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(1)
(2) UNITED STATES DISTRICT COURT
(3) DISTRICT OF COLUMBIA
-----x
(4) SENATOR MITCH MCCONNELL, et al.,
(5) Plaintiffs,
(6) -against-
(7) FEDERAL ELECTION COMMISSION, et al.,
(8) Defendants.
-----x
(9) REPUBLICAN NATIONAL COMMITTEE, et al.,
(10) Plaintiffs,
(11) -against-
(12) FEDERAL ELECTION COMMISSION, et al.,
(13) Defendants.
-----x
(14)
(15) 80 Pine Street
New York, New York
(16)
September 6, 2002
9:00 a.m.
(17)
(18)
(19) Deposition of non-party witness,
(20) CRAIG HOLMAN, pursuant to Notice, before Shari
(21) Cohen, a Notary Public of the State of New
(22) York.
(23) ELLEN GRAUER COURT REPORTING CO.
133 East 58th Street, Suite 1201
(24) New York, New York 10022
212-750-6434
(25) REF: 45949

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(1)
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(25)

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(1)
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(9) -and-
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(18) US DEPARTMENT OF JUSTICE
(19) 901 E Street, NW
(20) Washington, DC 20044
(21) BY: RUPA BHATTACHARYYA, ESQ.
(22)
(23) ALSO PRESENT:
(24) ELIZABETH DANIEL
(25) MARK LOPEZ

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(1)
(2) IT IS HEREBY STIPULATED AND AGREED by
(3) and between the attorneys for the respective
(4) parties herein, that the filing, and sealing of
(5) the within deposition be waived.
(6) IT IS FURTHER STIPULATED AND AGREED
(7) that all objections, except as to the form of
(8) the question, shall be reserved to the time of
(9) the trial.
(10) IT IS FURTHER STIPULATED AND AGREED
(11) that the within deposition may be sworn to and
(12) signed before any officer authorized to
(13) administer an oath with the same force and
(14) effect as if signed and sworn to before the
(15) Court.
(16)
(17) - ooo -
(18)
(19)
(20)
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(23)
(24)
(25)

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- (1)
- (2) **CRAIG HOLMAN**, called as a
- (3) Witness, having been duly sworn by a
- (4) Notary Public, was examined and
- (5) testified as follows:
- (6) **EXAMINATION BY**
- (7) **MR. ABRAMS:**
- (8) **Q.** Dr. Holman, my name is Floyd
- (9) Abrams. I represent Senator McConnell in this
- (10) litigation. Have you ever given a deposition
- (11) before?
- (12) **A.** Once I have.
- (13) **Q.** In what proceeding is that?
- (14) **A.** That was in Colorado in the
- (15) Amendment 15 case.
- (16) **Q.** As you know, I will be asking you
- (17) certain questions. Please let me know if any
- (18) of them are unclear and I will try to rephrase
- (19) them to make them clearer for you. Could you
- (20) tell us your education?
- (21) **A.** I have a Ph.D. in political
- (22) science from USC. I received a Ph.D. in 1992 I
- (23) believe it was.
- (24) **Q.** What did you do your thesis
- (25) about?

Page 6

- (1)
- (2) **A.** Thesis was on the democratic
- (3) party. On how to revitalize the democratic
- (4) party. Basically when I was writing, the
- (5) democratic party wasn't doing so well. Focused
- (6) on party politics and partisan realignment.
- (7) **Q.** Have you ever held a tenured
- (8) position at a university?
- (9) **A.** No, I have not.
- (10) **Q.** Tell us what you have done
- (11) subsequent to your obtaining the Ph.D. degree?
- (12) **A.** Immediately after the Ph.D.
- (13) degree I started working at a think tank in Los
- (14) Angeles called the Center for Governmental
- (15) Studies. A private non-profit think tank that
- (16) focused on issues of campaign finance reform
- (17) and governmental ethics. I worked there for
- (18) about 10 years. I had been working there while
- (19) getting my dissertation finished.
- (20) **Q.** What 10 years were those?
- (21) **A.** That would be 1990 to 2000.
- (22) **Q.** Did you write any books in that
- (23) time period?
- (24) **A.** Yes, I did.
- (25) **Q.** What were they?

Page 7

- (1)
- (2) **A.** Books Democracy by Initiative was
- (3) one book that was on the initiative process.
- (4) To Govern Ourselves which was a book on the
- (5) local initiative process. These were desk top
- (6) books by the way. They were not published by
- (7) academic presses.
- (8) **Q.** What does desk top books mean?
- (9) **A.** Published by our own think tank.
- (10) **Q.** Not published by commercial
- (11) publisher, correct?
- (12) **A.** Correct, not.
- (13) **Q.** Go on?
- (14) **A.** I'm trying to think of others.
- (15) Other works that I did at the Center for
- (16) Governmental Studies tended to be more like
- (17) reports rather than books and articles and
- (18) papers, academic papers.
- (19) **Q.** Were any of those on campaign
- (20) finance related issues?
- (21) **A.** Yes.
- (22) **Q.** Can you identify those for us?
- (23) **A.** I'm trying to recall. I have
- (24) written on electronic filing of campaign
- (25) finance records, that was a number of different

Page 8

- (1)
- (2) papers that were presented at conferences plus
- (3) published in a journal called Public Integrity.
- (4) There are quite a few others which I'm trying
- (5) to recall off the top of my head but having a
- (6) difficult time.
- (7) **Q.** What did you do beginning in the
- (8) year 2000?
- (9) **A.** In November 2000 I took a job
- (10) with the Brennan Center out here in New York
- (11) University.
- (12) **Q.** What was your job?
- (13) **A.** The senior policy analyst at the
- (14) Brennan Center. The primary responsibility I
- (15) had when I first started was to work on Buying
- (16) Time 2000.
- (17) **Q.** Do you consider yourself a
- (18) scholar?
- (19) **A.** Yes.
- (20) **Q.** Are you a scientist?
- (21) **A.** A political scientist.
- (22) **Q.** Are you an expert in law?
- (23) **A.** No, I'm not.
- (24) **Q.** Are you an expert in the First
- (25) Amendment?

Page 9

- (1)
- (2) **A. Not an expert, no.**
- (3) **Q. Are you the co-author of Buying**
- (4) **Time 2000?**
- (5) **A. Yes, I would say the principal**
- (6) **co-author.**
- (7) **Q. Did you come to read a**
- (8) **publication of the Brennan Center entitled**
- (9) **Buying Time Television Advertising in the 1998**
- (10) **congressional elections?**
- (11) **A. Yes, I have read it.**
- (12) **Q. Did you read that in the course**
- (13) **of your work on Buying Time 2000?**
- (14) **A. Yes.**
- (15) **MR. ABRAMS:** I would like to mark
- (16) **as Holman Exhibit 1 a copy of what I**
- (17) **will hereafter call Buying Time 2000 and**
- (18) **as Holman Exhibit 2 what I will**
- (19) **hereafter call Buying Time 1998.**
- (20) **(Plaintiff's Exhibit Holman 1,**
- (21) **Buying Time 2000, marked for**
- (22) **Identification.)**
- (23) **(Plaintiff's Exhibit Holman 2,**
- (24) **Buying Time 1998, marked for**
- (25) **Identification.)**

Page 10

- (1)
- (2) **Q. You know what I mean by those**
- (3) **terms?**
- (4) **A. Yes, I use those terms myself.**
- (5) **Q. Was your work on Buying Time 2000**
- (6) **done in the course of your employment at the**
- (7) **Brennan Center?**
- (8) **A. Yes, it was.**
- (9) **Q. Tell us first what is the Brennan**
- (10) **Center?**
- (11) **A. That is sort of a good question.**
- (12) **The Brennan Center is primarily a law firm that**
- (13) **also does a great deal of research in a variety**
- (14) **of social science issues that includes campaign**
- (15) **finance along with criminal justice and other**
- (16) **electoral issues and poverty issues.**
- (17) **Q. Does the Brennan Center engage in**
- (18) **advocacy with respect to the adoption of**
- (19) **legislation?**
- (20) **A. They do engage in advocacy of**
- (21) **certain public policies.**
- (22) **Q. Do they seek to embody those**
- (23) **public policies in legislation?**
- (24) **A. Yes, they do.**
- (25) **Q. Did they seek to do that with**

Page 11

- (1)
- (2) **respect to the adoption of the Bipartisan**
- (3) **Campaign Reform Act of 2002?**
- (4) **A. Yes, the Brennan Center played a**
- (5) **role in that.**
- (6) **Q. What was their role?**
- (7) **A. I guess a number of different**
- (8) **roles. The Brennan Center was involved early**
- (9) **in the process with helping craft the design of**
- (10) **the McCain-Feingold bill which is also the**
- (11) **Bipartisan Campaign Reform Act here that we are**
- (12) **talking about. That was before I even showed**
- (13) **up at the Brennan Center and then with much of**
- (14) **my work at the Brennan Center we were doing --**
- (15) **I was doing statistical analysis using the**
- (16) **Buying Time database and would on a fairly**
- (17) **regular basis draft memoranda that directly**
- (18) **addressed concerns that were being debated in**
- (19) **congress concerning the McCain-Feingold and**
- (20) **Shays-Meehan bill, two different bills**
- (21) **depending on where they were and would issue**
- (22) **those memoranda to legislative members as well**
- (23) **as the public, to the press and place them on**
- (24) **our website for the public and anyone to use.**
- (25) **We would frequently, fairly**

Page 12

- (1)
- (2) **frequently consult with a number of legislative**
- (3) **staff members on many of the principals that**
- (4) **were involved in the Campaign Reform Act. Many**
- (5) **of my charts that were based on the findings of**
- (6) **Buying Time 2000 were used in the course of a**
- (7) **congressional debate particularly on the senate**
- (8) **floor and brought out during debate on the**
- (9) **McCain-Feingold bill.**
- (10) **Q. Were they used by the proponents**
- (11) **of new "reform" legislation?**
- (12) **A. They were used by proponents of**
- (13) **the McCain-Feingold bill.**
- (14) **Q. When you say the Brennan Center**
- (15) **was involved before your arrival in crafting**
- (16) **the design of McCain-Feingold, what do you mean**
- (17) **by that?**
- (18) **A. They had some input along with a**
- (19) **number of political scientists in trying to**
- (20) **fashion the course and the nature of the**
- (21) **McCain-Feingold bill. They were present at the**
- (22) **time that people like Tom Mann, for instance,**
- (23) **were trying to develop the 60 day bright line**
- (24) **test that became known as the Snowe-Jeffords**
- (25) **Amendment.**

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(1)

(2) Q. What role did they play, to your
(3) knowledge, in that drafting process?

(4) A. To my knowledge, it was one of a
(5) group of people trying to craft something that
(6) they thought would be constitutionally
(7) defensible.

(8) Q. Did Brennan Center employees
(9) provide legal advice to members of congress in
(10) an effort to draft a constitutionally
(11) defensible piece of legislation?

(12) A. I guess I'm not clear -- they
(13) weren't hired to my knowledge as lawyers doing
(14) this. They were just part of a group of people
(15) trying to craft something and so they would
(16) have offered their legal opinions but they were
(17) not hired as lawyers.

(18) MR. ABRAMS: I would like to mark
(19) as Holman Exhibit 3 a memorandum from
(20) Glenn Moramarco dated April 10, 2001
(21) produced to us by the Brennan Center.

(22) (Plaintiff's Exhibit Holman 3,
(23) Memo dated April 10, 2001, marked for
(24) Identification.)

(25) Q. Why don't you tell us first and

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(1)

(2) then I will give you a chance to read it, who
(3) is Mr. Moramarco?

(4) A. Glenn Moramarco was the senior
(5) attorney at the Brennan Center in the democracy
(6) program.

(7) Q. What is the democracy program?

(8) A. The democracy program is one of
(9) the projects of the Brennan Center that focuses
(10) on campaign finance and electoral politics.

(11) Q. Why don't you take the time to
(12) read this to yourself. Referring now to what I
(13) marked as Exhibit 3, first, is the material on
(14) Exhibit 3 generally correct?

(15) A. Yes, it is.

(16) Q. I would like to go through
(17) certain of the paragraphs in it. The first
(18) paragraph, I will read this one into the record
(19) states "The Buying Time data and analysis of
(20) television advertising played a central role
(21) throughout the Senate debate on
(22) McCain-Feingold. One of the most contentious
(23) issues throughout the Senate debate was whether
(24) the provisions in McCain-Feingold (known as
(25) 'Snowe-Jeffords' provisions) for regulating

Page 15

(1)

(2) sham issue advocacy were constitutional. The
(3) Buying Time data was the central piece of
(4) evidence marshaled by defenders of
(5) Snowe-Jeffords in support of the bill's
(6) constitutional validity"; is that correct?

(7) MR. DODYK: I will object to the
(8) question in that there is no foundation
(9) laid for testimony by this witness as to
(10) what the central piece of evidence
(11) marshaled by the defenders was.

(12) Q. Do you have a view as a
(13) representative of the Brennan Center?

(14) A. It played an important role, that
(15) much I would recognize.

(16) Q. The next paragraph refers to the
(17) supporters of McCain-Feingold having designated
(18) Senator Edwards to champion the constitutional
(19) defense of Snowe-Jeffords and of Mr. Moramarco
(20) meeting with Senator Edwards' staff and going
(21) over with them in detail the Buying Time data
(22) and policy papers produced by you; is that
(23) correct?

(24) MR. DODYK: Objection.

(25) A. I do not know if the supporters

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(1)

(2) of McCain-Feingold championed the
(3) constitutional defense of Snowe-Jeffords.

(4) Q. Do you know if Brennan Center
(5) individuals including Mr. Moramarco met with
(6) Senator Edwards' staff and went over with them
(7) Buying Time data and policy papers produced by
(8) you?

(9) A. Yes, I do know that.

(10) Q. Did you attend any of those
(11) meetings?

(12) A. Not those meetings, no.

(13) Q. Who did you meet with?

(14) A. There was a breakfast meeting
(15) that was held after the or just as the law was
(16) about to be approved in Congress and there was
(17) a breakfast meeting that was held in Washington
(18) DC with a large group of people including staff
(19) members of some of the key players here plus
(20) other members of the legal team that was about
(21) to become the legal team later on.

(22) Q. What do you mean by the legal
(23) team?

(24) A. A variety of lawyers representing
(25) different groups who were involved in this case

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- (1)
- (2) now including lawyers from Kravath, also
- (3) lawyers from groups like common cause and a
- (4) fairly large group of people and the FEC, no,
- (5) the FEC was not present, I take that back.
- (6) Q. Did you ever speak to any staff
- (7) people from any Senate house committees during
- (8) the time what I will call McCain-Feingold was
- (9) under consideration?
- (10) A. Yes, I did.
- (11) Q. Who did you speak to?
- (12) A. There were a few that would call
- (13) me at my office. Bob Schiff is one whose name
- (14) I recall directly.
- (15) Q. Who is he?
- (16) A. Bob Schiff is a staff member with
- (17) McCain I believe. There were other staff
- (18) members I also talked to whose names I never
- (19) did take down or record but they were staff
- (20) members from Torricelli's office and staff
- (21) members from Snowe's office, for instance, a
- (22) staff member from Snowe's office called to ask
- (23) me if they could use some of my charts in the
- (24) Senate debate. I never kept records of who
- (25) actually called me.

Page 18

- (1)
- (2) Q. What did you talk to Mr. Schiff
- (3) about?
- (4) A. Bob Schiff would ask various
- (5) questions about what the database would show
- (6) for instance. He would ask questions like
- (7) whether the database had any relevance to the
- (8) debate going on in the congressional black
- (9) carcass objections to the Shays Meehan bill in
- (10) the house. He would ask various questions
- (11) dealing with how the database would deal with
- (12) various concerns that were emerging in both the
- (13) Senate and the House.
- (14) Q. Did you assist him in that
- (15) respect?
- (16) A. Yes, I did, when I could.
- (17) Q. What about Senator Torricelli's
- (18) office, what were you asked?
- (19) A. Staff member from Torricelli's
- (20) office was concerned about the lowest units
- (21) charge provision in the bill and I had done
- (22) some research on the lowest units charge using
- (23) the Buying Time database that they were
- (24) interested in, but later I really never did
- (25) issue that to congressional staffers or the

Page 19

- (1)
- (2) public because I had doubts about the
- (3) applicability of using Buying Time database to
- (4) apply to the lowest units charge argument.
- (5) Q. In the third paragraph of Exhibit
- (6) 3 it states that the Brennan Center, "put
- (7) together a scholars' letter signed by 88 First
- (8) Amendment scholars, which concluded that the
- (9) McCain-Feingold bill was constitutional" and
- (10) that that letter was introduced into the Senate
- (11) record and quoted from several times and that
- (12) it cited Buying Time data in support of the
- (13) constitutional validity of the McCain-Feingold
- (14) bill. Do you know if that's correct?
- (15) A. That is correct.
- (16) Q. The memorandum then states that
- (17) the Brennan Center "also put together a
- (18) statement signed by every past president,
- (19) executive director, legal director and
- (20) legislative director of the American Civil
- (21) Liberties Union asserting that the
- (22) McCain-Feingold bill is constitutional" and
- (23) that that statement because it "repudiated the
- (24) policy of the current ACLU board on campaign
- (25) finance reform, was very influential in the

Page 20

- (1)
- (2) Senate debate and in influencing media
- (3) perceptions." Is it true that the Brennan
- (4) Center put together that statement?
- (5) A. It is true that they put together
- (6) that statement.
- (7) Q. Who did that work?
- (8) A. It was mostly put together by
- (9) Glenn Moramarco. He drafted the memoranda
- (10) itself and then would seek statements, seek the
- (11) signing of the various members of the ACLU.
- (12) Q. Do you know if the ACLU policy on
- (13) campaign finance reform has changed since the
- (14) ruling in the case of Buckley verses Valeo?
- (15) A. I'm only familiar that the ACLU
- (16) has traditionally opposed many forms of
- (17) campaign finance reform at the Federal level.
- (18) Q. The next paragraph states that
- (19) the Brennan Center circulated the "Buying Time
- (20) Policy Committee on Political Advertising's
- (21) Five New Ideas to the relevant congressmen and
- (22) their staffs", is that true?
- (23) A. That is true.
- (24) Q. I'm going to ask you some
- (25) questions later about what has become known as

Page 21

- (1)
- (2) Five New Ideas, but can you tell us now what is
- (3) that document?
- (4) **A. I was not involved in that**
- (5) **document, but that document was prepared prior**
- (6) **to my arrival at the Brennan Center. It was**
- (7) **what I know of it is that it was part of a**
- (8) **session to try to come up with several new**
- (9) **ideas approaching reforming of campaign finance**
- (10) **laws aiming largely at what might be**
- (11) **constitutional.**
- (12) **Q. Could you tell me again precisely**
- (13) **when did you start at the Brennan Center?**
- (14) **A. November 2000.**
- (15) **Q. The last line of the memorandum**
- (16) **after listing Senators who cited data from**
- (17) **Buying Time concludes that "The Buying Time**
- (18) **data and the legal and policy analysis provided**
- (19) **by the Brennan Center's staff played an**
- (20) **integral role in the Senate's campaign finance**
- (21) **reform debates." Do you have any reason to**
- (22) **doubt the accuracy of that statement?**
- (23) **A. I do know that the policy**
- (24) **analysis in Buying Time data was cited**
- (25) **extensively in the Senate debate on**

Page 22

- (1)
- (2) **McCain-Feingold.**
- (3) **Q. Did representatives of the**
- (4) **Brennan Center testify in favor of the**
- (5) **McCain-Feingold bill?**
- (6) **A. Yes, there was some testimony in**
- (7) **favor of the McCain-Feingold bill especially in**
- (8) **earlier drafts prior to the last session.**
- (9) **Q. Mr. Rosenkranz testified in favor**
- (10) **of it?**
- (11) **A. Yes.**
- (12) **Q. Who is he?**
- (13) **A. Josh Rosenkranz is the president**
- (14) **of the Brennan Center.**
- (15) **Q. He was the president since at**
- (16) **least the time that you joined the Brennan**
- (17) **Center, correct?**
- (18) **A. Yes, that is correct.**
- (19) **Q. Did you ever talk to anyone in**
- (20) **the press with respect to the desirability of**
- (21) **the adoption of McCain-Feingold?**
- (22) **A. I frequently talk to the press**
- (23) **and it would include things like how the**
- (24) **findings of Buying Time 2000 would confirm --**
- (25) **would confirm the McCain-Feingold**

Page 23

- (1)
- (2) **Snowe-Jeffords amendments as being narrow and**
- (3) **appropriate for the nation's new campaign**
- (4) **finance law.**
- (5) **Q. Did the Brennan Center appear in**
- (6) **court on behalf of Senator McCain at some point**
- (7) **prior to this litigation?**
- (8) **A. On behalf of Senator McCain, I**
- (9) **honestly don't know.**
- (10) **Q. Do you recall if the Brennan**
- (11) **Center represented Senator McCain in order to**
- (12) **get him on the Republican ballot in their**
- (13) **primary in the year 2000?**
- (14) **A. Yes, that is correct.**
- (15) **Q. Did the Brennan Center submit**
- (16) **briefs in various cases supporting stricter**
- (17) **limits on amounts spent in federal political**
- (18) **campaigns and state campaigns?**
- (19) **A. Yes, they have done that.**
- (20) **Q. Did they appear on briefs urging**
- (21) **stricter limits on what is sometimes referred**
- (22) **to as issue advertising?**
- (23) **A. Yes, they have done that.**
- (24) **Q. Do you know if the Brennan Center**
- (25) **ever sought to become a party in a campaign**

Page 24

- (1)
- (2) **finance case for the purpose of defending a**
- (3) **state statute?**
- (4) **A. Yes, the Brennan Center has done**
- (5) **that.**
- (6) **Q. Do you recall if the case of**
- (7) **Daggot verses Maine Commission on Government**
- (8) **Ethics was such a case?**
- (9) **A. Yes, that was one such case.**
- (10) **Q. Who funded Buying Time 2000?**
- (11) **A. The Pew Charitable Trust.**
- (12) **Q. What is to the extent that you**
- (13) **know the Pew Charitable Trust?**
- (14) **A. I'm not involved in the budgetary**
- (15) **process, but the Pew Charitable Trust is a**
- (16) **charitable foundation that has provided funding**
- (17) **to a number of different groups in the field of**
- (18) **researching electoral politics and campaign**
- (19) **finance issues.**
- (20) **Q. Do you know whether at the time**
- (21) **the Brennan Center sought funding from Pew that**
- (22) **they did so for the purpose of creating a study**
- (23) **which would set forth the case for reform and**
- (24) **change in campaign finance law in a fashion**
- (25) **that it had never been put forth before?**

Page 25

- (1)
- (2) **MR. DODYK:** Would you repeat the
- (3) question?
- (4) **MR. ABRAMS:** I will change the
- (5) question. Thank you.
- (6) **Q.** What purpose if you know did the
- (7) Brennan Center advise Pew it was seeking
- (8) funding for?
- (9) **A.** The purpose was to provide an
- (10) empirical database on television advertising
- (11) and what is the nature of political television
- (12) advertising.
- (13) **Q.** Would it be fair to say that the
- (14) purpose of that was to put the case for reform
- (15) in the best light?
- (16) **A.** To tell the truth, that was not
- (17) necessarily my purpose when I came in working
- (18) on *Buying Time 2000*. I did not know what sort
- (19) of results I was going to produce.
- (20) **Q.** Did you know what sort of results
- (21) the Brennan Center personnel with whom you
- (22) spoke hoped you would produce?
- (23) **MR. DODYK:** Objection, no
- (24) foundation.
- (25) **Q.** Go on.

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- (1)
- (2) **A.** No one told me what they expected
- (3) to find and to tell the truth, I was not -- I
- (4) did not know what I would find out of the
- (5) database.
- (6) **MR. ABRAMS:** I would like to mark
- (7) as Exhibit 4 a document produced to us
- (8) from the Brennan Center entitled Brennan
- (9) Center for Justice Issue Advocacy
- (10) Amassing the Case for Reform.
- (11) (Plaintiff's Exhibit Holman 4,
- (12) Document entitled Brennan Center for
- (13) Justice Issue Advocacy Amassing the Case
- (14) for Reform, marked for Identification.)
- (15) **Q.** Let me ask you first if you have
- (16) ever seen this document?
- (17) **A.** I have not seen this document.
- (18) **Q.** The names on the front of the
- (19) document are E. Joshua Rosenkranz, he's listed
- (20) here as executive director, is that another
- (21) title that he has?
- (22) **A.** Yes, he's president and executive
- (23) director.
- (24) **Q.** Who is Nancy Northup?
- (25) **A.** She is currently director of the

Page 27

- (1)
- (2) democracy program.
- (3) **Q.** At the time this document was
- (4) submitted she was the deputy director?
- (5) **A.** Yes.
- (6) **Q.** Jonathan S. Krasno?
- (7) **A.** He was the senior policy analyst
- (8) prior to my arrival.
- (9) **Q.** I would like you to look at the
- (10) introduction to this submission to the Pew
- (11) Charitable Trust dated February 19, 1999.
- (12) **MR. DODYK:** You want him to read
- (13) the introduction?
- (14) **Q.** Why don't you read the
- (15) introduction to yourself, first. Dr. Holman,
- (16) let me address first the very first paragraph
- (17) of this submission. It's short enough so I
- (18) will read it in. "The tidal wave of so-called
- (19) 'issue advocacy' in the 1996 elections has
- (20) threatened to swamp our entire campaign finance
- (21) system. A variety of political actors have
- (22) tried to influence elections with a deluge of
- (23) dollars. But by subtly altering the tag lines
- (24) of their appeals - avoiding the 'magic words'
- (25) of express advocacy - they have managed to

Page 28

- (1)
- (2) skirt existing campaign finance laws
- (3) completely. Corporations and labor unions,
- (4) long prohibited from spending even a penny on
- (5) electioneering, have spent untold millions on
- (6) such ads, whether directly or by funneling
- (7) money through other organizations. And
- (8) political parties, through the device of
- (9) funneling soft money into thinly veiled
- (10) campaign ads, have all but shredded existing
- (11) campaign finance law."
- (12) At the time that you began work
- (13) on *Buying Time 2000*, did you know that what I
- (14) read to you was the basis upon which the
- (15) Brennan Center had sought funding for the
- (16) study?
- (17) **MR. DODYK:** Object to the form of
- (18) the question. You may answer.
- (19) **A.** What I was aware of is that there
- (20) is a great problem especially since 1996 that
- (21) involves soft money and issue advocacy and the
- (22) Brennan Center had identified that as being a
- (23) problem.
- (24) **Q.** When you began work at the
- (25) Brennan Center, is the paragraph that I read to

Page 29

(1)

(2) you inconsistent with your understanding of the
(3) views of the Brennan Center?

(4) **MR. DODYK:** Object to the form of
(5) the question.

(6) **A.** This paragraph it sounds like
(7) sort of an extreme paragraph to try to seek
(8) funding purposes, but it describes the problems
(9) that many people including the Brennan Center
(10) was trying to address.

(11) **Q.** Would you direct your attention
(12) to the last paragraph of the introduction which
(13) states, "While the data will be enormously
(14) valuable to political scientists - it will
(15) undoubtedly keep them busy for years: - the
(16) purpose of our acquiring the data set is not
(17) simply to advance knowledge for its own sake,
(18) but to fuel a continuous multi-faceted campaign
(19) to propel campaign reform forward."

(20) **A.** At the time you began work on
(21) Buying Time 2000, did you understand that that
(22) was the basis upon which funding had been
(23) sought?

(24) **A.** I would almost phrase it
(25) differently, but yes, I was mostly excited

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(1)

(2) advertising has and what issue advocacy and
(3) soft money is doing and the second purpose was
(4) indeed to direct that activity, that research
(5) activity to have an impact on public policy.

(6) **Q.** That impact would be legislative,
(7) would it not?

(8) **A.** Yes, it would be. In most
(9) instances, yes.

(10) **Q.** At the time that you joined the
(11) Brennan Center, were you aware that legislation
(12) had already been proposed to deal with what
(13) some perceived as the problems in campaign
(14) finance?

(15) **A.** Yes, I was. By the time I joined
(16) the Brennan Center, Buying Time 1998 had
(17) already been issued.

(18) **Q.** Had you read it before you joined
(19) the Brennan Center?

(20) **A.** Immediately before I joined, but
(21) I was aware of the conclusions of it.

(22) **Q.** Asking this rather broadly, but
(23) did you agree with the basic conclusions of the
(24) '98 study?

(25) **MR. DODYK:** Object to the form of

Page 30

(1)

(2) about the political science aspect of it
(3) because it provides a huge database that has
(4) never been available before and it was the
(5) intention to compile and analyze this database
(6) and to provide it for political scientists to,
(7) you know, test our analysis, test our
(8) conclusions, develop their own conclusions and
(9) also not to be just in this academic void, but
(10) also to address public policy issues. It was
(11) not clear at any point and never explained to
(12) me exactly what sort of policy direction that
(13) would go in. It sounds like a multi-faceted
(14) policy direction as described in this
(15) paragraph.

(16) **Q.** Did you understand that the
(17) purpose for which the funding was sought was to
(18) fund a document which would "fuel a continuous
(19) and multi-faceted campaign to propel reform
(20) forward"?

(21) **A.** The purpose was two-fold that's
(22) contained in that sentence and one is to
(23) provide political science data addressing a
(24) vacuum of knowledge, that's the entire academic
(25) community has in regards to what television

Page 32

(1)

(2) the question. You may answer.

(3) **A.** To tell the truth, I couldn't
(4) understand much of Buying Time 1998. It was a
(5) document that used extensive charts, but some
(6) of the conclusions which I could not test or
(7) confirm I found fascinating. Things like the
(8) general lack of the use of magic words in
(9) television advertising I found fascinating. I
(10) had no basis to determine whether or not it's
(11) accurate.

(12) **Q.** You used the words "magic words",
(13) where do those words come from?

(14) **A.** It's a term that has been applied
(15) to the Buckley decision where they speculated
(16) on certain ways to try to distinguish express
(17) advocacy from issue advocacy.

(18) **Q.** Is it your understanding that the
(19) Buckley case used the words "magic words"?

(20) **A.** The Buckley decision did not use
(21) the words.

(22) **Q.** Are those scientific words that
(23) belong in a scientific study?

(24) **MR. DODYK:** Object to the form of
(25) the question.

Page 33

(1)

(2) A. If you judge it by political
(3) scientists, the term magic words is used
(4) everywhere in the political science community
(5) including at the last American Political
(6) Science Association conference.

(7) Q. Are they neutral words?

(8) A. When they are used by political
(9) scientists, they are not necessarily loaded.
(10) You will find some political scientists who
(11) will use those terms. It's an easier way to
(12) describe the footnote at the Buckley decision.
(13) Frequently the term magic words is used in a
(14) derogatory sense, but in the political
(15) scientist community it's really used as a
(16) description.

(17) Q. When the words "magic words" were
(18) used in Buying Time 2000, were they used in a
(19) neutral fashion?

(20) A. In Buying Time 2000, yes, they
(21) were used as a descriptive fashion. As a
(22) matter of fact, I would make all efforts to
(23) avoid what I consider, you know, just bias
(24) terminology such as sham issue advocacy. I
(25) would not use terms like that.

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(1)

(2) Q. Why do you consider those words
(3) bias?

(4) A. The term sham strikes me as a
(5) bias term so I changed the term to
(6) electioneering issue ads which I consider
(7) neutral and scientific and when the term the
(8) magic words is used, I also never meant it in a
(9) derogatory sense.

(10) Q. Do you know if Mr. Rosenkranz
(11) used the terms "sham issue ads" in testifying
(12) before various Senate committees?

(13) A. I don't know if he used those
(14) terms.

(15) Q. What was the role of the Brennan
(16) Center other than the work that you did and Mr.
(17) McLoughlin did in the preparation of Buying
(18) Time 2000?

(19) A. I guess I don't understand the
(20) question.

(21) Q. Let me ask that again. Did
(22) anyone else at the Brennan Center other than
(23) you and Mr. McLoughlin work on Buying Time
(24) 2000?

(25) A. There was the database

Page 35

(1)

(2) development by Ken Goldstein at the University
(3) of Wisconsin.

(4) Q. What did Professor Goldstein do?

(5) A. Professor Goldstein is the person
(6) who put together the Buying Time 2000 database
(7) and the Buying Time 1998 database. He would
(8) get basically the television commercials from a
(9) private company called CMAG, Campaign Media
(10) Analysis Group, and then Professor Goldstein at
(11) the University of Wisconsin and when he was at
(12) Arizona earlier would then enlist students to
(13) go through the database and fill out a survey
(14) in response to each television commercial and
(15) from both Ken Goldstein's empirical data and
(16) the survey responses he developed the database.

(17) Then the database would be
(18) transmitted to me at the Brennan Center and I
(19) provided my independent analysis that produced
(20) Buying Time 2000.

(21) Q. Were the students referred to
(22) sometimes as coders?

(23) A. Yes.

(24) Q. What does that word mean?

(25) A. It just means they were coding

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(1)

(2) the database in response to a survey that was
(3) placed out in front of them. The survey had
(4) this series of questions roughly I think it was
(5) about 35 questions or so and they would view
(6) each television commercial and then fill out
(7) the survey responses.

(8) Q. Do you know how many students
(9) were used as coders with respect to the
(10) preparation of Buying Time 2000?

(11) A. I don't know. I would imagine
(12) the size of the team would vary through the
(13) course of the academic semester. I don't know.

(14) Q. Did more than one student code a
(15) particular storyboard?

(16) A. I am aware that Ken Goldstein had
(17) a system set up of intercoder reliability, but
(18) Ken Goldstein would have to explain exactly how
(19) extensive that was so that would mean that I
(20) know in many instances there would be more than
(21) one student doing the coding on a storyboard.

(22) Q. I have used the word storyboard.
(23) First, why don't you tell us what the word
(24) storyboard mean?

(25) A. Storyboard is the hard copy

Page 37

(1)
 (2) picture of each television commercial. It
 (3) roughly is a picture of the commercial every
 (4) three to four seconds captured in hard copy
 (5) form so that researchers and we can take a look
 (6) at each of the commercials without having to
 (7) watch television.

(8) MR. ABRAMS: I want to mark now as
 (9) Exhibit 5 what are actually the last
 (10) pages of Exhibit 1 that is to say the
 (11) very end of Buying Time 2000 under the
 (12) heading coding the commercials.

(13) (Plaintiff's Exhibit Holman 5,
 (14) Coding the Commercials, marked for
 (15) Identification.)

(16) Q. Do you recognize Exhibit 5?

(17) A. Yes, I do.

(18) Q. This was included, was it not, at
 (19) the very end of Buying Time 2000?

(20) A. Yes, it was.

(21) Q. Why did you do that?

(22) A. Mostly for political scientists
 (23) in order to convey exactly what the database
 (24) was in Buying Time 2000. I did not expect the
 (25) general public to be particularly interested in

Page 39

(1)
 (2) given anything other than what we now marked as
 (3) Exhibit 5?

(4) A. I do not know.

(5) Q. Do you know if the storyboards
 (6) were presented to the students on paper as
 (7) opposed to by computer?

(8) A. I know in the 2000 database they
 (9) were presented on computer. How the 1998
 (10) database was compiled you would have to ask Ken
 (11) Goldstein, but with the 2000 database Ken had
 (12) developed a system where the storyboards were
 (13) presented on a computer screen that also had
 (14) the survey right next to it so students would
 (15) do a direct feed into the computer database.

(16) Q. Some of the advertisements
 (17) contained identification, did they not, of the
 (18) sponsoring organization?

(19) A. Yes, some of them did.

(20) Q. When they did, did the students
 (21) know that?

(22) A. If the students could read it at
 (23) the end. Very frequently as you can see by the
 (24) storyboard that you handed out which is a very
 (25) clean copy of the storyboard it is often

Page 38

(1)
 (2) this and then I included a storyboard at the
 (3) end, I actually wanted to include several
 (4) storyboards, but there were cost considerations
 (5) so we had one storyboard just to make it clear
 (6) to everyone exactly what we were looking at for
 (7) Buying Time 2000.

(8) Q. Were the coders ever overruled by
 (9) Professor Goldstein?

(10) A. I am aware that they were
 (11) overruled on occasion by Professor Goldstein.

(12) Q. Do you know the circumstances in
 (13) which they were overruled?

(14) A. Not really. Not most of them.
 (15) It was the policy of the Brennan Center that
 (16) Ken Goldstein had the ultimate decision as to
 (17) what was going to go in the database.

(18) Q. Did you participate in
 (19) discussions with Professor Goldstein about
 (20) certain decisions as they were made with regard
 (21) to the coding?

(22) A. Had some discussions with
 (23) Professor Goldstein, but he always had the
 (24) final decision.

(25) Q. Do you know if the students were

Page 40

(1)
 (2) difficult to read.

(3) Q. If a storyboard said at the end
 (4) paid for by the California Democratic
 (5) Committee, for example, the students would see
 (6) that as well?

(7) A. They would see that as well, yes.

(8) Q. If the storyboard said paid for
 (9) by Citizens for Gore or whatever it would say,
 (10) the students would see it, correct?

(11) A. That is correct.

(12) Q. The students didn't hear or see
 (13) any of the ads themselves, correct?

(14) A. I don't believe they had volume
 (15) on the computer screen, but I'm speculating on
 (16) that. I was not involved in the data input.

(17) Q. Is it your information that what
 (18) they saw was the storyboard?

(19) A. That's my information, that's my
 (20) understanding.

(21) Q. Not the advertisement?

(22) A. That's right.

(23) Q. Do you know why the coding starts
 (24) with number four as opposed to number one if
 (25) you look at the coding information itself?

Page 4

- (1)
- (2) **A. No, I do not know. I do know.**
- (3) **There was other information that Ken would use**
- (4) **for providing some code data that would help in**
- (5) **compiling the database itself. Things like**
- (6) **which race it directly, you know, affected,**
- (7) **things like that so this is what the students**
- (8) **would look at and then there was other**
- (9) **identifying data that Ken would have.**
- (10) **Q. Could you direct your attention**
- (11) **to question 11, please?**
- (12) **A. Yes.**
- (13) **Q. Do you know how the students were**
- (14) **supposed to learn the "purpose of the ad"?**
- (15) **A. This was one of the few**
- (16) **subjective questions in the survey itself.**
- (17) **Most of the survey dealt with purely objective**
- (18) **questions that the students could easily**
- (19) **identify and easily be confirmed and question**
- (20) **11 was one of the few subjective questions that**
- (21) **simply asked the student's opinion.**
- (22) **Q. Was that opinion to be based**
- (23) **solely by looking at the storyboard?**
- (24) **A. On behalf of the students, yes,**
- (25) **and determining whether they felt this**

Page 42

- (1)
- (2) **commercial was designed to influence their vote**
- (3) **for or against a candidate or legislation or**
- (4) **public policy.**
- (5) **Q. The choice the students were**
- (6) **given, is it not, was whether or not the**
- (7) **purpose of the ad was "to provide information**
- (8) **about or urge action on a bill or issue or is**
- (9) **it to generate support or opposition for a**
- (10) **particular candidate", that was the choice they**
- (11) **were given, correct?**
- (12) **A. And whether or not they are**
- (13) **unsure and unclear and don't know.**
- (14) **Q. You're closely familiar with the**
- (15) **ads that the students saw, are you not?**
- (16) **A. Yes.**
- (17) **Q. Were any of the ads in your view**
- (18) **ones which had as their purpose both providing**
- (19) **information about or urging action on a bill or**
- (20) **issue and generating support or opposition for**
- (21) **a particular candidate?**
- (22) **A. I do recall seeing ads that had**
- (23) **both legislative matters that they were**
- (24) **addressing plus they mention the name of a**
- (25) **candidate and would appear to be trying to**

Page 43

- (1)
- (2) **promote or attack the candidate.**
- (3) **Q. How was the student to respond to**
- (4) **question 11 with respect to such an ad?**
- (5) **A. It would be their subjective**
- (6) **choice. If they were unclear, they would then**
- (7) **register 3 which is the unsure/unclear.**
- (8) **Q. Do you know why they weren't**
- (9) **given another option to answer both?**
- (10) **A. No, I do not know that.**
- (11) **Q. Could you direct your attention**
- (12) **to question 27 which asks, "In your judgment,**
- (13) **is the primary focus of this ad on the personal**
- (14) **characteristics of either candidate or on**
- (15) **policy matters" and there they did give the**
- (16) **students the opportunity to say both, did they**
- (17) **not?**
- (18) **A. Yes, they did.**
- (19) **Q. Did you ever speak with Professor**
- (20) **Goldstein about whether the students should**
- (21) **have been given an option in responding to**
- (22) **question 11 of saying both?**
- (23) **A. No, I never did talk to him about**
- (24) **that.**
- (25) **Q. Do you know what the results were**

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- (1)
- (2) **broadly with respect to question 27,**
- (3) **specifically what did the students conclude**
- (4) **about the primary focus of the advertisements**
- (5) **that they saw as regards whether the ads**
- (6) **focused on personal characteristics of**
- (7) **candidates or policy matters?**
- (8) **A. To tell the truth Q 27 was not a**
- (9) **major part of my analysis. I did not use it**
- (10) **very extensively. I can produce the results if**
- (11) **I go back to the database, but no, off the top**
- (12) **of my head I could not tell you what the**
- (13) **results were.**
- (14) **Q. If the results were that an**
- (15) **overwhelming amount of the advertisements were**
- (16) **determined by the students to be ones on policy**
- (17) **matters rather than on personal**
- (18) **characteristics, wouldn't that suggest to you**
- (19) **that many of the answers to question 11 would**
- (20) **have been both if the students had been given**
- (21) **an opportunity to so state?**
- (22) **MR. DODYK: Would you read the**
- (23) **question back, please.**
- (24) **(Record read.)**
- (25) **A. Well, you know, I don't know how**

Page 45

- (1)
- (2) the students would answer Q 11 if they were
- (3) provided with the both option, but Q 27 and
- (4) Q 11 are not really that interrelated in a way.
- (5) By focusing one on policy matters verses
- (6) personal characteristics would off hand suggest
- (7) to me an ad that promoted a candidacy should I
- (8) vote for that candidate because that candidate
- (9) stands on a certain policy matter or because
- (10) that candidate has, you know, a bad personal
- (11) background. Either way it would be -- it could
- (12) be candidate promotion. I could not draw -- I
- (13) would not draw a close interrelatedness between
- (14) Q 27 and Q 11.
- (15) Q. But an ad can be both candidate
- (16) promotion and policy promotion, correct?
- (17) A. Certainly it can be.
- (18) Q. Could you look at the particular
- (19) storyboard that is attached to the materials.
- (20) First, do you recall who chose that particular
- (21) one to attach?
- (22) A. It was not me. It was done in
- (23) the editorial process and what the particular
- (24) layout of the book was taken over by editors.
- (25) Q. I'm sorry, editors at the Brennan

Page 46

- (1)
- (2) Center or somewhere else?
- (3) A. Editors at the Brennan Center
- (4) along with the company that did the layout for
- (5) the book. I think they were called Flats so
- (6) together in their meetings they decided what
- (7) storyboards to select. As I noted earlier, I
- (8) would have taken the whole range of storyboards
- (9) to provide examples of electioneering verses
- (10) genuine issue ads and so forth.
- (11) Q. Can you look at the storyboard
- (12) now and tell us in your opinion is the purpose
- (13) of this ad to provide information about or urge
- (14) action on a bill or issue or is it to generate
- (15) support or opposition for a particular
- (16) candidate?
- (17) A. For me to offer a political
- (18) science opinion, I would like to know when this
- (19) ad was aired if it was very close to the
- (20) election or not.
- (21) Q. The students were not told that,
- (22) were they?
- (23) A. No, they were not told that so
- (24) even though I'm unfamiliar with this ad, in my
- (25) opinion it would be depending on when it's

Page 47

- (1)
- (2) aired, however, that would be my opinion. If
- (3) it were aired close to -- very close to the
- (4) election, I would suggest that this could be
- (5) electioneering. If it were not aired close to
- (6) the election and it deals with an issue that is
- (7) pending before Congress, then I would view it
- (8) as genuine issue.
- (9) Q. Students were not given any of
- (10) that information, were they?
- (11) A. No, they were not.
- (12) Q. If you sit here today with only
- (13) this storyboard in front of you and if I compel
- (14) you to play the role of coder and to respond as
- (15) the students did to this ad, how would you code
- (16) it with respect to question 11?
- (17) A. Without any knowledge of when it
- (18) aired, I would suspect it's an issue ad as
- (19) opposed to an electioneering ad.
- (20) Q. Is this something that by our
- (21) examination of the data that we will be able to
- (22) find out how this was, in fact, coded?
- (23) A. Yes, I can tell you that.
- (24) Q. You mentioned that if this were
- (25) close to an election you might have been more

Page 48

- (1)
- (2) likely to treat this as an electioneering
- (3) matter, correct?
- (4) A. That is correct. If it were
- (5) immediately prior to the election when Al Gore
- (6) was fighting against George Bush.
- (7) Q. Would you then have characterized
- (8) it as pro Gore or anti Gore?
- (9) A. I would have characterized this
- (10) as pro Gore.
- (11) Q. Why?
- (12) A. Gore has a reputation more so
- (13) than George Bush for supporting Medicare.
- (14) Q. Any other reason?
- (15) A. That would be my primary reason.
- (16) Q. Are there any other reasons?
- (17) A. Not that I can see, no.
- (18) Q. I want to take you -- sorry. Did
- (19) you ever come to review the 1998 ads which were
- (20) deemed by the Brennan Center to be "sham issue
- (21) ads"?
- (22) A. I looked at ads. The Brennan
- (23) Center does not use the term sham issue ads,
- (24) but I have reviewed the storyboards for 1998.
- (25) Q. Did a time come when you or Mr.

Page 49

- (1)
- (2) McLoughlin provided Professor Richard Hasen
- (3) with information for an article that he was
- (4) writing?
- (5) A. Yes, we did.
- (6) Q. Who was Professor Hasen?
- (7) A. Rick Hasen is a law professor at
- (8) Loyola Law School in Los Angeles. Part of the
- (9) whole agreement with Buying Time 2000 is trying
- (10) to encourage academic research in using the
- (11) database and Rick Hasen wanted to publish an
- (12) article, you know, using the database for both
- (13) 1998 and 2000 and so we obliged.
- (14) Q. And you funded him, did you not?
- (15) A. I don't know if he was funded for
- (16) that. I don't know if that was part of the
- (17) proposal.
- (18) Q. I mean the Brennan Center funded
- (19) his work, did it not?
- (20) A. I do not know that.
- (21) MR. ABRAMS: I want to mark as
- (22) Exhibit 6 a letter from Mr. McLoughlin
- (23) to Professor Hasen dated January 8,
- (24) 2001.
- (25) (Plaintiff's Exhibit Holman 6,

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- (1)
- (2) Letter dated January 8, 2001, marked for
- (3) Identification.)
- (4) Q. Do you recall if you have seen
- (5) this document before?
- (6) A. Luke would share these documents
- (7) with Rick so I would have seen this before,
- (8) although I didn't take much time with it. I
- (9) was busy working on Buying Time 2000.
- (10) Q. Why did he send him this
- (11) information?
- (12) A. This is clearly in response to a
- (13) request by Rick seeking the storyboards. Rick
- (14) is a very, very independent scholar who wants
- (15) to make his own judgments and so he was zealous
- (16) about getting all the storyboards so he could
- (17) take a look himself and determine whether or
- (18) not he happened to agree with the coders and do
- (19) his own analysis.
- (20) Q. Mr. McLoughlin's letter referred
- (21) to ad number 12 and ad number 318 and I want to
- (22) mark as Plaintiff's Exhibits 7 and 8 documents
- (23) produced to us by the Brennan Center which
- (24) appear to be ad 12 and ad 318.
- (25) MR. ABRAMS: I will mark as

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- (1)
- (2) Exhibit 7 the document with the number
- (3) 12 on the right. It's a storyboard. I
- (4) will mark as Exhibit 8 the document with
- (5) the number 318 on the right and it is
- (6) also a storyboard.
- (7) (Plaintiff's Exhibit Holman 7,
- (8) Ad 12 Storyboard, marked for
- (9) Identification.)
- (10) (Plaintiff's Exhibit Holman 8,
- (11) Ad 318 Storyboard, marked for
- (12) Identification.)
- (13) A. These are not good copies.
- (14) Q. These are our copies of what we
- (15) were given.
- (16) A. That's how we have them too.
- (17) Q. As you see, we will have better
- (18) copies of the 2000 storyboards. Could you
- (19) direct your attention first to Exhibit 7 which
- (20) is the AFL ad. Is this an ad that was treated
- (21) in the 1998 study as a "genuine issue ad"?
- (22) A. Yes, it is.
- (23) Q. Is Exhibit 8 an ad that was
- (24) treated in the 1998 study as a "genuine issue
- (25) ad"?

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- (1)
- (2) A. Yes, it is.
- (3) Q. What is a genuine issue ad?
- (4) A. The genuine issue ad was that one
- (5) component of the survey that the coders filled
- (6) which was Q 11 in 2000, it was a different
- (7) number in 1998 by the way, but the same
- (8) question, a genuine issue ad was classified as
- (9) an ad that did not use, first of all, the magic
- (10) words as part of the objective test and
- (11) secondly, was viewed by the coders as something
- (12) that was intended primarily to advocate a
- (13) certain issue rather than promote a candidacy.
- (14) Q. The coders were not given the
- (15) word primarily, were they, in question 11?
- (16) A. No, they were not.
- (17) Q. The question they were asked was
- (18) "is the purpose of the ad to provide
- (19) information about or urge action on a bill or
- (20) issue or is it to generate support or
- (21) opposition for a particular candidate",
- (22) correct?
- (23) A. Right or are you unsure or
- (24) unclear.
- (25) Q. Exhibit 7 was treated as a

Page 53

- (1)
- (2) genuine issue ad, correct?
- (3) **A. Yes.**
- (4) **Q. As was Exhibit 8?**
- (5) **A. Yes.**
- (6) **Q. When you say that a genuine issue**
- (7) **ad cannot contain what you refer to as magic**
- (8) **words, what do you mean by that?**
- (9) **A. Vote for a candidate or vote**
- (10) **against a candidate or elect a candidate.**
- (11) **Q. Are the particular words which**
- (12) **you understand to be "magic words"?**
- (13) **A. There are some that have been**
- (14) **identified as particular magic words, but it**
- (15) **was left very open in the Buckley decision and**
- (16) **remains a matter of dispute in the courts**
- (17) **today.**
- (18) **Q. Mr. McLoughlin mentions on page**
- (19) **two of his letter "28 distinct sham issue ads"?**
- (20) **MR. DODYK: Could you point us to**
- (21) **the line?**
- (22) **MR. ABRAMS: About line 7 right**
- (23) **above the numbers.**
- (24) **Q. "Though we don't have the other**
- (25) **12 boards to confirm, I count 28 distinct sham**

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- (1)
- (2) issue ads". He used the words sham issue ads?
- (3) **A. In the beginning I kept teaching**
- (4) **him not to do that, but in the beginning he**
- (5) **was, yes.**
- (6) **Q. Did anyone else around the**
- (7) **Brennan Center refer to them as sham issue ads**
- (8) **to your knowledge?**
- (9) **A. Well, I made it specific policy**
- (10) **not to do it in Buying Time 2000, but I have**
- (11) **heard other people use that term once in a**
- (12) **while, but it really is a term that is not used**
- (13) **very often and it is certainly not part of an**
- (14) **academic study.**
- (15) **Q. But the words magic words are**
- (16) **appropriately part of an academic study?**
- (17) **A. Yes, they are. I don't consider**
- (18) **that necessarily derogatory.**
- (19) **Q. I want to review with you by way**
- (20) **of example a few of the ads that Mr. McLoughlin**
- (21) **referred to as a distinct sham issue ads.**
- (22) **MR. ABRAMS: I will mark as**
- (23) **Exhibit 9 what is set forth as number 11**
- (24) **in Mr. McLoughlin's letter.**
- (25) **(Plaintiff's Exhibit Holman 9,**

Page 55

- (1)
- (2) **Ad 11 Storyboard, marked for**
- (3) **Identification.)**
- (4) **Q. This storyboard was treated as a**
- (5) **sham issue ad or as an electioneering issue ad**
- (6) **in the 1998 study, was it not?**
- (7) **A. Coded as an electioneering issue**
- (8) **ad, yes.**
- (9) **Q. Do you agree with that?**
- (10) **A. Yes, I would agree with that.**
- (11) **Q. Why is that?**
- (12) **A. It's attacking representative Pat**
- (13) **Danner for an issue that is over with already**
- (14) **specifically mentions and plays up the name**
- (15) **Danner and casts it in a very negative light on**
- (16) **a prior vote.**
- (17) **Q. Does Exhibit 9 refer to a public**
- (18) **issue?**
- (19) **A. It refers to a policy issue, yes,**
- (20) **which would show why I also don't believe Q 29**
- (21) **would be related to Q 11.**
- (22) **Q. So the answer to Q 29 on Exhibit**
- (23) **9 would be that it relates to a policy issue,**
- (24) **correct?**
- (25) **A. I don't know what the coders have**

Page 56

- (1)
- (2) **done, but it would not surprise me if they had**
- (3) **said that, yes.**
- (4) **Q. Is Exhibit 9 advocacy with**
- (5) **respect to how Representative Danner should**
- (6) **vote in the future when a tax plan comes up**
- (7) **again?**
- (8) **A. That would be difficult to say**
- (9) **without having a clue what the tax plan that**
- (10) **comes up again would be about.**
- (11) **Q. The coder won't know that, will**
- (12) **he?**
- (13) **A. No, which is why I would agree**
- (14) **with the coder that this really has nothing to**
- (15) **do with the tax plan since there is no tax**
- (16) **plan.**
- (17) **Q. Do you really mean it has nothing**
- (18) **to do with the tax plan even though it says**
- (19) **call Danner and tell her to vote no when the**
- (20) **tax plan comes up again?**
- (21) **A. Well, for a hypothetical tax plan**
- (22) **perhaps, but no, that isn't how I would read**
- (23) **this ad. I would read this ad as attacking Pat**
- (24) **Danner and trying to cast Pat Danner in a bad**
- (25) **light for a prior vote.**

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- (1)
- (2) **Q.** Would you also read the ad as
- (3) setting forth policy positions about social
- (4) security?
- (5) **A.** It wants to appeal to protect
- (6) social security, that it does.
- (7) **MR. ABRAMS:** I will mark as
- (8) Exhibit 10 a document from 1998 marked
- (9) as ad 15.
- (10) (Plaintiff's Exhibit Holman 10,
- (11) Ad 15 Storyboard, marked for
- (12) Identification.)
- (13) **Q.** Let me ask you first just so the
- (14) record is clear. Why don't you look at the
- (15) material on the top of the page first and let's
- (16) just explain for the record what these words
- (17) mean. Where it says brand AFL-CIO Union, what
- (18) does that mean?
- (19) **A.** That would be CMAG's assumption
- (20) as to who is behind the commercial as far as
- (21) they can determine.
- (22) **Q.** You say that's their assumption?
- (23) **A.** Yes.
- (24) **Q.** They don't know?
- (25) **A.** They often know and they often do

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- (1)
- (2) not.
- (3) **Q.** Under title it says AFL/SS Trust
- (4) Fund, who writes that?
- (5) **A.** CMAG writes that.
- (6) **Q.** On what basis do they write it?
- (7) **A.** That is their own basis. They
- (8) frequently try to put the identifying
- (9) geographical area first or if there is no
- (10) specific geographical area, they will often put
- (11) the group identifier first and then they just
- (12) come up with an abbreviation title for the ad
- (13) itself and that whole title has to be exact in
- (14) order to find this particular storyboard for
- (15) instance or ad in any of the databases.
- (16) **Q.** This means that the ad is from
- (17) the AFL and it's about the social security
- (18) trust fund, right?
- (19) **A.** Yes, it does.
- (20) **Q.** Under commercial under the word
- (21) "commercial" it has the same language there,
- (22) right?
- (23) **A.** Yes, it does.
- (24) **Q.** What does commercial mean?
- (25) **A.** I do not know why CMAG would have

Page 59

- (1)
- (2) that.
- (3) **Q.** Under length it says 30, does
- (4) that mean 30 seconds?
- (5) **A.** Yes, it does.
- (6) **Q.** Under frames it says 8, what does
- (7) that mean?
- (8) **A.** Number of frames captured on the
- (9) storyboard to reflect the full ad. Sometimes
- (10) especially with the 60 second commercials you
- (11) will have to go on two pages so it's necessary
- (12) to clarify how many frames are there.
- (13) **Q.** Do you know why Exhibit 10 was
- (14) coded as a so-called sham issue ad?
- (15) **A.** I would guess it's quite similar
- (16) to your earlier exhibit, Exhibit 9, in that it
- (17) deals with -- it focuses really on trying to
- (18) attack or -- attack a candidate, Congresswoman
- (19) Northup along with -- well, that probably
- (20) wasn't into the consideration.
- (21) **Q.** What is there in this ad that is
- (22) critical of Congresswoman Northup?
- (23) **A.** Trying to affiliate her with
- (24) Republican congress spending the social
- (25) security surplus.

Page 60

- (1)
- (2) **Q.** Anything else?
- (3) **A.** No, that's what I see in there.
- (4) **Q.** The ad does on its face urge her
- (5) to oppose certain cuts in social security, does
- (6) it not?
- (7) **A.** Yes, it does.
- (8) **Q.** It urges her to put social
- (9) security first, correct?
- (10) **A.** Correct.
- (11) **MR. ABRAMS:** I will mark as
- (12) Exhibit 11 a document sent by Mr.
- (13) McLoughlin with the number 16 on it.
- (14) (Plaintiff's Exhibit Holman 11,
- (15) Ad 16 Storyboard, marked for
- (16) Identification.)
- (17) **Q.** Can you tell us first whose ad
- (18) this is?
- (19) **A.** Because I have done research on
- (20) this this is Americans for Limited Terms.
- (21) **Q.** They are a group that is in favor
- (22) of term limits; is that correct?
- (23) **A.** Yes, they are.
- (24) **Q.** This ad was treated as a sham
- (25) issue ad, correct?

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- (1)
- (2) A. Yes, it was.
- (3) Q. Is it?
- (4) A. Again, I don't use the term: sham
- (5) issue ads, but let me read it. I would agree
- (6) with the coders on this one. This ad is
- (7) focusing Merrill Cook as not supporting the
- (8) term limits and depicting him as desiring to
- (9) become a career politician.
- (10) Q. Does this ad also in your view
- (11) urge Merrill Cook to sign a pledge to limit his
- (12) own terms?
- (13) A. Yes, it does.
- (14) Q. Does it take a position on a
- (15) public issue of term limits?
- (16) A. Yes, it does. It's in support of
- (17) term limits.
- (18) MR. ABRAMS: I will mark as
- (19) Exhibit 12 a document marked as number
- (20) 20 in Mr. McLoughlin's letter.
- (21) (Plaintiff's Exhibit Holman 12,
- (22) Ad 20 Storyboard, marked for
- (23) Identification.)
- (24) Q. This ad as well is by a group
- (25) that is in favor of term limits, correct?

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- (1)
- (2) A. Correct.
- (3) Q. This ad as well was treated as
- (4) what vocabulary do you want to use, an
- (5) electioneering issue ad?
- (6) A. Yes.
- (7) Q. This ad as well was treated as an
- (8) electioneering issue ad in 1998, correct?
- (9) A. Correct.
- (10) Q. Why?
- (11) A. Well, I mean the coders were the
- (12) ones that decided that and I'm assuming that is
- (13) accurate from Luke's memo and I would agree
- (14) with the coders on this one as well.
- (15) Q. What is it about this
- (16) advertisement that makes it in your view an
- (17) electioneering issue ad?
- (18) A. It is designed to promote the
- (19) candidacy of Molly Bordonaro for having pledged
- (20) to accept the term limits and to oppose the
- (21) candidacy of David Wu who refused to accept the
- (22) term limits. It's picturing Molly in a
- (23) positive light, a very positive light and David
- (24) Wu in a very negative light.
- (25) Q. Doesn't this ad on the face of it

Page 63

- (1)
- (2) urge David Wu to take certain actions?
- (3) A. This ad makes it clear that David
- (4) Wu already took that action and refused to sign
- (5) the term limits. It's calling David Wu, I mean
- (6) that's -- it makes it clear David Wu already
- (7) took this action and has refused.
- (8) Q. So when it says "Call David Wu
- (9) and tell him to sign the US term limits
- (10) pledge", are you testifying that it doesn't
- (11) mean that?
- (12) A. Yes, I am, although this is a bad
- (13) reproduction of the ad. For instance, I don't
- (14) see any telephone number here for anyone to
- (15) call. Yes, I do not believe the group that
- (16) sponsored this ad really cared one way or
- (17) another if anyone did call David Wu. It knows
- (18) that David Wu is opposed to term limits and
- (19) refused to sign the pledge, that's the gist of
- (20) the ad.
- (21) Q. This is your subjective judgment,
- (22) is it not, as to the intention of the people
- (23) that put out the ad?
- (24) A. True, and the subjective analysis
- (25) of the coder.

Page 64

- (1)
- (2) Q. This ad contains overt advocacy,
- (3) does it not, in support of term limits?
- (4) A. The ad supports the policy of
- (5) term limits, yes.
- (6) Q. In very strong terms, does it
- (7) not?
- (8) A. Yes.
- (9) Q. "The answer is term limits. Term
- (10) limits replace Washington insiders with new
- (11) people who reflect community interests, not
- (12) politics as usual"?
- (13) A. Certainly it supports the policy
- (14) of term limits.
- (15) Q. If there had been an option in
- (16) question 11 that said both, would you fill it
- (17) out?
- (18) A. In my subjective opinion, I would
- (19) not. This ad was designed specifically to
- (20) promote Molly Bordonaro and to attack David Wu.
- (21) If you ask me on Q 29, it certainly does deal
- (22) with the policy issue, but that's not the
- (23) intent in my opinion.
- (24) Q. Suppose question 11 were
- (25) rephrased not to ask what the purpose of the ad

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- (1)
- (2) was, but to ask what the ad did or said.
- (3) Suppose it said in your opinion does the ad
- (4) provide information about or urge action on a
- (5) bill or issue or does it generate support or
- (6) opposition for a particular candidate, how
- (7) would you answer that?
- (8) **MR. DODYK:** Would you read the
- (9) question back.
- (10) **(Record read.)**
- (11) **A.** In my opinion I would consider
- (12) this electioneering. This supports a certain
- (13) candidate and attacks a specific candidate.
- (14) **Q.** So you would answer my revised
- (15) question 11 by checking number one "generates
- (16) support or opposition for a candidate",
- (17) correct?
- (18) **A.** Yes, I would.
- (19) **Q.** Even if you had a choice of both,
- (20) you would not choose that, correct?
- (21) **A.** No, I would not, not in this
- (22) case.
- (23) **MR. ABRAMS:** Why don't we take a
- (24) 10 minute break.
- (25) **(Recess taken.)**

Page 66

- (1)
- (2) **MR. ABRAMS:** I want to mark, Dr.
- (3) Holman, as Exhibit 13 a Brennan Center
- (4) storyboard with the number 1411 on it
- (5) and since this advertisement also ran in
- (6) the year 2000 I'm providing as the back
- (7) two pages a better version of the same
- (8) advertisement so this is a four page
- (9) exhibit, but it is one ad.
- (10) **(Plaintiff's Exhibit Holman 13,**
- (11) **Ad 1411 Storyboard, marked for**
- (12) **Identification.)**
- (13) **Q.** I suggest you look at the better
- (14) version inside. Have you looked at Exhibit 13?
- (15) **A.** Yes.
- (16) **Q.** That exhibit was run in identical
- (17) form, was it not, in 1998 and 2000?
- (18) **A.** Yes, it was.
- (19) **Q.** Who paid for this advertisement?
- (20) **A.** National Pro Life Alliance
- (21) judging from the brand name of their -- I'm not
- (22) sure if they are affiliated with other pro life
- (23) groups or they are an independent group on
- (24) their own.
- (25) **Q.** They are a pro life group,

Page 67

- (1)
- (2) correct?
- (3) **A.** Yes.
- (4) **Q.** They are against partial birth
- (5) abortion?
- (6) **A.** Yes.
- (7) **Q.** This ad was treated as an
- (8) electioneering issue ad in both 1998 and 2000,
- (9) was it not?
- (10) **A.** Yes, it was.
- (11) **Q.** You agreed with that, did you
- (12) not?
- (13) **A.** Yes, I do.
- (14) **Q.** This ad refers to two senators,
- (15) Senator Feingold and Senator Kohl, correct?
- (16) **A.** Correct.
- (17) **Q.** Was the ad an electioneering
- (18) issue ad as to the senator that was not running
- (19) for election that year?
- (20) **A.** Yes, it is casting both senators
- (21) in a very negative light and which is why it
- (22) was used both years when each senator was
- (23) running.
- (24) **Q.** Senator Feingold ran in 1998,
- (25) correct?

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- (1)
- (2) **A.** Yes, he did.
- (3) **Q.** Why did it mention Senator Kohl
- (4) in 1998?
- (5) **MR. DODYK:** Object to the form of
- (6) the question.
- (7) **Q.** If you know?
- (8) **A.** Well, I guess I would be
- (9) speculating as to the intent of the group
- (10) whether the group knew they were going to run
- (11) this for two years or whether the group wanted
- (12) to cast both of these democrats who support
- (13) abortion rights in a very negative light. I
- (14) would be speculating why they did that.
- (15) **Q.** Aren't you doing that as to every
- (16) ad when we talk about what the intention of the
- (17) people that put the ad was?
- (18) **A.** I can offer my opinion that I
- (19) suspect this group intended to run this ad in
- (20) both 1998 and 2000 and they produced an ad that
- (21) was electioneering against these two senators
- (22) fully realizing that these two senators are not
- (23) going to change their mind on abortion rights
- (24) so not designed to try to influence their votes
- (25) on any future abortion bill, but designed to

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- (1)
- (2) **cast these senators in a very negative light in**
- (3) **the state of Wisconsin using such terms as**
- (4) **grizzily picturing their smiling faces after the**
- (5) **news stories of partial birth abortions.**
- (6) **Q. Is it your opinion that**
- (7) **advertisements that are critical of senators**
- (8) **who are running for election with regard to**
- (9) **their positions on public issues are for that**
- (10) **reason election issue ads?**
- (11) **A. No, not necessarily. Certainly**
- (12) **you can have genuine issue ads that talk about**
- (13) **candidates if the emphasis really is on a bill**
- (14) **that's pending say before congress or certain**
- (15) **public policy issue and hoping to actually**
- (16) **influence perhaps the legislative votes of that**
- (17) **congressman.**
- (18) **Q. Suppose the purpose is to**
- (19) **criticize a senator for taking a public policy**
- (20) **position and to do so during an election year,**
- (21) **does that in your view make it a sham issue ad**
- (22) **as opposed to a genuine issue ad?**
- (23) **A. Not necessarily, no. An**
- (24) **electioneering issue ad. If there is a**
- (25) **legislative policy that could be influenced by**

Page 70

- (1)
- (2) **the ad itself, even though if it does criticize**
- (3) **a candidate that is running in that election**
- (4) **period, I could conceive of some that I would**
- (5) **view as genuine issue ads.**
- (6) **Q. You don't mean, do you, that the**
- (7) **National Pro Life Alliance doesn't genuinely**
- (8) **care about partial birth abortion, do you?**
- (9) **A. No, I don't mean that.**
- (10) **Q. You don't mean that they don't**
- (11) **mean what they say about partial birth**
- (12) **abortions?**
- (13) **A. They are opposed to partial birth**
- (14) **abortions.**
- (15) **Q. They believe that partial birth**
- (16) **abortions kill thousands every year as the ad**
- (17) **says, correct?**
- (18) **A. Correct.**
- (19) **Q. They think it's a bad thing for**
- (20) **senators to vote in a fashion that is from**
- (21) **their perspective insufficiently critical of**
- (22) **partial birth abortion?**
- (23) **A. I'm sure they would say that's a**
- (24) **bad thing.**
- (25) **Q. When the ad then says "contact**

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- (1)
- (2) **Senators Feingold and Kohl today and insist**
- (3) **they change their vote and oppose partial birth**
- (4) **abortion", is it your opinion that they don't**
- (5) **want them to change their vote and oppose**
- (6) **partial birth abortions?**
- (7) **A. No, it's my opinion that they**
- (8) **couldn't care less if anyone called Feingold**
- (9) **and Kohl. Their purpose is to cast Feingold**
- (10) **and Kohl in a very negative light to try to**
- (11) **affect the public and the voter's perception of**
- (12) **Feingold and Kohl and to influence the**
- (13) **election.**
- (14) **Q. So when it says "tell them to**
- (15) **vote for the partial birth abortion ban", they**
- (16) **don't mean that, do they?**
- (17) **A. Not in my opinion. They really**
- (18) **-- I mean they support the partial birth**
- (19) **abortion ban, but this ad is not designed to**
- (20) **get people to call Feingold and Kohl and**
- (21) **convince them to change their vote on partial**
- (22) **birth abortion.**
- (23) **Q. Even though it says so?**
- (24) **A. Yeah.**
- (25) **Q. Is that the same sort of judgment**

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- (1)
- (2) **that you would hope the students that were**
- (3) **coding this ad went through?**
- (4) **A. I find it interesting that the**
- (5) **coders would agree with me on this, yes, it is**
- (6) **a subjective judgment.**
- (7) **Q. Did Mr. McLoughlin ever tell you**
- (8) **that he thought it was a genuine issue ad?**
- (9) **A. I do not recall if he ever said**
- (10) **that to me or not.**
- (11) **MR. ABRAMS: I would like to mark**
- (12) **as Exhibit 14 an e-mail from Mr.**
- (13) **McLoughlin to you of January 18, I**
- (14) **believe it's 2001.**
- (15) **(Plaintiff's Exhibit Holman 14,**
- (16) **R-Mail dated January 18, 2001, marked**
- (17) **for Identification.)**
- (18) **Q. Do you recall receiving Exhibit**
- (19) **14?**
- (20) **A. Not specifically, but I have no**
- (21) **doubt that I did receive this and Luke is**
- (22) **expressing his opinion that he could perceive**
- (23) **it as a genuine issue ad.**
- (24) **Q. He didn't say he could perceive**
- (25) **it, did he, he said, "It reads to me like a**

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- (1)
- (2) genuine issue ad?"
- (3) A. That is what Luke wrote.
- (4) Q. Do you think this is an issue
- (5) that reasonable people could disagree about?
- (6) A. Certainly. I mean when it comes
- (7) to any subjective judgments such as the Q 11
- (8) question, it isn't a black and white issue I
- (9) think as Luke's e-mail demonstrates.
- (10) Q. Was it in the end Professor
- (11) Goldstein who decided that with respect to the
- (12) 2000 study that Exhibit 13 should be treated as
- (13) an electioneering ad?
- (14) A. Yes, it was Ken Goldstein's
- (15) decision.
- (16) Q. Why was it his decision rather
- (17) than the students who did the coding?
- (18) A. I don't know why Ken Goldstein
- (19) would have made that decision. That's
- (20) something you would have to ask him.
- (21) Q. Wouldn't the only circumstances
- (22) be if the students had decided that it was a
- (23) genuine issue ad?
- (24) A. There are occasions in which Ken
- (25) overrode the student's judgment. Here in this

Page 74

- (1)
- (2) case Ken had two years to look at this in 2000
- (3) and in 1998, you know, was viewed as an
- (4) electioneering issue ad and Ken decided to keep
- (5) it the same way in 2000.
- (6) Q. What purpose did the coders serve
- (7) on this ad?
- (8) A. Well, Q 11 is just one of the
- (9) questions of 35 and the coders serve an
- (10) instrumental basis here all the way through.
- (11) When it comes to disagreements, you know, that
- (12) is when Ken would step in with his judgments
- (13) here and there was a disagreement apparently
- (14) between 1998 and 2000 by the student coders and
- (15) so Ken apparently felt justified to step in on
- (16) this one in 2000.
- (17) Q. Did he reverse or overrule the
- (18) students' judgments with respect to any other
- (19) ads with respect to Q 11?
- (20) A. There are other instances which
- (21) Ken did that, yes.
- (22) Q. Did he ever do it in the
- (23) direction of concluding that the students had
- (24) determined that something was an electioneering
- (25) issue ad, but that he believed that it was a

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- (1)
- (2) genuine issue ad?
- (3) A. I don't know if Ken -- I don't
- (4) know what direction Ken did that in.
- (5) Q. Weren't all of his other rulings
- (6) in the direction of showing that more ads were
- (7) electioneering or sham issue ads rather than
- (8) less?
- (9) A. I do not know for sure. I know
- (10) there was one instance in which there was an
- (11) overruling because he determined there were
- (12) magic words used in the ad and so that
- (13) transferred the ad into an electioneering call,
- (14) but no longer an issue ad. I don't know.
- (15) Q. That would be the determination
- (16) of a student in that situation would simply be
- (17) wrong, would it not, that is to say if there
- (18) were certain words that that permits an
- (19) objective judgment?
- (20) A. Right.
- (21) Q. But this is a subjective judgment
- (22) as to how to characterize this ad, correct?
- (23) A. That is correct.
- (24) Q. And all the ads?
- (25) A. Actually the magic words can be a

Page 76

- (1)
- (2) little subjective, but yes, this is a
- (3) subjective judgment when it comes to Q 11.
- (4) Q. How can the magic words be a
- (5) little subjective?
- (6) A. The list that is speculated by
- (7) the Supreme Court in the footnote in the
- (8) Buckley decision does not appear to be an
- (9) exclusive list of what the magic words are and
- (10) there have been subsequent court cases of which
- (11) I'm not a legal scholar in which they have
- (12) expanded some of the list and so there are
- (13) apparently subjective judgments as to what it
- (14) actually pictures a magic words or fits the
- (15) magic words standard.
- (16) Q. Would it be fair to say the words
- (17) aren't magic?
- (18) A. What term do you want to use to
- (19) describe them?
- (20) Q. Express advocacy?
- (21) A. I would stick with the magic
- (22) words express terminology. That's generally
- (23) what's used in the political science community.
- (24) Q. Aren't you testifying that in
- (25) fact "magic words" are not limited to a few

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- (1)
- (2) particular words?
- (3) **A. That is correct.**
- (4) **MR. ABRAMS:** I'm going to mark now
- (5) as Exhibit 15 an e-mail from you dated
- (6) April 11, 2001 which also deals in part
- (7) with Exhibit 13. You will see that
- (8) attached to Exhibit 15 are copies of all
- (9) the advertisements referred to in
- (10) Exhibit 15.
- (11) **(Plaintiff's Exhibit Holman 15,**
- (12) **E-Mail dated April 11, 2001, marked for**
- (13) **Identification.)**
- (14) **Q.** Is Exhibit 15 an e-mail that you
- (15) sent?
- (16) **A. Yes, it is.**
- (17) **Q.** Are the materials annexed to
- (18) Exhibit 15 copies of the advertisements that
- (19) are referred to in Exhibit 15?
- (20) **A. Yes, they are.**
- (21) **Q.** Focusing first on paragraph 3 in
- (22) your e-mail to Jonathan Krasno you say, "The
- (23) two genuine issue ads that mention a candidate
- (24) in the database are ad codes 627 (KY/CFAW Call
- (25) Northup) and 2862 (UT/COC Matheson Can't

Page 78

- (1)
- (2) Decide). There is no question these are
- (3) genuine issue ads that mention a candidate
- (4) within 60 days." Focusing first on the
- (5) advertisement relating to Congressman Northup,
- (6) do you remain of the view that there is no
- (7) question that that's a genuine issue ad?
- (8) **A. Yes, I do.**
- (9) **Q.** Is it at all critical of her?
- (10) **A. It raises suspicions. It doesn't**
- (11) **say that Congressman Northup did vote in favor**
- (12) **of the foreign worker bill. It refers to a**
- (13) **bill that is pending before Congress and makes**
- (14) **it unclear how Northup is going to vote on this**
- (15) **and so encourages viewers to call her and to**
- (16) **try to influence her vote on the bill pending**
- (17) **at congress.**
- (18) **Q.** It does say, doesn't it, "based
- (19) on her record Congresswoman Northup is likely
- (20) to vote in favor" of the bill?
- (21) **A. That's right.**
- (22) **Q.** It's not a friendly ad with
- (23) respect to her, is it?
- (24) **A. It's not really a critical ad**
- (25) **either. It's not something that I would label**

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- (1)
- (2) **as an attack ad against Northup.**
- (3) **Q.** On your reviewing it you're
- (4) persuaded that it is intended to get her to
- (5) change her vote or to vote in a particular way?
- (6) **A. Yes, it is.**
- (7) **Q.** Does it make any difference when
- (8) the ad ran?
- (9) **A. No, it doesn't make a difference.**
- (10) **Q.** Does it make a difference when
- (11) the vote was going to be held?
- (12) **A. On the bill itself?**
- (13) **Q.** Correct.
- (14) **A. Yes, the fact that there is a**
- (15) **bill pending you could influence her vote on is**
- (16) **a significant indicator to me that it is a**
- (17) **genuine issue ad trying to influence**
- (18) **legislation.**
- (19) **Q.** Did you know when you read the ad
- (20) how soon the vote would be on the foreign
- (21) worker bill?
- (22) **A. I did not actually document when**
- (23) **the foreign worker bill was being subject to**
- (24) **the vote, but the ad itself indicates that this**
- (25) **worker bill is coming up for a vote soon.**

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- (1)
- (2) **Q.** Do you know when the election was
- (3) with respect to Congressman Northup?
- (4) **A. No, I do not know that.**
- (5) **Q.** Would that make a difference to
- (6) you?
- (7) **A. No, the emphasis really does seem**
- (8) **to be on the bill that's pending before**
- (9) **Congress so even if this were within the 60 day**
- (10) **period near the election, I view this as an ad**
- (11) **that is genuinely trying to influence**
- (12) **legislation.**
- (13) **Q.** Is that something that there
- (14) could be reasonable debate about, do you think?
- (15) **A. All of these subjective judgments**
- (16) **can be reasonably debated.**
- (17) **Q.** Focusing on the next ad, this is
- (18) a Chamber of Commerce ad, correct?
- (19) **A. Correct.**
- (20) **Q.** Paid for by the United States
- (21) Chamber of Commerce and it says so, correct?
- (22) **A. That's correct.**
- (23) **Q.** Is this a supportive ad with
- (24) respect to Congressman Matheson?
- (25) **A. Let me read it here a second. It**

Page 81

- (1)
- (2) **is neither supporting nor attacking Jim**
- (3) **Matheson. As a matter of fact, it makes it**
- (4) **clear that Jim Matheson doesn't know what he's**
- (5) **going to do.**
- (6) **Q. Do you think Jim Matheson viewed**
- (7) **this as a neutral ad vis-a-vis him?**
- (8) **A. I would not know how Jim Matheson**
- (9) **viewed this ad.**
- (10) **Q. Do you view it as a neutral ad**
- (11) **vis-a-vis Congressman Matheson?**
- (12) **A. I view it as a neutral ad trying**
- (13) **to encourage Jim Matheson to vote a certain way**
- (14) **on a public policy issue.**
- (15) **Q. This is an ad that says "Jim**
- (16) **Matheson can't decide what position to take on**
- (17) **prescription drug coverage for seniors. He**
- (18) **doesn't support the common sense plan passed by**
- (19) **House of Representatives. He doesn't support**
- (20) **Bill Clinton's big government plan. Tell Jim**
- (21) **Matheson a big government plan is the wrong way**
- (22) **to go. It gives seniors no choice and it could**
- (23) **cost millions of seniors to lose the coverage**
- (24) **they already have. Tell Jim Matheson to make a**
- (25) **decision. This issue is too important to**

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- (1)
- (2) **ignore." Do you think this was a helpful ad**
- (3) **for Jim Matheson's campaign?**
- (4) **A. No, I don't believe it would help**
- (5) **or hurt his campaign. I don't believe that was**
- (6) **the point here. I mean it has Jim Matheson in**
- (7) **the middle. Doesn't support House of**
- (8) **Representatives, doesn't support Clinton's big**
- (9) **government plan. No, this doesn't lay out to**
- (10) **me whether or not I should vote for Jim**
- (11) **Matheson yet.**
- (12) **Q. Two paragraphs down in your memo**
- (13) **on Exhibit 15 it says that ads 1367 which is**
- (14) **the Langevin abortion ad and 2107 which is the**
- (15) **Feingold Kohl abortion ad "were judgment calls**
- (16) **made by Ken as electioneering (Q 11 = one) at**
- (17) **our last conference call". First of all, what**
- (18) **does Q 11 equals one mean?**
- (19) **A. That means electioneering. I**
- (20) **presume I wrote that correctly. Q 11 equals**
- (21) **generate support or opposition for a candidate.**
- (22) **Q. The Q 11 equals one in different**
- (23) **words would be Q 11 (1), correct?**
- (24) **A. Yes.**
- (25) **Q. Focusing first on the Langevin**

Page 83

- (1)
- (2) **abortion act, this was run in the 2000**
- (3) **campaign, was it not?**
- (4) **A. Yes, it was.**
- (5) **Q. This is the one that you referred**
- (6) **to as your poster child of sham issue advocacy?**
- (7) **A. Yes, and I wish I didn't use the**
- (8) **word sham issue advocacy.**
- (9) **Q. In fact, you use it throughout**
- (10) **the e-mail, didn't you?**
- (11) **A. I did in this case. I did not**
- (12) **make any habit of that.**
- (13) **Q. The Langevin ad is critical of**
- (14) **Congressman Langevin, correct?**
- (15) **A. Yes, it is.**
- (16) **Q. The Langevin ad takes a strong**
- (17) **position, does it not, on a women's right to**
- (18) **choose?**
- (19) **A. Yes, it does.**
- (20) **Q. It's critical of him because he**
- (21) **voted to ban abortion even if a mother's health**
- (22) **is in jeopardy, correct?**
- (23) **A. Correct.**
- (24) **Q. So this is another ad, is it not,**
- (25) **which you conclude is both an electioneering**

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- (1)
- (2) **issue ad, I'm sorry, this is another ad, is it**
- (3) **not, which you conclude is electioneering in**
- (4) **motive and policy in language?**
- (5) **MR. DODYK: I will object to the**
- (6) **form of the question.**
- (7) **Q. Is that correct?**
- (8) **A. Well, that's why I really do**
- (9) **prefer to use the term electioneering issue in**
- (10) **this case. It does address public policy, but**
- (11) **in my opinion its primary purpose is to cast**
- (12) **Jim Langevin in a bad image for voters that**
- (13) **this is televised to, but it does discuss**
- (14) **public policy, yes.**
- (15) **Q. Let's now turn to the next page**
- (16) **which is the same as Exhibit 13 and that is the**
- (17) **Feingold Kohl abortion ad. As to this one you**
- (18) **said in your e-mail that, "The Feingold Kohl**
- (19) **abortion ad also appears as a sham issue ad and**
- (20) **was coded as such in 1998. It is the same ad**
- (21) **that was used to attack Feingold then and Kohl**
- (22) **in 2000. The same group put out one identical**
- (23) **cookie-cutter attack ad against Chuck Robb in**
- (24) **2000 (ad 2089). This led us to conclude it is**
- (25) **a sham issue ad and not genuine." First of**

Page 85

- (1)
- (2) all, who is the us in that language?
- (3) **A. Well, always Ken had the final**
- (4) **decision as determining any of these issues,**
- (5) **but by us there was a group that made a**
- (6) **conference call to Ken when Ken was on vacation**
- (7) **in Florida and the us included Nancy Northup,**
- (8) **myself, Glenn Moramarco and there could have**
- (9) **been some other people there, but I don't**
- (10) **recall and we ran over different issues dealing**
- (11) **with coding and basically asked Ken to make a**
- (12) **decision on these.**
- (13) **Q. Under what circumstances did Ken**
- (14) **make the call on question 11 as opposed to the**
- (15) **coders?**
- (16) **A. I wouldn't know. I mean there**
- (17) **are times when I would call in to question some**
- (18) **issues, times when he would do it. I don't**
- (19) **know when he would actually decide to step in.**
- (20) **That is something really Ken would have to**
- (21) **answer for you.**
- (22) **Q. Does Buying Time 2000 give us the**
- (23) **answer to that question?**
- (24) **A. I don't think so. I don't recall**
- (25) **writing about it in Buying Time 2000.**

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- (1)
- (2) **Q. Would a reader of Buying Time**
- (3) **2000 know that Ken overruled the coders with**
- (4) **regard to question 11 at all?**
- (5) **A. I believe there was a line**
- (6) **referring to some intercoder reliability in the**
- (7) **database. Whether I specifically said that Ken**
- (8) **would overrule, I'm not sure.**
- (9) **Q. Was the student's judgment about**
- (10) **the Feingold Kohl ad "unreliable" in some way**
- (11) **or simply one that Ken disagreed with?**
- (12) **A. First of all, if there were two**
- (13) **students' judgments and one said yes and one**
- (14) **said no, then Ken stepped in and resolved it.**
- (15) **I wouldn't call that unreliable. I mean this**
- (16) **is a subjective call when we are dealing with**
- (17) **Q 11.**
- (18) **Q. When you say one said yes and one**
- (19) **said no, you mean, do you not, that in 1998 a**
- (20) **student said yes, this is an ad which is**
- (21) **directed at influencing the election and in**
- (22) **2000 a student said no, that's not what it's**
- (23) **about, correct?**
- (24) **A. Correct, that's what I'm**
- (25) **referring to.**

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- (1)
- (2) **Q. A difficult ad, isn't it?**
- (3) **A. Well, from my view point I don't**
- (4) **consider it that difficult, but you show that**
- (5) **Luke had questions about it in that e-mail and**
- (6) **the fact that another student would have a**
- (7) **question with it, you know, highlights the**
- (8) **subjectivity involved in this.**
- (9) **Q. Doesn't the fact that the same**
- (10) **group put out the same ad with respect to**
- (11) **Senator Robb suggest the intensity of their**
- (12) **feeling about this issue?**
- (13) **A. I would have no doubt that the**
- (14) **National Pro Life Alliance is very intense**
- (15) **about their feelings on this issue. I would**
- (16) **not question that.**
- (17) **Q. Do you conclude from the fact**
- (18) **that they put out this identical ad with**
- (19) **respect to another senator, Senator Robb, shows**
- (20) **even more strongly how much they care about it?**
- (21) **A. More strongly, no. I mean it**
- (22) **shows they strongly care about the issue and**
- (23) **that they want you to get involved with**
- (24) **electioneering apparently. The next one is the**
- (25) **Robb ad, I didn't see that.**

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- (1)
- (2) **Q. Did a time come that you did a**
- (3) **memo to Steve Weissman at Public Citizen**
- (4) **setting forth to him which ads in 1998 and**
- (5) **which ads in 2000 would have been "unfairly**
- (6) **caught" by the Snowe-Jeffords bill?**
- (7) **A. I suspect I may have. I mean I**
- (8) **have had communications with Steve Weissman**
- (9) **about the database and would try clarifying the**
- (10) **database to him.**
- (11) **Q. Who is Steve Weissman?**
- (12) **A. Steve Weissman was the**
- (13) **legislative advocate for Public Citizen based**
- (14) **in Washington, DC.**
- (15) **Q. Why did you provide him with**
- (16) **information?**
- (17) **A. Anybody who asked me I provided**
- (18) **with information. He would have called and**
- (19) **asked or written and asked.**
- (20) **Q. Were Public Citizen also an**
- (21) **organization that was in favor of**
- (22) **McCain-Feingold?**
- (23) **A. Yes, Public Citizen was an**
- (24) **organization in favor of McCain-Feingold.**
- (25) **MR. ABRAMS: I would like to mark**

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- (1)
- (2) as Exhibit 16 a memo to Steve Weissman
- (3) dated March 2, 2001, Brennan Center
- (4) production number 003465.
- (5) (Plaintiff's Exhibit Holman 16,
- (6) Memo dated March 2, 2001, Brennan Center
- (7) production number 003465, marked for
- (8) Identification.)
- (9) Q. Can you identify this document?
- (10) A. Yes, I can. This is a memo I did
- (11) write to Steve Weissman which I see Luke signed
- (12) it so I would have asked Luke to do the
- (13) research behind it and then sent this memo to
- (14) Steve Weissman answering questions he had.
- (15) Q. What did you mean when you
- (16) referred to election ads "that would have been
- (17) unfairly caught by Snowe-Jeffords"?
- (18) A. That I usually refer to as false
- (19) positives and those are ads that my coders had
- (20) identified as genuine issue ads, but that
- (21) mentioned a candidate's name in the process of
- (22) airing their genuine issue ad within 60 days of
- (23) the general election and therefore would have
- (24) constituted a genuine issue ad, but unfairly
- (25) caught by the Snowe-Jeffords Amendment as an

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- (1)
- (2) electioneering ad by the mere virtue that they
- (3) mention a candidate's name.
- (4) Q. What was unfair about it?
- (5) A. That isn't really the intent of
- (6) the Snowe-Jeffords Amendment to capture all
- (7) such ads if it's a genuine issue ad. That's
- (8) what I would consider unfair. I usually prefer
- (9) the term false positives because it's not the
- (10) ads that are intended to be captured. They are
- (11) not electioneering ads.
- (12) Q. Snowe-Jeffords does capture
- (13) certain ads that you conclude are genuine issue
- (14) ads, correct?
- (15) A. Extremely few, but yes, three in
- (16) 2000.
- (17) Q. This memo deals with 1998, does
- (18) it not?
- (19) A. Okay.
- (20) Q. I will give you a 2000 memo in a
- (21) moment.
- (22) A. Yes, 1998 as well.
- (23) Q. The ads that are attached are the
- (24) ones that we reviewed earlier, correct?
- (25) A. Correct.

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- (1)
- (2) MR. DODYK: Can I hear that
- (3) question and answer back.
- (4) (Record read.)
- (5) MR. DODYK: I will make an
- (6) objection to the question.
- (7) Q. The two advertisements that are
- (8) attached to this memo are the ones referred to
- (9) in Mr. McLoughlin's earlier memo as
- (10) advertisement 12 and advertisement 318,
- (11) correct?
- (12) A. That is right.
- (13) Q. Those are the ones that the
- (14) Brennan Center concluded were genuine issue
- (15) ads, but that would nonetheless fall within the
- (16) purview of the Snowe-Jeffords bill?
- (17) A. That is right, false positives.
- (18) MR. ABRAMS: I want to mark as
- (19) Exhibit 17 a memo from you and Mr.
- (20) McLoughlin also dated March 2, 2001,
- (21) Brennan Center production number 003468
- (22) with respect to the 2000 election.
- (23) (Plaintiff's Exhibit Holman 17,
- (24) Memo dated March 2, 2001, Brennan Center
- (25) production number 003468, marked for

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- (1)
- (2) Identification.)
- (3) Q. Is Exhibit 17 a document that you
- (4) and Mr. McLoughlin wrote?
- (5) A. Right.
- (6) Q. The first advertisement attached
- (7) to Exhibit 17 is an advertisement put out by a
- (8) group called Citizens for Better Medicare,
- (9) right?
- (10) A. Um-hum.
- (11) Q. And you viewed that as a genuine
- (12) issue ad when you wrote the memo of March 2,
- (13) correct?
- (14) A. That's correct, it was coded as a
- (15) genuine issue ad at that time.
- (16) Q. It was your view at that time
- (17) that it was a genuine issue ad, correct?
- (18) A. I went with the database and
- (19) that's what Ken had called it at that time,
- (20) yes.
- (21) Q. When you say I went with the
- (22) database, you mean you went with the coders?
- (23) A. That's correct.
- (24) Q. And a time came later on, did it
- (25) not, when all ads of Citizens for Better

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- (1)
- (2) Medicare every one of them was treated as an
- (3) electioneering issue ad, weren't they?
- (4) A. That is correct.
- (5) Q. Regardless of their language,
- (6) correct?
- (7) A. Well, no, I mean Ken would have
- (8) gone over the ads and taken a look at the ads
- (9) and he changed the codes on Q 11 of the CBM
- (10) ads.
- (11) Q. All of the CBM ads, didn't he?
- (12) A. I'm not sure. I think several of
- (13) them were already coded as electioneering, but
- (14) I'm not sure.
- (15) Q. Didn't he change as to every one
- (16) that had been coded as a genuine issue ad so as
- (17) to assure that it became not a genuine issue
- (18) ad, but an electioneering issue ad?
- (19) MR. DODYK: I will object to the
- (20) form of the question. You may answer.
- (21) Would you read the question back.
- (22) (Record read.)
- (23) A. Well, straightforward he changed
- (24) the CBM ads that were coded as genuine issue
- (25) ads to electioneering issue ads.

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- (1)
- (2) Q. Did you participate in any
- (3) discussion about that?
- (4) A. I think it was probably part of
- (5) that conference call maybe that we had when Ken
- (6) was on vacation although I'm not clear if we
- (7) discussed any of the CBM ads at that time.
- (8) Yes, I do recall. I was trying to deal with
- (9) these as cookie-cutter ads and I was asking Ken
- (10) how to deal with cookie-cutter ads because I
- (11) was fairly unfamiliar with these and Ken
- (12) decided that the CBM ads were, in fact,
- (13) electioneering issue ads rather than genuine
- (14) issue ads so that removes that whole issue for
- (15) me out of the question so I didn't have to deal
- (16) with it anymore.
- (17) Q. CBM spent over \$5 million, hadn't
- (18) they, on ads in the 2000 campaign?
- (19) A. Yes, they had.
- (20) Q. That changed the numbers quite a
- (21) lot, didn't it?
- (22) A. It depends. I mean the numbers
- (23) had never really been run yet. I was still
- (24) trying to deal with the fact that they were
- (25) cookie-cutter ads and how many of them were

Page 95

- (1)
- (2) aired in districts that had active candidates
- (3) or not or whether that even had to be done so I
- (4) still had not even done the analysis on that.
- (5) Q. What is a cookie-cutter ad?
- (6) A. Cookie-cutter ad is similar to
- (7) several of the ads that we have seen that are
- (8) the same ads aired in different markets and
- (9) they just change the office holder or candidate
- (10) that they are referring to at the end of the
- (11) ad. It's basically the same ad though.
- (12) Q. Does the fact that an ad is a
- (13) cookie-cutter ad tell you that the group that
- (14) had put it in cares any less about the issue
- (15) discussed in the ad?
- (16) A. Neither less nor more, but when
- (17) I'm trying to assess whether the ad would be
- (18) captured under the McCain-Feingold bill or
- (19) Snowe-Jeffords Amendment, I have to try to
- (20) identify which markets there was an active
- (21) candidate as opposed to an office holder. That
- (22) was my concern with the CBM ads. Since Ken
- (23) determined they were electioneering issue ads,
- (24) that no longer became an issue for me.
- (25) Q. Is there any other organization

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- (1)
- (2) that had all of its ads that the coders had
- (3) determined were genuine issue ads transformed
- (4) into being electioneering issue ads other than
- (5) CBM?
- (6) A. First of all, I'm not sure
- (7) whether all the CBM ads were coded that way.
- (8) Q. All that were coded as genuine
- (9) issue ads transformed into electioneering issue
- (10) ads?
- (11) A. I don't know. The National Pro
- (12) Life Alliance that you referred to, if that was
- (13) their only ad that would constitute that, but I
- (14) don't know.
- (15) MR. ABRAMS: I want to mark next
- (16) as Exhibit 18 a document produced by the
- (17) Brennan Center as Brennan Center
- (18) production number 001664 with
- (19) accompanying storyboards.
- (20) (Plaintiff's Exhibit Holman 18,
- (21) Document, Brennan Center production
- (22) number 001664, marked for
- (23) Identification.)
- (24) Q. Can you tell us on Exhibit 18
- (25) whose handwriting that is?

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- (1)
- (2) **A. That's my handwriting.**
- (3) **Q. Can you tell us why you wrote**
- (4) **this document?**
- (5) **A. Well, clearly I was identifying**
- (6) **for the record the three false positives that**
- (7) **would have been captured in the 2000 election.**
- (8) **Who I distributed this record to I don't**
- (9) **recall, but that's clearly the point of this.**
- (10) **I suspect I distributed it to staff around the**
- (11) **Brennan Center to make it clear which are the**
- (12) **three false positives.**
- (13) **Q. How many false positives or**
- (14) **unfairly caught ads did you wind up with in the**
- (15) **year 2000 as concluded fell into that category?**
- (16) **MR. DODYK: Object to the form of**
- (17) **the question. You may answer.**
- (18) **A. I guess I may be unclear on the**
- (19) **question because it's these three ads that came**
- (20) **out of the Buying Time 2000 database that I**
- (21) **call the false positives.**
- (22) **Q. To your knowledge, that didn't**
- (23) **change prior to the publication of Buying Time**
- (24) **2000, these were the three ads?**
- (25) **A. These were the three ads.**

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- (1)
- (2) **MR. ABRAMS: I want to mark as**
- (3) **Exhibit 19 an e-mail from Luke**
- (4) **McLoughlin to various people dated**
- (5) **October 30, 2000.**
- (6) **(Plaintiff's Exhibit Holman 19,**
- (7) **E-Mail dated October 30, 2000, marked**
- (8) **for Identification.)**
- (9) **Q. Do you recall if you ever saw**
- (10) **this document?**
- (11) **A. I don't recall seeing this**
- (12) **document, no.**
- (13) **Q. The document which was produced**
- (14) **to us by the Brennan Center as Brennan**
- (15) **production number 012547 states that with**
- (16) **respect to CBM that that entity had spent**
- (17) **\$5,971,666 at that point at least in the 2000**
- (18) **campaign; is that correct?**
- (19) **A. That's what this memo says, yes,**
- (20) **and that is correct.**
- (21) **Q. Then it says "CBM spending has**
- (22) **been both on legitimate, genuine issue ads, as**
- (23) **well as thinly veiled Republican candidate**
- (24) **promoting sham issue ads. Ken says it would be**
- (25) **an arduous task to separate the spending out at**

Page 99

- (1)
- (2) **this point." Was it your view as of October**
- (3) **30th -- let me go back. Were you employed by**
- (4) **the Brennan Center as of the sending of this**
- (5) **document?**
- (6) **A. No, I was employed in November,**
- (7) **2000.**
- (8) **Q. Did you ever conclude as Mr.**
- (9) **McLoughlin did that CBM spending in the 2000**
- (10) **campaign was on both legitimate genuine issue**
- (11) **ads as well as thinly veiled Republican**
- (12) **candidate promoting sham issue ads?**
- (13) **A. Quite honestly I never tried**
- (14) **making that judgment.**
- (15) **Q. Did you ever know before today**
- (16) **that Professor Goldstein had told Mr.**
- (17) **McLoughlin that it would be an arduous task to**
- (18) **separate out what the CBM spending had been for**
- (19) **vis-a-vis legitimate as opposed to**
- (20) **electioneering ads?**
- (21) **A. No, I did not know that.**
- (22) **MR. ABRAMS: I will mark as**
- (23) **Exhibit 20 an e-mail from Luke**
- (24) **McLoughlin to Professor Hasen, you and**
- (25) **Mr. Rosenkranz dated March 12, 2001.**

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- (1)
- (2) **(Plaintiff's Exhibit Holman 20,**
- (3) **E-Mail dated March 12, 2001, marked for**
- (4) **Identification.)**
- (5) **Q. Have you seen this document**
- (6) **before?**
- (7) **A. I do recall seeing this, yes.**
- (8) **Q. This document states in part that**
- (9) **the CBM ads had been determined by Ken**
- (10) **Goldstein to be election ads. Do you have any**
- (11) **additional recollection as to anything you have**
- (12) **told us so far as to why?**
- (13) **A. No, I don't.**
- (14) **MR. ABRAMS: We will mark as**
- (15) **Exhibit 21 an e-mail from you to Ken**
- (16) **Goldstein of March 19, 2001.**
- (17) **(Plaintiff's Exhibit Holman 21,**
- (18) **E-Mail dated March 19, 2001, marked for**
- (19) **Identification.)**
- (20) **Q. Do you recall sending this**
- (21) **document?**
- (22) **A. Yes, I do.**
- (23) **Q. This document refers in part to**
- (24) **the recoding of the CBM ad, correct?**
- (25) **A. Correct.**

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- (1)
- (2) Q. Do you recall if any ads were
- (3) recoded out of the electioneering category in
- (4) to the genuine issue advocacy category?
- (5) A. Among the CBM ads?
- (6) Q. No, of all the ads?
- (7) A. I don't recall.
- (8) Q. You said here in paragraph three
- (9) that in the March 11th recodes "in the March
- (10) 11th recodes I had initially decided to group
- (11) all the similar CBM ads together as genuine
- (12) issue advocacy and then target the ads as to
- (13) whether they mentioned a candidate (Q 12 and Q
- (14) 13) specifically to the candidate's district
- (15) (as was done for the AFL-CIO ads in 1998). But
- (16) then we all agreed to move the CBM ads in to
- (17) the electioneering category during our
- (18) conference call and hence code changes dated
- (19) March 14th does that." Were you one of the
- (20) people that agreed to shift the designation of
- (21) the CBM ads into the electioneering category?
- (22) A. Well, my opinion really didn't
- (23) matter. It was Ken's call and always was Ken's
- (24) call, but I was on the conference call and Ken
- (25) decided to do that and I really didn't have an

Page 102

- (1)
- (2) opinion on it, but, you know, it's nothing I
- (3) disagreed with, put it that way.
- (4) Q. Hadn't you previously had an
- (5) opinion that CBM ads should be treated as
- (6) genuine issue advocacy?
- (7) A. No, they were just coded that way
- (8) and so I was taking it as such.
- (9) Q. Again, do you recall why the CBM
- (10) ads were changed?
- (11) A. I don't recall that. Ken
- (12) apparently had been judging from that earlier
- (13) memo you gave me had been considering it or
- (14) debating it for a while as far as I can tell,
- (15) but I don't recall that. Just at the
- (16) conference call Ken decided that the CBM ads
- (17) that were coded as genuine issue ads were in
- (18) fact electioneering.
- (19) MR. ABRAMS: I will mark as
- (20) Exhibit 22 a press release of the
- (21) Brennan Center dated October 16, 2000.
- (22) (Plaintiff's Exhibit Holman 22,
- (23) Press Release dated October 16, 2000,
- (24) marked for identification.)
- (25) Q. This is a document that was

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- (1)
- (2) prepared prior to your arrival, correct?
- (3) A. Yes, but I have read this.
- (4) Q. Could you focus on the bottom of
- (5) page two on the discussion of Citizens for
- (6) Better Medicare. "Citizens for Better Medicare
- (7) had spent more than \$7 million on ads
- (8) advocating Medicare proposals similar to those
- (9) advocated by Governor Bush." Professor
- (10) Goldstein is quoted as stating, "Because they
- (11) steer clear of mentioning a candidate, the ads
- (12) run by Citizens for Better Medicare are
- (13) different from those run by the AFL-CIO,
- (14) Planned Parenthood, Handgun Control and the
- (15) Sierra Club on behalf of Vice President Gore.
- (16) Those ads are virtually indistinguishable from
- (17) the ads run by the Gore campaign and Democratic
- (18) Party. As a result, we do not code ads paid
- (19) for by Citizens for Better Medicare as
- (20) electioneering. Nevertheless, given the volume
- (21) and targeting of these ads, they are an
- (22) important part of the story of this
- (23) presidential campaign." Do you recall that?
- (24) A. Yes, I do recall this press
- (25) release.

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- (1)
- (2) Q. Do you recall any decision being
- (3) made that that language should be reversed?
- (4) MR. DODYK: Object to the form of
- (5) the question.
- (6) MR. ABRAMS: I will re-ask it.
- (7) Q. Do you recall that a time came
- (8) when ads paid for by Citizens for Better
- (9) Medicare were treated as electioneering?
- (10) MR. DODYK: May I hear the
- (11) question back.
- (12) (Record read.)
- (13) Q. Ads?
- (14) A. When that conference call
- (15) happened and Ken decided to treat them as
- (16) electioneering, then they were recoded as
- (17) electioneering at that point.
- (18) Q. Do you recall if a press release
- (19) was issued then?
- (20) A. Not specifically addressing
- (21) Citizens for Better Medicare, no.
- (22) Q. You were generally inclined, were
- (23) you not, towards going with the coders'
- (24) judgments about these advertisements?
- (25) MR. DODYK: I will object to the

Page 10

- (1)
- (2) form of the question.
- (3) A. Well, for the most part, yeah.
- (4) To be clear, it was never my role, my point to
- (5) make any such changes in the database. That
- (6) had to be done at the University of Wisconsin
- (7) so Ken was the one who made the final choices
- (8) on this. Whatever the coders came in after
- (9) approved by Ken I guess, you know, that I would
- (10) go with that as my database.
- (11) MR. ABRAMS: I want to mark as
- (12) Exhibit 23 an e-mail from you to
- (13) Professor Goldstein dated March 10,
- (14) 2001.
- (15) (Plaintiff's Exhibit Holman 23,
- (16) E-Mail dated March 10, 2001, marked for
- (17) Identification.)
- (18) Q. Do you recall a conference call
- (19) on which the staff decided that you would be on
- (20) more solid ground not substituting your own
- (21) judgments of the ads for the undergraduate
- (22) coder's judgments except in the case of clearly
- (23) factual errors?
- (24) A. Yes, that was decided that we
- (25) would stay with what came out of the University

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- (1)
- (2) of Wisconsin so that would be the coder's
- (3) judgments and Ken. At this meeting it was also
- (4) decided that Ken would have the final judgments
- (5) on any such changes in recodes. I believe it
- (6) was at this meeting.
- (7) Q. But we determined, have we not,
- (8) between us that changes with respect to
- (9) question 11 were not ones which are clear
- (10) factual errors, correct?
- (11) A. That's right, those are
- (12) subjective judgments.
- (13) Q. There's a reference here to the
- (14) facts that, "Even though I would consider at
- (15) least one of these ads as clearly
- (16) electioneering (see ad code 1367 for example)
- (17) that is not how the coders viewed it". That ad
- (18) is the Langevin ad, correct?
- (19) A. Is 1367 the Langevin ad?
- (20) Q. It's attached.
- (21) A. Yes.
- (22) Q. That was your poster child ad?
- (23) A. That's right.
- (24) Q. That's one that the coders viewed
- (25) as a genuine issue ad, correct?

Page 107

- (1)
- (2) A. That is correct.
- (3) Q. That's one that Professor
- (4) Goldstein ultimately overruled the coders and
- (5) determined it was an electioneering ad,
- (6) correct?
- (7) A. Correct.
- (8) Q. You concluded your e-mail by
- (9) saying "I hear that Krasno is coming out to the
- (10) Hill on Wednesday. Excellent.
- (11) Snow-Jeffords/McCain-Feingold are becoming
- (12) increasingly viable." That's what you wanted
- (13) to happen, was it not, for Snowe-Jeffords and
- (14) McCain-Feingold to pass?
- (15) A. Yes, I did want that bill to
- (16) pass.
- (17) Q. What was Dr. Krasno going to do
- (18) on the Hill?
- (19) A. I never really had communications
- (20) with Krasno, but I suspect he was going to the
- (21) Hill with the results that we have been coming
- (22) up with so far to testify either before
- (23) Congress or with congressional staffers on the
- (24) results that we have been coming up with.
- (25) MR. ABRAMS: I want to mark as

Page 108

- (1)
- (2) Exhibit 24 an e-mail from you to
- (3) Professor Goldstein dated March 10,
- (4) 2001. Could I ask you all to remove
- (5) page two. You are free to look at it if
- (6) you like, but it was not part of the
- (7) exhibit that was prepared for my use. A
- (8) document of this sort.
- (9) (Plaintiff's Exhibit Holman 24,
- (10) E-Mail dated March 10, 2001, marked for
- (11) Identification.)
- (12) Q. Could you tell us what Exhibit 24
- (13) is?
- (14) A. Exhibit 24 was an e-mail message
- (15) that I sent to Ken informing him that I was
- (16) going to start doing some of the targeting of
- (17) the CBM ads that the coders had coded as
- (18) genuine issue ads so I was going to take a look
- (19) at where these genuine issue ads mentioned a
- (20) candidate within a specific district where a
- (21) candidate was running as opposed to just office
- (22) holder or candidate that is not running and I
- (23) was going to then try doing an analysis trying
- (24) to deal with that cookie-cutter ad phenomenon
- (25) that we discussed earlier.

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- (1)
- (2) With that last sentence I'm not
- (3) really recoding Q 11, I would be recoding
- (4) whether or not it mentioned a candidate within
- (5) a district and of course if Ken overrode me, he
- (6) would have the final say on that.
- (7) This ended up not having any
- (8) relevance because Ken recoded the CBM ads as
- (9) being electioneering and so then I didn't have
- (10) to deal with this whole cookie-cutter
- (11) phenomenon and try to determine in which
- (12) district a candidate was running and which
- (13) district it wasn't so all of this was never
- (14) done.
- (15) Q. Let's start with line one of your
- (16) e-mail. You said that you found several ads
- (17) identical to ad number 1269 which is the first
- (18) ad attached to here and you said ad 1269 had
- (19) been coded as a genuine issue ad. You said you
- (20) agreed with that coding, but "do not want to
- (21) over inflate the amount of genuine issue ads."
- (22) Why did you agree with the coding on 1269?
- (23) A. I wasn't contesting the coding.
- (24) The coders viewed that as genuine issue ad and
- (25) I wasn't contesting that if I even had any

Page 110

- (1)
- (2) authority to contest it so I was accepting that
- (3) and I was going to see how I could deal with
- (4) the cookie-cutter ad phenomenon at that point.
- (5) Q. The language you used was "I
- (6) agree with that coding". Was that inaccurate?
- (7) A. It really meant to express that I
- (8) was not contesting it.
- (9) Q. Why weren't you contesting it?
- (10) A. It wasn't clear to me one way or
- (11) the other and quite frankly, it didn't matter
- (12) to me if it was a genuine issue ad or
- (13) electioneering ad, but it wasn't clear to me
- (14) and so I wasn't going to contest it.
- (15) Q. You don't say any of that, do
- (16) you, in Exhibit 24?
- (17) MR. DODYK: Object to the form of
- (18) the question.
- (19) A. I could have said it more clearly
- (20) here. This was a quick e-mail to Ken to try to
- (21) explain that I'm going to try dealing with the
- (22) cookie-cutter ad phenomenon. It wasn't an
- (23) e-mail to solicit or endorse the Q 11 coding of
- (24) any of these ads.
- (25) Q. When you say to deal with the

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- (1)
- (2) cookie-cutter phenomenon, your concern, was it
- (3) not, was that you would count too many ads as
- (4) genuine issue ads; isn't that right?
- (5) A. The concern would be that the
- (6) genuine issue ads that mention the candidates
- (7) like too many of those might be caught because
- (8) you have to take a look at each district to see
- (9) if there was actually an active candidate
- (10) running that would have been addressed by the
- (11) ad and that was my concern.
- (12) Q. Let's take a look at the ads
- (13) after the first one. As you said, they are all
- (14) CBM ads, correct?
- (15) A. Yes.
- (16) Q. These ads are not identical, are
- (17) they, with the first one?
- (18) A. No, they are not identical.
- (19) Q. Let's look at the very first one
- (20) titled CBM/NC Taylor If You Don't Have Health.
- (21) Do you have that in front of you?
- (22) A. Yes, I do.
- (23) Q. In the text of that it says, "If
- (24) you don't have health, you can't enjoy anything
- (25) else. I paint, I write and I have my family

Page 112

- (1)
- (2) and I am pretty stable with my cancer. I would
- (3) be struggling very hard if it weren't for
- (4) medicines. Congressman Charles Taylor is
- (5) working to strengthen Medicare and provide a
- (6) prescription drug benefit so all seniors can
- (7) get the medicines they need. Support Charles
- (8) Taylor's prescription drug plans for seniors.
- (9) Paid for by Citizens for Better Medicare." Is
- (10) that one of the ones that as of March 10, 2001
- (11) you were prepared to acquiesce in treating as a
- (12) genuine issue ad?
- (13) A. I was prepared to accept the
- (14) voter's judgment on this, yeah, so I was then
- (15) taking a look at these ads to see where they
- (16) actually addressed a candidate who was active.
- (17) Q. Let's go to the one two after
- (18) that which under the title Florida CBM Foley
- (19) Cancer RX. Do you have that available?
- (20) A. Yes, I do.
- (21) Q. That says "People who have cancer
- (22) are looking for miracles. At this point it is
- (23) my faith and support from my family and my
- (24) friends. And then there is the medicine."
- (25) Then the announcer says, "Congressman Mark

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(1)
 (2) Foley is working to add a prescription drug
 (3) benefit to Medicare and to make sure medicines
 (4) are available for every senior who needs them.
 (5) Call Congressman Mark Foley." Then it says,
 (6) "Without the medicine I would not be where I
 (7) am. Paid for by friends of Bill Redmond."
 (8) That's one as well that you were prepared to go
 (9) along with the coders determining that this was
 (10) a genuine issue ad, correct?

(11) **MR. DODYK:** Object to the form of
 (12) the question. I'm not sure we
 (13) established all of these ads were coded
 (14) as genuine issue ads by the coders
 (15) because there's a reference in the memo
 (16) to the fact that the same ads are coded
 (17) in different ways by the coders and you
 (18) may have knowledge of that that I don't,
 (19) but it's not clear to me that the record
 (20) supports that assumption.

(21) **MR. ABRAMS:** Let me rephrase the
 (22) question.

(23) **Q.** Is the ad that I just read to you
 (24) and that you are looking at one that you would
 (25) have been prepared to go along with the coders

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(1)
 (2) whether or not it would actually have addressed
 (3) a candidate, an active candidate. These ads
 (4) all would have been coded as mentioning a
 (5) candidate.

(6) Now I would have had to have
 (7) taken a look at which districts they aired in
 (8) and whether or not they actually mention a
 (9) candidate in those different districts and
 (10) that's the recode I was referring to.

(11) **Q.** To what extent then were you not
 (12) abiding by your former rule not to change
 (13) coder's subjective assessments?

(14) **A.** I would have recoded that Ken
 (15) said it was all right whether or not the ad
 (16) mentioned a candidate which is not Q 11, but
 (17) it's another question on in the survey, that's
 (18) what I would have recoded.

(19) **Q.** Are you saying then that you were
 (20) not changing the coder's subjective assessments
 (21) at all with respect to this CBM ads?

(22) **A.** I was not changing Q 11 at all.
 (23) As a matter of fact, the beginning of the
 (24) paragraph even says so.

(25) **Q.** What subjective assessments were

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(1)
 (2) had they determined that it was a genuine issue
 (3) ad?

(4) **A.** I would have been prepared to go
 (5) along with the coders and Ken Goldstein if they
 (6) determined it was a genuine issue ad or an
 (7) electioneering ad. It really was not my role
 (8) to try to intervene here very much in Q 11
 (9) unless, you know, I had some strong opinions
 (10) and I would ask Ken to consider it.

(11) **Q.** It says in the last line of the
 (12) e-mail which is Exhibit 24 that "This also
 (13) means that I cannot abide by my former rule not
 (14) to change coder's subjective assessments since
 (15) the same ads were coded different ways by the
 (16) coders." What do you mean by that?

(17) **A.** What I really meant was by doing
 (18) the targeting of the cookie cutter ads that we
 (19) were talking about, I wasn't really going to be
 (20) changing Q 11, I was going to be trying to
 (21) identify where an active candidate was running.
 (22) I was not changing Q 11. That is not how I
 (23) should have described what my actions were
 (24) going to be.

(25) I was going to be changing

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(1)
 (2) you talking about?

(3) **A.** The assessments, I should not
 (4) have described it as subjective I think. The
 (5) assessments that the students gave as to
 (6) whether a candidate was mentioned in the ad. I
 (7) can be specific as to which Q that is. Would
 (8) have been Q 12 and Q 13.

(9) **Q.** When you said that the same ads
 (10) were coded different ways by the coders, what
 (11) did you mean by that?

(12) **A.** Apparently there were some CBM
 (13) ads that were coded as electioneering and some
 (14) that were coded as genuine issue ads, but I
 (15) don't know at this point which was which.

(16) **Q.** Doesn't this say that the same
 (17) ads were coded different ways by the coders?

(18) **A.** It does say that there. I don't
 (19) know which ads were coded which way in Q 11. I
 (20) would have to look at the database.

(21) **Q.** I asked you earlier if you knew
 (22) Mr. Rosenkranz testified before various
 (23) congressional committees and you said you did,
 (24) correct?

(25) **A.** Yes.

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- (1)
- (2) **Q.** Did you know that he testified
- (3) before the Senate committee on rules and
- (4) administration in April 2000 before you joined
- (5) the Brennan Center?
- (6) **A.** I don't know of any specific
- (7) dates or who he testified before, but I know he
- (8) testified before Congress.
- (9) **MR. ABRAMS:** Mark as Exhibit 25
- (10) copy of testimony of Mr. Rosenkranz
- (11) before the Senate committee on rules and
- (12) administration dated April 26, 2000.
- (13) (Plaintiff's Exhibit Holman 25,
- (14) Document dated April 26, 2000, marked
- (15) for Identification.)
- (16) **A.** This is Josh Rosenkranz.
- (17) **Q.** I would like you to direct your
- (18) attention to page five of the testimony and in
- (19) particular the next to last paragraph on that
- (20) page which I will read into the record. "The
- (21) bright line approach has frequently been
- (22) criticized by reform opponents with the
- (23) argument that it would unduly restrict much
- (24) legitimate issue advocacy." Do you know what
- (25) the words bright line approach mean in that

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- (1) context?
- (2) **A.** Yes, it's the Snowe-Jeffords 60
- (3) day bright line test which means if an ad
- (4) refers to a candidate, mentioning a candidate
- (5) or depicts a candidate within 60 days of an
- (6) election, it's assumed to be an electioneering
- (7) ad.
- (8) **Q.** You don't mean it's assumed to
- (9) be, it is treated as an electioneering ad, is
- (10) it not?
- (11) **A.** It's treated as such by the law,
- (12) yes.
- (13) **Q.** Continuing with this paragraph
- (14) "With the Brennan Center's academic study of
- (15) television advertising in 1998, we now have
- (16) empirical data describing how the bright line
- (17) approach would have affected political
- (18) advertising had such a test been in effect
- (19) during the last congressional election. The
- (20) results of this study demonstrate, quite
- (21) starkly, that a bright line 60 days test is
- (22) remarkably accurate in separating true issue
- (23) ads from sham issue ads. Just 7 percent of ads
- (24) categorized as genuine issue advocacy would
- (25)

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- (1)
- (2) have been affected by this approach verses 82
- (3) percent of ads categorized as electioneering.
- (4) With solid empirical data of this type,
- (5) Congress can be confident that the major
- (6) campaign finance reform proposals currently
- (7) before it do not inhibit true issue advocacy".
- (8) Did you know that Mr. Rosenkranz had so
- (9) testified?
- (10) **A.** I didn't follow this testimony,
- (11) but it does not surprise me at all.
- (12) **Q.** Did you know it was the position
- (13) of the Brennan Center that just 7 percent of
- (14) ads categorized as genuine issue advocacy in
- (15) the 1998 campaign would have been affected by
- (16) the 60 day Snowe-Jeffords approach?
- (17) **MR. DODYK:** I will object to the
- (18) form of the question.
- (19) **A.** I knew the conclusion of Buying
- (20) Time 1998 and they identified 7 percent of
- (21) group issue ads as falling in the false
- (22) positives and that's being captured by the 60
- (23) day bright line test.
- (24) **Q.** That was stated in Buying Time
- (25) 1998, correct?

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- (1)
- (2) **A.** Yes.
- (3) **Q.** It was also stated, was it not,
- (4) in the documented title Five New Ideas, do you
- (5) know?
- (6) **MR. ABRAMS:** I will mark as
- (7) Exhibit 26 a Brennan Center document
- (8) dated May 2000 entitled "Five New Ideas
- (9) to Deal with the Problems Posed by
- (10) Campaign Appeals Masquerading as Issue
- (11) Advocacy."
- (12) (Plaintiff's Exhibit Holman 26,
- (13) Document dated May 2000 entitled Five
- (14) New Ideas to Deal with the Problems
- (15) Posed by Campaign Appeals Masquerading
- (16) as Issue Advocacy, marked for
- (17) Identification.)
- (18) **Q.** We mentioned this document a few
- (19) hours ago, Dr. Holman. Have you ever seen it?
- (20) **A.** I have seen it, but I haven't
- (21) studied it for this deposition.
- (22) **Q.** Would you direct your attention
- (23) to page 6. In particular, the second full
- (24) paragraph which states "Examination of 1998s
- (25) ads shows that 82 percent of the total airings

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(1)
 (2) of ads regarded by coders as electioneering
 (3) would have been captured under a bright line 60
 (4) day approach and only 7 percent of the total
 (5) airings regarded by coders as genuine issue ads
 (6) would have been similarly captured. Both
 (7) numbers are reassuring. The bright line
 (8) approach is designed to delineate sham issue
 (9) ads and judging from the 82 percent figure, it
 (10) does so fairly accurately and the 7 percent
 (11) figure of total airings regarded by coders as
 (12) genuine issue ads all resulted from multiple
 (13) airings of only two separate spots". You were
 (14) aware, were you not, that that was the position
 (15) of the Brennan Center with respect to 1998?

(16) **MR. DODYK:** Object to the form of
 (17) the question.

(18) **A. That was the finding of Buying**
 (19) **Time 1998.**

(20) **Q. That was false, was it not?**

(21) **A. What was false?**

(22) **Q. The 7 percent figure was untrue,**
 (23) **wasn't it?**

(24) **A. No, it is not untrue. It depends**
 (25) **how you measured the 7 percent figure.**

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(1)
 (2) **Q. If you measure the 7 percent**
 (3) **figure the way Mr. Rosenkranz described it, 7**
 (4) **percent of airings, it's untrue, isn't it?**

(5) **A. No, I do not believe it is**
 (6) **untrue.**

(7) **Q. Did a time come when you came to**
 (8) **the view that the actual figure was in the area**
 (9) **of 40 percent instead of 7 percent?**

(10) **A. The time had come early in the**
 (11) **process where when I would do the computer runs**
 (12) **according to how I understood it to be done I**
 (13) **would come out with a 40 percent figure which**
 (14) **was that was false.**

(15) **Q. But 7 percent was true?**

(16) **A. Seven percent is true. It is**
 (17) **measured in a -- it is measured different than**
 (18) **I would have measured it in Buying Time 2000.**

(19) **Q. I want to be clear I understand.**
 (20) **Is 7 percent true with respect to the airings**
 (21) **of ads in the 1998 campaign?**

(22) **A. Yes, it is.**

(23) **MR. ABRAMS:** We will mark as
 (24) Exhibit 27 an e-mail from you to Mr.
 (25) Rosenkranz dated January 11, 2001.

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(1)
 (2) **(Plaintiffs Exhibit Holman 27,**
 (3) **E-Mail dated January 11, 2001, marked**
 (4) **for Identification.)**

(5) **Q. This is an e-mail that you sent?**

(6) **A. Yes, it is.**

(7) **Q. This was from you to**
 (8) **Mr. Rosenkranz?**

(9) **A. Yes.**

(10) **Q. In the next to last paragraph you**
 (11) **said, did you not, that some of the numbers**
 (12) **crunched for Mr. Hasen, "do not paint as great**
 (13) **a picture as previously thought". I will**
 (14) **continue to read in quotes "Rick's persistence**
 (15) **in the research has generated at least one**
 (16) **awkward number. Since Rick is writing about**
 (17) **this new number, I need to let you know about**
 (18) **it. The figure cited in Buying Time that only**
 (19) **7 percent of genuine issue ads would be**
 (20) **affected by a 60 day regulation can be a little**
 (21) **misleading. That 7 percent refers to unique**
 (22) **issue ads -- or in other words proportion of**
 (23) **special interest groups placing issue ads.**
 (24) **While only 7 percent of groups placing genuine**
 (25) **issue ads would be captured, those groups**

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(1)
 (2) bought about 40 percent of all issue ads within
 (3) that time period. So, in reality, according to
 (4) the 1998 database, about 40 percent of genuine
 (5) issue ads would be deemed electioneering within
 (6) a 60 day regulatory period". That's what you
 (7) thought, isn't it, as of January 11, 2001?

(8) **A. As of January 11th and I was very**
 (9) **wrong.**

(10) **Q. Because the 7 percent figure was**
 (11) **accurate?**

(12) **A. Yes.**

(13) **MR. ABRAMS:** Mark as Exhibit 28 an
 (14) e-mail from Mr. Rosenkranz to you of
 (15) January 11, 2001.

(16) **(Plaintiffs Exhibit Holman 28,**
 (17) **E-Mail dated January 11, 2001, marked**
 (18) **for Identification.)**

(19) **Q. Do you recall receiving this**
 (20) **e-mail?**

(21) **A. Yes, I do.**

(22) **Q. Do you recall Mr. Rosenkranz**
 (23) **writing that even 7 percent seemed too close**
 (24) **for comfort, paragraph three?**

(25) **A. Sorry.**

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- (1)
- (2) **Q.** In the first large paragraph.
- (3) For the record, let me read the beginning "The
- (4) revised presentation is very troubling. I
- (5) remember the 7 percent figure. I remember
- (6) distinctly asking the question about the 7
- (7) percent and being told that it was based upon
- (8) numbers of airing, not unique spots. Even 7
- (9) percent seemed too close for comfort. That's
- (10) why I never referred to 7 percent number, but
- (11) only to the sheer number of false positives."
- (12) Do you recall that?
- (13) **A.** Yes, I recall this.
- (14) **Q.** What did you understand he meant
- (15) by saying even 7 percent seemed too close for
- (16) comfort?
- (17) **A.** To tell the truth, I'm not sure
- (18) what he meant by that. Perhaps he wanted some
- (19) different figure. My focus in this series of
- (20) exchanges that went on for a while after this
- (21) was to try to replicate the 7 percent figure
- (22) that Jonathan Krasno had done by 1998. What
- (23) Josh meant by even 7 percent seemed too close
- (24) for comfort, I honestly don't know.
- (25) **Q.** You do know, don't you, that it

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- (1)
- (2) simply isn't true that Mr. Rosenkranz never
- (3) referred to the 7 percent number?
- (4) **A.** That is correct. You just showed
- (5) me his testimony where he refers to 7 percent.
- (6) **Q.** In the next paragraph he says
- (7) this, "Here's the problem: Our findings are not
- (8) just misleading; as I read them, they are flat
- (9) out false. We say, in two separate places,
- (10) that 'just 7 percent of issue ads (consisting
- (11) of just two spots) appeared within 60 days and
- (12) referred to a candidate.' I always read that
- (13) sentence as distinguishing between ads (i.e.,
- (14) airings) and spots (i.e., unique ads). That
- (15) reading is reinforced by page eight where we
- (16) define the term 'ads' to refer to the number of
- (17) times a commercial or set of commercials was
- (18) aired. Nowhere in chapter 4 do we explain that
- (19) we've departed from that convention. So the
- (20) reader (at least this reader) assumed that the
- (21) Y axis was sheer number of airings." Do you
- (22) recall that part of the e-mail?
- (23) **A.** Yes, I do.
- (24) **Q.** You also understood, didn't you,
- (25) the 7 percent figure to refer to airings?

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- (1)
- (2) **A.** That is what I believed the first
- (3) time I read Buying Time 1998.
- (4) **MR. ABRAMS:** Let's mark as Exhibit
- (5) 29 an e-mail from Mr. McLoughlin to Mr.
- (6) Rosenkranz dated January 12, 2001.
- (7) (Plaintiff's Exhibit Holman 29,
- (8) E-Mail dated January 12, 2001, marked
- (9) for Identification.)
- (10) **Q.** Do you recall receiving this
- (11) e-mail?
- (12) **A.** Yes, I do.
- (13) **Q.** There Mr. McLoughlin states "I
- (14) agree, the statements on page eight of 'Five
- (15) New Ideas' and on page 109 of Buying Time are
- (16) either false or so vague as to mislead the
- (17) reader. With your permission I would like to
- (18) get in touch with Daniel and see how this may
- (19) have happened." Do you recall that?
- (20) **A.** Yes, I do.
- (21) **MR. ABRAMS:** Mark as Exhibit 30 an
- (22) e-mail from you to Mr. Rosenkranz dated
- (23) January 12, 2001.
- (24) (Plaintiff's Exhibit Holman 30,
- (25) E-Mail dated January 12, 2001, marked

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- (1)
- (2) for Identification.)
- (3) **Q.** This is an e-mail you sent to Mr.
- (4) Rosenkranz?
- (5) **A.** Yes, and others.
- (6) **Q.** The first paragraph said the
- (7) following, "Yes, the revised presentation is
- (8) somewhat troubling. I have known about it for
- (9) a while and decided that since Buying Time is
- (10) already published and distributed I am going to
- (11) focus my efforts on the 2000 database and not
- (12) rekindle the issue. I asked Luke not to
- (13) volunteer the reassessment to Rick but to
- (14) provide it if Rick asked (and I suspected he
- (15) would - and he did). There is no mistake in
- (16) the reassessment. Luke and I have run over it
- (17) many, many times." When did you first learn
- (18) that the revised presentation was "somewhat
- (19) troubling"?
- (20) **A.** That would have been probably in
- (21) about the course of the week prior to this
- (22) e-mail. Rick as I noted earlier is a very
- (23) independent researcher and very diligent and so
- (24) going through the Buying Time 1998 database as
- (25) I was -- in the fashion that I was going

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- (1)
- (2) through it produced these false results that
- (3) led to this series of discussions where we are
- (4) trying to find out where the 7 percent figure
- (5) came from in Buying Time 1998. I had believed
- (6) I had found the answer at that point, but I had
- (7) not.
- (8) Q. Why did you ask Luke not to
- (9) volunteer the reassessment to Professor Hasen?
- (10) A. I was focused on the 2000
- (11) database. I'm trying to get Buying Time 2000
- (12) the database together and trying to get the
- (13) book out as quick as possible. It was not -- I
- (14) knew I was not that familiar with Buying Time
- (15) 1998 and what went into it and I could have
- (16) been perceiving the 1998 database wrong. It
- (17) was a whole debate that I really just did not
- (18) want to get into. It was something Krasno and
- (19) Seltz the co-authors of Buying Time 1998 should
- (20) have been addressing rather than I and so I
- (21) would have preferred to avoid the whole thing
- (22) with Rick, but of course I knew Rick was going
- (23) to pursue it and I wasn't going to obstruct his
- (24) efforts.
- (25) Q. What was it that was somewhat

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- (1)
- (2) troubling about the revised presentation?
- (3) A. I could not reproduce that 7
- (4) percent figure when I would run the two false
- (5) positives, the ads number 12 and 318. If I ran
- (6) those ads the way I perceived them as genuine
- (7) issue ads that mentioned a candidates in all
- (8) the markets that they applied to, then I would
- (9) keep coming out with this 40 percent figure and
- (10) that's what I found troubling. At that point I
- (11) was unaware of the cookie-cutter phenomenon.
- (12) Q. What is the cookie-cutter
- (13) phenomenon of which you are unaware?
- (14) A. The cookie-cutter phenomenon is
- (15) when a similar ad is aired in multiple markets
- (16) and if we take a look at ad number 12, we have
- (17) that somewhere, this is the AFL ad HMO said no
- (18) to Coats. This ad was aired in multiple
- (19) markets all over the country and had been
- (20) coated as a genuine issue ad that mentioned the
- (21) name of the candidates.
- (22) Now if I calculated that into the
- (23) database in all the markets and all the states
- (24) where it was aired, it comes out with a false
- (25) positive up to 40 percent rather than 7

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- (1)
- (2) percent. What Krasno and Seltz had done which
- (3) was unbeknownst to me at the time they realized
- (4) this was a cookie-cutter ad and that it was
- (5) aired in lots of different markets mentioning
- (6) incumbent office holders most of whom were not
- (7) candidates and in fact only in three of the
- (8) markets where this ad aired was it actually
- (9) mentioning an office holder that was a
- (10) candidate.
- (11) Q. Which three were those?
- (12) A. That was Greensboro, Raleigh,
- (13) Durham and --
- (14) Q. Pennsylvania?
- (15) A. Pittsburgh.
- (16) Q. That's two states, right?
- (17) A. Two states, but --
- (18) Q. North Carolina and Pennsylvania?
- (19) A. Right, with three markets and
- (20) that they had taken out the other markets
- (21) because they didn't have active candidates that
- (22) were being mentioned in the ad, but just office
- (23) holders and then scaled it down to address the
- (24) districts, the areas where this ad aired that
- (25) mentioned candidates and I had not known about

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- (1)
- (2) that cookie-cutter phenomenon. That's why I
- (3) kept coming up with 40 percent.
- (4) If I did the calculations of the
- (5) two unique ads among 30 unique ads, then it
- (6) produced 7 percent and I was thinking at the
- (7) time maybe this is what they were really
- (8) talking about, but it turns out not. They were
- (9) actually talking about airings and they
- (10) addressed the cookie-cutter phenomenon.
- (11) Q. Didn't you have more research
- (12) done with respect to the cookie-cutter
- (13) phenomenon and ultimately determine the
- (14) accurate number was in the order of 11.8
- (15) percent?
- (16) A. That was subsequent research and
- (17) there is more research beyond that too.
- (18) MR. ABRAMS: Let me mark as
- (19) Exhibit 31 an e-mail from Mr. McLoughlin
- (20) to you and Mr. Rosenkranz of January 16,
- (21) 2001.
- (22) (Plaintiff's Exhibit Holman 31,
- (23) E-Mail dated January 16, 2001, marked
- (24) for identification.)
- (25) Q. Do you recall receiving this

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- (1)
- (2) document?
- (3) **A. Yes, I do.**
- (4) **Q.** This is a document, is it not, in
- (5) which Mr. McLoughlin goes through an analysis
- (6) of each of the places that based on the
- (7) information he had the AFL-CIO ad marked as
- (8) Exhibit 7 had been shown, correct?
- (9) **A. Correct.**
- (10) **Q.** He tried to deal with precisely
- (11) what you were just telling us about and that is
- (12) counting only the Pittsburgh and North Carolina
- (13) showings of the ad, correct?
- (14) **A. That's correct.**
- (15) **Q.** Based on that he came up with a
- (16) false positive percentage of 11.38 percent,
- (17) right?
- (18) **A. Correct.**
- (19) **Q.** Then more work was done, wasn't
- (20) it?
- (21) **A. Yes.**
- (22) **Q.** You had to look at the fact, did
- (23) you not, that other Senators were running in
- (24) districts in which the ad had shown; isn't that
- (25) right?

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- (1)
- (2) **A. That's something Krasno and Seltz**
- (3) **would have looked into. I was basing my**
- (4) **analysis on what they were telling me.**
- (5) **MR. ABRAMS:** I would like to mark
- (6) as Exhibit 32 an e-mail from Mr.
- (7) McLoughlin to Mr. Seltz dated January
- (8) 16, 2001.
- (9) **(Plaintiff's Exhibit Holman 32,**
- (10) **E-Mail dated January 16, 2001, marked**
- (11) **for Identification.)**
- (12) **Q.** This reflects, does it not,
- (13) continuing work on the same subject?
- (14) **A. Yes, trying to get further**
- (15) **clarification from Daniel Seltz.**
- (16) **Q.** On page one of Exhibit 32 Mr.
- (17) McLoughlin said to Daniel Seltz that in almost
- (18) all the markets there was a candidate running
- (19) for the Senate. Feingold in Milwaukee, Patty
- (20) Murray in Seattle, Blanche Lincoln in Arkansas
- (21) and so on. That was something that had to be
- (22) checked out, wasn't it?
- (23) **A. Yes, that was.**
- (24) **MR. ABRAMS:** I will mark as
- (25) Exhibit 33 an e-mail from Mr. McLoughlin

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- (1)
- (2) to you on January 16, 2001.
- (3) **(Plaintiff's Exhibit Holman 33,**
- (4) **E-Mail dated January 16, 2001, marked**
- (5) **for Identification.)**
- (6) **Q.** At that time, Mr. McLoughlin's
- (7) conclusion was that the correct number was 13.4
- (8) percent, right?
- (9) **A. Yes, we realized that we had**
- (10) **overlooked Greensboro.**
- (11) **MR. ABRAMS:** I will mark as
- (12) Exhibit 34 an e-mail from you to Mr.
- (13) Rosenkranz and others dated January 17,
- (14) 2001.
- (15) **(Plaintiff's Exhibit Holman 34,**
- (16) **E-Mail dated January 17, 2001, marked**
- (17) **for Identification.)**
- (18) **Q.** One of the people that received
- (19) this was Nancy Northup?
- (20) **A. Yes.**
- (21) **Q.** What was her position then?
- (22) **A. She's director of the democracy**
- (23) **program.**
- (24) **Q.** You told her, did you not, that,
- (25) "The short of it is that there are some

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- (1)
- (2) miscoded data in the 1998 database that can
- (3) make a significant difference in the results
- (4) depending on how they are calculated", correct?
- (5) **A. Yes.**
- (6) **Q.** Then in the third paragraph you
- (7) said that you had been worried about how to
- (8) inform Professor Hasen that miscodes of the AFL
- (9) ads "warrant changing his numbers from the 40
- (10) percent figure down to about 13 percent of
- (11) genuine issue ads captured by the bright line
- (12) test this late in his analysis." Then you say
- (13) "Now that Rick has requested a new analysis
- (14) based on the miscode of ad number 1374, the
- (15) door is open for a quick recalculation of the
- (16) figures", correct?
- (17) **A. Correct.**
- (18) **MR. DODYK:** It should read this is
- (19) good which appears immediately
- (20) following.
- (21) **MR. ABRAMS:** So it does.
- (22) **Q.** The next line is "This is good",
- (23) correct?
- (24) **A. Correct.**
- (25) **MR. ABRAMS:** Then we will mark as

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- (1)
- (2) Exhibit 35 an e-mail from Rick Hasen to
- (3) you of January 17, 2001.
- (4) (Plaintiff's Exhibit Holman 35,
- (5) E-Mail dated January 17, 2001, marked
- (6) for Identification.)
- (7) Q. Do you recall receiving this
- (8) document?
- (9) A. Yes, I do.
- (10) Q. Professor Hasen concludes, does
- (11) he not, in paragraph three that the correct
- (12) number is about 13.8 percent, right?
- (13) A. Correct, and that's what he ended
- (14) up publishing.
- (15) Q. That was the correct number,
- (16) wasn't it?
- (17) A. That's the correct number in the
- (18) way he did the analysis.
- (19) Q. Did you ever tell him he did it
- (20) wrong?
- (21) A. No, quite frankly, no, he didn't
- (22) do it wrong. He just did it differently than
- (23) Krasno and Seltz had done it. The way he had
- (24) done it was the difference between the
- (25) numerator and the denominator. His denominator

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- (1)
- (2) was the issue ads that mention a candidate
- (3) within 60 days of the election. The numerator
- (4) was the issue ads that mention the candidate
- (5) within 60 days of the election and that if you
- (6) run airings will produce the 13.8 percent.
- (7) The way that I'm now told by
- (8) Seltz and Krasno is that their denominator was
- (9) issue ads over the course of the entire
- (10) calendar year divided by the number of airings
- (11) that were captured within the 60 days that
- (12) mention ad candidate and I'm told that that is
- (13) how they came about their 7 percent figure.
- (14) Either method is acceptable when
- (15) it comes to statistics or political science.
- (16) It's just important that one be very clear what
- (17) their number is measuring and defining clearly.
- (18) Q. In Exhibit 33 which you have
- (19) already looked at Mr. McLoughlin concluded that
- (20) the 13.4 percent what was the correct number of
- (21) genuine issue ads that would be caught
- (22) "unfairly by a 60 day rule", right?
- (23) A. Right. The difference between
- (24) 13.4 and 13.8 I'm not clear where that came
- (25) from. Rick was doing his own coding. I mean

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- (1)
- (2) we were not going to change our database for
- (3) Rick, but Rick was going to do his own coding
- (4) as an independent researcher so he came up with
- (5) his own figure 4948 and that's what changed
- (6) that.
- (7) Q. As of January 16th the number out
- (8) of your office was 13.4 percent and on January
- (9) 17th Rick made a slight change to make it 13.8
- (10) percent, correct?
- (11) A. Correct.
- (12) Q. Is not 13.8 percent the final
- (13) figure that the Brennan Center sent out in
- (14) various internal and external e-mails?
- (15) MR. DODYK: I will object to the
- (16) form of the question that the final
- (17) figure does not refer to which of the
- (18) computations this witness has been
- (19) testifying about and may be misleading.
- (20) Q. Was there ever a later e-mail
- (21) from you or Mr. McLoughlin saying that after
- (22) all the 7 percent figure was correct?
- (23) A. I don't know if there is in the
- (24) public record here, but from discussions with
- (25) Jonathan Krasno he clarified that his

Page 140

- (1)
- (2) denominator was different than the denominator
- (3) that Rick Hasen used. His denominator was
- (4) issue ads over the course of the entire
- (5) calendar year of 1998 and not limited to issue
- (6) ads within 60 days and that is where he
- (7) produces his 7 percent figure. It is certainly
- (8) a justifiable way of doing it. It's not how I
- (9) did it in Buying Time 2000 and it's not how
- (10) Rick Hasen did it in his publication, but it's
- (11) neither incorrect -- it's not incorrect. It's
- (12) a different way of assigning a number to
- (13) measure a phenomenon.
- (14) Q. Can you identify for us any
- (15) document that the Brennan Center has produced
- (16) internally or otherwise which concludes that
- (17) the 7 percent figure was after all an
- (18) acceptable one?
- (19) A. I cannot produce it here, no.
- (20) Q. Do you know of any?
- (21) A. Is this part of the litigation?
- (22) Sorry if I can ask a question.
- (23) MR. DODYK: Can we go off the
- (24) record for a second or do you want to
- (25) stay on the record?

Page 141

(1)

(2) **MR. ABRAMS:** Why don't we stay on
(3) the record.

(4) **MR. DODYK:** I would have to take a
(5) look at the document that he's referring
(6) to and determine whether or not the
(7) document is part of the work product
(8) preparation for the case or is, in fact,
(9) a document which was involved in
(10) communications between Mr. Holman and
(11) the authors of the 1998 study and
(12) clearly if it is the latter, it would be
(13) produceable and we would produce it to
(14) you, but I'm not in a position at this
(15) point to say because I don't know
(16) exactly which document the witness has
(17) in mind, but certainly if there is a
(18) document which is produceable, we will
(19) produce it. If there is a work product
(20) document, we will let you know of its
(21) nature and talk about its
(22) produceability.

(23) **Q.** Do you know if any public
(24) statement has ever been made by the Brennan
(25) Center with respect to the subjects that we

Page 143

(1)

(2) would have used had I used the methodology that
(3) I did in *Buying Time 2000*.

(4) **Q.** In that time period did the
(5) Brennan Center ever communicate on its website
(6) to advise anybody that the 7 percent figure
(7) that it had used on a number of occasions was
(8) incorrect?

(9) **MR. DODYK:** Object to the form of
(10) the question; assumes a fact not in
(11) evidence since 7 percent was not
(12) incorrect.

(13) **A.** I answer this anyway. I had
(14) mistakenly believed the 7 percent figure then
(15) was referring to unique ads and not airings at
(16) the time in *Buying Time 1998* until I got direct
(17) clarification from Krasno.

(18) **Q.** You understood, did you not, in
(19) January 2001 at the time of all these e-mails
(20) we have been going over that the 7 percent
(21) figure had been characterized by Mr. Rosenkranz
(22) and in *Five New Ideas* and in the 1998 study as
(23) relating to airings?

(24) **A.** No, it was not clearly
(25) characterized that way in *Buying Time 1998*. I

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(1)

(2) have been talking about here today?

(3) **A.** No public statements as far -- no
(4) public statements as far as I know.

(5) **Q.** Do you know if Mr. Rosenkranz
(6) ever apologized to the Senate committee?

(7) **MR. DODYK:** Object to the form of
(8) the question.

(9) **A.** Not at all because the Brennan
(10) Center is sticking by the 7 percent figure for
(11) 1998.

(12) **Q.** When did the Brennan Center
(13) decide to stick by the 7 percent figure?

(14) **A.** When we received further
(15) clarification from Daniel Seltz and Jonathan
(16) Krasno that they measured a different
(17) denominator than Rick Hasen did.

(18) **Q.** When was that?

(19) **A.** I was aware of it within the last
(20) couple of weeks.

(21) **Q.** So between January 2001 and the
(22) last couple of weeks had you thought that the
(23) correct number was about 13.8 percent?

(24) **A.** This is how I normally would have
(25) measured it myself and that's the figure that I

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(1)

(2) don't believe in the *Five New Ideas*, but I
(3) would have to read that closer. It was not
(4) characterized that way. It was very ambiguous
(5) to the point where I concluded that the 7
(6) percent figure really was referring to unique
(7) ads and that's how I read *Buying Time 1998* at
(8) this point.

(9) **Q.** Did you ever tell Mr. Rosenkranz
(10) how could you say this is flat out wrong,
(11) what's flat out wrong about it if all we were
(12) talking about was the percentage of unique ads
(13) as opposed to the amount of airings?

(14) **A.** I told her what my findings were
(15) and my findings were 7 percent of unique ads
(16) and 13.8 percent of airings if you measure it
(17) within the 60 day window. I was very clear to
(18) Josh about that and others and that's what Rick
(19) has published in his article. Seven percent
(20) figure even though I was still mistakenly
(21) reading the 7 percent figure was not wrong. I
(22) mean, even if I read it my way being unique ads
(23) and assumed that's what Krasno and Seltz were
(24) actually writing about in 1998 I mean that's
(25) not wrong.

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- (1)
- (2) Q. I'm not asking if it's wrong with
- (3) respect to unique ads. I'm asking if it's
- (4) wrong with respect to airings which is what Mr.
- (5) Rosenkranz e-mailed you about, isn't it?
- (6) A. Right, in terms of airings and we
- (7) now know it's not wrong in terms of airings.
- (8) Q. Between January 2001 and a few
- (9) weeks ago you thought it was wrong with respect
- (10) to airings, correct?
- (11) A. I had believed it was wrong with
- (12) respect to airings.
- (13) MR. ABRAMS: Why don't we break
- (14) for lunch now and could we try to make
- (15) it short so we can finish on time.
- (16) (Luncheon recess taken at 1:00
- (17) p.m.)
- (18)
- (19)
- (20)
- (21)
- (22)
- (23)
- (24)
- (25)

Page 146

- (1)
- (2) AFTERNOON SESSION
- (3) (Time noted: 1:55 p.m.)
- (4)
- (5) CRAIG HOLMAN, resumed and
- (6) testified as follows:
- (7)
- (8) CONTINUED EXAMINATION
- (9) BY MR. ABRAMS:
- (10) Q. Dr. Holman, continuing with the
- (11) line of inquiry we were on a few moments ago I
- (12) want to mark as Exhibit 36 a document written
- (13) by you without date, but it's Brennan Center
- (14) documents 001438 to 001440.
- (15) (Plaintiff's Exhibit Holman 36,
- (16) Document, Brennan Center production
- (17) number 001438 through 001440, marked for
- (18) Identification.)
- (19) Q. Do you recall writing this
- (20) document?
- (21) A. Yes, I do.
- (22) Q. This was from you to Professor
- (23) Hasen?
- (24) A. Yes.
- (25) Q. This document reflects, does it

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- (1)
- (2) not, discussions between you and Daniel Seltz
- (3) with respect to the 1998 database?
- (4) A. Yes, it does.
- (5) Q. Did you tell Mr. Seltz in or
- (6) around January 2001 that the number that you
- (7) have determined was the actual percentage of
- (8) total genuine issue ads as defined by the
- (9) Brennan Center which mentioned a candidate and
- (10) would be captured by the 60 day bright line
- (11) test was 13.8 percent?
- (12) A. I'm trying to recall if this is
- (13) when we contacted and said we get 40 percent,
- (14) how do you get 13.8 percent.
- (15) Q. I want to make sure I understand.
- (16) Was Mr. Seltz telling you the correct number
- (17) was 13.8 percent?
- (18) A. No, Mr. Seltz was trying to tell
- (19) us that there is this cookie-cutter phenomenon
- (20) that we discussed and that I'm not taking that
- (21) into account in my assessment.
- (22) Q. Then you did take it into account
- (23) and that's what led you to the 13.8 percent
- (24) rather than the 40 percent, correct?
- (25) A. Correct.

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- (1)
- (2) Q. My question is did you tell Mr.
- (3) Seltz that that's what you were doing?
- (4) A. I told him I was going to take
- (5) into account the cookie-cutter ads and try
- (6) running the number and see what I get. I don't
- (7) recall if I ever reported to Seltz I came up
- (8) with 13.8 percent.
- (9) Q. The data contained in Exhibit 36
- (10) shows how you computed it out to be 13.8
- (11) percent, right?
- (12) A. It shows my precise syntax for
- (13) calculating it, yes.
- (14) Q. If the AFL-CIO ads had run in
- (15) other states with candidates who were running
- (16) for office and mentioned their names, the
- (17) percentage would have been higher, would it
- (18) not?
- (19) A. That is correct.
- (20) Q. Do you know if the AFL ads ran in
- (21) Missouri and mentions Senator Bond?
- (22) A. I don't know that. We have the
- (23) market breakdown which is in one of your
- (24) exhibits that you gave us as to all the
- (25) different markets.

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- (1)
- (2) Q. It mentions St. Louis as a place
- (3) where it ran, but my question is not whether it
- (4) ran in St. Louis, but whether one that ran in
- (5) St. Louis mentioned Senator Bond by name?
- (6) A. I don't know. I'm relying on the
- (7) information that I received from Seltz that it
- (8) was limited to these three markets.
- (9) Q. Do you know if it ran in Iowa and
- (10) referred to Senator Grassley who was then
- (11) running for reelection?
- (12) A. I don't know by personal
- (13) knowledge.
- (14) Q. Do you know if anybody within the
- (15) Brennan Center called the AFL to ask them where
- (16) this ad had run?
- (17) A. I know that no one did that. The
- (18) source of information was from CMAG so they
- (19) consulted with CMAG.
- (20) Q. Who is the they that did the
- (21) consultation?
- (22) A. Daniel Seltz and Jonathan Krasno.
- (23) Q. Do you know why they didn't call
- (24) the AFL itself to ask them?
- (25) MR. PAOLELLA: Objection. You can

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- (1)
- (2) January 2001 when all the documents that we
- (3) have just been going over with respect to the 7
- (4) percent figure were created and the time period
- (5) after this litigation began, were there any
- (6) documents prepared by the Brennan Center
- (7) defending the 7 percent figure?
- (8) A. I had come to the conclusion at
- (9) this point that the 7 percent figure was unique
- (10) ads and so I concluded that and in terms of
- (11) going back to the Buying Time 1998 and issuing
- (12) other reports on it, no, my focus was on Buying
- (13) Time 2000.
- (14) Q. Was your conclusion then that the
- (15) 7 percent figure related only to unique ads and
- (16) not to airings?
- (17) A. That was my conclusion in Buying
- (18) Time 1998 at this time, yes.
- (19) Q. What time was that that you
- (20) reached that conclusion?
- (21) A. Well, the rough dates would be
- (22) when Rick Hasen came out with his article so
- (23) January, February or March, somewhere around
- (24) there in 2001 would have been when I reached my
- (25) conclusion that Buying Time 1998s 7 percent

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- (1)
- (2) answer.
- (3) A. No, I don't know.
- (4) MR. ABRAMS: I want to mark now as
- (5) Exhibit 37 what may be an earlier
- (6) version of Exhibit 36, but I want you to
- (7) tell me. This is a document from Mr.
- (8) McLoughlin to you with what appears to
- (9) be the same numbers that are contained
- (10) in Exhibit 36. It also has no date and
- (11) it's Brennan Center 003855 to 003856.
- (12) (Plaintiff's Exhibit Holman 37,
- (13) Document, Brennan Center production
- (14) numbers 003855 through 003856, marked
- (15) for identification.)
- (16) Q. Can you identify this document?
- (17) A. Yes, this was the research that
- (18) went into my memo to Rick.
- (19) Q. So this information went into
- (20) Exhibit 36?
- (21) A. Yes.
- (22) Q. In the time period between
- (23) January 2001 when all the e-mails we have been
- (24) discussing were created, were there any
- (25) documents -- let me start again. Between

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- (1)
- (2) figure reflected unique ads.
- (3) Q. The exhibit that we marked which
- (4) was Mr. Rosenkranz' memorandum using the phrase
- (5) that the figures used were "flat out wrong"
- (6) related specifically to the '98 study, didn't
- (7) it?
- (8) A. Yes.
- (9) Q. Did you ever tell him that he was
- (10) wrong?
- (11) A. I told him what my conclusions
- (12) were.
- (13) Q. When was that?
- (14) A. I don't know exact dates, but I
- (15) believe we have run over some of the e-mails
- (16) here where I conveyed to him these sort of
- (17) messages.
- (18) Q. The last document that we talked
- (19) about was a document written by you which has a
- (20) 13.8 percent figure in it, correct?
- (21) A. All right, and sent to Joshua,
- (22) yeah.
- (23) Q. That was sent to Josh, right?
- (24) A. Right.
- (25) Q. My question to you is at what

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- (1)
- (2) point after you sent that to Josh did you tell
- (3) him that the 7 percent figure after all had
- (4) been correct all the time?
- (5) **MR. PAOLELLA:** Object to the form.
- (6) **A.** I answered that I told him the 7
- (7) percent figure was correct as of relative to
- (8) unique ads, that's what I believed was the case
- (9) and that's what I believe Krasno and Seltz had
- (10) been writing about in *Buying Time 1998*.
- (11) **Q.** Then did you reach the conclusion
- (12) that your memo which said that the information
- (13) produced had been a little bit misleading, was
- (14) that incorrect?
- (15) **A.** Misleading in the sense that I
- (16) was initially reading *Buying Time 1998* as
- (17) referring to airings and when you read that
- (18) clause several times that they have in *Buying*
- (19) *Time 1998* which they cite the 7 percent figure
- (20) twice in there, it's ambiguous what they are
- (21) referring to whether it's airings or unique ads
- (22) so I had come to the conclusion that it is
- (23) unique ads and I do wish at that point that
- (24) Krasno and Seltz would have been clear on that,
- (25) but I never concluded that the 7 percent figure

Page 154

- (1)
- (2) was incorrect.
- (3) **Q.** What was it you thought was
- (4) misleading?
- (5) **A.** It should have been clarified
- (6) that it was unique ads if I was perceiving that
- (7) figure as to refer to 7 percent to ads
- (8) referring to unique ads. It isn't clear in
- (9) that paragraph whether it's referring to
- (10) airings or unique ads and whichever one it was,
- (11) you know, it should have been identified very
- (12) clearly what it was referring to and, you know,
- (13) that way I would not have had to go through
- (14) this whole research process in trying to figure
- (15) out, you know, what they had done if they would
- (16) have been very clear in the text.
- (17) **Q.** Did you tell Mr. Rosenkranz that
- (18) you thought that the 7 percent figure related
- (19) to unique ads after you prepared the memorandum
- (20) which is in front of you which concludes that
- (21) the correct number is 13.8 percent?
- (22) **A.** I concluded that 13.8 percent is
- (23) the correct number as the way Rick calculated
- (24) it here and that 7 percent would be the number
- (25) in relation to unique ads and yes, I told Josh

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- (1)
- (2) that and everyone else and it was published by
- (3) Rick in his article in the University of
- (4) Minnesota law review.
- (5) **Q.** What was published by him?
- (6) **A.** These numbers.
- (7) **Q.** He published that 7 percent was
- (8) the figure for unique ads and 13.8 percent was
- (9) the figure for airings correct?
- (10) **A.** That's what he published, yes.
- (11) **Q.** Are those numbers correct?
- (12) **A.** Those numbers are correct, but
- (13) the 7 percent airings is also a correct figure
- (14) too, but those numbers are correct, yes, they
- (15) are not incorrect.
- (16) **Q.** You testified before lunch that
- (17) it was within the last few weeks that you spoke
- (18) to Mr. Seltz and heard from him that the 7
- (19) percent figure was correct with respect to
- (20) airings; is that correct?
- (21) **A.** It was Krasno and I didn't speak,
- (22) it was through memoranda exchanges.
- (23) **Q.** Am I right that until that
- (24) conversation and those exchanges that you
- (25) believed that the 13.8 percent figure was the

Page 156

- (1)
- (2) correct figure with respect to airings?
- (3) **A.** With airings within the 60 day
- (4) period, yes, that is what I believed.
- (5) **Q.** I asked you a part of this
- (6) earlier, but I want to make sure I have it
- (7) right, was there any public statement of any
- (8) sort by the Brennan Center between January 2001
- (9) and a few weeks ago when you had these
- (10) exchanges with Mr. Krasno in which the Brennan
- (11) Center said in words or substance that the 7
- (12) percent figure used in Mr. Rosenkranz'
- (13) testimony, in *Five New Ideas* and in *Buying Time*
- (14) 1998 should have been stated as 13.8 percent?
- (15) **A.** No, and I don't believe that
- (16) really is the case. It was just a matter of
- (17) how one interprets *Buying Time 1998*. The 7
- (18) percent figure being the unique number of
- (19) unique ads.
- (20) **Q.** Is there any piece of paper that
- (21) was created before the last few weeks which
- (22) says in words or substance there was nothing
- (23) wrong with the 7 percent figure at all?
- (24) **A.** Well, no public statements other
- (25) than something like these memorandum that

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- (1)
- (2) **explain my understanding of what the 7 percent**
- (3) **figure reflected.**
- (4) **Q. Did the Brennan Center ever use**
- (5) **the 13.8 percent figure publicly?**
- (6) **A. No, that was Rick Hasen's**
- (7) **article.**
- (8) **Q. Why did the Brennan Center not**
- (9) **use the 13.8 percent figure publicly?**
- (10) **A. There was still some uncertainty**
- (11) **among different colleagues in the Brennan**
- (12) **Center as to what the 1998 database and what**
- (13) **Buying Time 1998 actually said and my efforts**
- (14) **were now focused on Buying Time 2000.**
- (15) **Q. Does the Brennan Center still**
- (16) **distribute Buying Time 1998?**
- (17) **A. Yes, on request.**
- (18) **Q. In the same form that it existed**
- (19) **before me, correct?**
- (20) **A. Yes.**
- (21) **Q. I want to turn now to political**
- (22) **parties ads. Were all of the party ads**
- (23) **determined by the coders to be aimed at**
- (24) **generating support or opposition to a**
- (25) **candidate?**

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- (1)
- (2) **MR. PAOLELLA: Talking about 1998**
- (3) **or 2000?**
- (4) **MR. ABRAMS: Why don't we start**
- (5) **with 1998.**
- (6) **Q. Focusing on 1998, were all of the**
- (7) **party ads found to be aimed at generating**
- (8) **support or opposition to a candidate?**
- (9) **A. I'm sorry, but I don't recall the**
- (10) **findings for 1998 on that issue.**
- (11) **Q. How about 2000?**
- (12) **A. For 2000, yes, 100 percent of the**
- (13) **ads were viewed as electioneering by the**
- (14) **parties.**
- (15) **Q. Is that because they were party**
- (16) **or because of what the ad said?**
- (17) **A. Because of what the ad said.**
- (18) **MR. ABRAMS: I put together a few**
- (19) **of the ads made available to us from the**
- (20) **Brennan Center which were set forth on**
- (21) **storyboards. I put together six of them**
- (22) **which I will mark collectively as**
- (23) **Exhibit 38.**
- (24) **(Plaintiff's Exhibit Holman 38,**
- (25) **Ads, marked for identification.)**

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- (1)
- (2) **Q. Could you direct your attention**
- (3) **first to the first advertisement titled**
- (4) **California Democratic Party Bilbray Wrong RX**
- (5) **for Seniors?**
- (6) **A. Yes.**
- (7) **Q. Is that an ad that deals with the**
- (8) **record of Congressman Bilbray with respect to**
- (9) **prescription drug plans?**
- (10) **A. Yes, it does.**
- (11) **Q. It sets forth that Congressman**
- (12) **Bilbray voted against certain prescription drug**
- (13) **coverage, does it not?**
- (14) **A. Yes, it does.**
- (15) **Q. It argues that Congressman**
- (16) **Bilbray's plan would leave a large number of**
- (17) **California seniors without guaranteed**
- (18) **prescription drug coverage, doesn't it?**
- (19) **A. That is correct.**
- (20) **Q. It concludes saying, "Tell Brian**
- (21) **Bilbray to start supporting real prescription**
- (22) **drug coverage for all seniors" paid for by the**
- (23) **California Democratic Party, right?**
- (24) **A. Right.**
- (25) **Q. This advertisement does deal,**

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- (1)
- (2) **does it not, with a public issue of**
- (3) **significance, correct?**
- (4) **A. It does discuss a public policy**
- (5) **of significance, yes.**
- (6) **Q. Do you agree that this**
- (7) **advertisement should have been coded in the**
- (8) **fashion that it was?**
- (9) **A. As electioneering, yes, I do**
- (10) **agree with that.**
- (11) **Q. Why is this an electioneering ad?**
- (12) **A. The focus is much more Brian**
- (13) **Bilbray than it is on any public policy. It's**
- (14) **trying to depict Brian Bilbray in a very**
- (15) **negative light in relationship to this public**
- (16) **policy and is just all about Bilbray's picture**
- (17) **and talking about how bad Bilbray is.**
- (18) **Q. Doesn't it talk about how wrong**
- (19) **Congressman Bilbray is about prescription drug**
- (20) **coverage?**
- (21) **A. Yes, about that issue, yes.**
- (22) **Q. Would you turn to the second one**
- (23) **which is also a California Democratic Party ad**
- (24) **with respect to Congressman Cunneen. This is a**
- (25) **15 second ad, right?**

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- (1)
- (2) **A. Yes, it is.**
- (3) **Q. This says in its entirety "Jim**
- (4) **Cunneen voted with the NRA to allow adults to**
- (5) **carry concealed weapons in public places such**
- (6) **as parks, restaurants or the work place. Under**
- (7) **pressure we can't count on Jim Cunneen. Tell**
- (8) **Jim Cunneen to vote against the NRA and for**
- (9) **public safety. California Democratic Party."**
- (10) **Is this an ad which takes a position with**
- (11) **respect to the NRA?**
- (12) **A. Yes, it obviously is taking a**
- (13) **position on gun control and trying to picture**
- (14) **the NRA as being wrong and Jim Cunneen voting**
- (15) **with the NRA on these issues to carry concealed**
- (16) **weapons in public places.**
- (17) **Q. Would you direct your attention**
- (18) **to the third ad, please. This is also a**
- (19) **California Democratic Party ad entitled Rogan**
- (20) **Against RX Coverage and it says "Jim Rogan**
- (21) **voted against real prescription drug coverage**
- (22) **for all California seniors guaranteed under**
- (23) **Medicare. No wonder the pharmaceutical**
- (24) **industry is spending a fortune promoting him.**
- (25) **Tell Jim Rogan to stop opposing real**

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- (1)
- (2) **prescription drug coverage. Paid for by the**
- (3) **California Democratic Party." Does that ad take**
- (4) **a position about prescription drug coverage?**
- (5) **A. Yes, it certainly implies that it**
- (6) **supports prescription drug coverage, but the**
- (7) **point of it is that Jim Rogan voted against the**
- (8) **prescription drug coverage bill previously.**
- (9) **Q. It's critical of Congressman**
- (10) **Rogan for voting against the prescription drug**
- (11) **coverage bill, correct?**
- (12) **A. Correct.**
- (13) **Q. The next is another California**
- (14) **Democratic Party ad titled Bilbray Privacy**
- (15) **and it says "After taking over \$300,000 in**
- (16) **contributions from finance and insurance**
- (17) **interests, Brian Bilbray voted to allow your**
- (18) **personal medical records and financial**
- (19) **information to be distributed without your**
- (20) **consent. Tell Congressman Bilbray to protect**
- (21) **your privacy rights. Paid for by California**
- (22) **Democratic Party." That advertisement takes a**
- (23) **position, does it not, on the issue of the**
- (24) **dissemination of personal medical records and**
- (25) **financial information?**

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- (1)
- (2) **A. That is true and that Bilbray is**
- (3) **being supported by the finance and insurance**
- (4) **interests.**
- (5) **Q. It criticizes Congressman**
- (6) **Bilbray for his position on the issue of the**
- (7) **availability of medical records, correct?**
- (8) **A. It criticizes him for a couple of**
- (9) **reasons, yes.**
- (10) **Q. The next one is from the Florida**
- (11) **Democratic Party titled Shaw Social Security**
- (12) **Plan. Why don't you read that one to yourself.**
- (13) **Is that an advertisement that criticizes**
- (14) **Congressman Shaw for his position with respect**
- (15) **to privatizing social security?**
- (16) **A. Yes, it does.**
- (17) **Q. That winds up saying "Tell Clay**
- (18) **Shaw to stop putting our social security funds**
- (19) **at risk", correct?**
- (20) **A. That is correct.**
- (21) **Q. The last one is a Florida**
- (22) **Republican ad titled Stedem Capital Punishment**
- (23) **and that says "Mike Stedem is against capital**
- (24) **punishment for even the most terrible crimes. I**
- (25) **guess I fall into the liberal category he said.**

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- (1)
- (2) **The Fraternal Order of Police is disappointed**
- (3) **that Mike Stedem has chosen to oppose the mass**
- (4) **majority of residents in Central Florida and**
- (5) **not support the death penalty for the worst**
- (6) **criminals. They support Adam Putnam instead.**
- (7) **Putnam sponsored the tough release reoffender**
- (8) **punishment act and co-sponsored the 10-20-life.**
- (9) **Tell Mike Stedem to support the death penalty."**
- (10) **That ad deals with an issue of significant**
- (11) **public dispute, does it not?**
- (12) **A. And several issues all in one.**
- (13) **Stedem is a liberal and that Putnam is tough on**
- (14) **crime.**
- (15) **Q. Deals with capital punishment, it**
- (16) **deals with --**
- (17) **A. Adds a Fraternal Order of Police**
- (18) **opposed Stedem.**
- (19) **Q. That's with respect to capital**
- (20) **punishment also, correct? That Stedem is**
- (21) **opposing the death penalty?**
- (22) **A. Yes.**
- (23) **Q. That concludes tell Mike Stedem**
- (24) **to support the death penalty, right?**
- (25) **A. Correct.**

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- (1)
- (2) **MR. ABRAMS:** I'm going to mark as
- (3) Exhibit 39 a memorandum by Glenn
- (4) Moramarco produced to us by the Brennan
- (5) Center dated January 16, 2001.
- (6) **(Plaintiff's Exhibit Holman 39,**
- (7) **Memo dated January 16, 2001, marked for**
- (8) **Identification.)**
- (9) **Q.** Have you seen this document
- (10) before?
- (11) **A.** I'm trying to remember if I have
- (12) seen this. I was working there so it would
- (13) have been presented to me.
- (14) **Q.** This is a memorandum Re: "Lessons
- (15) from Buying Time: Improving Snowe-Jeffords."
- (16) What sort of improvements were suggested?
- (17) **A.** Let me get into this for a second
- (18) here. This was Glenn's idea that he was coming
- (19) up with the rebuttable presumption that -- I'm
- (20) no legal scholar so I won't try to defend it
- (21) one way or the other, but his idea was to
- (22) provide a provision in Snowe-Jeffords that
- (23) would allow any group to try rebutting the fact
- (24) whether they have an electioneering ad if they
- (25) mentioned a candidate within 60 days. That the

Page 167

- (1)
- (2) **A.** I believe it did issue that and
- (3) then through a period of discussions the idea
- (4) was later dropped.
- (5) **MR. ABRAMS:** I would like to mark
- (6) as Exhibit 40 a document containing an
- (7) e-mail from Rick Hasen to you and an
- (8) earlier one from you to him. That's
- (9) Brennan Center 006190.
- (10) **(Plaintiff's Exhibit Holman 40,**
- (11) **E-Mail, Brennan Center production number**
- (12) **006190, marked for Identification.)**
- (13) **Q.** Can you tell me first is the part
- (14) of Exhibit 40 which reflects an e-mail from you
- (15) to him one that was written before the material
- (16) at the top which is his response to you?
- (17) **A.** My query to him was written
- (18) before his response to me, yes.
- (19) **Q.** Focusing on first what you wrote
- (20) to him, you said to him in January 2001, did
- (21) you not, that you thought that the
- (22) advertisement that we have seen today involving
- (23) Senator Coats was one which provided an ideal
- (24) example of the need to permit some exceptions
- (25) to the bright line test. What did you mean by

Page 166

- (1)
- (2) law would initially assume that it's an
- (3) electioneering ad, but the group could contest
- (4) it and file a complaint.
- (5) **Q.** Congress has not done that, has
- (6) it?
- (7) **A.** No, congress has not done that.
- (8) **Q.** What was his second idea?
- (9) **A.** Second idea was to lessen the
- (10) penalties from criminal to civil penalties.
- (11) **Q.** Congress has not done that,
- (12) correct?
- (13) **A.** No, they haven't done that. The
- (14) first idea I'm somewhat familiar with was
- (15) viewed as too ambiguous and so the idea never
- (16) did fly anywhere. The second one I'm not
- (17) familiar with.
- (18) **Q.** Who was it that to your knowledge
- (19) viewed the first idea as too ambiguous?
- (20) **A.** That was internal discussions in
- (21) the Brennan Center.
- (22) **Q.** The Brennan Center did urge
- (23) members of Congress to include a rebuttable
- (24) presumption element in the McCain-Feingold
- (25) bill, did it not?

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- (1)
- (2) that?
- (3) **A.** These represent the false
- (4) positives and quite frankly without being a
- (5) legal scholar the idea that was being discussed
- (6) to allow the false positives to rebut the
- (7) presumption since they mention a candidate
- (8) struck me as intriguing and I conveyed that to
- (9) Rick and Rick was not impressed with the idea.
- (10) **Q.** In the last sentence of your
- (11) e-mail to him you said that "The Brennan Center
- (12) is using 'these advertisements' as examples to
- (13) encourage McCain-Feingold to include a rebuttal
- (14) of presumption clause in their bright line
- (15) test", correct?
- (16) **A.** Yes.
- (17) **Q.** Who at the Brennan Center was
- (18) doing that?
- (19) **A.** That was Glenn Moramarco.
- (20) **Q.** Who was he speaking to if you
- (21) know?
- (22) **A.** I don't know, but it would have
- (23) been -- I know it would have been staff members
- (24) of McCain-Feingold.
- (25) **MR. ABRAMS:** I want to mark as

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- (1)
- (2) Exhibit 41 a collection of storyboards
- (3) from the 2000 campaign produced to us by
- (4) the Brennan Center. I will mark nine of
- (5) them as a collective exhibit and I will
- (6) just read the titles in.
- (7) The first one is titled Dooley
- (8) Chavez Spanish, the second is McCollum
- (9) Union Bosses, the third is Stabenow
- (10) Death Tax, the fourth is Stabenow Death
- (11) Tax 2, the fifth is Bilbray Right to
- (12) Choose, the sixth is Robb Big Government
- (13) RX Plan, the next is Bush Hate Crimes
- (14) and the last is Fletcher PBR.
- (15) (Plaintiff's Exhibit Holman 41,
- (16) Storyboards, marked for Identification.)
- (17) Q. Focusing on Exhibit 41 with
- (18) respect to the Chavez ad, do I understand
- (19) correctly that this ad was broadcast in
- (20) Spanish? It says at the beginning announcer
- (21) translated from Spanish?
- (22) A. That would be how I would view
- (23) this ad.
- (24) Q. Who did the translation, was it
- (25) CMAG?

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- (1)
- (2) A. That would have been CMAG.
- (3) Q. This is an advertisement, is it
- (4) not, criticizing Congressman Dooley in the
- (5) first instance for opposing a holiday
- (6) celebrating Cesar Chavez and more broadly for
- (7) not respecting constituents for having said
- (8) that Chavez was not on the level of Martin
- (9) Luther King and this ad winds up saying "Call
- (10) Congressman Cal Dooley and say to him that he
- (11) needs to give respect to our community and our
- (12) leaders", correct?
- (13) A. Right.
- (14) Q. Is this ad in your view an
- (15) electioneering ad?
- (16) A. I'm offering my subjective
- (17) opinion again, but yes, I would view that as an
- (18) electioneering ad to recommend that someone is
- (19) anti-respectful of the Latino community and
- (20) that the congressman should call -- we should
- (21) call him and say respect the Latino community,
- (22) yes, I would view that as something that is
- (23) focusing on trying to in affect slander
- (24) Congressman Cal Dooley.
- (25) Q. Do you view this as a topic which

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- (1)
- (2) can legitimately be raised with respect to a
- (3) member of congress?
- (4) MR. PAOLELLA: Objection to the
- (5) form of the question.
- (6) A. Any topic can be raised in
- (7) relationship to a member of congress including
- (8) whether they are racist or not. I would view
- (9) this as focusing less on the issue of racism
- (10) and more on trying to cast Dooley in an
- (11) extremely negative light.
- (12) Q. Why?
- (13) A. It is essentially calling Dooley
- (14) a racist to the Latino community and advertised
- (15) in Spanish to the Latino community designed to
- (16) discourage the Latino community from voting for
- (17) Dooley.
- (18) Q. Isn't another way to look at it
- (19) that it's designed to criticize Congressman
- (20) Dooley for taking positions which are
- (21) inconsistent with genuinely respecting the
- (22) Latino community?
- (23) A. It certainly does deal with the
- (24) racism issue, yes.
- (25) Q. Focusing on the second one that's

Page 172

- (1)
- (2) a two page advertisement which is to say a 60
- (3) second ad. I will read it in. This is an ad
- (4) from the National Right to Work Committee
- (5) identified at the end of the ad. "Defending
- (6) Florida's cherished right to work law could
- (7) well come down to one vote in the United
- (8) State's Senate. Al Gore and the union bosses
- (9) have already pledged to join forces with Ted
- (10) Kennedy to pass big labor power grabs and gut
- (11) state right to work laws. That's why the
- (12) National Right to Work Committee has asked your
- (13) candidates to answer our candidate survey
- (14) pledging opposition to the union bosses'
- (15) agenda. Bill McCollum has pledged 100 percent
- (16) opposition to the forced unionism in Washington
- (17) and has agreed to sponsor a National Right To
- (18) Work Act, but candidate Bill Nelson has so far
- (19) refused to answer and he has welcomed union
- (20) bosses into his campaign with open arms taking
- (21) in over \$200,000 in forced dues money. Don't
- (22) let Bill Nelson get away with hiding his views
- (23) on forced unionism. Call him today at
- (24) 1-850-222-8777 before it is too late. Tell him
- (25) to renounce his forced dues support and insist

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- (1)
- (2) that he publicly pledge support for right to
- (3) work. Paid for by the National Right to Work
- (4) Committee."
- (5) Isn't that a strong articulation
- (6) of the views of the National Right to Work
- (7) Committee against forced dues and in favor of
- (8) right to work which is critical of candidate
- (9) Nelson?
- (10) A. And supportive of Bill McCollum,
- (11) yes, it is.
- (12) Q. Do you believe that organizations
- (13) like this ought to be able to put ads like this
- (14) on television?
- (15) MR. PAOLELLA: Objection to the
- (16) form.
- (17) A. Certainly.
- (18) Q. Do you believe they should be
- (19) able to do so as often as they want?
- (20) MR. PAOLELLA: Objection.
- (21) A. Yes, as often as they want.
- (22) Q. To spend unlimited funds in doing
- (23) so?
- (24) MR. PAOLELLA: Objection.
- (25) A. If it's electioneering as long as

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- (1)
- (2) position on the death tax; is that correct?
- (3) A. That is correct.
- (4) Q. Are these in your view election
- (5) ads?
- (6) A. I would perceive them as
- (7) electioneering ads, yes.
- (8) Q. Why is that?
- (9) A. The focus is on casting Debbie
- (10) Stabenow in an extremely negative light and if
- (11) this were aired very close to the election, I
- (12) would view this as a group effort to try to
- (13) uncede Debbie Stabenow to try to influence
- (14) voters.
- (15) Q. Would you have the same view
- (16) regardless of the degree to which the Chamber
- (17) of Commerce believed that the death tax was a
- (18) bad thing for the country?
- (19) A. Judging from this ad, they are
- (20) talking about the death tax, I would presume
- (21) the Chamber of Commerce does feel that way, but
- (22) actually don't know what their stand on this
- (23) issue is. I presume -- I don't know if they
- (24) are just using this issue to cast Debbie
- (25) Stabenow in a negative light or if the Chamber

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- (1)
- (2) it comes from legitimate campaign sources, but
- (3) yes, spending unlimited funds to do so.
- (4) Q. By legitimate sources you exclude
- (5) unions, the corporations?
- (6) A. Directly from the treasuries,
- (7) yes.
- (8) Q. Do you exclude any other sources?
- (9) A. Contributions in excess of
- (10) contributions limits and contributions I would
- (11) include from foreign nationals.
- (12) Q. It's important, isn't it, that
- (13) views like this be expressed?
- (14) MR. PAOLELLA: Objection.
- (15) A. I believe in the free expression
- (16) of ideas, yes.
- (17) Q. So the answer to my question is
- (18) yes?
- (19) A. Yes.
- (20) Q. Focusing on the next one Stabenow
- (21) death tax and the one after that called
- (22) Stabenow death tax two, these are ads, are they
- (23) not, which are critical of then candidate
- (24) Stabenow for voting against getting rid of the
- (25) death tax and which criticize her for her

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- (1)
- (2) of Commerce is actually against the death tax.
- (3) Q. Does it make a difference to you
- (4) the answer to that question?
- (5) A. In terms of evaluating whether
- (6) this is electioneering?
- (7) Q. Yes.
- (8) A. Not really. If it's done close
- (9) to the election and it's focusing on Debbie
- (10) Stabenow and casting her in a negative light, I
- (11) would view this as an electioneering ad.
- (12) Q. That would not matter then, would
- (13) it, whether the organization that put the ad
- (14) out is genuinely and fervently opposed to the
- (15) death tax?
- (16) A. Not in consideration as to
- (17) whether this is an electioneering ad.
- (18) Q. Would it make a difference if
- (19) there was going to be a vote on the death tax
- (20) at some point in the near future after the ads
- (21) ran?
- (22) A. If there were a serious bill
- (23) coming up and that was the focus of this ad
- (24) rather than just on Debbie Stabenow we would
- (25) have an entirely different ad here and I would

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(1)

(2) **have to see that to offer my subjective view**
(3) **point as to whether it's electioneering.**

(4) **Q.** Suppose that one of the issues in
(5) the Stabenow race was the death tax and that
(6) she was in favor of perpetuating the estate tax
(7) and her opponent was in favor of abolishing
(8) what we call the death tax. Would that have
(9) any impact at all on your judgment as to
(10) whether these two advertisements should be
(11) characterized as genuine issue advertisements
(12) as the Brennan Center uses that phrase?

(13) **A.** No, not really. The Chamber of
(14) Commerce is making the death tax an issue in
(15) this election already as we can see.

(16) **Q.** Do you think it's important that
(17) the Chamber of Commerce be permitted to do
(18) that?

(19) **MR. PAOLELLA:** Objection.

(20) **A.** I agree that the Chamber of
(21) Commerce should be able to advertise within the
(22) constraints of the campaign finance law. If
(23) it's electioneering, they should abide by the
(24) electioneering laws. If it's issue advocacy,
(25) then they should be free to do what they want

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(1)

(2) **on that.**

(3) **Q.** Are these ads both?

(4) **A.** No, they are electioneering ads
(5) as I see them.

(6) **Q.** They are not issue ads at all?

(7) **A.** I would not call these issue ads.
(8) I would all them electioneering ads. These are
(9) designed to influence the election of Debbie
(10) Stabenow.

(11) **Q.** Are they designed to influence
(12) the debate about the death tax?

(13) **A.** I don't know if there is any
(14) death tax bill being debated anywhere. My
(15) viewing of these ads is that they are primarily
(16) designed to uncede Debbie Stabenow.

(17) **Q.** Let me just turn to the next to
(18) last ad in the package which is an NAACP ad
(19) with the title given it by CMAG of "Bush Hate
(20) Crimes". The text here is "I'm Renee Mollins,
(21) Jane Burn's daughter. On June 7, 1998, my
(22) father was killed. He was beaten, chained and
(23) then dragged three miles to his death all
(24) because he was black. So, when George W. Bush
(25) refused to support Hate Crimes legislation, it

Page 179

(1)

(2) was like my father was killed all over again.
(3) Call George W. Bush and tell him to support
(4) Hate Crimes legislation. We won't be dragged
(5) away from our future" and there's a telephone
(6) number. Is this advertisement in part with
(7) respect to an issue?

(8) **A.** Yes, it certainly is in part with
(9) respect to an issue.

(10) **Q.** It's very powerful with respect
(11) to an issue, is it not?

(12) **A.** Yes, it is.

(13) **Q.** Is it your view that this

(14) advertisement is not a genuine issue
(15) advertisement as you define it?

(16) **A.** This one, well, if it were close
(17) to the election, if I knew that, I would call
(18) it an electioneering ad, but if it were
(19) sometime perhaps after Bush is already elected
(20) president, then it would be a genuine issue ad.
(21) The timing would matter to me in this one.

(22) **Q.** If you were a coder you wouldn't
(23) know the timing, would you?

(24) **A.** That's right.

(25) **MR. ABRAMS:** I want to mark as

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(1)

(2) Exhibit 42 a memorandum to you from Luke
(3) McLoughlin dated September 24th. I
(4) believe it's 2001.

(5) (Plaintiff's Exhibit Holman 42,
(6) Memo dated September 24, 2001, marked
(7) for identification.)

(8) **Q.** Do you recall receiving this
(9) document?

(10) **A.** Yes, I do recall this one.

(11) **Q.** This was Mr. McLoughlin writing
(12) to you that he had just read an article with a
(13) quotation from the Buckley verses Valeo case
(14) and saying that he "didn't realize that the
(15) Justices knew full well that sham issue
(16) advocacy would result from their decision."
(17) Did you respond to this document?

(18) **A.** Well, I didn't respond to Luke if
(19) that's what you are asking.

(20) **Q.** That's what I'm asking?

(21) **A.** I did not respond to Luke. Luke
(22) is now a law student and he finds this stuff
(23) interesting.

(24) **Q.** Did you realize before reading
(25) the memo that the Justices knew full well that

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- (1)
- (2) "sham issue advocacy" would result from their
- (3) decision?
- (4) **MR. PAOLELLA:** Object to the form.
- (5) **A. From my reading of the decision**
- (6) **Justices speculated that it could be a problem.**
- (7) **I would not go so far to say they knew full**
- (8) **well, but they speculated that there could be a**
- (9) **problem.**
- (10) **MR. ABRAMS:** I have no further
- (11) questions at this time subject to the
- (12) following. First, I would like to ask
- (13) of counsel for the Brennan Center that
- (14) they agree to the authentication of each
- (15) of the Brennan Center documents that we
- (16) have used today.
- (17) Second, I would like to ask of
- (18) counsel to the Brennan Center that they
- (19) agree with respect to each of the
- (20) documents from the Brennan Center used
- (21) today that they are in the terms of Rule
- (22) 803 (6) memoranda, reports or the like
- (23) made out at or near the time by or from
- (24) information transmitted by a person with
- (25) knowledge if kept in the course of a

Page 183

- (1)
- (2) appropriate in the case of each
- (3) document, but I'm certainly willing to
- (4) take that under advisement, review the
- (5) documents and where we believe it's
- (6) appropriate stipulate as to those two
- (7) matters.
- (8) With regard to the question of
- (9) confidentiality, we believe that the
- (10) documents that are marked confidential
- (11) fall under the global confidentiality
- (12) agreement which was entered into by all
- (13) the parties and the Brennan Center. As
- (14) well, we believe their documents are
- (15) covered as documents produced in the
- (16) course of this litigation so we plan to
- (17) treat them the confidential designation
- (18) as set forth in the confidentiality
- (19) agreement.
- (20) If you have specific documents
- (21) where you believe that the
- (22) confidentiality designation was
- (23) inappropriate, please notify us as to
- (24) those documents and we will review those
- (25) designations on a case by case basis.

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- (1)
- (2) regularly conducted business activity
- (3) and that it was the regular practice of
- (4) the Brennan Center to make these
- (5) memoranda that we used today.
- (6) Third, I would like to ask
- (7) counsel for the Brennan Center that they
- (8) agree that each of the documents with
- (9) the word confidential on the bottom be
- (10) treated not as confidential documents
- (11) but as public documents which without
- (12) more we can make use of in and/or
- (13) matters related to this litigation and
- (14) otherwise. I'm prepared to go through
- (15) authentication and business records
- (16) questions now, but I would prefer to ask
- (17) either that you agree now or let me know
- (18) at some point soon so that if necessary
- (19) I can establish what I have to on those
- (20) two points.
- (21) **MR. PAOLELLA:** With regard to the
- (22) authentication and business records
- (23) questions, we would like a chance to
- (24) reviews these documents and make sure
- (25) that agreeing to that would be

Page 184

- (1)
- (2) **MR. ABRAMS:** I'm simply saying
- (3) that our view is that none of them
- (4) should remain confidential. I'm
- (5) prepared to yield now to other counsel.
- (6) **EXAMINATION BY**
- (7) **MR. KELNER:**
- (8) **Q.** Dr. Holman, I'm Rob Kelner. I'm
- (9) representing the Republican National Committee.
- (10) I have a few questions for you. I will try to
- (11) keep it brief before we exhaust you.
- (12) **MR. KELNER:** Let me ask the court
- (13) reporter to mark the Deposition Notice
- (14) and Subpoena issued to the Brennan
- (15) Center in connection with this
- (16) deposition as 43.
- (17) **(Plaintiff's Exhibit Holman 43,**
- (18) **Notice of Deposition and Subpoena,**
- (19) **marked for Identification.)**
- (20) **Q.** I have just a few follow up
- (21) questions on your earlier testimony so far
- (22) today. My understanding is that you testified
- (23) that in Buying Time 2001 100 percent of the
- (24) party advertisements were coded as
- (25) electioneering advertisements, is that correct?

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- (1)
- (2) **A. That is correct.**
- (3) **Q.** I further understand that you
- (4) testified that the advertisement storyboards
- (5) presented to the coders included the paid for
- (6) by disclaimer language that appears in
- (7) television political advertisements?
- (8) **A.** If it was picked up by the
- (9) storyboards, they would have seen that, yes.
- (10) There are times when it's not quite picked up
- (11) because it's every four seconds, but on a
- (12) regular basis, yes, that would have been seen
- (13) by the coders.
- (14) **Q.** That paid for by language would
- (15) in the case of party advertisement say paid for
- (16) by the Republican National Committee if it were
- (17) a Republican National Party advertisement; is
- (18) that correct how that disclaimer language
- (19) worked?
- (20) **A.** That's correct. More often it
- (21) was the state parties buying these, but that's
- (22) correct, whoever was buying it it would have
- (23) said that.
- (24) **Q.** So if the ad was purchased by the
- (25) California Democratic Party, the ad would have

Page 186

- (1)
- (2) at some point indicated typically paid for by
- (3) the California Democratic Party or similar
- (4) language?
- (5) **MR. PAOLELLA:** The ads or
- (6) storyboards here?
- (7) **MR. ABRAMS:** Let me be more
- (8) precise.
- (9) **Q.** Would the storyboards presented
- (10) to the coders reflect the advertisement
- (11) purchased by the California Democratic Party
- (12) indicate typically paid for by the California
- (13) Democratic Party?
- (14) **A.** Typically it would have done so,
- (15) yes.
- (16) **Q.** Do you believe in your opinion
- (17) that a coder would be more or less likely to
- (18) identify an advertisement as an electioneering
- (19) advertisement if the coder sees that the
- (20) advertisement was purchased by a political
- (21) party?
- (22) **MR. PAOLELLA:** Objection.
- (23) **A.** Again, I'm speculating, but we
- (24) have done a lot of that here. I suspect in
- (25) many of these cases the coders didn't seem to

Page 187

- (1)
- (2) care whether it was a democratic party or
- (3) Republican party or something called NPLA. I
- (4) don't know if coders would try introducing that
- (5) kind of bias, but I would suspect that was not
- (6) done would be my guess.
- (7) **Q.** You said injecting that kind of
- (8) bias, what kind of bias?
- (9) **A.** Bias indicating because who is
- (10) sponsoring the ad that they would view it as
- (11) being electioneering verses genuine issue ad
- (12) depending on who is sponsoring. I really was
- (13) not part of the coding process, but I do not
- (14) believe the coders even cared who was
- (15) sponsoring these ads. They were looking at the
- (16) ads and offering their judgment as to whether
- (17) that ad made them feel that they were supposed
- (18) to vote for or against a candidate or be more
- (19) concerned about an issue.
- (20) **Q.** To your knowledge was any effort
- (21) made by Professor Goldstein and his team or the
- (22) Brennan Center to determine whether or not the
- (23) coders were influenced in anyway by the paid
- (24) for by language designating the purchaser of
- (25) the advertisement?

Page 188

- (1)
- (2) **A.** The Brennan Center was not
- (3) involved in the coding process, but Ken
- (4) Goldstein at the University of Wisconsin did do
- (5) some intercoder reliability to make sure that
- (6) there is consistency among how different coders
- (7) would view the same ads so he did implement
- (8) some tests on intercoder reliability.
- (9) **Q.** But the intercoder reliability
- (10) test would not rule out the possibility that
- (11) all coders are influenced in the same way by
- (12) the disclaimer language; isn't that correct?
- (13) **MR. PAOLELLA:** Objection.
- (14) **A.** I couldn't imagine all coders
- (15) being influenced the same way, I could not
- (16) imagine that.
- (17) **Q.** Let me ask the question more
- (18) precisely I think. If it were the case that
- (19) coders were generally influenced by the source
- (20) of the ad, the intercoder reliability test
- (21) would not identify that bias, would it?
- (22) **MR. PAOLELLA:** Rob, we don't know
- (23) what the intercoder reliability tests
- (24) were at this point. I'm going to
- (25) object. You can go ahead and answer it

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- (1)
- (2) if you have an answer.
- (3) **A.** I guess I'm not sure about the
- (4) question. If there is intercoder reliability
- (5) and you find two or more people agreeing on the
- (6) subjective Q 11 answer to an ad, I would take
- (7) that as very strong evidence and it is indeed
- (8) in social science very strong evidence that
- (9) there is at least assemblance of consensus
- (10) about the ad. Intercoder reliability in trying
- (11) to have multiple responses from multiple
- (12) respondents to the same ad is an effort to try
- (13) to weed out any kind of bias that may be
- (14) present in one of the coders verses another and
- (15) it's a very reasonable social scientific
- (16) practice.
- (17) **Q.** My question to you is if both
- (18) coders shared the same bias, the intercoder
- (19) reliability test that you were referring to
- (20) would not identify that bias?
- (21) **A.** That one instance, that would be
- (22) true.
- (23) **Q.** So if it were generally the case
- (24) that the coders are influenced by the paid for
- (25) by language, that bias would not be identified

Page 191

- (1)
- (2) that at one point I may not be aware of that,
- (3) but it wasn't done.
- (4) **MR. ABRAMS:** Let me ask the court
- (5) reporter to mark as Holman Exhibit 44
- (6) this document.
- (7) **(Plaintiff's Exhibit Holman 44,**
- (8) **Memorandum, marked for Identification.)**
- (9) **Q.** This document was printed from
- (10) the website of the Brennan Center which I will
- (11) represent to you is designated www.Brennan
- (12) Center.org. Do you recognize this document?
- (13) **A.** Yes, it's a memorandum that I
- (14) wrote.
- (15) **Q.** For the record this memorandum is
- (16) titled The End of Limits on Money in Politics:
- (17) Soft Money Now Comprises the Largest Share of
- (18) Party Spending On Television Ads in Federal
- (19) Elections. If you will take a look at the
- (20) document. Does this document appear to be a
- (21) true and correct copy of the memorandum that
- (22) you wrote?
- (23) **A.** Yes, it is.
- (24) **Q.** Were you asked to write this
- (25) article or did you write it on your own

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- (1)
- (2) by an intercoder reliability test; isn't that
- (3) correct?
- (4) **MR. PAOLELLA:** Objection.
- (5) **A.** You're really asking me to
- (6) speculate on something that I don't believe
- (7) happens. I don't believe everybody thinks the
- (8) same way and intercoder reliability is a well
- (9) established scientific principal for increasing
- (10) the validity of survey research such as this
- (11) research. I do not believe everybody was bias
- (12) against parties who participated in the coding
- (13) process.
- (14) **Q.** What is your basis for that
- (15) belief?
- (16) **A.** I guess a belief in the
- (17) reasonableness of human beings. Sorry, I wish
- (18) I had a more scientific answer on that, but I
- (19) don't.
- (20) **Q.** Was any consideration given to
- (21) redacting from the storyboards, from removing
- (22) from the storyboards the paid for by language?
- (23) **A.** No consideration was given.
- (24) Again, I want to clarify I was not involved in
- (25) the coding process. If Ken ever considered

Page 192

- (1)
- (2) initiative?
- (3) **A.** I wrote it on my own initiative.
- (4) This was in the course of compiling the data
- (5) for the analysis for Buying Time 2000 and I
- (6) found this finding interesting and I wrote it
- (7) on my own initiative.
- (8) **Q.** So the data in this article is
- (9) drawn from the Buying Time 2000 study?
- (10) **A.** Yes, it is.
- (11) **Q.** How was this article distributed?
- (12) **A.** It was created as a memoranda
- (13) that was distributed on Capital Hill to
- (14) congressional staffers. It was then posted on
- (15) the website for the public and anybody who
- (16) wanted to access it could access it.
- (17) **Q.** You said it was distributed on
- (18) the Hill. It was distributed on the Hill by
- (19) whom?
- (20) **A.** Probably by our press director
- (21) Scott Schell.
- (22) **Q.** Did you have any assistance in
- (23) writing this article?
- (24) **A.** Yes, I had assistance with Luke
- (25) McLoughlin.

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- (1)
- (2) Q. What sort of assistance did he
- (3) provide?
- (4) A. His assistance was helping me
- (5) identify the allocation ratios from the FEC
- (6) regulation for appropriate for each state and
- (7) then the breakdown of the money from the
- (8) national parties to the state parties.
- (9) Q. If you look at the top of page
- (10) three of the document, third line from the top
- (11) you see where it says "some of the content
- (12) codes were subjective in nature"?
- (13) A. Yes.
- (14) Q. Which content codes are you
- (15) referring to there?
- (16) A. The content code that I'm
- (17) referring to is Q 11.
- (18) Q. Q 11 from the Buying Time 2000
- (19) study questionnaire?
- (20) A. Yes.
- (21) Q. Were all of the party
- (22) advertisements that were coded subject to the
- (23) same Q 11 that was applied to the other ads
- (24) that have been discussed earlier today?
- (25) A. Yes, they were.

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- (1)
- (2) Q. Therefore, were subject to the
- (3) same level of subjectivity as those other
- (4) advertisements?
- (5) A. Yes, they were.
- (6) Q. If you look further down the page
- (7) on page three to the last full paragraph which
- (8) reads "Party ads, like those sponsored by
- (9) special interest groups, tend to be very
- (10) negative and attack the character of
- (11) candidates", you see that?
- (12) A. Yes, I do.
- (13) Q. If I could ask you to flip to
- (14) table number five attached to the same document
- (15) which reads Electioneering Ads by Candidates,
- (16) Parties and Groups that Attack, Contrast or
- (17) Promote Candidates. Am I correct in reading
- (18) this table to indicate that 45.1 percent of
- (19) party ads were classified ads attack ads and
- (20) 69.5 percent of group ads were classified as
- (21) attack ads?
- (22) A. That's correct.
- (23) Q. What is an attack ad?
- (24) A. That was another question in the
- (25) survey, I can cite it specifically for you that

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- (1)
- (2) the coders were asked did they perceive this as
- (3) the ad is attacking a candidates or promoting a
- (4) candidates. Q 14.
- (5) Q. Q 14 which reads in your judgment
- (6) is the primary purpose of the ad to promote a
- (7) specific candidate in his ... to attack a
- (8) candidate ... or to contrast the candidates?
- (9) A. That's correct and this table is
- (10) based on the responses to Q 14.
- (11) Q. To your knowledge, was any
- (12) definition of attack, promote or contrast
- (13) provided to the coders?
- (14) A. Well, in the question itself I
- (15) see examples provided. I don't know what kind
- (16) of training Ken put the coders through. That's
- (17) something Ken would have to answer.
- (18) Q. Looking back to table five for a
- (19) moment which is divided between candidate,
- (20) party and group, what did you mean -- what does
- (21) the table mean by group?
- (22) A. It's the three categories that
- (23) CMAG database, the Buying Time 2000 database is
- (24) divided into and that's the category of the
- (25) sponsor of the ad. We have identified it in

Page 196

- (1)
- (2) three different categories either candidates,
- (3) parties or groups. Groups being political
- (4) action committees, special interest groups,
- (5) non-profit groups, anybody that's not a
- (6) candidate or party committee.
- (7) Q. Am I correct in reading table
- (8) five and the associated graph on the same page
- (9) as indicating that the Buying Time 2000 study
- (10) showed groups airing attack ads more frequently
- (11) than political parties?
- (12) MR. PAOLELLA: Objection.
- (13) Q. You can answer.
- (14) A. Yes, it's one of the findings I
- (15) found fascinating. I didn't know I would come
- (16) out with the result like that.
- (17) Q. Why did you find that
- (18) fascinating?
- (19) A. I guess I just didn't even think
- (20) about whether or not one group or another would
- (21) be more attack oriented and it led me to
- (22) conjecture which I wrote about in Buying Time
- (23) 2000 that the further away the sponsor gets
- (24) from being directly identified with an
- (25) individual candidate, the more freer they feel

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- (1)
- (2) to do an attack ad so candidates are less
- (3) inclined to do so, party committees have that
- (4) close relationship with candidates, but they
- (5) are not quite directly tied to the candidate
- (6) and independent groups have the furthest
- (7) relationship. It's a theory I developed. I'm
- (8) not sure if it's true, but this chart seems to
- (9) provide some evidence to that.
- (10) Q. If I understand you correctly,
- (11) your theory is that the political parties are
- (12) in affect somewhat more accountable for their
- (13) advertising than the groups are?
- (14) A. That would be what I would
- (15) speculate, that the parties are somewhat closer
- (16) tied to the candidates and have a closer
- (17) relationship with them than the independent
- (18) groups do so, yes, that would be one of the
- (19) conclusions I would draw.
- (20) Q. Based on the data that appears in
- (21) table five?
- (22) A. Yes.
- (23) Q. One of the categories of ads
- (24) analyzed on table five is listed as contrast.
- (25) What is a contrast advertisement?

Page 198

- (1)
- (2) A. A contrast ad is one in which two
- (3) or more candidates are contrasted against each
- (4) other. It can be a very negative contrast or a
- (5) positive contrast. Usually combines both, but
- (6) it's in which multiple candidates are compared
- (7) to each other.
- (8) Q. In your experience as a political
- (9) scientist, do contrast ads typically provide
- (10) more information about candidates than other
- (11) types of ads?
- (12) A. No, I would not say that.
- (13) Q. Do you have a view of whether
- (14) contrast ads contribute more to the democratic
- (15) process than attack ads?
- (16) MR. PAOLELLA: Objection.
- (17) A. No, I would not say that. The
- (18) contrast ads tended to be every bit as negative
- (19) as the attack ads and I consider that not a
- (20) contribution.
- (21) Q. So an advertisement would be
- (22) classified as a contrast ad even if it is a
- (23) negative ad?
- (24) A. If it compared two or more
- (25) candidates, yes, and we have seen some of the

Page 199

- (1)
- (2) examples of that.
- (3) Q. Could an ad be coded both as an
- (4) attack ad and contrast ad?
- (5) A. No, the coder would have been
- (6) forced to choose one or the other.
- (7) Q. If it is as you describe a
- (8) negative contrast ad, what would be the basis
- (9) to specify it as contrast ad and not an attack
- (10) ad?
- (11) A. Mere fact that two or more
- (12) candidates are compared to each other.
- (13) Q. So in your view it's your
- (14) understanding that any ad that compared two
- (15) candidates should have been coded as a contrast
- (16) ad even if it was also a negative ad?
- (17) A. Yes, that's correct.
- (18) Q. Does table five indicate that
- (19) political parties ran more contrast ads than
- (20) groups or candidates in 2000?
- (21) MR. PAOLELLA: Are you talking
- (22) about as a percentage of the ads they
- (23) ran or absolute number?
- (24) MR. ABRAMS: I'm talking about the
- (25) percentage of ads overall that were run.

Page 200

- (1)
- (2) A. Percentage of ads overall then
- (3) candidates dominated in all fields.
- (4) Q. Does this table indicate that of
- (5) the contrast advertisements that were
- (6) classified, the greatest share were aired by
- (7) political parties?
- (8) A. No, it doesn't. What this table
- (9) shows is that of political party advertising,
- (10) as a proportion of political party advertising,
- (11) the proportion of party advertising was higher
- (12) than the proportion of candidate and group
- (13) advertising.
- (14) Q. The proportion of party
- (15) advertising that was a contrast ad?
- (16) A. That's right, but in terms of
- (17) total contrast ads, of course candidates
- (18) dominate. The chart itself represents
- (19) percentage and not the absolute numbers.
- (20) MR. ABRAMS: Let me introduce and
- (21) ask the court reporter to mark as Holman
- (22) 45 this document.
- (23) (Plaintiff's Exhibit Holman 45,
- (24) Letter dated March 12, 2001, marked for
- (25) Identification.)

Page 201

- (1)
- (2) Q. Do you recognize this document?
- (3) A. Yes, I do. It's referred to as
- (4) the scholars letter.
- (5) Q. I should represent that was also
- (6) printed from the website of the Brennan Center.
- (7) Does this appear to you to be a true and
- (8) correct copy of the March 12, 2001 so-called
- (9) scholars letter to Senators McCain and
- (10) Feingold?
- (11) A. Yes, it is.
- (12) Q. Do you know who drafted this
- (13) letter?
- (14) A. This letter was originally
- (15) drafted by -- it came in several draft
- (16) versions. There was an earlier letter prior to
- (17) this one that was originally drafted by Nancy
- (18) Northup who was the director of the democracy
- (19) program at NYU. This letter came about a year
- (20) later or so and was updated by Glenn Moramarco.
- (21) Q. Did someone at the Brennan Center
- (22) then go out and recruit individuals to sign the
- (23) letter?
- (24) A. Yes, Glenn Moramarco did that.
- (25) The letter itself got the original scholars at

Page 202

- (1)
- (2) the bottom of page eight and then the letter
- (3) went out with those names on it to
- (4) constitutional scholars all around the nation
- (5) to ask them if they would be willing to sign on
- (6) to this letter and Glenn Moramarco was in
- (7) charge of that.
- (8) Q. If you look at page eight and
- (9) what you just described as the original
- (10) signatories to the earlier draft of this
- (11) letter, if I understood you correctly, do you
- (12) know whether any of those individuals have at
- (13) any time received funding from the Pew
- (14) Charitable Trust?
- (15) A. I would not know that.
- (16) Q. Do you know whether any of the
- (17) other signatories listed at any time ever
- (18) received any funding from the Pew Charitable
- (19) Trust?
- (20) A. I wouldn't know who the Pew has
- (21) really funded and I certainly don't know if law
- (22) professors so I would have to say no, I don't
- (23) know.
- (24) Q. Did Glenn Moramarco, when he
- (25) drafted this version of the letter, do you know

Page 203

- (1)
- (2) whether he exchanged drafts with any of the
- (3) signatories, in other words, was there a
- (4) dialogue and an editorial process with the
- (5) signatories?
- (6) A. There was an editorial process
- (7) with the original signatories on page eight and
- (8) after that there was not.
- (9) Q. With regard to the editorial
- (10) process with the original signatories, could
- (11) you describe that process for me?
- (12) A. In general terms Glenn drafted
- (13) his updated version of the original letter and
- (14) would send it to the original signatories and
- (15) get any sort of editorial feedback that they
- (16) may offer until it finally came out with a
- (17) final letter that was agreed upon.
- (18) Q. If you look at page three of the
- (19) document about the middle of the page it reads
- (20) "Moreover, Congress has the power to regulate
- (21) the source of the money used for expenditures
- (22) by state and local parties during federal
- (23) election years when such expenditures are used
- (24) to influence federal elections." Do you see
- (25) where I'm reading?

Page 204

- (1)
- (2) A. Yes.
- (3) Q. Do you know whether during the
- (4) editorial process there was any discussion of
- (5) the fact that national party committees make
- (6) campaign contributions directly to state and
- (7) local candidates?
- (8) A. I do not know if that was part of
- (9) the editorial process going on. I don't know
- (10) that.
- (11) Q. Was this letter sent to Senators
- (12) McCain and Feingold by the Brennan Center?
- (13) A. Yes, it was.
- (14) Q. Was it otherwise distributed by
- (15) the Brennan Center?
- (16) A. Yes, it was distributed as widely
- (17) as anybody was interested. It was distributed
- (18) to the public through any congressional
- (19) staffers who requested it. It was put on our
- (20) website and yes, it was distributed as widely
- (21) as we could get it out.
- (22) Q. You said it was distributed to
- (23) any congressional staffers who requested it.
- (24) Was it also distributed to congressional
- (25) staffers who did not request it?

Page 205

(1)

(2) A. It was sent to Senator McCain and
(3) Feingold whether or not they requested it, but
(4) they were expecting the letter.

(5) Q. Aside from Senators Feingold and
(6) McCain and their staff, was it sent to other
(7) congressional staff who had not actually
(8) requested it?

(9) A. Yes, it was, if they were
(10) involved in the whole debate that was going on.

(11) Q. Did the Brennan Center have a
(12) distribution list of congressional staffers who
(13) letters like this would be distributed?

(14) A. Scott Schell would have the
(15) distribution list. He's our public relations
(16) director at the Brennan Center.

(17) Q. That list consisted of whom, who
(18) was listed on that list typically?

(19) A. Typically it would be
(20) congressional staffers involved in the campaign
(21) finance reform debates both in the Senate and
(22) in the house.

(23) Q. Do you know for a fact whether or
(24) not this letter was sent to that distribution
(25) list?

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(1)

(2) A. I don't know for a fact, but I
(3) would guess that it was.

(4) MR. ABRAMS: I would like this
(5) exhibit to be marked as Exhibit number
(6) 46.

(7) (Plaintiff's Exhibit Holman 46,
(8) Letter dated July 9, 2001, marked for
(9) Identification.)

(10) MR. KELNER: Why don't we take a
(11) break.

(12) (Recess taken.)

(13) Q. We are looking at a letter dated
(14) July 9, 2001 addressed to Representatives Shays
(15) and Meehan. Do you recognize this document?

(16) A. Yes, I do. This is known as the
(17) political scientists letter.

(18) Q. This I will represent was also
(19) printed off the website of the Brennan Center.
(20) Does this appear to be a true and correct copy
(21) of the political scientists letter?

(22) A. Yes, it is.

(23) Q. Do you know who drafted this
(24) letter?

(25) A. It was originally drafted by

Page 207

(1)

(2) Glenn Moramarco and then distributed to
(3) political scientists that are listed at the
(4) bottom of page three and most of them had
(5) feedback and editorial comments so Glenn had to
(6) keep sending out revised versions of the letter
(7) before they all agreed to sign off on it.

(8) Q. Do you recall what any of the --
(9) do you know what any of the criticisms were of
(10) the original draft by those political
(11) scientists?

(12) A. No, I don't. Glenn was the one
(13) in charge of the drafting of the letter. I was
(14) the person who contacted the various political
(15) scientists to see if they would be interested
(16) in joining in on the letter and then it was
(17) turned over to Glenn at that point.

(18) I know there was a lot of
(19) editorial exchanges between the political
(20) scientists because they have a tendency to do
(21) that a lot, but I was not involved in the
(22) drafting of the letter itself.

(23) Q. When you were contacting
(24) political scientists about signing on to the
(25) letter, did any of them express to you reasons

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(1)

(2) why they did not want to sign on that related
(3) to the text of the letter?

(4) A. No, when I contacted political
(5) scientists, first of all, it's a very small
(6) community of political scientists that are
(7) involved in campaign finance that are
(8) interested in that field and when I would
(9) contact the political scientists, I would ask
(10) in general terms would they be interested in
(11) signing on to a letter that addressed the
(12) McCain-Feingold bill and then if they said yes
(13) or if I could contact them, many of them I
(14) could not get through and would not return my
(15) calls, then I would turn it over to Glenn and
(16) Glenn would do the negotiations with them.

(17) Q. Do you see on the first page of
(18) the letter in the last paragraph on that page
(19) where the letter reads in 2000 some \$300
(20) million of the parties' soft money came from
(21) only 800 donors, you see that?

(22) A. Yes, I do.

(23) Q. Do you know what the source of
(24) that data was?

(25) A. I believe the source of that data

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- (1)
- (2) **was a report issued by the Center for**
- (3) **Responsive Politics.**
- (4) **Q. Do you happen to know the name of**
- (5) **that report?**
- (6) **A. No, but I do know it's not on**
- (7) **their websites and the issue is the donors of**
- (8) **soft money.**
- (9) **Q. Do you know when that report was**
- (10) **issued?**
- (11) **A. I don't know the exact date, but**
- (12) **it would have had to have been after the 2000**
- (13) **election so it would be 2001 would be my guess.**
- (14) **Q. Do you know if Mr. Moramarco or**
- (15) **anyone else at the Brennan Center independently**
- (16) **verified that data?**
- (17) **A. No, we did not do a study on who**
- (18) **the donors of soft money actually are.**
- (19) **Q. So Mr. Moramarco would have been**
- (20) **relying on the data from the Center for**
- (21) **Responsive Politics study?**
- (22) **A. For that sentence, yes.**
- (23) **Q. If you will turn to page three of**
- (24) **the letter, do you see at the top of the page**
- (25) **where it reads "However, political parties will**

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- (1)
- (2) **be able to raise very substantial amounts of**
- (3) **hard money in the future, even more than they**
- (4) **have in the past, and they will doubtless**
- (5) **maintain their position in the forefront of**
- (6) **electoral actors." You see that?**
- (7) **A. Yes, I do.**
- (8) **Q. Do you know if Mr. Moramarco**
- (9) **relied on any existing studies as support for**
- (10) **that proposition?**
- (11) **A. On that proposition I do not know**
- (12) **what he may have relied on so I don't know if**
- (13) **he relied on existing studies for that.**
- (14) **Q. Are you aware of any existing**
- (15) **studies or empirical data that would support**
- (16) **that proposition?**
- (17) **A. Yes, there are -- well, that I**
- (18) **would consider indirect evidence of it. For**
- (19) **instance, in Colorado when Amendment 15 was**
- (20) **passed, that lowered contribution limits**
- (21) **radically, the candidates continued to raise**
- (22) **slightly larger amounts than they raised before**
- (23) **yet in smaller contributions. That was one**
- (24) **indirect evidence that candidates and you would**
- (25) **speculate parties then can still raise a great**

Page 211

- (1)
- (2) **deal of money if they redirect their efforts**
- (3) **towards hard money fundraising.**
- (4) **Q. In Colorado you are talking about**
- (5) **candidates and not parties?**
- (6) **A. That's correct. That's one piece**
- (7) **of evidence that indirectly comes to mind.**
- (8) **Q. You see later in that paragraph**
- (9) **the statement that "In terms of spending, the**
- (10) **parties will likely shift away from candidate**
- (11) **specific advertising and towards more**
- (12) **grassroots, get-out-the-vote and party building**
- (13) **activities"?**
- (14) **A. Yes, I see that.**
- (15) **Q. Do you know if Mr. Moramarco was**
- (16) **relying on any existing research for that**
- (17) **proposition?**
- (18) **A. No, I don't know what kind of**
- (19) **research he would have been relying on for that**
- (20) **proposition. I don't know. Perhaps looking at**
- (21) **the Buying Time 2000 database and speculating**
- (22) **that it would force parties to becoming more**
- (23) **local oriented and more grassroots oriented,**
- (24) **but I don't know. I'm speculating on that.**
- (25) **Q. Do you know to whom this letter**

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- (1)
- (2) **was distributed other than Representatives**
- (3) **Shays and Meehan?**
- (4) **A. This was also distributed not**
- (5) **only to Shays and Meehan, but other**
- (6) **congressional staffers far beyond Shays and**
- (7) **Meehan that were involved in the whole debate**
- (8) **of the Shays Meehan bill and later the version**
- (9) **that went to the Senate. It was distributed to**
- (10) **the public again and posted on our website.**
- (11) **Q. To the best of your knowledge,**
- (12) **was this letter also distributed to the**
- (13) **congressional staff distribution list that you**
- (14) **referred to earlier?**
- (15) **A. Yes, I would, yes, I would**
- (16) **believe it was.**
- (17) **Q. Would Mr. Schell have coordinated**
- (18) **the distribution to congressional staff?**
- (19) **A. Yes, he would have.**
- (20) **MR. KELNER: I have no further**
- (21) **questions at this time. I would also**
- (22) **echo Mr. Abrams in requesting that**
- (23) **counsel for the Brennan Center stipulate**
- (24) **either now or in the near future to the**
- (25) **authenticity of the exhibits that I have**

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- (1)
- (2) asked to be marked and to their status
- (3) as business records of the Brennan
- (4) Center.
- (5) **MR. PAOLELLA:** We are happy to
- (6) review those and make a stipulation
- (7) whether the stipulation is appropriate.
- (8) **MR. KELNER:** I have no further
- (9) questions.
- (10) **EXAMINATION BY**
- (11) **MR. KIRBY:**
- (12) **Q.** Dr. Holman, I'm Tom Kirby,
- (13) counsel for the Chamber of Commerce Plaintiffs.
- (14) I have been very interested listening to your
- (15) testimony here today because there's been a lot
- (16) of discussion of the purpose of various ads and
- (17) other things as well and I would like to talk
- (18) with you a little bit about that concept of
- (19) purpose. I missed the first few minutes of
- (20) your deposition, but I gather you played an
- (21) important role in Buying Time 2000; is that
- (22) right?
- (23) **A.** Yes, I'm the principal co-author
- (24) of Buying Time 2000.
- (25) **Q.** Mr. Abrams suggested to you that

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- (1)
- (2) the purpose of Buying Time 2000 was to
- (3) influence public policy with respect to
- (4) campaign reform, do you remember that?
- (5) **A.** I remember that, that was one of
- (6) the purposes of Buying Time 2000.
- (7) **Q.** You suggested your purpose, that
- (8) wasn't really your dominant purpose; isn't that
- (9) what you said?
- (10) **A.** My cherished purpose was
- (11) political science research. This is a
- (12) fascinating new database, you know, that is a
- (13) whole brand new thing in the political science
- (14) field and to have access to that and to see and
- (15) to draw analysis and draw conclusions from that
- (16) database was a privilege.
- (17) **Q.** I take it you were not opposed to
- (18) public policy outcome, but deepest in your
- (19) heart was the purpose you just described; is
- (20) that fair?
- (21) **A.** I am a political scientist, I
- (22) love political science, but throughout the
- (23) course of this study, I mean, I of course was
- (24) directing conclusions that I would find if it
- (25) was relevant to public policy and produce

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- (1)
- (2) memoranda and, you know, ask Scott to
- (3) distribute it to the Hill if appropriate.
- (4) **Q.** Is it fair to say there were
- (5) other people at the Brennan Center who may have
- (6) had public policy nearest and dearest to their
- (7) heart?
- (8) **A.** I would guess so, yeah.
- (9) **Q.** You know so, in fact, don't you,
- (10) they have told you so anyway?
- (11) **A.** Yeah. I guess so. You're asking
- (12) me to speculate to the motives of other people
- (13) in the Brennan Center.
- (14) **Q.** You work closely with them,
- (15) right?
- (16) **A.** I work closely with them. Most
- (17) of them are not as interested in political
- (18) science as I am. When I started this study, I
- (19) didn't know what kind of results I would come
- (20) out with, you know, and that is an intriguing
- (21) thing for me by itself.
- (22) **Q.** When you talk about the purpose
- (23) of Buying Time 2000, it sort of depends on who
- (24) you ask, doesn't it?
- (25) **MR. PAOLELLA:** Object to the form

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- (1)
- (2) of that.
- (3) **A.** I would make it very clear that
- (4) it had two purposes. One is to provide an
- (5) empirical research base as to what is going on
- (6) with television advertising in politics and the
- (7) second one was to influence public policy.
- (8) **Q.** For different people involved in
- (9) preparing that report, those two purposes had
- (10) different weights; isn't that fair?
- (11) **A.** When you throw me into the mix,
- (12) yeah, probably.
- (13) **Q.** You are an important part of the
- (14) mix, aren't you?
- (15) **A.** Sure.
- (16) **Q.** That's not unusual, is it, when
- (17) an organization does something that various
- (18) participants in the organization activity may
- (19) have different purposes; isn't that true?
- (20) **A.** I'm sure. We didn't have
- (21) different purposes, but I mean we all had the
- (22) same two purposes.
- (23) **Q.** But speaking more broadly in its
- (24) political science, you know within political
- (25) organizations you often have people with very

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- (1)
- (2) different purposes supporting the same action
- (3) where their interests happen to coincide; isn't
- (4) that true?
- (5) **A. That can certainly happen, but in**
- (6) **the Brennan Center we didn't have very**
- (7) **different purposes.**
- (8) **Q. I would like you to take a look**
- (9) **if you can find it and you have to dig a little**
- (10) **bit take a look at Exhibit 12 somewhere in this**
- (11) **stack in front of you somewhere down towards**
- (12) **the bottom.**
- (13) **A. A storyboard?**
- (14) **Q. Yes, and that's the storyboard**
- (15) **you will recall that was an ad run by**
- (16) **Americans --**
- (17) **A. For Limited Terms.**
- (18) **Q. Yes. Would you agree that that**
- (19) **organization's fundamental interest was in**
- (20) **persuading candidates to agree to abide by term**
- (21) **limits?**
- (22) **A. No, I would not.**
- (23) **Q. I'm not talking about in this**
- (24) **particular ad, I'm talking about when they**
- (25) **organized as an organization what do you**

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- (1)
- (2) understand their purpose to have been?
- (3) **MR. PAOLELLA: I will object to**
- (4) **that.**
- (5) **A. An organization like Americans**
- (6) **for Limited Terms I'm sure would have organized**
- (7) **with the specific purpose of trying to get term**
- (8) **limits through.**
- (9) **Q. Did you actually research this**
- (10) **race? Do you know a lot about David Wu**
- (11) **personally?**
- (12) **A. No.**
- (13) **Q. Or as a candidate?**
- (14) **A. No and I did not research the**
- (15) **race.**
- (16) **Q. So far as you know, if Mr. Wu had**
- (17) **been willing to sign the pledge, Americans for**
- (18) **Term Limits would have been perfectly happy not**
- (19) **to run this ad; isn't that true?**
- (20) **MR. PAOLELLA: Objection, that**
- (21) **calls for speculation.**
- (22) **MR. KIRBY: He testified that's**
- (23) **the purpose of this ad.**
- (24) **MR. PAOLELLA: I objected to that**
- (25) **too.**

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- (1)
- (2) **Q. As far as you know, if Mr. Wu had**
- (3) **been willing to sign the term limit pledge,**
- (4) **they would have been happy not to run the ad;**
- (5) **isn't that so?**
- (6) **A. That would be my guess since I**
- (7) **view this as an electioneering ad against David**
- (8) **Wu. If David Wu were supporting of term**
- (9) **limits, I suspect Americans for Limited Terms**
- (10) **would have focused their ad activity elsewhere.**
- (11) **Q. So if I hear what you're saying,**
- (12) **your understanding of this ad isn't so much**
- (13) **that they wanted to defeat Mr. Wu, it's that**
- (14) **they wanted to persuade him I will use that**
- (15) **term to agree to term limits?**
- (16) **MR. PAOLELLA: Objection,**
- (17) **mischaracterizes the witness' prior**
- (18) **testimony.**
- (19) **A. The purpose of this ad was to**
- (20) **defeat David Wu.**
- (21) **Q. How do you know that to be true?**
- (22) **A. That is my subjective view.**
- (23) **Q. I want to know if it has a basis?**
- (24) **A. All right. The basis of it is**
- (25) **just reading the ad without having researched**

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- (1)
- (2) **the race itself, the ad focuses on how good**
- (3) **Molly Bordonaro is because she signed the**
- (4) **pledge limits, the term for pledge limits,**
- (5) **David Wu refused so he already declined so it**
- (6) **isn't as if they are trying to get David Wu to**
- (7) **sign the limits, but they conclude with call**
- (8) **David Wu and tell him to sign the US term limit**
- (9) **pledge and provide no telephone number for**
- (10) **anyone to call.**
- (11) **Q. Do you know whether politicians**
- (12) **ever change their mind as a political**
- (13) **scientist?**
- (14) **A. Of course politicians can change**
- (15) **their mind.**
- (16) **Q. The fact that a politician had**
- (17) **said I won't sign your pledge today doesn't**
- (18) **mean he won't sign it tomorrow, does it?**
- (19) **A. Not necessarily.**
- (20) **Q. Do you know whether this**
- (21) **organization or similar organizations succeeded**
- (22) **in persuading some people who initially refused**
- (23) **to sign the pledge to sign the pledge through**
- (24) **ads such as this?**
- (25) **A. I don't know of any such cases.**

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- (1)
- (2) Q. Would you be surprised to find
- (3) that there were cases where people who refused
- (4) to sign a pledge initially later decided it was
- (5) a good idea when they found themselves
- (6) confronted with the threat or actuality of this
- (7) kind of ad?
- (8) A. I would be surprised if it
- (9) happened with any frequency. Whether or not
- (10) there was some individual case, I don't know if
- (11) that ever happened.
- (12) Q. You don't think ads are run for
- (13) the purpose of changing a candidate's mind?
- (14) A. Some ads certainly are.
- (15) Q. Some ads are run for the purpose
- (16) of extracting a commitment from a candidate,
- (17) aren't they?
- (18) A. Certainly I would agree with
- (19) that.
- (20) Q. Politicians -- elected
- (21) politicians to some extent at least are
- (22) sensitive to constituent opinion; isn't that
- (23) true?
- (24) A. Yes, that is true.
- (25) Q. They may be particularly

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- (1)
- (2) sensitive to the opinions of their constituents
- (3) at election time; isn't that true?
- (4) A. Yes, that's true.
- (5) Q. One purpose of an ad such as ad
- (6) number 12 whether or not you believe it of this
- (7) particular ad of an ad such as number 12 might
- (8) well be to change a politician's mind or to
- (9) extract a commitment; isn't that fair?
- (10) A. I don't see this ad as attempting
- (11) to do that.
- (12) Q. Let's put this ad aside and
- (13) simply ask whether ads of this type might be
- (14) run during a campaign for the purpose of
- (15) changing the target's mind or extracting a
- (16) commitment from him; is that conceivable?
- (17) MR. PAOLELLA: I will object to
- (18) that.
- (19) A. It could be conceivable, but I
- (20) don't see one of those ads around here.
- (21) Q. Is it possible there were people
- (22) who consider contributed money used to sponsor
- (23) this ad Exhibit 12 who actually were going to
- (24) vote for Mr. Wu?
- (25) MR. PAOLELLA: Objection.

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- (1)
- (2) A. I would not know that. I would
- (3) not know that.
- (4) Q. You can't conclude one way or the
- (5) other from this ad?
- (6) A. Not on what the motive and action
- (7) of contributors are, no.
- (8) Q. It's certainly conceivable there
- (9) were people who were planning to vote for Mr.
- (10) Wu, but who wanted him to sign the pledge and
- (11) contributed to this organization and helped
- (12) support this ad to try to move Mr. Wu in their
- (13) desired direction; isn't that true?
- (14) MR. PAOLELLA: Objection, calls
- (15) for speculation three times removed.
- (16) Q. Isn't it true?
- (17) A. It could be.
- (18) Q. You just don't know?
- (19) A. That's right, I don't know.
- (20) Q. Suppose an ad is being run for
- (21) the purpose of extracting a commitment from a
- (22) candidate or changing the candidate's mind; is
- (23) that an electioneering ad or is that an issue
- (24) ad?
- (25) A. I would have to see the ad itself

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- (1)
- (2) to offer subjective judgments on how I would
- (3) view the ad. If it is run very close to the
- (4) election and used to target the constituency of
- (5) that candidate, I would tend to think that it
- (6) would be an electioneering ad designed to
- (7) influence how people are going to vote for or
- (8) against that candidate. But again, I would
- (9) have to see any particular ad to offer my
- (10) subjective opinion on that.
- (11) Q. Let me rephrase the question. Is
- (12) the objective of persuading a candidate to
- (13) change his mind on an issue or to make a
- (14) commitment with respect to an issue an
- (15) electioneering objective or an issue objective?
- (16) MR. PAOLELLA: Objection.
- (17) A. If the means to do so is to
- (18) influence the votes of the electors, then it's
- (19) an electioneering ad.
- (20) Q. Even if the ultimate objective of
- (21) the person running the ad or the organization
- (22) is not to elect the candidate, but simply to
- (23) affect his behavior?
- (24) A. If the affect of the ad is to
- (25) influence the vote, choice of voters, I would

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- (1)
- (2) **classify that as an electioneering ad.**
- (3) **Q.** You recall we saw an ad and I
- (4) will try to do this without digging it out, we
- (5) saw an ad that talked about how President Bush
- (6) was not willing to sign a hate crimes bill?
- (7) **A.** Yes.
- (8) **Q.** Do you remember that ad?
- (9) **A.** I recall that.
- (10) **Q.** I remember you had some colloquy
- (11) with Mr. Abrams about its purpose and as I
- (12) recall you said if that ad were run before an
- (13) election involving Candidate Bush you would be
- (14) attempting to view it as an electioneering ad,
- (15) but if it were run after the election that same
- (16) ad you would tend to view it as an issue ad, do
- (17) you recall that?
- (18) **MR. PAOLELLA:** Objection. I
- (19) believe that mischaracterizes the
- (20) witness' earlier testimony.
- (21) **A.** I recall responding that if it
- (22) were run prior to the election, I believe it
- (23) would have been designed to influence voter
- (24) choice for or against George Bush, but I don't
- (25) know when that ad aired.

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- (1)
- (2) **Q.** You also said if it were run
- (3) after the election, you would be inclined to
- (4) view it as an issue ad?
- (5) **A.** When there was no candidate?
- (6) **Q.** Yes.
- (7) **A.** Yes.
- (8) **Q.** What if the same ad were run
- (9) before the election and continued running after
- (10) the election, how would you view that ad?
- (11) **A.** It would be electioneering at the
- (12) point in which it was trying to influence vote
- (13) choice of the voters.
- (14) **Q.** Then non-electioneering the day
- (15) after the election?
- (16) **A.** If it became an issue and there
- (17) was no longer a candidate, I would suspect you
- (18) could not call that an electioneering ad at
- (19) that point.
- (20) **Q.** The same ad, same words,
- (21) classified different ways simply depending on
- (22) time; is that right?
- (23) **A.** On whether or not there is a
- (24) candidate running.
- (25) **Q.** You talked very briefly about the

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- (1)
- (2) coders. You referred to, and I'm not going to
- (3) get the term right, but some sort of
- (4) reliability confirmation technique?
- (5) **A.** Intercoder reliability.
- (6) **Q.** Intercoder reliability. What is
- (7) your understanding of the purpose of that
- (8) technique or mechanism?
- (9) **A.** Intercoder reliability is
- (10) traditionally used as taking a sample of survey
- (11) responses and getting -- putting multiple
- (12) respondents through the same survey to see if
- (13) they come out with the same results and if
- (14) there is a great deal of consistency in
- (15) intercoder reliability among the sample being
- (16) done, it is good solid evidence that there is
- (17) consistency between the results among the
- (18) survey respondents.
- (19) **Q.** It's consistency with respect to
- (20) that universe of coders; isn't that right?
- (21) **A.** Yes, that is correct.
- (22) **Q.** In this case, so far as you know,
- (23) there wasn't any attempt to make these coders
- (24) representative of US demographics?
- (25) **A.** I don't know how the coders were

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- (1)
- (2) chosen, but the fact that they were students at
- (3) the University of Wisconsin would suggest they
- (4) were not representative of the general
- (5) population.
- (6) **Q.** As a matter of fact, they would
- (7) very much not be representative of the general
- (8) US population; isn't that true?
- (9) **A.** By the fact of being students, I
- (10) would suspect that's the case.
- (11) **Q.** And they are students in a
- (12) particular part of the country, yes?
- (13) **A.** That's correct.
- (14) **Q.** They would not have necessarily
- (15) the cultural or political background of people
- (16) say in Arizona who might be watching an ad
- (17) directed to Arizona; isn't that right?
- (18) **A.** That's correct. The 1998
- (19) database was coded by students in Arizona.
- (20) **Q.** Then they would not know what's
- (21) going on in the state of Washington, right?
- (22) **A.** Correct.
- (23) **Q.** It would not be fair for anyone
- (24) to suggest that the reactions of these coders
- (25) to these ads accurately predict how the people

Page 229

- (1)
- (2) who viewed those ads perceived them, would it?
- (3) **MR. PAOLELLA:** Objection.
- (4) **A.** It is certainly a sample of what
- (5) one would call reasonable people and their
- (6) evaluation of the ads.
- (7) **Q.** But it's people I think we agreed
- (8) from a certain educational level, right?
- (9) **A.** Correct.
- (10) **Q.** Certain age level, right?
- (11) **A.** Correct.
- (12) **Q.** Living in a certain geographic
- (13) area, right?
- (14) **A.** Correct.
- (15) **Q.** It would be a bold political
- (16) scientist who started projecting from that kind
- (17) of sample to what people all across the United
- (18) States were doing; isn't that true?
- (19) **MR. PAOLELLA:** Objection.
- (20) **A.** It would not be a bold step for a
- (21) political scientist to say this is what a
- (22) reasonable person would evaluate.
- (23) **Q.** We saw I think in some of the
- (24) e-mails that Mr. Abrams showed you reasonable
- (25) persons disagree, didn't they?

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- (1)
- (2) **A.** Yes.
- (3) **Q.** That wasn't because they were
- (4) acting in bad faith, was it?
- (5) **MR. PAOLELLA:** Objection.
- (6) **Q.** So far as you know?
- (7) **A.** Right.
- (8) **Q.** They just brought their own
- (9) background?
- (10) **MR. PAOLELLA:** Let the witness
- (11) finish the answer.
- (12) **A.** That's what the intercoder
- (13) reliability is about to see if there was any
- (14) significant inconsistencies among the coders.
- (15) **Q.** But with respect to the people we
- (16) saw disagreeing in those e-mails, presumably
- (17) the disagreement was a result of their
- (18) different background and life experiences and
- (19) perhaps education; is that right?
- (20) **MR. PAOLELLA:** Objection.
- (21) **A.** We know they disagreed and I'm
- (22) not sure why.
- (23) **Q.** We do know that people of say
- (24) different educational backgrounds do tend to
- (25) perceive political statements differently.

Page 231

- (1)
- (2) don't they?
- (3) **A.** That I don't know.
- (4) **Q.** What about different ages?
- (5) **A.** I wouldn't feel qualified to say
- (6) that that would be the case.
- (7) **Q.** As a political scientist you
- (8) don't know whether people of different ages
- (9) tend to perceive political statements
- (10) differently?
- (11) **A.** Not political statements. I do
- (12) know there are different ideological viewpoints
- (13) where older persons often coming from the new
- (14) deal generations would tend to be more liberal
- (15) then say middle age persons, but whether they
- (16) see a television commercial and view it
- (17) differently because of their different ages, I
- (18) don't know that.
- (19) **Q.** Your answer would be the same for
- (20) educational level, for age, for geographic
- (21) residence; is that correct?
- (22) **A.** Yes. As far as I know, there
- (23) really have not been any studies yet to see
- (24) whether demographic differences really has an
- (25) impact on how people perceive television ads.

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- (1)
- (2) **Q.** This group that was used here has
- (3) not been validated as a way of predicting the
- (4) way people across the United States would
- (5) perceive ads, have they?
- (6) **MR. PAOLELLA:** Objection.
- (7) **A.** For demographics as a whole as
- (8) far as I know there hasn't been a demographic
- (9) analysis on that.
- (10) **Q.** The most that this -- tell me the
- (11) word again reliability, what do you call
- (12) it?
- (13) **A.** Intercoder reliability.
- (14) **Q.** The most intercoder reliability
- (15) can tell you is that this particular group of
- (16) students roughly of an age roughly of the same
- (17) educational background living in roughly the
- (18) same part of the country with contacts to the
- (19) same professors tend to see things about the
- (20) same way?
- (21) **A.** In viewing these ads.
- (22) **MR. KIRBY:** Thank you. That's
- (23) all I have.
- (24) **MR. ABRAMS:** I have one or two
- (25) more.

Page 23

(1)

(2) FURTHER EXAMINATION

(3) BY MR. ABRAMS:

(4) Q. I just want to pursue a little
(5) more the issue of purpose which Mr. Kirby
(6) starting asking you about. If you know the
(7) purpose of an advertisement because it's
(8) acknowledged, does it make any difference to
(9) the analysis you have been going through what
(10) the ad says?

(11) MR. PAOLELLA: Objection.

(12) A. I just don't understand the
(13) question.

(14) Q. Suppose the California Democratic
(15) Party says we will do a series of 10 ads
(16) designed to get Gray Davis nominated for
(17) president of the United States and it does that
(18) within the requisite time period before a
(19) democratic primary in 2004 and then they put
(20) the first ad on.

(21) Are you prepared on the basis of
(22) what I told you so far to say when that first
(23) ad comes on I don't really need to know anymore
(24) than what their purpose is and they told me
(25) their purpose?

Page 234

(1)

(2) A. If they told me their purpose,
(3) that would be very strong evidence for me to
(4) assume that it was electioneering, but I would
(5) actually want to see the ad to see if they
(6) somehow changed their mind or something, but if
(7) they specify their purpose is to elect Gray
(8) Davis with this ad and they run this ad, I
(9) would consider that very strong evidence that
(10) it was an electioneering ad designed to elect
(11) Gray Davis.

(12) Q. Wouldn't you consider it
(13) conclusive if the only issue is purpose
(14) regardless of the text of the ad if they make
(15) an announcement tonight is our first ad in a
(16) series designed to get Gray Davis nominated?

(17) MR. PAOLELLA: Objection, asked
(18) and answered.

(19) Q. You don't know enough then to say
(20) however this ad may look, however issue
(21) oriented it may seem to be, if all you take
(22) account of is its words and I know its purpose
(23) because they told me its purpose, therefore I
(24) will treat it as an election ad?

(25) A. Not necessarily. I would really

Page 235

(1)

(2) want to see the ad. If the ad came out and
(3) never talked about Gray Davis, but was
(4) instructing voters where to go register at
(5) polls, I would not then consider that an
(6) electioneering ad even if they had said so. I
(7) would start with the assumption they are going
(8) to do an electioneering ad designed to elect
(9) Gray Davis, but if I were to come out with any
(10) sort of document or study or proclamation as to
(11) what the ad actually is, of course I would want
(12) to see the ad.

(13) Q. Am I right in understanding this
(14) that once you reach a conclusion as to the
(15) purpose of the advertisement that gives you the
(16) answer to the question that enables you to
(17) answer question 11, right?

(18) MR. PAOLELLA: Objection.

(19) A. I don't see that. I would want
(20) to see the ad.

(21) Q. I understand you want to see the
(22) ad, but the reason you want to see the ad, is
(23) it not, so you can determine the purpose of the
(24) people putting the ad on?

(25) A. That's right.

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(1)

(2) Q. You're not thinking about the
(3) affects of the ad on the public, are you,
(4) you're thinking about the purpose of the people
(5) putting the ad on?

(6) MR. PAOLELLA: To answer question
(7) 11?

(8) A. I would want to see the ad to
(9) determine if it is an electioneering ad that is
(10) designed to influence vote choice for or
(11) against a candidate. If the democratic party
(12) said they will run ads to try to get Gray Davis
(13) elected and their ads turn to be voter
(14) registration ads regardless of what the
(15) democratic party said, that would not be an
(16) electioneering ad.

(17) Q. If it's voter registration ads
(18) and his picture is on the ad?

(19) A. Then I would have to take a
(20) closer look at the ad. Once it starts
(21) depicting a candidate, then I would want to
(22) actually see how the ad is constructed.

(23) Q. Do I understand correctly though
(24) that what you are looking for the question you
(25) want the answer to is why was this ad run?

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- (1)
- (2) **MR. PAOLELLA:** I think it's
- (3) ambiguous whether you are asking whether
- (4) the answer is the answer to question 11
- (5) or some gestalt classification.
- (6) **MR. ABRAMS:** I'm asking in terms
- (7) of the witness' testimony.
- (8) **A.** If I were to be talking about a
- (9) particular ad, an offer, a proclamation of the
- (10) ad, I would want to see the ad and I would
- (11) answer Q 11 regarding the ad before I was going
- (12) to say whether this is an electioneering ad or
- (13) issue ad. Even if someone went out and said we
- (14) are doing all these electioneering ads, I would
- (15) want to see the ad.
- (16) **Q.** If you were redoing Buying Time
- (17) 2000, would you ask Q 11 in precisely the same
- (18) language as it currently exists?
- (19) **A.** Yes, I would.
- (20) **Q.** If you were redoing Buying Time
- (21) 2000, would you leave out a category under
- (22) question 11 saying both?
- (23) **A.** Yes, I would leave that out. I
- (24) would want to get the opinion of the coder
- (25) whether they viewed it as electioneering or

Page 238

- (1)
- (2) issue advocacy with the third option that if
- (3) they could not tell the difference, they answer
- (4) unsure/unclear. I would not put both in there.
- (5) That would add a level of ambiguity that I
- (6) would not want.
- (7) **Q.** It would allow the person filling
- (8) out the form to say something a little more
- (9) nuance, wouldn't it?
- (10) **MR. PAOLELLA:** Objection.
- (11) **A.** That falls under unsure and
- (12) unclear. That would be where they would
- (13) answer.
- (14) **Q.** What were the students told about
- (15) that?
- (16) **A.** I don't know what Ken instructed
- (17) the students, but I'm sure he took them through
- (18) the survey all together and made it very clear
- (19) that unsure/unclear is a very viable option
- (20) especially with the subjective questions.
- (21) **Q.** Do you think they were told that
- (22) unsure or unclear included the concept that it
- (23) really does both?
- (24) **A.** I don't know how Ken would have
- (25) instructed them on that.

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- (1)
- (2) **MR. PAOLELLA:** Can we take five
- (3) minutes.
- (4) **(Recess taken.)**
- (5) **EXAMINATION BY**
- (6) **MR. PAOLELLA:**
- (7) **Q.** Dr. Holman, I just have some very
- (8) brief questions. My name is Chris Paoella.
- (9) I'm representing you here today. Dr. Holman,
- (10) do you remember a bit earlier in the deposition
- (11) discussing Professor Goldstein's policy of
- (12) occasionally recoding coder responses to
- (13) resolve conflicts between coders?
- (14) **MR. ABRAMS:** Object to the form of
- (15) the question.
- (16) **A.** Yes, it was an extensive
- (17) discussion.
- (18) **Q.** Do you recall and I'm going to
- (19) paraphrase here Mr. Abrams asking you in
- (20) substance whether a reader of Buying Time 2000
- (21) would ever know that Professor Goldstein ever
- (22) recoded his coder's responses?
- (23) **A.** Yes.
- (24) **Q.** I would like you to take a look
- (25) at Exhibit 1, Buying Time 2000. Dr. Holman,

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- (1)
- (2) could you turn to page 19 of that document and
- (3) take a look at footnote two. It reads
- (4) intercoder consistency was not always proof
- (5) against error. For example, multiple students
- (6) concluded that an ad featured a candidate when
- (7) the person was, in fact, an office holder who
- (8) is not running for election. Such coding
- (9) errors were corrected. When coders disagreed
- (10) with respect to a particular question,
- (11) Professor Goldstein made the judgment as to the
- (12) appropriate code. Dr. Holman, does footnote
- (13) two jive with your recollection of Professor
- (14) Goldstein's policy in recoding responses of
- (15) student coders?
- (16) **A.** Yes, it does. I wrote footnote
- (17) two.
- (18) **Q.** Footnote two was contained in the
- (19) Buying Time 2000 report; is that correct?
- (20) **A.** Yes.
- (21) **Q.** Dr. Goldstein, as a political
- (22) scientist, are you familiar with the techniques
- (23) of survey research?
- (24) **A.** You're asking Holman.
- (25) **Q.** Pardon me. My own witness. Dr.

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- (1)
- (2) Holman, as a political scientist, are you
- (3) familiar with the techniques of survey
- (4) research?
- (5) **A. I'm familiar with the techniques,**
- (6) **but I'm not an expert in survey research.**
- (7) **Q. Based on your familiarity as a**
- (8) **political scientist, would you say it is**
- (9) **unusual to use student coders in conducting**
- (10) **survey research?**
- (11) **MR. KIRBY: Objection,**
- (12) **foundation, competence.**
- (13) **THE WITNESS: I still answer it**
- (14) **though?**
- (15) **MR. KIRBY: Yes, we just get paid**
- (16) **for talking.**
- (17) **A. No, it's common practice to use**
- (18) **students as survey respondents especially in**
- (19) **political work I may add.**
- (20) **Q. Would you say that that is an**
- (21) **accepted practice in the political science**
- (22) **academic community?**
- (23) **MR. KIRBY: Same objection.**
- (24) **A. It is an accepted practice. It**
- (25) **is widely done. The important thing in any**

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- (1)
- (2) kind of survey research just as with the
- (3) results there is that it be spelled out very
- (4) clearly as to how the survey was conducted.
- (5) That's the important thing and then people who
- (6) reevaluate the survey can draw their own
- (7) conclusions as to how adequately it reflects
- (8) the certain pool that it's supposed to reflect.
- (9) **MR. PAOLELLA: I have no further**
- (10) **questions.**
- (11) **MR. ABRAMS: Just a few.**
- (12) **FURTHER EXAMINATION**
- (13) **BY MR. ABRAMS:**
- (14) **Q. Referring to footnote two in**
- (15) **Exhibit 1, that footnote talks about coding**
- (16) **errors being corrected. When we focus on**
- (17) **question 11, we are not talking about errors,**
- (18) **are we?**
- (19) **A. No, talking about disagreements.**
- (20) **Q. Is there any place in Exhibit 1**
- (21) **Buying Time 2000 that the reader is told that**
- (22) **when Professor Goldstein disagreed with the**
- (23) **subjective judgment of the students with**
- (24) **respect to how to characterize an ad for**
- (25) **purposes of responding to question 11 that he**

Page 243

- (1)
- (2) sometimes overrode their judgments?
- (3) **MR. PAOLELLA: Objection.**
- (4) **A. I do not believe that is**
- (5) **specified in Buying Time 2000. I don't recall**
- (6) **having written that.**
- (7) **Q. The disagreement between the**
- (8) **students and Professor Goldstein with respect**
- (9) **to the characterization of the Kohl Feingold**
- (10) **ad, for example, was a subjective matter where**
- (11) **reasonable people had different views, right?**
- (12) **A. Yes, and actually now that I look**
- (13) **at page 20 on Exhibit 1, the top paragraph on**
- (14) **the second column, I did clarify that Professor**
- (15) **Goldstein made all final determinations on**
- (16) **coding accuracy of the students. That does not**
- (17) **specify Q 11, but it does clarify that**
- (18) **Goldstein was the final arbiter of the coding.**
- (19) **Q. But not only does it not specify**
- (20) **Q 11, it doesn't even apply to Q 11, does it,**
- (21) **because there is nothing as to which one can**
- (22) **say is accurate or inaccurate in response to**
- (23) **Q 11; isn't that right?**
- (24) **MR. PAOLELLA: Objection.**
- (25) **A. I guess when I wrote that I**

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- (1)
- (2) really meant just to clarify that Goldstein had
- (3) the final authority in determining the coding.
- (4) **Q. Regardless of what you meant,**
- (5) **what you said was that Professor Goldstein made**
- (6) **all final determinations on coding accuracy of**
- (7) **the students. My question to you is when the**
- (8) **student coded the Kohl Feingold ad as a**
- (9) **"genuine issue ad", they were not being**
- (10) **inaccurate, were they?**
- (11) **A. Ken Goldstein would have made**
- (12) **that judgment that they were being inaccurate**
- (13) **and he would have then corrected it towards**
- (14) **what he thought was a more accurate response to**
- (15) **Q 11.**
- (16) **Q. Do you think that's fairly**
- (17) **disclosed on page 20?**
- (18) **A. I could have disclosed it clearer**
- (19) **than that.**
- (20) **MR. ABRAMS: I have no further**
- (21) **questions.**
- (22) **MR. PAOLELLA: I just have maybe**
- (23) **three follow-ups to that.**
- (24) **FURTHER EXAMINATION**
- (25) **BY MR. PAOLELLA:**

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- (1)
- (2) Q. Referring back again to the Kohl
- (3) Feingold Abortion Act that we just discussed,
- (4) is it your recollection that that ad was coded
- (5) by the coders as an electioneering ad in the
- (6) 1998 Buying Time study?
- (7) MR. KIRBY: Objection, beyond the
- (8) scope.
- (9) A. In the 1998 study it was coded as
- (10) an electioneering ad by the coders.
- (11) Q. Is it your recollection that that
- (12) ad was originally coded as a genuine issue ad
- (13) in the 2000 Buying Time study?
- (14) MR. KIRBY: Same objection.
- (15) A. Yes, it was.
- (16) Q. Is it your recollection that
- (17) another ad identical except for substituting in
- (18) Chuck Robb for Senators Kohl and Feinberg was
- (19) coded as an electioneering ad by the coders in
- (20) the 2000 Buying Time study?
- (21) MR. KIRBY: Same objection.
- (22) A. That was coded as electioneering.
- (23) Q. Would you say that reflected
- (24) disagreement between the coders of the various
- (25) ads as to whether the ads were electioneering

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- (1)
- (2) or genuine issue ads?
- (3) A. Yes, that was clear disagreement
- (4) between the coders.
- (5) MR. PAOLELLA: I have no further
- (6) questions.
- (7) FURTHER EXAMINATION
- (8) BY MR. ABRAMS:
- (9) Q. When coders disagree with each
- (10) other as to how to respond to question 11, can
- (11) one learn anything about the difficulty of the
- (12) coding process with respect to that ad?
- (13) A. I would suspect that could be the
- (14) case. We certainly learned the difficulty when
- (15) you apply survey methodology to subjective
- (16) issues.
- (17) Q. We have gone over a number of
- (18) situations today, haven't we, where coders
- (19) disagreed either with each other or with
- (20) Professor Goldstein?
- (21) A. There have been several instances
- (22) that you brought up, yes.
- (23) MR. ABRAMS: I have no further
- (24) questions.
- (25) (Time noted: 4:30 p.m.)

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- (1)
- (2)
- (3) ACKNOWLEDGMENT
- (4) STATE OF)
- (5) :SS
- (6) COUNTY OF)
- (7) I, CRAIG HOLMAN, hereby certify
- (8) that I have read the transcript of my testimony
- (9) taken under oath in my deposition of September
- (10) 6, 2002; that the transcript is a true,
- (11) complete and correct record of my testimony,
- (12) and that the answers on the record as given by
- (13) me are true and correct.
- (14)
- (15)
- (16) CRAIG HOLMAN
- (17)
- (18) Signed and subscribed to before
- (19) me, this day of ,
- (20) 2002.
- (21)
- (22) Notary Public, State of New York
- (23)
- (24)
- (25)

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(19)			
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(22)			
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(24)			
(25)			

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(1)

CERTIFICATE

(2)

(3)

(4) STATE OF NEW YORK)

(5)) ss.:

(6) COUNTY OF NEW YORK)

(7)

(8) I, SHARI COHEN, a Notary Public

(9) within and for the State of New York, do

(10) hereby certify:

(11) That CRAIG HOLMAN, the witness

(12) whose deposition is hereinbefore set forth, was

(13) duly sworn by me and that such deposition is a

(14) true record of the testimony given by such

(15) witness.

(16) I further certify that I am not

(17) related to any of the parties to this action

(18) by blood or marriage; and that I am in no way

(19) interested in the outcome of this matter.

(20) IN WITNESS WHEREOF, I have

(21) hereunto set my hand this day of September,

(22) 2002.

(23)

(24)

(25)

SHARI COHEN

CRAIG HOLMAN - 9/6/02

Concordance Report

Unique Words: 2,473

Total Occurrences: 14,543

Noise Words: 384

Total Words In File:
38,381

Single File Concordance

Case Insensitive

Noise Word List(s):

NOISE.NOI

Cover Pages = 0

Includes ALL Text
Occurrences

Dates ON

Includes Pure Numbers

Possessive Forms ON

* * \$ * *

\$200,000 [1]

172:21

\$300 [1]

208:19

\$300,000 [1]

162:15

\$5 [1]

94:17

\$5,971,666 [1]

98:17

\$7 [1]

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