. This is my last question. Mr. Carvin
 24 asked you some questions before based on your
 25 declaration about the different amount of money that

1 has traditionally been raised by the Democratic party
 2 compared to the Republican party. And I think you
 3 indicated that, as it states in your declaration,
 4 most wealthy individuals and special interest groups
 5 tend to favor Republican politicians.
 6 Ig that were untrue, if traditionally both
 7 parties raised exactly the same amount of money from
 8 wealthy individuals and special interest groups so
 9 that they had exactly the same amount of money to
 10 spend historically and every reason to think that
 11 that would be true in the future, would your views on
 12 the Bipartisan Campaign Reform Act be the same?
 13 MR. CARVIN: Objection, hypothetical and
 14 speculative.
 15 THE WITNESS: My view would be the same.
 16 Political money is not the only thing that determines
 17 whether you win or lose. We all know that. But if
 18 it were the same, I would still feel this way and
 19 frankly, if we raised more than Republicans I would
 20 still feel this way because I just fundamentally
 21 believe that there is so much suspicion of money and
 22 the relationship that money has to political
 23 decisions that somehow that has to be attenuated or
 24 reduced or corrected before people will have faith in
 25 the system. And I point out that every election, we

1 hear that, oh, it's terrible that only 50 percent of
 2 the people are voting. That's in Presidential
 3 elections and not that many will vote this year. But
 4 20 years ago when we spent far less money, even
 5 accounting for inflation, we had a higher percentage
 6 of people voting. So more money does not mean better
 7 democracy. In fact, I think to some extent the
 8 suspicion about the system that has been brought
 9 about by the growth of big money is one of the things
 10 that turns people off and keeps them from voting.
 11 MS. BREGMAN: I have nothing further.
 12 MR. CARVIN: No questions. Thank you.
 13 MR. HAMILTON: Thank you.
 14 (Whereupon, at 2:40 p.m., the taking of
 15 the instant deposition ceased.)
 16
 17
 18
 19 _____
 20 Signature of the Witness
 21 SUBSCRIBED AND SWORN to before me this _____ day of
 22 _____, _____.
 23
 24 _____
 25 Notary Public
 My Commission Expires: _____

A		
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