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09/25/02: McConnell v FEC: Depo: John McCain

PAGE 1 TO PAGE 301

NEAL R. GROSS & CO., INC.

(202) 234-4433

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CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

NEAL R. GROSS & CO., INC.  
1323 RHODE ISLAND AVE., NW  
WASHINGTON, DC 20005  
Phone: (202) 234-4433  
FAX: (202) 387-7330

Page 1

(1) IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

(2) \* \* \* \* \*

(3) DEPOSITION

(4) IN THE MATTER OF:

(5) SENATOR MITCH MCCONNELL,  
et al.,

(6) Plaintiffs Case No. 02-0582  
Y. (CCK, KLH, RJL)

(7) FEDERAL ELECTION  
COMMISSION, et al., All consolidated cases  
Defendants

(8) IN THE MATTER OF:  
REPUBLICAN NATIONAL  
COMMITTEE, et al.,  
Plaintiffs Case No. 02-874  
Y. (CCK, KLH, RJL)

(9) FEDERAL ELECTION  
COMMISSION, et al.,  
Defendants

(10) Wednesday,  
September 25, 2002

(11) DEPOSITION OF:  
JOHN MCCAIN

Page 2

(1) called for examination by Counsel for the National  
Rifle Association, pursuant to notice of deposition,  
at 11:15 a.m., in Room 236 of the Russell Senate  
Office Building, First Street and Independence Avenue,  
N.E., Washington, D.C., when were present on behalf of  
the respective parties:

Page 3

(1) APPEARANCES:  
On Behalf of the National Rifle Association:

(2) CHARLES COOPER, ESQ.  
DAVID H. THOMPSON, ESQ.  
Cooper & Kirk  
1500 K Street, N.W., Suite 200  
Washington, D.C. 20005  
(202) 220-9660

(3) On Behalf of the Defendant/Intervenor:

(4) RANDOLPH NESS, ESQ.  
ROGER WITTEB, ESQ.  
ANITA MANUEL, ESQ.  
Wilmer, Cutler & Pickering  
2445 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-6640

(5) On behalf of the United States Senate:

(6) MORGAN J. FRANKEL, ESQ.  
Deputy Senate Legal Counsel  
United States Senate  
642 Hart Senate Building  
Washington, D.C. 20510  
(202) 224-4435

(7) On Behalf of United States Senator McConnell:

(8) FLOYD ABRAMS, ESQ.  
BRIAN T. HASKLEY, ESQ.  
Cahill Gordon & Reindel  
80 Pine Street  
New York, NY 10005  
(212) 701-3000

Page 4

(1) APPEARANCES: (cont.)

(2) On Behalf of the Chamber of Commerce  
of the United States:

(3) JAH MITOLO BARAN, ESQ.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 719-7330

(4) On Behalf of the  
Republican National Committee:

(5) BOBBY R. BURCHFIELD, ESQ.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566

Washington, D.C. 20044-7566  
(202) 662-5350

On behalf of the American Center  
for Law and Justice:  
JAMES H. HENDERSON, SR., ESQ.  
The American Center for Law and Justice  
205 Third Street, S.E.  
Washington, D.C. 20003  
(202) 546-8890

Page 5

(1) WITNESS I-N-D-E-X  
(2) DIRECT CROSS REDIRECT RECESS  
(3) John McCain  
By Mr. Abrams 7  
By Mr. Burchfield 150  
By Mr. Henderson 285

(4) On page 30 a portion of the testimony has been  
excerpted as "For Counsel Only"

EXHIBIT NO.	DESCRIPTION	PAGE
(5) 1	Senate Resolution 323	10
(6) 2	The McCain Report	10
(7) 3	itsyourcountry.com	16
(8) 4	Pittsburgh Post Gazette	42
(9) 5	Article, December 23rd, 1999	45
(10) 6	McCain Nov. 17, 1999	48
(11) 7	Letter: McCain to Kenner	53
(12) 8	Boston Globe Article January 5, 2000	66
(13) 9	New York Times Article RE Book Party	81
(14) 10	Washington Times Article	94
(15) 11	Sierra Club Advertisement	109
(16) 12	Michigan Broadcast Ad	111
(17) 13	AFL-CIO Union	111
(18) 14	Americans for Limited Term	111
(19) 15	Democratic State Central Committee	111
(20) 16	POL-Congress	111
(21) 17	Wisconsin Campaign Ad	129
(22) 18	Alliance for Quality Nursing Ad	137
(23) 19	Coalition for the Future	139
(24) 20	American Worker Ad	142
(25) 21	Answer to Interrogatories	167
(26) 22	House Concurrent Resolution 175	168
(27) 23	Senate Ethics Manual	169
(28) 24	FEC's Responses to RMC	169
(29) 25	Intervenor's Responses to RMC	218
(30) 26	FEC's 20-year report	236
(31) 27	Agenda for TEAM 100 meeting	236
(32) 28	Line-by-Line TEAM 100 Agenda	236

Page 6

(1) I-N-D-E-X (cont.)

EXHIBIT NO.	DESCRIPTION	PAGE
(2) 27	Roll Call Article April 8, 1999	238
(3) 28	St. Louis Post-Dispatch Article, June 16, 1998	239
(4) 29	Comments to FEC	246
(5) 30	Vote Republican flyer	255
(6) 31	Oliver Letter Oct 4, 2001	257
(7) 32	Barbour Letter Oct 1, 1993	260
(8) 33	Richolson Letter Oct 8, 1997	263
(9) 34	McCain Script	268
(10) 35	California Democratic Party Print Ad for 1996	271
(11) 36	Flyer for Antonio Villaralosa	272
(12) 37	Life Every Voice and Vote	274

Page 7

(1) P-R-O-C-E-E-D-I-N-G-S  
(2) (11:17 a.m.)  
(3) Whereupon,  
(4) SENATOR JOHN MCCAIN (5) was called as a witness, and having been first duly (6) sworn, was examined and testified as follows:  
(7) MR. ABRAMS: Good morning, Senator McCain. (8) My name is Floyd Abrams and I represent Senator (9) McConnell. I appreciate your being here today.  
(10) I'll be the first lawyer who will be (11) asking you questions today related to this case. (12) You've done a lot of things in your life, is one of (13) them to testify in a Deposition?

(14) SENATOR MCCAIN: Yes.  
(15) MR. ABRAMS: Then you know that I'll be (16) asking questions. If any of them are unclear, please (17) let me know and I'll try to rephrase them.  
(18) DIRECT EXAMINATION  
(19) BY MR. ABRAMS:  
(20) Q Is it your understanding, Senator McCain, (21) that under the bi-partisan campaign reform act, an (22) individual citizen and his or her spouse may each

Page 8

(1) contribute up to \$2,000.00, per primary and per (2) general election, to your re-election campaign, should (3) you run?  
(4) A Yes.  
(5) Q For a total of \$8,000.00?  
(6) A Yes. That's my understanding, yes.  
(7) Q And is it your understanding that if your (8) opponent in your next Senatorial race, if you should (9) choose to run, triggers the so-called millionaire's (10) provision of the law.  
(11) That an individual citizen and his or her (12) spouse may each contribute up to \$12,000.00, per (13) election, primary and general?  
(14) A As I recall, that's the case. I've got it (15) here. Yes, as I recall, yes.  
(16) Q And that would be then a potential total (17) of \$48,000.00, for a two-person family? Twelve (18) thousand dollars, general election, husband. Twelve (19) thousand dollars, general election, wife.  
(20) Twelve thousand dollars, primary,  
(21) \$12,000.00, primary. Correct?  
(22) A Yes.

Page 9

(1) Q And it's also true, is it not, that an (2) individual and his or her spouse may each contribute up (3) to \$5,000.00, per year to Straight Talk America. Is (4) that correct?  
(5) A That's correct. What connection that has (6) to do with the senatorial campaign is not clear.  
(7) Q And that would be up to a total of (8) \$60,000.00, then, over a six year period, would it (9) not?  
(10) A I don't have a calculator with me, so I (11) won't challenge your numbers. But I would assume they (12) are probably accurate.  
(13) Q Well, what is Straight Talk America?  
(14) A It's a Political Action Committee funded (15) by hard money that is designed to further, to do a (16) variety of things. Including some contributions to (17) political campaigns.  
(18) Including holding functions where we can (19) have our members briefed. Including alerting our (20)

people when we are addressing issues such campaign (21) finance reform and others. Just a broad variety of (22) functions.

## Page 10

- (1) Q And what is the McCain Report?  
 (2) A I'd have to look it up. I'm sure it's an (3) update and briefing of the people who are members of (4) the Straight Talk America.  
 (5) MR. ABRAMS: I'd like to mark that as (6) McCain Exhibit 1. First a copy of the Senate (7) Resolution 323, that authorizes the Senators who (8) agreed to participate in this litigation to testify, (9) except concerning matters for which a privilege should (10) be asserted, and when their attendance at the Senate (11) is necessary for the performance of their legislative (12) duties.  
 (13) (Whereupon, the document was (14) marked as McCain Exhibit No. 1 (15) for identification.)  
 (16) MR. ABRAMS: And I'll mark as McCain (17) Exhibit 2, a copy of a document entitled The McCain (18) Report.  
 (19) (Whereupon, the document was (20) marked as McCain Exhibit No. 2 (21) for identification.)  
 (22) BY MR. ABRAMS:

## Page 11

- (1) Q Can you tell us what this document is, (2) Senator McCain?  
 (3) A Which one?  
 (4) Q The McCain Report.  
 (5) A Well, it's a way of updating our (6) supporters on things we have done, on issues that are (7) of importance. And also information about other (8) candidates.  
 (9) In this particular issue, it talks about (10) Senator Susan Collins, who our PAC contributed to her (11) campaign.  
 (12) Q Is the main, is the main topic of the (13) report your activities?  
 (14) A Well, the main topic of this report is (15) that campaign finance reform passed. That's the main (16) topic of this particular report.  
 (17) Q And did you write the article, or is it (18) written in your name, titled Campaign Finance Reform (19) Passes?  
 (20) A Yeah, I'm sure it's written in my name, in (21) my endorsement.  
 (22) Q Do you know how often the document

## Page 12

- (1) entitled The McCain Report is issued?  
 (2) A No. I'm sure as we feel necessary.  
 (3) Q It says on the top right that it is an (4) exclusive publication of Straight Talk America. (5) Straight Talk America is the PAC that you described (6) earlier?

(7) A Well, it's a PAC, but it's also a (8) frankly, a label for our effort. It's more than a (9) PAC. We, our bus was called Straight Talk America. (10) It didn't have anything to do with a political action (11) committee or any fundraising.

(12) It was a bus titled that during our (13) presidential campaign. So, no, I don't think it's, (14) that it refers specifically to the PAC. I think it (15) refers to a theme and a crusade.  
 (16) Q And are you the leader of that crusade?

(17) A I am a co-leader with Senator Russ (18) Feingold, and very proud to be.

(19) Q Who or what funds the publication of The (20) McCain Report?

(21) A I'm sure the PAC funds pay for it. I'm (22) relatively confident that it was paid for by that.

## Page 13

(1) Q The numbers that we referred to earlier (2) involved potential contributions to Straight Talk (3) America of \$60,000.00, over a six year period, and (4) \$48,000.00, to campaign organizations associated with (5) you in an election year.

(6) My question is whether you believe, (7) Senator McCain, that a contribution of \$108,000.00, to (8) Straight Talk America and your political committees, (9) over the course of a six year senate term, would (10) corrupt you?

(11) A I believe not. Let me show you what we're (12) really talking about here, Mr. Abrams. Recently a (13) fundraiser was held while a prescription drug bill was (14) before the senate.

(15) Hundreds of thousands of dollars were (16) given by the pharmaceutical companies while the (17) legislation was before the United States Senate.

(18) That's what we're talking about here, Mr. Abrams.

(19) Q I move to strike the entirety of Senator (20) McCain's response after the words, I believe not, as (21) unresponsive to the question.

(22) Now, Senator McCain, would a contribution

## Page 14

(1) of \$108,000.00 -

(2) A Is that, is that, I'm not a lawyer, is (3) that accepted, that he moved to strike?

(4) MR. WITTEN: No. It just means that it's (5) written down that he's moved to strike it and the (6) world will soon forget that he so moved. But there's (7) no point in us having a fight with him.

(8) SENATOR MCCAIN: I see.

(9) MR. WITTEN: And taking up your

time about (10) it.

(11) SENATOR MCCAIN: I see.

(12) BY MR. ABRAMS:

(13) Q Do you believe, Senator McCain, that a (14) contribution of \$108,000.00, to Straight Talk America (15) and your political committees, over the course of a (16) six year senate term, would appear to corrupt you?

(17) A I don't know where you get the (18) \$108,000.00. again.

(19) Q I thought we established that -

(20) A Okay, my answer is no. My answer is no.

(21) Q I want to understand, Senator McCain, what (22) you mean when you use the word, the words corruption

## Page 15

(1) for the appearance of corruption? It occurs in (2) certain places in this case and I want to ask you a (3) few questions about that now.

(4) A Sure. I refer to the United States (5) Supreme Court in a Colorado case as they referred to (6) corruption or the appearance of corruption.

(7) Q Last Sunday -

(8) A They ruled that -

(9) Q I'm sorry.

(10) A Where they ruled that you could put a (11) limit on the amount of contributions that were given (12) to a political campaign. I believe in this case by (13) state party society, as I recall.

(14) MR. WITTEN: I think you're talking about (15) the Shrink, Missouri case.

(16) SENATOR MCCAIN: Oh, okay. I'm sorry, (17) yeah.

(18) BY MR. ABRAMS:

(19) Q Last Sunday on Meet the Press, you (20) referred to the Federal Election Commission as an (21) unelected corrupt commission. What did you mean by (22) the use of the word corrupt?

## Page 16

(1) A I mean that they have failed to carry out (2) their constitutional responsibilities of interpreting (3) the law as it is written, and emasculated the law.

(4) Q Is that your understanding of what the (5) word corrupt means?

(6) A That's what the reference in which I made (7) it.

(8) Q You also referred to the Commission by (9) saying that you had, quote, never seen such corruption (10) in an independent Commission.

(11) A Never have.

(12) Q Did you use the word corruption in the (13) same sense that you just told us?

(14) A Yes, they are, they are violating their (15) constitutional duties to make regulations that conform (16) with the

**law passed by Congress.**

(17) MR. ABRAMS: I want to mark a copy of a (18) website entitled, itsyourcountry.com, and ask you if (19) you can identify it. I'd like to mark this as McCain (20) Exhibit 3.

(21) (Whereupon, the document was (22) marked as McCain Exhibit No. 3

**Page 17**

(1) for identification.)

(2) BY MR. ABRAMS:

(3) Q All right, I'm going to refer you, Senator (4) McCain, to look at the language on Page 1, on the (5) right side towards the bottom, which I will read into (6) the record now.

(7) It attributes to you the following quote. (8) In the last several years, while all Republicans (9) controlled Congress, special interest earmarks in (10) appropriations bills have dramatically increased.

(11) The rise in pork barrel spending is (12) directly related to the rise of soft money as (13) Republicans and Democrats scramble to award major (14) donors to our campaigns, unquote.

(15) I believe you said that in 1999, Senator. (16) Is that something that you said?

(17) A Yes.

(18) Q You refer, as well, on the next page to (19) four examples, or five examples in four places, of (20) what you call to be pork list.

(21) There are ones in Seattle, Maine, Georgia, (22) Alaska, and elsewhere. Can you identify for us which

**Page 18**

(1) Senators, if any, would not have proposed or supported (2) these items, but for the existence of soft money?

(3) A No, of course not.

(4) Q Is that because you are unable to do so, (5) or because you don't choose to do so?

(6) A No, it's not my responsibility to do so, (7) so I've never contemplated it in the past nor would I (8) do so now.

(9) Q Well, I will ask you then now, Senator, to (10) identify for this record in this litigation in which (11) you are appearing as an intervening Defendant, to (12) identify for us which Senators, if any, are known to (13) you as having proposed or supported these items, (14) excuse me. (15) Which Senators, if any, would not have (16) proposed or supported these items, but for soft money (17) contributions?

(18) A Of course not.

(19) Q You will not do so?

(20) A Of course not.

(21) Q Why is that, Senator?

(22) A Because this pork list here is developed

**Page 19**

(1) for my work with the Citizens Against Government (2) Waste. And it is clearly outrageous that the process (3) should include \$750,000.00, with \$220,000.00 or (4) millions or billions for projects that are (5) unauthorized and receive no scrutiny from the United (6) States Senate.

(7) And that's why I go to the floor and (8) combat it. And clearly there is an appearance that is (9) wrong and the process has gone on. And the pork (10) barrel spending has dramatically increased as the soft (11) money has increased.

(12) That's a matter of fact. You can ask any (13) watch dog organization.

(14) Q Your observation that you acknowledged (15) having made that the rise in pork barrel spending is (16) directly related to the rise of soft money, as (17) Republicans and Democrats scramble to reward major (18) donors to our campaigns, leads to this question.

(19) Which Republicans and which Democrats (20) scrambled to reward major donor with respect to the (21) particular pork list that I read to you?

(22) A I have no idea, nor would I ever speculate

**Page 20**

(1) on such things, Mr. Abrams. It's not my purpose for (2) campaign finance reform.

(3) The purpose of campaign finance reform was (4) to eliminate the widespread belief that there is the (5) appearance of corruption in Washington, D.C.

(6) And the appearance is there. I spend a (7) lot of time with the American people and the people of (8) my state. The appearance is there, and the appearance (9) in politics as opposed to in court is reality.

(10) And that's why I've worked so hard to (11) eliminate it. And that's why poll after poll show (12) that the American people are in agreement with me that (13) the system has to be cleaned up.

(14) Q And my question to you now, Senator (15) McCain, is not with respect to the widespread belief (16) that you just testified about, but with respect to the (17) reality.

(18) A Well, Mr. -

(19) Q My question, let me ask a question first, (20) please. My question to you is who the Republicans and (21) Democrats were that were scrambling to reward their (22) major donors to their campaigns with respect to the

**Page 21**

(1) particular appropriations referred to

in this (2) document?

(3) A And my response to you again, Mr. Abrams, (4) and I'll be glad to repeat it as many time as you (5) would like. Is that my job is to serve the American (6) people to try to eliminate the appearance and award (7) the reality of corruption.

(8) It is not my job to identify that from a (9) legal standpoint. There are statutes on the books (10) concerning bribery, and that's a job for the Justice (11) Department.

(12) But I will tell you again that I believe (13) there is a widespread belief amongst my constituents (14) that I have elected to represent that there either is (15) the appearance of or actual corruption.

(16) And I am trying to get at the system that (17) creates that appearance and I will continue to attack (18) that system. It is up to others to identify and (19) prosecute individuals under existing statutes under (20) the law.

(21) I am on the political branch, not the (22) judicial branch of government, and it's my job to try

**Page 22**

(1) to address appearances as well as reality, because in (2) politics appearance is reality as opposed to a (3) judicial proceeding.

(4) Q Senator, I think my job is to ask you (5) questions today.

(6) A And I am more than pleased to answer them.

(7) Q And with respect, your job is to answer (8) them.

(9) A Umm hmm, and I'm answering them in the (10) best way that I know how. And I might add, all these (11) questions have been asked me many times before.

(12) Q Did you report to any law enforcement (13) officials, any Republican or Democratic Senators who (14) you had concluded were acting in violation of the (15) criminal laws by taking money in contributions and (16) then voting because of those contributions?

(17) I'd request you speak a little louder.

(18) A No.

(19) Q Thank you.

(20) A Sorry.

(21) Q Did you bring any proceedings before the (22) Senate Ethics Committee against any members of the

**Page 23**

(1) Senate who you had concluded had scrambled to reward (2) major donors to their campaigns?

(3) A No. I didn't do so because it's neither (4) my obligation nor my purpose to investigate. Nor do (5) I have the capability to investigate whether

those (6) were actual acts of corruption or not.

(7) I know what they did do, and they created (8) an appearance that the American people soundly reject (9) because the influence of soft money in particular in (10) American political campaigns.

(11) Q Was this, I'm almost finished with this (12) line of questioning.

(13) A Sure.

(14) Q Taking one of them, by way of example, on (15) the first page of this exhibit. You said, the (16) following examples will give you an idea of what laced (17) with most recent triganosis attack. (18) Twenty-six million dollars to compensate (19) the dungeness crab fisherman, fish processors and (20) fishing crews negatively affected by restrictions on (21) fishing in Glacier Bay National Park in Alaska.

(22) My question relates to reality, not

Page 24

(1) perception. Do you know, have you figured it out, do (2) you know if any Senator voted in favor of this (3) legislation because of campaign contributions?

(4) A There wasn't a vote taken on that, Mr. (5) Abrams.

(6) Q How was this encompassed in legislation?

(7) A It was inserted in an appropriations bill, (8) Mr. Abrams. It was never voted on.

(9) Q The appropriations bill was voted on, was (10) it not?

(11) A The entire bill?

(12) Q Yeah.

(13) A Yes, technically you are correct. (14) Specifically, there was no specific vote on this (15) particular item. Technically, that's correct.

(16) Q And do you know, Senator McCain, if anyone (17) inserted this provision in the appropriations bill (18) because the person had received soft money?

(19) A No.

(20) Q And would you get the same answer if I (21) went through each of the other examples cited by you (22) in this document?

Page 25

(1) A Sure.

(2) Q In response to the questions I just asked (3) you, used the phrase the appearance of corruption a (4) number of times and I want to explore that to some (5) extent with you.

(6) When you use those words, what are you (7) conveying? What do you mean?

(8) A I'm conveying the views of the majority of (9) my constituents and the majority of the American (10) people.

no, as we do things here in Washington, (11) which are not in the public interest, but are in the (12) interest of the special interest!

(13) And that is their perception. That is my (14) perception and belief. And that's why I wanted to (15) clean up the campaign finance laws which were, (16) actually didn't want to clean up, I wanted to enforce (17) the laws that were passed in 1907 and 1947 and 1974.

(18) Over which loopholes were created. (19) Because those loopholes then created the appearance (20) that the peoples' business was not being conducted (21) here, but the special interests business were.

(22) And I've had hundreds of town hall

Page 26

(1) meetings across this country and people overwhelming (2) believe that. And so if I had been interested in (3) addressing just corruption, I would have gone to (4) court.

(5) I would have asked for someone to enforce (6) bribery statutes. But that's not my job. I am a (7) Legislator and a Politician. My job is to try to (8) change procedures that I believe are wrong and not in (9) the best interest of the American people. And that's (10) been my record for about 20 years.

(11) Q In your view, Senator McCain, can there be (12) an appearance of corruption and in fact no reality of (13) it?

(14) MR. WITTEN: In a particular case -

(15) MR. ABRAMS: Yes.

(16) MR. WITTEN: - or across the board?

(17) MR. ABRAMS: Yes, in a particular case.

(18) SENATOR MCCAIN: Well -

(19) BY MR. ABRAMS:

(20) Q Should I ask it again?

(21) A My answer is that, yes, there can be, but (22) in the environment in which I operate it doesn't

Page 27

(1) matter. Because what the American people care about (2) is not only whether actually things happen, but (3) whether they believe things are happening.

(4) No democracy survives without the (5) confidence of the people who are involved in it.

(6) Q And have you ever, in any of your (7) speeches, distinguished between the actuality of (8) corruption and what you're calling the appearance of (9) corruption?

(10) A I've never said anything except that it is (11) a rotten system that

needs to be cleaned up. Full of (12) sewer muck, as we call it nowadays.

(13) And it has merged completely out of (14) control and the numbers continue to go up and up and (15) up in a bipartisan fashion.

(16) Q Is there, in your view, the appearance of (17) corruption every time a Senator receives money from a (18) contributor, and then takes some sort of action that (19) is understood to benefit the contributor?

(20) MR. WITTEN: Sorry, are you using soft (21) money or hard money?

(22) SENATOR MCCAIN: Any kind of money.

Page 28

(1) BY MR. ABRAMS:

(2) Q Any kind of money.

(3) A Of course not. That's why we didn't ban (4) completely campaign contributions and go to public (5) finance. Because we believed that a certain amount of (6) money is an investment in a, in a campaign, and a (7) commitment to it.

(8) Q And all the circumstances in which you (9) find it difficult to assess whether a particular (10) conduct has or does not have the appearance of (11) corruption.

(12) A Mr. Abrams, I don't have a problem (13) anymore. I don't have a problem when a pharmaceutical (14) company gives a million dollars to a fundraiser while (15) a prescription drug bill is on the floor of the United (16) States.

(17) The appearance is wrong. Now if that drug (18) company had given a thousand dollars or two thousand (19) dollars, most people wouldn't think there was anything (20) wrong with it.

(21) When they give a million dollars, they (22) think there is something wrong and that's what the

Page 29

(1) appearance issue is all about. And that's why I'm a (2) politician and not a Judge or a lawyer.

(3) Because I have based my actions on what I (4) think is best for my constituents and what I think are (5) their concerns and hopes and dreams and aspirations.

(6) Q And did you consider, sir, supporting any (7) legislation which would have allowed the (8) pharmaceutical company to make smaller contributions?

(9) A I supported legislation which is the whole (10) campaign finance reform bill. It would allow them to (11) contribute \$5,000.00 to a PAC, \$2,000.00 as (12) individuals, etcetera, etcetera.

(13) Q And did you consider supporting any (14) legislation which would allow a pharmaceutical company (15) to make any contributions, at all, out of its treasury (16) funds to -

(17) A No, that was banned in 1907, thanks to (18) President Theodore Roosevelt. And I still believe (19) that Theodore Roosevelt was right. And I believe that (20) Theodore Roosevelt is turning in his grave as we (21) speak.

(22) And I, what I'm trying to do is go back to

Page 30

(1) what Theodore Roosevelt was able to accomplish in (2) 1907, which was a banning of corporate contributions (3) to American political campaigns because it was (4) corruption then, Mr. Abrams, at least in view of most (5) historians.

(6) (Testimony on pages 31 through 40 (7) excerpted as "For Counsel Only".)

Page 41

(1) Q Senator McCain, in March of 1999, you (2) received, did you not, thousand dollar contributions (3) to your presidential campaign from Lowell Paxson and (4) members of his immediate family?

(5) A Yes.

(6) Q And there were also contributions, were (7) there not, from a number of the top executives from (8) his firm?

(9) A Yes.

(10) Q And there were also contributions, were (11) there not, from members of the law firm that (12) represented the Paxson interests?

(13) A I don't know that for sure, but I would (14) assume so.

(15) Q And a total of about, of about \$20,000.00 (16) was received, was it not, from company executives, (17) family members and lawyers, to your campaign, in March (18) or thereabouts of 1999?

(19) A I don't know that for a fact. I will (20) accept it that, I know there were contributions, I (21) don't know the exact numbers. There was a number of (22) millions of dollars contributed to my campaign, so

Page 42

(1) It's hard for me to remember an exact number in this (2) case.

(3) MR. ABRAMS: I want to mark as Exhibit 4, (4) an article published in the Pittsburgh Post Gazette on (5) December 23rd, 1999.

(6) (Whereupon, the document was (7) marked as McCain Exhibit No. 4 (8) for identification.)

(9) BY MR. ABRAMS:

(10) Q I'd like you to take the time and

read (11) that to yourself.

(12) A I've read it before.

(13) Q This was turned over by your office to us (14) in response to certain document requests that we made (15) in this case.

(16) A Umm hmm.

(17) Q Referring to Exhibit 4, there is a (18) statement on Page 2, of the document that Mr. Paxson's (19) relatives and colleagues donated \$9,000.00 to McCain. (20) And the Washington, D.C. law firm of Dow, Londus & (21) Albertson, representing some of the parties in the (22) 35 million dollar deal, donated another \$6,858.00.

Page 43

(1) according election contribution records. Now does (2) that refresh your recollection -

(3) A Sure.

(4) Q - that that was the ballpark.

(5) A Sure, that's fine, sure.

(6) Q There is a statement attributed to Dan (7) Shnur in this document. Who is Mr. Shnur?

(8) A Mr. Shnur was part of our campaign. He (9) was many times a spokesperson.

(10) Q And there is a statement here attributed (11) to him in which he is said to have said that accepting (12) a political contribution is not against the law. And (13) that, quote, what is illegal is taking a specific (14) action in exchange for that contribution.

(15) And there is no evidence John McCain had (16) done such a thing. In order for there to be a quid (17) pro quo, there has to be a quid. And John McCain took (18) no position for the FCC on whether they should accept (19) or deny the big petition, unquote.

(20) Is that position consistent with yours, (21) Senator McCain.

(22) A Yeah, pretty much. I don't know exactly

Page 44

(1) the definition of what's illegal. I might put in (2) unethical in space of the word illegal, because as I (3) stated before, I'm not that conversant with the (4) specifics of bribery statutes because I haven't been (5) concerned with it.

(6) Q Well, would it be your view, Senator (7) McCain, that it would be accurate to say what is (8) unethical is taking a specific action in exchange for (9) that contribution, and there's no evidence John McCain (10) has done such a thing.

(11) In order for there to be a quid pro quo, (12) there has to be a quid, and John McCain took no (13) position with the FCC on whether they should accept or (14) deny the petition, unquote. Cor-

rect?

(15) A I would agree with that statement.

(16) Q On November of 19 - on November 17, 1999, (17) and again on December 10, 1999, you wrote to the (18) Chairman of the Federal Communications Commission with (19) respect to the transaction involving the Paxson (20) interest, did you not?

(21) A Yes.

(22) MR. ABRAMS: I want to mark as McCain

Page 45

(1) Exhibit 5, the letter of Senator McCain of November (2) 17th, 1999.

(3) (Whereupon, the document was (4) marked as McCain Exhibit No. 5 (5) for identification.)

(6) BY MR. ABRAMS:

(7) Q Is this a copy, Senator McCain, of the (8) letter that you wrote?

(9) A Yes.

(10) Q And this was about the assignment of (11) certain television licenses in Pittsburgh, was it not?

(12) A Whether it was an approval or disapproval (13) of the sale of a television license.

(14) Q And the Paxson interest would wind up with (15) one of the television stations?

(16) A Yes. If the, as I recall, if the purchase (17) was approved by the FCC.

(18) Q Now there's information in the second (19) paragraph in which you refer to the, quote, extent of (20) the delay at issue, unquote, in FCC consideration of (21) the application.

(22) And in which you wrote that, quote, over

Page 46

(1) three years ago the FCC promised WQED Pittsburgh that (2) the FCC would give, quote, expedited consideration to (3) any application WQED might file, end quote, to sell (4) WQEX TV, its struggling second non-commercial station (5) in the market, unquote.

(6) Where did you get information of that (7) sort, Senator McCain?

(8) A I was briefed by my staff.

(9) Q Do you know where they got the (10) information?

(11) A No. But I would add, I was contacted by (12) Mr. Paxson on this issue.

(13) Q You were?

(14) A Yes.

(15) Q Were you contacted prior to November 17th?

(16) A I'm sure I was.

(17) Q And when, what's your best estimate as to (18) when you, when you first - let me rephrase the (19) question for you. What's your best estimate as to (20)

when you first spoke to Mr. Paxson about this matter?

(21) **A I don't remember.**

(22) **Q Can you tell us what you said and what he**

Page 47

(1) said about it?

(2) **A That he had applied to purchase this (3) station and that he wanted to purchase it. And that (4) there had been a numerous year delay with the FCC (5) reaching a decision.**

(6) **And he wanted their approval very bad for (7) purposes of his business.**

(8) **Q Okay, and at that point you were the (9) Chairman of the Senate Commerce Committee?**

(10) **A Yes.**

(11) **Q And at that point you were a candidate for (12) president, or not?**

(13) **A I assume so.**

(14) **Q What did you say?**

(15) **A I think my formal announcement was January (16) of 2000.**

(17) **Q But you were already in the hunt?**

(18) **A Yeah, sure. It was well known.**

(19) **Q What did you say to him when he told you (20) that?**

(21) **A I said I would be glad to write a letter (22) asking them to act. But I will not write a letter, I**

Page 48

(1) cannot write a letter asking them to approve or deny, (2) because then that would be an interference in their (3) activities.

(4) **I think everybody is entitled to a (5) decision. But I can't ask for a favorable disposition (6) for you.**

(7) **Q And then on December 10, you wrote certain (8) letters about the same subject, did you not?**

(9) **A Yes.**

(10) **MR. ABRAMS: I'd like to mark as Exhibit (11) Number 6, a letter that you wrote to the Chairman of (12) the FCC, William Kenner.**

(13) **(Whereupon, the document was (14) marked as McCain Exhibit No. 6 (15) for identification.)**

(16) **BY MR. ABRAMS:**

(17) **Q Is this a copy of a letter that you wrote, (18) Senator McCain?**

(19) **A Yes, yes.**

(20) **Q And in this letter, that you have written (21) on December 10, you will note that you had a copy of (22) the Public Notice setting out the agenda for the**

Page 49

(1) Commission's open meeting on December 15.

(2) **And that the applications were not listed (3) for consideration.**

(4) **A Yes.**

(5) **Q And you also state that you**

wanted, quote, (6) each member of the Commission, unquote, to advise you (7) in writing, no later than the close of business on (8) Tuesday, December 14, 1999, whether they had already (9) acted on the applications.

(10) **And then if the answer to that question (11) was no, whether the applications would be acted on on (12) December 15th. And if the answer to those questions (13) were no, why, correct?**

(14) **A Correct.**

(15) **Q And then you state, do you not, that the (16) purpose of the request was to secure -**

(17) **MR. WITTEN: Sole purpose.**

(18) **MR. ABRAMS: Let me read it in.**

(19) **BY MR. ABRAMS:**

(20) **Q You state, do you not, that quote, the (21) sole purpose of this request is to secure final action (22) on a matter that had now been pending for over two**

Page 50

(1) years?

(2) **I emphasize that my purpose is not to (3) suggest in any way how you should vote, merely that (4) you vote, in order to assure that no moral ex parte (5) communications on the merits of these applications (6) take place, I will not entertain any oral responses of (7) any kind to this letter, unquote. Is the correct?**

(8) **A Yes.**

(9) **Q And you wrote the same letter, did you (10) not, to each member of the Federal Communications (11) Commission?**

(12) **A Yes.**

(13) **Q Separate letters to each one of them?**

(14) **A Yes.**

(15) **Q And when you wrote the letters you were (16) Chairman of the Senate Commerce Committee, which does (17) the funding for the Federal Communications Commission, (18) correct?**

(19) **A Yes. And I think its, for the record, (20) even though the letter is in the record, that it is (21) important also the last paragraph of both letters.**

(22) **The second one, this letter is not written**

Page 51

(1) to obtain favorable disposition of any matter on (2) behalf of any party to any proceeding before the (3) Commission.

(4) **My job as Chairman of the Committee, Mr. (5) Abrams, is to see that bureaucracy's do function. (6) Bureaucracies are notorious for not functioning and (7) not making decisions.**

(8) **I believe that Mr. Paxson had a legitimate (9) complaint. Not about**

whether the Commission acted (10) favorably or unfavorably, but that the Commission act.

(11) **Every citizen has the right to get a (12) response from their government. I can provide for the (13) record, if you'd like, hundreds, if not thousands of (14) letters that I have written to government (15) bureaucracies on the behalf of constituents.**

(16) **Some who are featured in my campaign, some (17) who are not. They are asking for action, not for (18) favorable or unfavorable disposition. I feel that's (19) not only a privilege that I have, but it's a (20) responsibility.**

(21) **And it's an added responsibility being (22) Chairman of the Commerce Committee to see that**

Page 52

(1) bureaucracies that are directly under the oversight of (2) my Committee do act in a timely fashion in response to (3) carrying out their duties.

(4) **By not acting upon this for over 2 two (5) years on this issue, clearly the Commission was (6) derelict in their duties.**

(7) **And finally, I'm sure we may get to this, (8) Mr. Reed Hunt, the former Chairman of the Federal (9) Communications Commission, said that I was not only (10) appropriate, but correct in urging the Commission to (11) act. (12) Now I know that there were others who said (13) that that was not the case, but I believe that Mr. (14) Reed Hunt, who was a Democrat appointee, his opinion (15) was that we moved some weight around.**

(16) **And may I say again, whenever a (17) constituent writes to me, whether it be Mr. Paxson or (18) someone who has never known me before, and says I (19) tried to get my license from this bureaucracy.**

(20) **I tried to get an answer from this (21) bureaucracy. I tried to get a response, which was (22) their job. I will always write and urge them to act.**

Page 53

(1) **But not to act in one way or the other.**

(2) **So the difference between what others (3) wrote, as mentioned in this Pittsburgh newspaper, that (4) others wrote asking for disposition of the case.**

(5) **I did not ask for disposition of the case. (6) If I had asked for disposition of the case, I believe (7) then I would have been open to at least allegations (8) that I acted in behalf of a contributor.**

(9) **Q How many times did you fly in Mr.**

Paxson's (10) jet in the time period surrounding the writing of (11) these letters?

(12) **A I don't know. I can supply the answer for (13) the record.**

(14) Q I want to furnish you with a copy, which (15) I'll mark as McCain Exhibit 7, of the Boston Globe (16) from January 5, 2000.

(17) (Whereupon, the document was (18) marked as McCain Exhibit No. 7 (19) for identification.)

(20) **A Well, I would add one thing to my answer, (21) if I could, Mr. Abrams.**

(22) Q Sure.

Page 54

(1) **A That, as I've said on hundreds of (2) occasions, all of us are tainted by this system, and (3) I am one of them. And I clearly understand why there (4) would be questions raised on this issue.**

(5) Q You didn't received any soft money, did (6) you, from the Paxson interests?

(7) **A No.**

(8) Q I'm going to ask you about a few (9) particular paragraphs in this article. Why don't you (10) finish looking through it first.

(11) (Witness reviews the article.)

(12) **A I think I've read it.**

(13) Q I refer first to the second paragraph of (14) the article, which is January 5, 2000. The article (15) was published in the Boston Globe, which states, (16) quote, McCain in his bluntly worded December 10, (17) letter to the FCC did not urge a vote favoring the (18) contributing Paxson Communications, but he acted at (19) the request of the company's lobbyist during a period (20) when he used Paxson's corporate jet four times to (21) travel to campaign events where he almost always (22) attacks money special interests, unquote.

Page 55

(1) My first question is did you speak to the (2) company's lobbyist about these matters?

(3) **A I don't recall if it was Mr. Paxson or the (4) company's lobbyist or both.**

(5) Q But you did speak to him?

(6) **A I'm sure I spoke with him, yes.**

(7) Q Now you've already described one (8) conversation to us a few minutes ago, that you had (9) with Mr. Paxson personally. Where there more (10) discussions with him about this subject?

(11) **A I don't recall.**

(12) Q Do you recall if Mr. Paxson was ever on (13) his company jet at any of the occasions when you were (14) flying on it?

(15) **A I don't recall. You can easily get the (16) manifest, but I don't recall.**

I flew all over the (17) country in those (18) days, almost daily.

(18) Q Do you recall if Mr. Paxson's lobbyist (19) accompanied you on any of the corporate jet trips that (20) you took?

(21) **A I do not recall. Again, I know it's a (22) matter of public record.**

Page 56

(1) Q The last paragraph, excuse me, the last (2) paragraph on Page 1, reads as follows. Quote, but (3) McCain's close ties to Paxson were abundantly clear (4) from the key dates surrounding the FCC decision.

(5) The day before he sent the December 10, (6) letter, McCain used Paxson's jet for a trip from New (7) York to Florida. The after the letter he took the (8) company jet from Florida to Washington.

(9) The campaign reimbursed the company at (10) first class airfare rates, well below the actual cost (11) of the charts, unquote. Was that true, Senator (12) McCain?

(13) **A Yes.**

(14) Q I'd like to refer you to Page 3, which (15) states in the first paragraph, quote, McCain's (16) insistent urging that the FCC vote on the Pittsburgh (17) issue had the affect, if not the intent, of benefiting (18) Paxson, a West Palm Beach, Florida network of 73 (19) family-oriented stations and the nation's largest (20) owner of independent television stations.

(21) Through the end of September, Paxson's top (22) officers and their family members, and even the

Page 57

(1) Personal Assistant to the wife of the company's (2) founder, Lowell W. Paxson, contributed \$12,000.00 to (3) McCain.

(4) In 1998, Paxson officials gave \$9,000.00 (5) to McCain, period, end quote. I want to ask you (6) separately about some of the statements here.

(7) Do you agree that your urging the FCC to (8) vote on the issue had the affect, if not the intent of (9) benefiting Paxson?

(10) **A Absolutely not. And I'll be glad to (11) supply for the record hundreds of letters that I've (12) written to bureaucracies, particularly those under the (13) oversight of the Commerce Committee, where I urge them (14) to act on issues, as recently as a week ago.**

(15) Q What this says, Senator, is that it had (16) the affect, if not the personal intent by you, of (17) helping him.

(18) **A I disagree. There's no evidence to (19) suggest that it had the affect. Because I didn't tell (20) them to vote for or against Mr. Paxson.**

(21) Q But they did vote, correct?

(22) **A I was glad they voted. I'm glad when any**

Page 58

(1) **bureaucracy acts when we ask them to act when a (2) constituent applies to it. That's why they exist, Mr. (3) Abrams, is to serve the American people.**

(4) **When they don't serve the American people, (5) then it's the job of the elected legislator to ask (6) them to act in behalf of the American people. Not how (7) to act, but to act.**

(8) Q Did the FCC action benefit Mr. Paxson?

(9) **A I don't know.**

(10) Q You don't know -

(11) **A I don't know.**

(12) Q You don't know if approving this (13) transaction benefitted him or not?

(14) **A If they acted in approval, which I assume (15) from your line of questioning they did, I was in the (16) middle of a presidential campaign, Mr. Abrams.**

(17) **I didn't pay much attention to what they (18) did. I just asked them to act. I didn't care what (19) they did. I just asked them to act.**

(20) Q Would you agree, Senator McCain, that if (21) the pressure that you put on the FCC -

(22) **A To act.**

Page 59

(1) Q - at act, led them to act, and that the (2) action that they took benefitted Mr. Paxson, that that (3) was something which was caused, however innocently and (4) however appropriately, by you?

(5) **A Mr. Abrams, I neither know nor care of (6) whether it, if the affect was to benefit Mr. Paxson. (7) I neither know nor care.**

(8) **What I did was carry out my (9) responsibilities as Chairman of the Oversight (10) Committee to ask them to act.**

(11) Q The next to last paragraph on the page (12) says, quote, sometime between McCain's first letter on (13) November 17, and his more insistent letter on December (14) 10, Paxson made his four engine jet available to ferry (15) McCain and his entourage from New Hampshire to (16) Washington.

(17) On December 3, a day after McCain (18) declared, in a New Hampshire appearance, quote, it is (19) very clear to all the lobbyists and the special (20) influence people that run Washington now, that if John (21) McCain is President of the United States, things are (22) going to be a lot different, period, end quote.

Page 60

(1) Focusing for the moment on the (2)



availability of the jet to you, do you recall, with (3) this in front of you, that it was at a time after the (4) November 17, letter, and before the December 10, (5) letter that Mr. Paxson first made a jet available to (6) you?

(7) A Could you repeat the question?

(8) Q Sure. Do you recall now, having read (9) this, that it was at some time period between these (10) two letters that you wrote to the FCC, that Mr. Paxson (11) first made his jet available to you?

(12) A I'm still not sure I understand the (13) question. But I guess my answer is yes, that I used (14) Mr. Paxson's jet.

(15) Q And -

(16) A I used -

(17) Q I'm sorry.

(18) A Because I didn't have a whole lot of money (19) that, say, Governor Bush had to in order to lease a (20) jet until much later in the campaign. We then used (21) various corporate jets as has been a common practice (22) in every presidential campaign.

Page 61

(1) Q Now in your view, Senator McCain, was (2) there any appearance of corruption in your writing the (3) letters to the FCC, flying on Mr. Paxson's jet, (4) accepting contributions from Mr. Paxson all in the (5) same time period?

(6) A As I said before, I believe that there (7) could possibly be an appearance of corruption because (8) this system has tainted all of us. I've said that (9) thousands of times.

(10) It has tainted me, it has tainted every (11) officeholder that ever accepts anything from any group (12) or individual that has an interest in Washington.

(13) So there may be an appearance that is (14) wrong, there. But the fact is that when I did not ask (15) the FCC to act favorably for Mr. Paxson, then I was (16) not doing anything wrong in any way.

(17) But the reason, one of the reasons why I (18) sought and worked so hard for the campaign finance (19) reform because of the taint of corruption or (20) appearance of corruption that affects all of us, even (21) if we take one dollar or a thousand dollars or a (22) million dollars.

Page 62

(1) Q Now you haven't proposed anything, have (2) you, which would have dealt with the taint of (3) corruption about this matter, have you?

(4) A No. And, could I more completely answer (5) that question?

(6) Q Sure.

(7) A When we decided to embark,

Senator (8) Feingold and I, on campaign finance reform, we knew (9) that we could not come up with a perfect bill. If I (10) had written the legislation, or Russ and I had written (11) legislation ourselves, with a blank check, it would (12) have been somewhat different.

(13) The Millionaires Amendment wouldn't have (14) been in it. There's a number of other items that (15) would not have been in it. So we are dealing with a (16) legislative process where we are not guaranteed a (17) perfect product.

(18) So not every possible, quote, taint of, or (19) appearance of corruption is dealt with.

(20) Q Well ---

(21) A But, can I finish?

(22) Q Sure.

Page 63

(1) A Can I finish my statement?

(2) Q That's fine.

(3) A But in the view of most objective (4) observers, the product that we've come up with will (5) improve the system dramatically from what it is today. (6) Because it will close certain loopholes that have been (7) opened by the FEC, not through acts of Congress.

(8) So I don't claim that ours is a perfect (9) bill. I'm not saying that after this is passed there (10) will no longer be suspicions about members of Congress (11) and two or four thousand or five thousand dollar (12) contributions.

(13) But I will argue, and I think most outside (14) observers will, who are objective on this issue, will (15) view it as a dramatic improvement.

(16) That's certainly been what the media (17) coverage has been and the response we've gotten to the (18) passage of this law. And I'm sorry for the long (19) answer.

(20) Q No. Just to be sure I understand, though, (21) looking back on the events with Mr. Paxson, the (22) contributions, the jets, everything you and I have

Page 64

(1) just talked about, do you believe that it would have (2) been justified for a member of the public to say there (3) is at least an appearance of corruption here?

(4) A Absolutely. And when I took a thousand (5) dollars or any other hard money contribution from (6) anybody who does business before the Congress of the (7) United States, then that allegation is justified as (8) well. Because the taint affects all of us.

(9) Well, I'm not asking now about the taint (10) affecting all of you, I'm asking if you agree that (11) there should have been - let me just state it again, (12) excuse me.

(13) My question is whether you agree that it (14) was reasonable for a member of the public to say of (15) the events about which we've just been talking, there (16) is an appearance of corruption here?

(17) MR. WITTEN: He answered that question. (18) He already did answer it with a one word answer that (19) he then elaborated on.

(20) SENATOR McCAIN: Yeah, I said yes. But (21) let me also add again, Russ Feingold and I thought (22) about putting in a provision that would ban the use of

Page 65

(1) corporate jets or full fare being, have to be paid by (2) candidates.

(3) We also considered free time for (4) candidates. We considered a number of other (5) provisions. But our job was to get the legislation (6) through and a tax off money. And that was the focus (7) of our efforts, as I said.

(8) If we'd of had a perfect bill we would (9) have banned a whole lot of other things besides what's (10) in the legislation.

(11) BY MR. ABRAMS:

(12) Q Senator McCain, the New York Times reports (13) today about a book party celebrating your new memoir, (14) worth, quote, Worth Fighting For, unquote. I'm going (15) to pass you a copy, which I'll mark as Exhibit 8. (16) Have you read this today?

(17) A Yes.

(18) (Whereupon, the document was (19) marked as McCain Exhibit No. 8 (20) for identification.)

(21) Q Now this article relates to a book party (22) celebrating your new memoir, which is being sponsored

Page 66

(1) by Frederick Smith, the Chairman and CEO of Federal (2) Express, correct?

(3) A Correct.

(4) Q And Federal Express is an entity that (5) appears in front of us at a Commerce Committee, true?

(6) A Yes.

(7) Q And it is, as the Times says, the largest (8) all cargo air carrier in the world. And one that (9) ranks among the top transportation lobbying forces in (10) Washington. Is that true?

(11) A Yes.

(12) Q And it's -

(13) A I accept the statement. I haven't checked (14) who's the most powerful.

(15) Q And the article says that the person (16) lobbies is the Senate, Commerce and Transportation (17) Committee. Is that true?

(18) A Yes, I would imagine you would include the (19) Appropriations Committee in that.

(20) Q And it says that Mr. Smith, himself, is (21) actively engaged in that lobbying. That Mr. Smith (22) frequently appears on Capitol Hill, quote, where he

Page 67

(1) had beseeched Mr. McCain to solve some of his (2) problems.

(3) For example, those with Unions and (4) workers, unquote. Is that true, Senator McCain?

(5) A Anyone who knows Mr. Smith knows he (6) doesn't beseech anyone for anything.

(7) Q Has he ordered you to do certain things?

(8) (Laughter.)

(9) A No. I've certainly discussed issues with (10) him, as I have other CEOs of major airlines in (11) American and other transportation executives.

(12) Q Is corporate money being used to pay for (13) the party?

(14) A I have no idea.

(15) Q Did you ask?

(16) A No. They don't care.

(17) Q They don't care? The invitation here (18) quoted by the Times, Mr. Smith praised you as, quote, (19) an honest man searching and finding meaning through (20) public service in a time of conflict, unquote.

(21) Have you even seen the invitation so far, (22) Senator?

Page 68

(1) A No, I haven't seen it.

(2) Q Do you see any appearance of corruption in (3) a lobbyist for the nation's largest all cargo air (4) carrier paying for a book party for the ranking member (5) and perhaps future Chair of the Senate Commerce (6) Committee.

(7) Q Absolutely not. Mr. Smith has been a (8) friend of mine since the Vietnam war. He was a combat (9) marine pilot in the Vietnam war and we've been close, (10) personal friends for many years with a common (11) background.

(12) Mr. Smith is not a lobbyist. Mr. Smith is (13) a CEO of Federal Express, one of the most successful (14) endeavors in recent years.

(15) No, not a penny of the proceeds from this (16) book will in anyway come to benefit John McCain or my (17) family or my associates - my family.

(18) Mr. Salter, who is my Administrative (19) Assistant, will receive proceeds from the book. I, (20) personally, will re-

ceive no monies for it, and all of (21) it is donated to charity, as has been the case of, (22) I've forgotten how many hundreds of thousands of

Page 69

(1) dollars over my last book.

(2) If I was benefiting in any way from this (3) book being sold, that I know of, financially or (4) otherwise, then there might be some taint. But there (5) is not.

(6) Q Who chooses the charities, Senator McCain?

(7) A We send almost all of it, occasionally I (8) will earmark one, but most of it goes to a fund that (9) is administered by the company that my wife is (10) associated with and they distribute the funds.

(11) Quite often I'll get a letter from some (12) charity and give them, and say send them a thousand (13) dollars or 500 dollars, a veteran's organization or (14) something like that.

(15) But a lot of it is just distributed by the (16) foundation which, the name of which I will supply for (17) the record.

(18) Q You want people to buy the book, don't (19) you?

(20) A Of course.

(21) Q And you want people to read the book, (22) don't you?

Page 70

(1) A Of course.

(2) Q Well, then it is in your interest that (3) people do so, isn't it?

(4) A Mr. Abrams, please, please, let's not (5) insult each other's intelligence and integrity. I (6) wrote a book because I want the American people to (7) motivated, as that says, to public service and to (8) revering great Americans and to do and serve a noble (9) cause in the United States of America.

(10) And that's what I wrote the book for, and (11) I gain nothing from it materially, except the (12) satisfaction of knowing, as I did from the last book, (13) that hundreds of thousands of young Americans were (14) inspired by it.

(15) Q Don't you, Senator McCain, gain at least (16) some assistance when you run for reelection if you are (17) viewed as somebody who had published an inspiring and (18) eloquent and meaningful book that many Americans have (19) read with interest and profit?

(20) A I would be very interested if that were (21) the reason why people voted for me. In my experience, (22) in 20 years in elected office, the people go into the

Page 71

(1) ballot booth to vote for their representative as to (2) how they will repre-

sent them in Washington, D.C. as (3) their legislator.

(4) How I stand, how he stands on issues. How (5) his positions will be, as far as their benefit and the (6) benefit to the state of Arizona and the nation is (7) concerned.

(8) Q Let me ask you a related question, then. (9) Mr. Smith is a friend of yours, correct?

(10) A Yes. A very great American.

(11) Q And Mr. Smith is doing you a favor, is he (12) not? Something nice for you by holding a book party (13) for you, no?

(14) A I, Mr. Smith volunteered to do this, in (15) helping, obviously, to have people come and hopefully (16) it will help the book sales.

(17) So, if you want to have that kind of (18) stretch of the imagination that he's doing me a favor, (19) then my answer is yes.

(20) Q Are you appreciative to him for doing so?

(21) A Of course, I'm appreciative.

(22) Q Can you understand how anyone, any

Page 72

(1) reasonable person, not an enemy of yours, how any (2) reasonable person, who does not wish you ill, could (3) read the New York Times article today and say that he (4) felt, you know, I think when all is said and done, the (5) ranking member of the Commerce Committee and perhaps (6) the future Chairman of the Commerce Committee, really (7) shouldn't do that?

(8) A No, I do not. In light of my relationship (9) with Mr. Smith, in light of the fact that any proceeds (10) go to charity, absolutely not.

(11) Q Let me turn to another topic, and, again, (12) I'm continuing down the line of asking you questions, (13) so that at least I will understand your views about (14) the question of what is an "appearance of corruption," (15) and what is not. (16) You have been represented in this case, (17) have you not, by, among others, the Brennan Center?

(18) A Yes.

(19) Q And they represented you as well in (20) getting you on the ballot in New York State in New (21) York's Republican primary, correct?

(22) A Yes. They and numerous other

Page 73

(1) organizations.

(2) Q Well, they get a good deal of credit for (3) it. Do they deserve a reasonable amount of credit for (4) that success?

(5) A Sure. All who participated fought an (6) uphill battle that most

people didn't think we could (7) win.  
 (8) Q And they are representing you now pro (9) bono, and represented you in that case pro bono, is (10) that correct? Are they representing you free?  
 (11) **A Yes.**  
 (12) Q You have appeared, have you not, at a fund (13) raising event for the Brennan Center?  
 (14) **A I think so. I have to say yes. I would (15) be glad to. If I didn't, I would be glad to.**  
 (16) Q And the Brennan Center accepts money from (17) corporations and unions in unlimited amounts, insofar (18) as the corporations or unions are willing to (19) contribute, does it not?  
 (20) **A I would imagine so, yes.**  
 (21) MR. WITTEN: Don't speculate.  
 (22) THE WITNESS: Okay. Yes.

Page 74

(1) BY MR. ABRAMS:  
 (2) Q At such fund raising events, do (3) contributors come and speak to you?  
 (4) **A Yes.**  
 (5) MR. WITTEN: Contributors to the Brennan (6) Center?  
 (7) MR. ABRAMS: Contributors to the Brennan (8) Center.  
 (9) THE WITNESS: Yes.  
 (10) BY MR. ABRAMS:  
 (11) Q Do you think, Senator, that there was any (12) issue at all about the appearance of corruption in (13) your - let me finish the question - in your (14) appearing at a fund raiser for an entity which was (15) very actively taking positions before Congress about (16) campaign finance reform and had represented you on a (17) free basis on at least one occasion at that point? Was (18) there any issue at all in your mind?  
 (19) **A No. And I think it's important to add (20) that I have appeared in fund raisers for the Citizens (21) Against Government Waste, Common Cause. I'm sure a (22) number of other organizations which are 501(c)(3)s, I**

Page 75

(1) **believe is their designation. And I'm pleased and (2) proud to have the opportunity to support them, because (3) they are committed to the same effort that we are to (4) reform.**  
 (5) Q And the fact that corporations and unions (6) make contributions to the Brennan Center, that doesn't (7) change the equation in your mind at all about the (8) propriety of your behavior?  
 (9) **A No, because organizations under that (10) designation by law are allowed, and under campaign (11) finance reform law are allowed, to accept union and (12) corporate contributions.**  
 (13) Q I'm not asking you now what the

was.  
 (14) **A Yes.**  
 (15) Q I really want to explore your state of (16) mind about it. And my question was: did you have any (17) feeling at all that it was questionable or dubious (18) about whether you ought to attend such an event, lend (19) your name and presence to such an event, (20) notwithstanding that the organization that you were (21) assisting had, in turn, assisted you?  
 (22) **A Not in the slightest. I support Citizens**

Page 76

(1) **Against Government Waste. They put out a thing called (2) a Pig Book every year. I go help - try to help raise (3) money for them. They supply me with information about (4) wasteful pork barrel spending. I send that (5) information to my constituents. I am proud and (6) pleased to support them in their efforts, because (7) their research is marvelous.**  
 (8) Q Do they also accept money from (9) corporations?  
 (10) **A I'm sure they do.**  
 (11) Q And they are at least free to accept money (12) in unlimited amounts from corporations, right?  
 (13) **A I'm sure. And maybe I could add again (14) while you're -**  
 (15) Q Sure.  
 (16) **A - considering the next question, they are (17) chartered under the law and the U.S. Tax Code, as I (18) understand it, to be able to operate with funds, (19) etcetera. Perhaps it might be nice to ban those kinds (20) of activities as well, but they would be clearly (21) unconstitutional to do so, because they are (22) organizations that also are organized the same way**

Page 77

(1) **they are, which are some of the very egregious (2) campaign contributors in political campaigns.**  
 (3) Q Sorry. I didn't follow the very last (4) statement, Senator McCain.  
 (5) MR. WITTEN: It wasn't answering any (6) question, in any event.  
 (7) MR. ABRAMS: But it has prompted some, (8) so-  
 (9) (Laughter.)  
 (10) MR. WITTEN: As it undoubtedly would.  
 (11) (Laughter.)  
 (12) I think he has learned his lesson.  
 (13) (Laughter.)  
 (14) MR. ABRAMS: Why don't you play back the (15) last answer, please.  
 (16) (Whereupon, the proceedings in the (17) foregoing matter went off the record (18) briefly while the previous answer was (19) played back by the Court

Reinter.)  
 (20) BY MR. ABRAMS:  
 (21) Q I still don't.  
 (22) **A Well, let me try again.**

Page 78

(1) Q What were you saying about -  
 (2) **A Let me try and help you out.**  
 (3) Q Yes. Could you focus -  
 (4) **A That's all right.**  
 (5) Q No, let me ask it first.  
 (6) **A Yes, sure.**  
 (7) Q Could you focus on the very last part of (8) what you were saying about - after you said that it (9) might be unconstitutional, and then you talked about (10) egregious contributors who have done some very bad (11) things.  
 (12) **A No, I didn't say who had done very bad (13) things. I said that there are organizations that (14) operate as 501(c)(3)s that are heavily engaged in (15) American political campaigns - sometimes, in my view, (16) in violation, at least the spirit, of the campaign (17) finance laws of 1907 and 1947, which limited - and (18) '74 - which limited the amount of a contribution and (19) banned corporate and union contributions. But I - we (20) have not tried to in any way abolish or impair them (21) for constitutional reasons.**  
 (22) Q Isn't it your understanding, Senator, that

Page 79

(1) the Wellstone Amendment does, in fact, limit what (2) certain corporations that comment on public affairs (3) can do by way of financing advertisements on (4) television?  
 (5) **A The Wellstone Amendment - help me out.**  
 (6) Q It's only if you know. This is not a (7) quiz.  
 (8) **A No, I don't - I don't think so. I (9) think-**  
 (10) Q It's only if you know.  
 (11) **A I think the Wellstone Amendment - I'm (12) drawing a blank.**  
 (13) MR. WITTEN: Then just say you don't know.  
 (14) THE WITNESS: Yes, I know - I don't know (15) if it does that. I remember it was an amendment that (16) I voted against and lost.  
 (17) I think it - my staff tells me it applied (18) to 501(c)(4)s and 527s, which I think are a different (19) category than 501(c)(3)s, as I recall it.  
 (20) BY MR. ABRAMS:  
 (21) Q Is it your understanding, if you have (22) one-

Page 80

(1) **A Yes.**  
 (2) Q - is it your understanding that a (3) 501(c)(4) organization, which com-

ments on public (4) events and is organized in a corporate form, is (5) limited under the Bipartisan Campaign Reform Act in (6) its ability to pay for ads on television within 60 (7) days of an election?

(8) MR. WITTEN: Is that your whole question?

(9) MR. ABRAMS: Yes.

(10) MR. WITTEN: I object to the form of the (11) question.

(12) THE WITNESS: Let me see if I can - if I (13) could - Mr. Abrams, if you wouldn't mind, I would (14) like to be able to have my staff look that up, because (15) I am not sure - I've just forgotten - on the (16) Wellstone Amendment that if - I think that's what you (17) are referring to. And maybe I could provide that for (18) the record before we finish or just after - when we (19) take a break, if that would be okay.

(20) MR. ABRAMS: Sure. Sure.

(21) THE WITNESS: See if you can find that for (22) me, would you, please?

Page 81

(1) BY MR. ABRAMS:

(2) Q Returning to the issue of possible (3) appearance questions, you received over \$50,000 in (4) contributions from PACs and individual donors in the (5) casino gambling industry during the 2000 campaign, did (6) you not?

(7) A I don't know. I will accept that I did. (8) I think there was \$14 million that we raised during (9) the campaign, if I remember that right. So I don't (10) think I would remember \$50,000.

(11) Q One of the documents that your staff, or (12) whoever works for you, turned over to us is a clipping (13) from The Washington Times, which is undated, of which (14) I'd like to show you. We'll mark it as Exhibit 9.

(15) (Whereupon, the above-referred (16) to document was marked as (17) McCain Deposition Exhibit No. 9 (18) for identification.)

(19) Why don't you read it to yourself first.

(20) MR. WITTEN: Well, did you say the date of (21) this? I must have missed it.

(22) MR. ABRAMS: No, I don't have a date.

Page 82

(1) This is the way it was given to us.

(2) THE WITNESS: Well, you know, Mr. Abrams, (3) we can go into the details of every one of these, and (4) I don't mind doing it at all. But what this is about (5) - and I probably should have mentioned it - this (6) isn't gaming and casinos per se. It's got to do with (7) Indian gaming and casinos that I received (8) contributions from.

(9) Some years ago there was a deci-

sion by the (10) United States Supreme Court called the Cabazon (11) Decision, which basically said that states have to (12) allow gaming on Indian reservations that are (13) comparable to that allowed on - in the states (14) themselves.

(15) I won't go into all of the details of (16) their decision. But what it triggered was an effort (17) led by Senator Inouye and myself, who was then the (18) chairman and I was the ranking member of the Indian (19) Affairs Committee, to propose legislation which was (20) called the Indian Gaming Regulatory Act.

(21) And what this would do is would allow (22) compacts to be entered into between the states and the

Page 83

(1) tribes for gaming to take place on Indian (2) reservations. I don't think there's any doubt that (3) Indian tribes, including those that engage in gaming, (4) were glad that we were able to codify a decision by (5) the United States Supreme Court that would allow (6) gaming in - on their Indian reservations. (7) If we hadn't passed that law, then the (8) gaming would have been completely unchecked and (9) completely unregulated. That's why it was imperative (10) for Senator Inouye and I to pass this legislation. I (11) don't think there is any doubt that those Native (12) Americans, after the bill was passed, have been (13) grateful for my interest not only in that issue but my (14) advocacy for Native Americans throughout this country, (15) including in my home state.

(16) I was very pleased and proud to receive (17) the endorsement of every Indian tribe, all 27 Indian (18) tribes in my state, when I ran for reelection. And, (19) of course, they have given me campaign contributions, (20) hard money contributions, and I am very grateful for (21) them.

(22) And time after time, since it was

Page 84

(1) Xmillions of dollars contributed to my campaign, we (2) will find different organizations, different groups, (3) different kinds of Americans - veterans have (4) contributed to my campaign, and I have tried to help (5) veterans, and I am proud to have received their (6) endorsement and support.

(7) All different kinds of groups of Americans (8) have supported me. I'm proud of that, and I am most (9) proud of receiving the support, both voting-wise and (10) financially, from the Native Americans of this (11) country.

(12) BY MR. ABRAMS:

(13) Q Now, in circumstances, Senator McCain, (14) when you have received hard money contributions, and (15) in

which you, on the merits, have determined to (16) support legislative action which the individuals who (17) have contributed to you are in favor of, do you (18) consider on that basis alone any problem of (19) appearances?

(20) A Of course. We are all tainted by it. And (21) because of this explosion of soft money and this (22) incredible degeneration and violation - emasculation

Page 85

(1) of laws passed in 1907 and 1947 and 1974, every one of (2) us are tainted by it, which is why we had to get it (3) under control, and not eliminate, but reduce that (4) taint of corruption or interest - special interest (5) influence in the way that we do business.

(6) Q My question, Senator McCain, is, if you (7) can, putting aside all the problems that you sought to (8) identify about soft money, focusing for the moment now (9) only on hard money -

(10) A I can't do that, Mr. Abrams -

(11) Q You can't?

(12) A - because we have a system now where the (13) average American doesn't know the difference between (14) hard money and soft money. My average citizen - if (15) I walked down the street in Arizona and said, "Do you (16) know what hard money is?" they wouldn't know. "Do you (17) know what soft money is?" No, they don't know. But (18) they know that our system is out of control, and they (19) believe they're not represented here, which is why (20) they wanted me to reform the campaign finance system.

(21) Q Well, let us assume, you and I, for the (22) moment that your side wins every part of this

Page 86

(1) litigation, that the law takes effect -

(2) MR. WITTEN: Are you willing to stipulate?

(3) (Laughter.)

(4) BY MR. ABRAMS:

(5) Q - that the law takes effect fully, as you (6) have drafted it, with regulations satisfactory to you (7) from the Federal Election Commission; and that then (8) there are circumstances in which individuals give you (9) hard money contributions, as permitted by law, and (10) you, in good faith, make the decision that you should (11) vote in favor or sponsor certain legislation which (12) they are in favor of, and which will benefit them.

(13) My question is: In those circumstances, (14) would you believe it appropriate for an informed (15) citizen to say there is something about the appear-

ance (16) of a Senator receiving \$2,000, \$4,000, \$8,000 in hard (17) money, the only money allowed after the new law, and (18) then voting in favor of something that the constituent (19) wants, which leads me to think that there is an (20) appearance here – an appearance – of impropriety. (21) Would you understand someone saying that?  
(22) **A Sure. Sure. And I would understand**

Page 87

(1) someone saying that a UFO landed at Roswell, New (2) Mexico, some years ago. But what I believe is, (3) because I have been in the Congress for 20 years now, (4) that before the soft money spigot was turned on – and (5) I ran first in 1982 – it wasn't really until (6) 1988/1989 that there was a much greater trust and (7) confidence and belief on the part of the American (8) people that they were legitimately recognized – (9) represented.

(10) So I believe that as the soft money has (11) increased, understandably – understandably, a million (12) dollar contribution while a pharmaceutical drug bill (13) is up before the Congress – understandably – now, if (14) the pharmaceutical company had been more prohibitive, (15) and their employees had been restricted to \$2,000, no, (16) I don't think my fellow citizens would have been as (17) concerned as they are today. Absolutely not.

(18) So will there always be – as long as (19) there's money in politics, and we have tried to return (20) to what it was when I first ran and first served, will (21) there always be some taint? Yes. But it won't be (22) what it is today, nor will the unhappiness and

Page 88

(1) dissatisfaction of the American people be manifested, (2) and I can show you polling data that shows you, as the (3) soft money rises, the dissatisfaction and anger and (4) frustration rises, because the American people are (5) smart. They see what's going on. They see what's (6) happening here, and they feel their voice being (7) crowded out.

(8) MR. WITTEN: Floyd, your question sounded (9) like it was at or near the end of a line of (10) questioning. We've been going a couple of hours, so (11) can we take a break when it's convenient for you?

(12) MR. ABRAMS: Sure. Let's do it now.

(13) (Whereupon, at 12:52 p.m., the (14) proceedings in the foregoing matter

went (15) off the record for a lunch break.)

Page 89

(1) A-F-T-E-R-N-O-O-N-S-E-S-I-O-N

(2) (1:48 p.m.)

(3) BY MR. ABRAMS:

(4) Q Senator McCain, you realize that you're (5) still under oath, sir?

(6) **A Yes.**

(7) Q I asked you some questions earlier in the (8) day about your assertion on Meet the Press about the (9) FEC being a corrupt institution. I just want to make (10) sure of two things about that. You're not saying that (11) the FEC has been paid off by somebody to act in some (12) improper fashion, are you?

(13) **A No, I believe –**

(14) MR. WITTEN: Objection. Asked and (15) answered.

(16) THE WITNESS: What's that?

(17) MR. WITTEN: I'm objecting that he asked (18) that question before, and you've answered it. But you (19) can go ahead and answer it.

(20) THE WITNESS: I believe that anyone who (21) willfully carries out their duties in direct violation (22) and contravention of the law fits that description.

Page 90

(1) BY MR. ABRAMS:

(2) Q As being corrupt?

(3) **A Absolutely.**

(4) Q So if a statute is unconstitutional, would (5) that–

(6) **A No, I believe that the regulations that (7) they are writing are clearly in violation of both the (8) letter and the intent of the law, and we intend to (9) prove that in court.**

(10) Q And if you lose in court, will they become (11) not corrupt, then?

(12) **A No, because then they will be in violation (13) of the intent of the law, because we wrote it. I was (14) one of the authors of it, and I know what they're (15) doing is in total violation of the intent of the law.**

(16) Q And do you believe that you and your (17) colleagues who were the sponsors of the legislation (18) are the people best placed to tell us what the law (19) means?

(20) **A I don't know anyone better than the (21) authors of a law to describe the intent of it.**

(22) Q How about the language?

Page 91

(1) **A And the language.**

(2) Q And you're not suggesting, are you, that (3) the FEC received any soft money?

(4) **A No.**

(5) Q On the issue of appearance of corruption (6) that we've spent some time on now, isn't it true that (7) the more

people say that there is corruption, even if (8) there isn't, the more people will think there is an (9) appearance of corruption?

(10) **A Yes. And the more people who see this (11) system, the more people will say there's an (12) appearance.**

(13) Q All right. I want to turn now –

(14) **A More people have said that there's an (15) appearance.**

(16) Q I want to turn now to the subject of issue (17) advocacy. You have used the term on occasion "sham (18) issue ads," have you not?

(19) **A Yes.**

(20) Q And can you tell me what you mean by a (21) "sham issue ad"?

(22) **A The ad that attacks an individual and is**

Page 92

(1) clearly for the purpose of electing or defeating a (2) candidate in the name of an issue ad.

(3) Q And is that something that you can tell, (4) Senator McCain, by simply looking at an ad, or is it (5) – does one need more information in order to know the (6) intention of –

(7) **A Ninety-nine times out of –**

(8) Q Okay. Just –

(9) **A I'm sorry.**

(10) Q – the intention of the party who put the (11) ad on?

(12) **A Ninety-nine times out of a hundred, you (13) can tell just by looking at the ad. Any person can. (14) I cite my own personal experience to authenticate (15) that. There are times where there is a gray area. (16) That's why we set up objective criteria, so that there (17) would not be some – somebody would have to go through (18) every ad and look at them to determine whether they (19) are sham or not sham.**

(20) Q And the objective criteria lead to a (21) situation, does it not, where you don't look at all at (22) factors such as intent, other than as revealed in the

Page 93

(1) ad, correct?

(2) **A Yes.**

(3) Q Are there ads that you've seen run within (4) 60 days of federal elections which contain advocacy (5) with respect to issues, and which you have concluded (6) were put on for the purpose of electing someone?

(7) MR. WITTEN: Excuse me. Are you talking (8) about ads – because you didn't specify – that are (9) broadcast and that mention candidates?

(10) MR. ABRAMS: Yes.

(11) THE WITNESS: Yes. Their broadcasts (12) mention candidates, which is what applies here. No, (13) but I'm sure

you're going to show me some.  
 (14) BY MR. ABRAMS:  
 (15) Q I will show you one now. Let me say that (16) what I'm going to show you is so-called story boards (17) prepared by the Brennan Center. Have you seen any of (18) those before?  
 (19) A No.  
 (20) Q They purport to have -  
 (21) A I may have seen copies. I don't think so. (22) I -

Page 94

(1) Q But they purport to have a whole language (2) of ads. And according to the Brennan Center, they (3) take - they are based on pictures taken from outer (4) space every three, three and a half seconds. And so, (5) in theory, it picks up all the words and just about (6) every frame on the ad. I'll show you them, and then (7) you can judge for yourself.  
 (8) Let me mark as Exhibit 10 an advertisement (9) of the Sierra Club referring to Senator McConnell.  
 (10) (Whereupon, the above-referred (11) to document was marked as (12) McCain Deposition Exhibit (13) No.10 for identification.)  
 (14) First, have you ever seen this, Senator (15) McCain?  
 (16) A I have not.  
 (17) Q I ask you, for our purposes, to assume (18) that this ad was broadcast in Arizona in January of (19) 2000.  
 (20) A January of 2000?  
 (21) Q Yes.  
 (22) A Then, McCain-Feingold would not apply to

Page 95

(1) this ad.  
 (2) Q Well, why is that, Senator?  
 (3) A Because it's not within 30 or 60 days from (4) the time of an election, 30 days of the primary and 60 (5) days -  
 (6) Q Isn't it 30 days before the New Hampshire (7) primary? At least until I tell you when it ran in (8) January.  
 (9) A Did it run in New Hampshire?  
 (10) Q It ran in Arizona.  
 (11) A Well, then, how would it apply to the New (12) Hampshire primary?  
 (13) Q Well, I shouldn't give testimony here (14) today.  
 (15) A Yes, sorry.  
 (16) Q Is it your understanding that the law, as (17) you drafted it, only applies within the particular (18) state in which a primary is being held, with respect (19) to a federal election for President?  
 (20) MR. WITTEN: For this question and all (21) others, the Senator is going to answer based on his (22) own personal opinion. For speech and debate clause

Page 96

(1) reasons, he's not purporting to testify

as to the (2) intent of the entire United States Congress and the (3) President who signed the -  
 (4) MR. ABRAMS: Sure.  
 (5) MR. WITTEN: If you don't mind, I won't (6) bother saying that again.  
 (7) MR. ABRAMS: Sure.  
 (8) BY MR. ABRAMS:  
 (9) Q Why don't we move right ahead to the text (10) of the ad, Senator. I simply ask you to assume that (11) an ad with these words, and with pictures such as (12) you've seen -  
 (13) A Let me just point out if it was in January (14) of - what year?  
 (15) Q Of 2000.  
 (16) A Then, it would be 60 days prior to the (17) primary, because the primary in Arizona was in March, (18) so it did - it is - it does fall under McCain- (19) Feingold.  
 (20) Q Why don't we assume -  
 (21) A We had a March primary in the -  
 (22) Q Well, why don't we just assume for our

Page 97

(1) purposes-  
 (2) MR. WITTEN: Thirty days for a primary.  
 (3) THE WITNESS: Thirty days for a (4) Presidential primary. Okay. Anyway -  
 (5) BY MR. ABRAMS:  
 (6) Q Right. Well, why don't we just assume for (7) our purposes now that this ad ran, that it ran in (8) Arizona, that it had these words, and then at least it (9) ran during your Presidential bid in 2000, and put (10) aside for the moment what the new statute says. I (11) want to understand how I can tell a sham issue ad from (12) a non-sham issue ad. As you look at this, and simply (13) accepting my representation that it ran in January of (14) 2000, does this read to you as a sham issue ad?  
 (15) A Yes.  
 (16) Q And please tell me why.  
 (17) A Because it meets the objective criteria of (18) mentioning my name or showing my likeness.  
 (19) Q Well, I'd like to take you back to the (20) time period before we had the Bipartisan Campaign (21) Reform Act, right? So I want to ask you not whether (22) it would violate the statute.

Page 98

(1) A I see.  
 (2) Q I want to ask you if, in your personal (3) view, this is the sort of ad that you would consider (4) to be a sham issue ad.  
 (5) A Well, if we want to have a philosophical (6) discussion that has nothing to do with the law, I (7) would be glad to do that, although I'm not sure

how (8) that helps the Supreme Court decide the (9) constitutionality of the law. Of course, I think it's (10) an attack ad, because I don't think I attacked the (11) President's plans to protect our national forests and (12) to create the Grand Canyon.  
 (13) But, frankly, I think that's irrelevant (14) because we passed a law, so that we wouldn't have to (15) make subjective judgments, so we would have an (16) objective set of criteria.  
 (17) Q But the question in this case -  
 (18) A Yes.  
 (19) Q - is whether the law is constitutional, (20) and we want to furnish the courts with as much (21) relevant information as we can about that. So you are (22) here today. You are terribly knowledgeable. You

Page 99

(1) were, as you say, the chief sponsor, the drafter, of (2) the law. And I want to ask you some questions -  
 (3) A Sure.  
 (4) Q - which deal not with what the new law (5) does, but with the underlying situation that existed (6) before we had a law. I want to know if in - as of (7) January 2000, if you had seen this -  
 (8) A I did not see this.  
 (9) Q - you would have thought that this ad is (10) what you had called a sham issue ad.  
 (11) A I probably would, because of, you know, so (12) why is he attacking the President's plans to protect (13) our national forests and to create the Grand Canyon. (14) The Grand Canyon was created -  
 (15) Q The Grand Canyon National Monument.  
 (16) A Oh. Well, create the Grand Canyon (17) National Monument. I don't think I "attacked" the (18) President's position on that. But I - I want to add, (19) in the strongest terms, when we're talking about (20) constitutionality or non-constitutionality, or what's (21) a sham ad or what's not a sham ad, Senator Feingold (22) and I were looking at the real world.

Page 100

(1) The real world is that the overwhelming (2) majority of ads that we see running today are attack (3) ads that are called issue ads, which are direct, (4) blatant attacks on the candidates. The airwaves in (5) South Dakota today cannot turn on a television set (6) without seeing an attack ad against either John Koon (7) or Tim Johnson.  
 (8) We don't think that's right. And the (9) reason why we passed this law is not because there may (10) be an

exception or two that there's question about. (11) But we talked to people like Congressman Adam Schiff, (12) who said, "I used to come home in the evening and turn (13) on the television to see which attack ads was being on (14) my behalf and was running against me - attack ads (15) were being against me today." (16) Candidate after candidate has said, "We (17) lost control of our campaigns." Republican National (18) Committee buys these ads. The Sierra Club, whoever (19) they are, they buy these ads attacking my opponent, (20) supporting me, or vice versa.

(21) And that's what we're trying to take care (22) of. We're not too worried about the occasional ad

Page 101

(1) that there may be some question about, many of which (2) you will show me.

(3) Q Are you worried about -

(4) A Because we're talking about political - (5) what has happened to American politics because of this (6) fountain of soft money, which is now financing these (7) attack ads.

(8) Q Is it your understanding that ads that (9) attack individuals who run for office are for that (10) reason not to be protected in some way?

(11) A Not at all.

(12) Q In any way by the law?

(13) A Not at all. I just believe that the - If (14) they want to run the attack ad, they are absolutely (15) free to do so. They should pay for it with hard (16) money. In other words, if my ads and my funding is (17) hard money from my campaign, then anybody who comes (18) into my campaign and tries to affect the voters, then (19) they should be playing by the same rules which are (20) financed with hard money.

(21) If the Republican National Committee wants (22) to attack Mr. Johnson all day and all night, that's

Page 102

(1) fine with me. But their donation shouldn't be a (2) million dollars from Merck.

(3) Q And if the Sierra Club wants to do an (4) ad-

(5) A Yes.

(6) Q - that deals with their views about your (7) views about conservation, are you telling us that if (8) that ad is an attack ad on you, that they have to use (9) hard money?

(10) A Absolutely. Just like if I want to attack (11) the Sierra Club, a candidate that's sponsored by the (12) Sierra Club, then I should only be able

attack them (13) using hard money as well. And that's what I'm (14) restrained to doing when I am a candidate.

(15) Q And what is it about this ad, Senator (16) McCain, that makes it an attack ad?

(17) A Because I don't believe I was attacking (18) the President's plans to protect our national forests (19) and to create the Grand Canyon National Monument.

(20) Q Did you support President Clinton's plan (21) in that respect?

(22) A I did not - I did partially. I said, "I

Page 103

(1) believe that these monuments should be created, but I (2) believe that you should have local and state input (3) into this decision." So I agreed to a large degree (4) with the outcome, but I didn't agree with the process (5) that he went through. So I wasn't "attacking" the (6) President's plan. I said, "I think the ranchers and (7) the state legislators and the governor and everybody (8) else ought to have a say in what happens to our (9) state."

(10) Q And is it because this ad is, in your (11) view, inaccurate in portraying your views? Is that (12) what makes it an attack ad for you?

(13) A Probably assume that. But I would also (14) say that if they mention my name, despite this (15) objective criteria, or use my face, then they can say (16) whatever they want. They can praise me - they can (17) praise me for my support of the Grand Canyon, which I (18) have been called by many a great supporter of, and it (19) still would not be, in my view - should be funded by (20) soft money, because it is entering into the campaign. (21) It helps my candidacy, not just hurts it - or not (22) hurts it, helps it. It should be financed by hard

Page 104

(1) money.

(2) Q But suppose it is entirely neutral about (3) who should be elected, but mentions your name, are you (4) telling us that then, too, that you believe that it is (5) a good idea to have legislation that requires only (6) hard money paying for the ad within 60 days of an (7) election?

(8) A We had to set up objective criteria, and (9) that's addressing the real world situation. One out (10) of 10,000 ads mentions a candidate's name 30 or 60 (11) days prior, it doesn't take one side either supporting (12) or against a candidate. So -

(13) Q Well, we -

(14) - that, unfortunately, for only 60 days (15) prior to a general election, and only 30 days prior to (16) the primary, would then, again, be in the eye of the (17) beholder. You and may have a disagreement whether (18) it is an attack or a support ad. That's why we had to (19) set up the objective criteria.

(20) Q And the objective criteria apply, don't (21) they, whatever the ad says, so long as it has the name (22) and it's within 60 days.

Page 105

(1) A Yes.

(2) MR. WITTEN: From broadcast.

(3) THE WITNESS: Yes, broadcast. And let me (4) remind you again that the reason why we did this was (5) because there is a loophole been created which is in (6) violation of the 1907 and 1947 and 1974 laws, which (7) ban corporate and union contributions, and '74 put a (8) limit on individual contributions.

(9) So soft money, in violation of those laws, (10) because of FEC decisions, not because of a change in (11) laws on the part of the Congress, has allowed the (12) spigot to be turned on.

(13) BY MR. ABRAMS:

(14) Q Do you understand that a union is, after (15) the new law, allowed to do an ad with its own money (16) relating to some issue which does not mention a (17) Presidential candidate, and to put it on as often as (18) they want?

(19) A As is a corporation.

(20) Q As is a corporation, correct?

(21) A Sure. As long as they're not part of the (22) political campaign, sure.

Page 106

(1) Q And it's only during the political (2) campaign that their speech rights are diminished, (3) correct?

(4) MR. WITTEN: Object to the - sorry. (5) You've got to let me do something here.

(6) (Laughter.)

(7) I'm going to object to that - to the form (8) of that question. Be fair, Floyd.

(9) THE WITNESS: I don't think that we are (10) diminishing their free speech rights. I believe that (11) we are making them play under the same rules that the (12) candidates are required to play under.

(13) BY MR. ABRAMS:

(14) Q Now, I asked you some questions in the (15) morning, and I don't know if you had a chance to look (16) at it at lunch. I know you were dealing with Iraq and (17) other less important things than this case. But I (18) asked you about the Wellstone Amendment.

(19) A Yes.

(20) Q Do you remember?

(21) A Yes.

(22) Q And what I was asking you then, and I'm

Page 107

(1) simply going to ask you now, if you have any more (2) information. If it isn't true that under the (3) Wellstone Amendment organizations which are (4) 501(c)(4)s-

(5) A Yes.

(6) Q - and that do comment on public events (7) are subject to all the limitations of the new law.

(8) A Yes. 501(c)(4)s, yes.

(9) Q That's what I just said.

(10) A Yes, yes.

(11) Q And so like other corporations, then, it (12) would be a crime, would it not, for them to spend (13) their money putting ads on television within 60 days (14) of an election which refer, by name or picture, to a (15) candidate for the Presidency?

(16) MR. WITTEN: In the district.

(17) THE WITNESS: Yes. And it would not be in (18) violation of the law for them to use the same (19) restrictions on the raising of those funds to fund (20) those advertisements that the candidate does. So, you (21) know, somehow we have created the appearance, maybe (22) intentionally or unintentionally, we are banning this

Page 108

(1) activity or not banning this activity. As long as (2) they raise their money the same way that the (3) candidates do - hard money - they are free to run (4) all they want.

(5) BY MR. ABRAMS:

(6) Q Well, are you saying that the Sierra Club, (7) assuming it is a 501(c)(4), cannot use corporate (8) money-

(9) A Right.

(10) Q - to put an ad on within 60 days of the (11) Presidential election mentioning the name of the (12) candidate, and in the requisite geographical area?

(13) A Yes. But they can get money from a (14) corporate PAC and fund these ads the same way that the (15) candidate gets the money from the corporate PAC.

(16) Q But they can't get it from the (17) corporation, right? They can't get it from a union, (18) correct?

(19) A Right.

(20) Q And it is a crime if they put an ad on (21) television, which they're paying for -

(22) A Yes.

Page 109

(1) Q - which refers to the candidate by name, (2) within 60 days, and the appro-

prate geographic area, (3) correct?

(4) A In the same way that it's a crime for a (5) candidate, himself or herself, to fund an ad that (6) mentions either his own or his opponent's name or (7) face, by using money that is not gained through hard (8) money.

(9) Q But the answer to the question is yes.

(10) A Yes.

(11) Q Let's look at another ad. Exhibit 11 is (12) an ad broadcast in Michigan.

(13) (Whereupon, the above-referred (14) to document was marked as (15) McCain Deposition Exhibit (16) No.11 for identification.)

(17) I represent to you that this ad was (18) broadcast in Michigan in October 2000. Had you (19) withdrawn from the - (20) A Yes.

(21) Q - and the nomination had already been-

(22) A Yes.

Page 110

(1) Q I want to ask you a hypothetical question (2) about this ad, precisely because this ad ran in (3) October. Do I understand correctly that if this ad (4) had run within 30 days of the Michigan primary that it (5) would have been subject to the Act?

(6) A Yes.

(7) Q And that that would be true if a 501(c)(4) (8) put it on, correct?

(9) A Yes.

(10) Q And so if a corporation had given money to (11) whatever this Michigan group was that was supporting (12) Prop1, and they had used their funds, which include (13) corporate funds, to put this ad on within 30 days of (14) the Michigan primary, that would have been a crime, (15) wouldn't it?

(16) A Yes. By the way, it failed.

(17) Q Sorry?

(18) A It lost. Prop1 lost.

(19) Q And now I want to show you a few ads from (20) the 1998 time period, and I will represent to you that (21) the three ads I'm going to - the four ads I'm going (22) to show you all did appear within 60 days of a federal

Page 111

(1) election, and I want to ask you some questions. I'll (2) mark as Exhibit 12 a document titled "AFL-CIO Union." (3) It has the number 15 on the side.

(4) (Whereupon, the above-referred (5) to document was marked as (6) McCain Deposition Exhibit (7) No.12 for identification.)

(8) As Exhibit 13, a document titled (9) "Americans for Limited Term."

(10) (Whereupon, the above-referred (11) to document was marked as (12) McCain Deposition Exhibit (13) No.13 for

identification.)

(14) Exhibit 14, a document titled "Democratic (15) State Central Committee."

(16) (Whereupon, the above-referred (17) to document was marked as (18) McCain Deposition Exhibit (19) No.14 for identification.)

(20) And a document numbered 15 titled "POL- (21) Congress."

(22) (Whereupon, the above-referred

Page 112

(1) to document was marked as (2) McCain Deposition Exhibit (3) No.15 for identification.)

(4) I should - just for your information, (5) Senator McCain, we didn't write any of these words on (6) there. They were put there by the entity that took (7) the pictures and everything.

(8) Focusing first on Exhibit 12, which states (9) that it is an AF of L ad, and I'll also tell you the (10) pictures aren't good, but this is the - this is the (11) best we got. Assume with me, if you will, that this (12) was shown within 60 days of a federal election in (13) which Congresswoman Northup sought reelection, and (14) that it was put on by the AF of L. Okay?

(15) A Yes.

(16) Q Do you view this ad -

(17) MR. WITTEN: Where was it?

(18) MR. ABRAMS: In Congresswoman Northup's (19) district.

(20) MR. WITTEN: Kentucky, then.

(21) BY MR. ABRAMS:

(22) Q Do you view this ad as a sham issue ad?

Page 113

(1) A Yes.

(2) Q Well, why is that?

(3) A It doesn't meet the objective criteria (4) that we set up for the requirement that it be treated (5) the same way that a candidate responding would be (6) treated.

(7) Q I don't want to mislead you, Senator (8) McCain. I really am not asking you now if this is - (9) if this would be covered by the new statute.

(10) A I see.

(11) Q I understand that it would be.

(12) A Yes.

(13) Q I want to understand it - if an ad like (14) this is part of the problem -

(15) A Yes, sir. And by the way, I would be glad (16) to answer your questions and make a judgment on (17) hundreds of ads, if you'd like. I'd be glad to give (18) my opinion. But the reason why we passed the law the (19) way we did, to have objective criteria, was so that (20) there wouldn't be anyone required to say this, in your (21) view, is a sham ad, or that would



not be a sham ad, (22) because we know what 99 out of - 999 out of 1,000 ads

Page 114

(1) are.

(2) They are direct attack ads that are meant (3) to influence an election. I mean, we all know that. (4) So I'm very glad and pleased to engage in this (5) academic exercise with you. Why do I think this is an (6) attack ad? Because Ms. Northup would allege, and some (7) conservative Republicans, that the tax cut actually (8) over time will stimulate the economy and increase the (9) surplus.

(10) So they are stating as a fact that the tax (11) cuts somehow harm Social Security. And that's not the (12) view of those who voted for the tax cuts. So, yes, I (13) do - my opinion is - my subjective opinion is that (14) it's an attack ad.

(15) Q Now, this ad - I'm going to ask you now (16) to assume with me that it was put on by the AF of L as (17) the information on top states it was.

(18) A But if the ad had -

(19) Q Let me finish the question.

(20) A Yes, I'm sorry.

(21) Q It does set forth, does it not, a position (22) of the AF of L about cutting Social Security and

Page 115

(1) spending the Social Security surplus?

(2) A That's their position. But they are (3) calling - telling you to call Congresswoman Northup. (4) If they were just stating their position without "call (5) Congresswoman Northup," then they could run the ad all (6) they wanted to, for as long as they wanted to, with (7) all the soft money they wanted to.

(8) Q And is it your view that the AF of L ought (9) to have the right to express its opinion in an (10) unlimited fashion, with as many ads as it wants, with (11) its own money spent, so long as it doesn't mention (12) Congresswoman Northup's name?

(13) A The subjective criteria - the objective (14) criteria is mentioning the name or show a likeness in (15) a broadcast ad.

(16) Q Is this ad an attack on Congresswoman (17) Northup?

(18) A It clearly implies that Congresswoman (19) Northup needs to be called in order to save Social (20) Security. I think Congresswoman Northup would allege (21) that she has done everything she can to save Social (22) Security, and she voted for tax cuts because she

Page 116

(1) thought it would help Social Security over time (2) because it would boost the economy. So, clearly, it (3) is a - implies that she has - by voting for tax (4) cuts, she has wiped out Social Security, which is a (5) pretty damning charge with senior citizens.

(6) Q Where does it say that she did that, (7) Senator McCain?

(8) A "Now the Republican Congress wants to (9) spend the Social Security surplus on an \$80 billion (10) election year tax cut. GOP measure uses surplus for (11) tax cut." You can only draw one conclusion, and that (12) is that Congresswoman Northup voted with the GOP for (13) tax cuts, and she did.

(14) Q In order to do that, you'd have to know (15) she was a Republican, correct?

(16) A I think most of her constituents probably (17) know what she - her party affiliation.

(18) Q But you would have to know in order to (19) read the ad the way you just did.

(20) A Mr. Abrams, she has been in office for a (21) number of terms. Her constituents know her. They (22) know her party affiliation. They probably, most of

Page 117

(1) them that are going to be voting, know her record, (2) either for or against her. I mean, I'm trying to talk (3) about the real world of politics here, which is what (4) I deal in. And this is clearly an ad, by mentioning (5) her name and connecting it with the GOP, Congress, (6) cuts, uses tax - uses surplus for tax cuts, is (7) clearly an association with her that would harm her (8) candidacy.

(9) Q Are you saying that the - either way that (10) the AF of L doesn't believe or support the notion that (11) the Social Security surplus should not be spent in (12) certain ways, and that Social Security should be (13) "saved"?

(14) A No, I believe that the AFL-CIO is free to (15) take their position on Social Security and run as many (16) ads as they want to about Social Security and how (17) important it is to their members. But when they put (18) Congresswoman Northup's name in there, they become (19) part of a campaign, and then, therefore, meet the (20) objective criteria of an ad that must be funded only (21) by hard money.

(22) Q And that would be true, wouldn't it,

Page 118

(1) whatever it said about Congresswoman Northup?

(2) A Yes.

(3) Q Okay. Let's look at the next one.

(4) A Which in the real world is usually they (5) run election - ads during election time for a purpose (6) of either electing or defeating a candidate when they (7) mention their name. I think you'll find that's the (8) case in most elections.

(9) Q How about the next one? Is that true of (10) Exhibit 13, which was put on by Americans for Limited (11) Term"?

(12) A Well, clearly, the U.S. -

(13) MR. WITTEN: Do you want to tell him what (14) the assumptions he ought to make are about -

(15) MR. ABRAMS: Oh, I've asked him to assume (16) that all of the - this and the next two ads -

(17) MR. WITTEN: Okay. Sorry.

(18) MR. ABRAMS: - were run in 1998 and were (19) run in the last 60 days of the campaign.

(20) THE WITNESS: Clearly, this is U.S. Term (21) Limits that's running this ad. They want Mr. Wu to (22) agree to sign up for term limits. According to this

Page 119

(1) ad, he has refused to do so. So, clearly, they are (2) entering into the campaign. And, again, if U.S. Term (3) Limits wants to beat up on Mr. Wu for not signing a (4) term limits pledge, they are free to do so. Use hard (5) money.

(6) BY MR. ABRAMS:

(7) Q And your view is that this is an ad (8) designed to beat up on Mr. Wu to get him to sign the (9) U.S. Term Limits pledge, correct?

(10) A Or in form voters that he has refused - (11) as it says, David Wu refused, and, therefore, affect (12) their view of him, and thereby affect their vote.

(13) Q Does this ad, in your view, Senator (14) McCain, tell the individual watching it, "Vote against (15) David Wu"?

(16) A Well, it's clearly implied there, because (17) it says he refused to - to sign a Term Limits pledge. (18) And the last thing here I see, "Tell him to sign the (19) U.S. Term Limits pledge." Clearly, that's the case. (20) And, again, I want to keep repeating over and over and (21) over again, run this ad, talk about Mr. Wu all you (22) want to, raise hard money to do it.

Page 120

(1) Before the FEC opened the loophole in (2) 1978, and then in 1988, when they opened the loophole (3) that allowed all of this stuff to happen, it didn't (4) happen. When I first ran for Congress in 1982, there (5) was no

ad like this on television.

(6) Q Senator McCain, wasn't a group like (7) Americans for Term Limits always free to raise money (8) from wherever it got it and spend it in ads like this? (9) Isn't that true? They didn't have to raise hard (10) money, did they? They could just raise money.

(11) A They didn't get -

(12) Q And put it on -

(13) A - into campaigns.

(14) Q - television.

(15) A They didn't get into campaigns like this, (16) then.

(17) Q Is this in a campaign?

(18) A They didn't get into campaigns like this (19) in the 1980s.

(20) Q Wouldn't they have been free in the (21) 1980s-

(22) A Yes.

Page 121

(1) Q - to use money from wherever they got it?

(2) A Absolutely. Until - and then they abused (3) the system.

(4) Q They could have done it by mail. They (5) could have put billboards up, correct?

(6) A They still can.

(7) Q All right. They could have put radio ads (8) on, newspaper ads.

(9) A Yes.

(10) Q Everything was possible, then, right?

(11) A Yes.

(12) Q Everything was legal, then?

(13) A Yes.

(14) Q The next ad, Exhibit 14, I really can't (15) represent to you who put it on, but I'd like you to (16) have a look at it.

(17) A All right.

(18) Q Now, assuming that this ad was put on in (19) Nevada in the last 60 days of the Senatorial campaign (20) involving Harry Reid and John Ensign in 1998, would (21) you have considered this ad to be a sham issue ad, (22) before there was any Bipartisan Campaign Reform Act?

Page 122

(1) A Sure.

(2) Q Who does it favor?

(3) A It attacks both, thereby perhaps having (4) the effect of diminishing voter turnout. It's part of (5) a campaign.

(6) Q But isn't it part of a campaign, as you (7) read it, about an issue?

(8) A No, it's part of - if it's a part - (9) about an issue, then they should stick with the issue.

(10) Q Why shouldn't they be fully permitted - (11) let me finish the question. Let me start again. Why (12) shouldn't whatever group put this on that was saying, (13) "Call Harry Reid and John En-

sign and tell them no (14) matter who goes to Washington, you want them to cut (15) your taxes; otherwise, there will be "nothing left but (16) the crumbs," why, in your view, Senator McCain, (17) shouldn't a group be absolutely free to put an ad on (18) this - saying this on any time, however it's done?

(19) A Could I say, for starters it said - ran, (20) "Democratic State Central Committee"-

(21) Q I know.

(22) A - at the top. What's that about? Who

Page 123

(1) did sponsor this? I think it's important to know. If (2) the Democrats sponsored it, maybe there's something we (3) don't know about that's going on in the State of (4) Nevada at this time. I can't make a judgment when I'm (5) just shown an ad without knowing what was going on at (6) the time, what was in part of the campaign, what was (7) - what was Harry Reid saying, what was John Ensign (8) saying.

(9) If it was put on by the Democratic State (10) Central Committee, I doubt seriously if they are (11) running an ad that doesn't hurt John Ensign, or they (12) should be fired for wasting a hell of a lot of money.

(13) So, I'm sorry, I can't comment on an ad (14) that I don't know the circumstances that prevailed at (15) the time. But I'm sure there was a reason to mention (16) the candidates' names, and they weren't associated (17) with an issue. They were associated with candidates.

(18) Q And none of these factors matter, do they, (19) under the new law?

(20) A Well, as I say, we set up objective (21) criteria because we couldn't go through lists of (22) thousands and thousands of campaign ads.

Page 124

(1) Q So it doesn't matter -

(2) A But we know what is run, and we know (3) what's running as we speak today.

(4) Q So it doesn't matter under the new law who (5) paid for the ad, correct?

(6) MR. WITTEN: Excuse me?

(7) THE WITNESS: It matters whether it was (8) hard money or not.

(9) BY MR. ABRAMS:

(10) Q Yes. I said what organization - by "who (11) paid," I mean, who put the ad on?

(12) MR. WITTEN: Objection.

(13) THE WITNESS: I really don't care who put (14) the ad on -

(15) MR. WITTEN: Excuse me.

(16) THE WITNESS: - as long as they

use hard (17) money.

(18) MR. WITTEN: The form of who put the ad on (19) does matter, of course, and you're not trying to imply (20) that it -

(21) BY MR. ABRAMS:

(22) Q It doesn't matter, does it, whether the ad

Page 125

(1) was deliberately put on at the end of a campaign?

(2) A I don't know of an ad that's not (3) deliberately put on at the end of a campaign.

(4) Q Well, you just said, Senator McCain, a (5) number of things you'd like to know in order to offer (6) us an informed judgment -

(7) A Sure.

(8) Q - about this ad.

(9) A Sure.

(10) Q Under the new law, none of those things (11) that you'd like to know are relevant, are they?

(12) MR. WITTEN: I object to the form of the (13) question. He has been trying to answer questions that (14) you have asked, which he has repeatedly told you are (15) irrelevant for purposes of the new law. But go ahead.

(16) THE WITNESS: I can only answer to you, I (17) thought the premise of our conversation was that it (18) had nothing to do with the law.

(19) BY MR. ABRAMS:

(20) Q It was. It was.

(21) A You said it has nothing to do with the (22) law, and then you're asking me a question, what it has

Page 126

(1) to do with the law. So -

(2) Q Senator McCain, I'm -

(3) A - I'm not sure I understand.

(4) Q - continuing our -

(5) A Okay.

(6) Q - conversation by taking advantage of the (7) fact that you have now given an answer which mentioned (8) a lot of different things that you'd like to know in (9) order to answer the question I asked about this (10) particular ad in 1998.

(11) A But you asked me -

(12) Q And you told me -

(13) A - to give the answer with no relation to (14) the law.

(15) Q Correct. Absolutely. I asked you to give (16) that answer without regard to anything in the new law, (17) and you did. And now I'm asking you a new question.

(18) A Okay.

(19) Q Which is prompted by your answer. And the (20) new question is: under the new law, the various (21) things that you would have wanted to know to answer (22) the last question, aren't rele-

vant at all, are they?

Page 127

(1) A No. What's relevant here is what happens (2) in American politics, as I keep going back to. And (3) what's happening in America today as we speak is that (4) the airwaves, both television and radio, are flooded (5) with negative attack ads in the guise of being issue (6) ads. Everybody knows that they are not. (7) Now, we can find an ad from time to time (8) like this one that there may be some question about. (9) What we're trying to do is stop the practices that are (10) going on which we all know are going on. I'm not (11) talking about some ethereal atmosphere. I'm talking (12) about what is going on which has harmed the practice (13) of American politics.

(14) Q And I'm asking you, Senator McCain -

(15) A Okay.

(16) Q - not why you passed the law; I'm trying (17) to understand - and I think you - I think as your (18) counsel mentioned a moment ago, I think you answered (19) this question a moment ago, but I just -

(20) A Okay.

(21) Q - want to make it clear for the record (22) here.

Page 128

(1) A Yes.

(2) Q And that is that when I asked you to (3) simply look at this piece of paper and tell us, is (4) this an attack ad, is this a sham issue ad, you said, (5) "Well, I'd have to know who put it on. I'd have to (6) know a variety of factors about it."

(7) A Right.

(8) Q And you set those forth for us. And my (9) next question, then, was: I do understand correctly, (10) don't I, that under the new law none of the things (11) that you mentioned in that answer are relevant, are (12) they?

(13) A Right. The only thing that's relevant-

(14) Q They are not, right?

(15) A The only thing that's relevant is how it (16) was funded.

(17) Q And those factors are not relevant, (18) correct?

(19) A The only relevant factor is how the ad was (20) funded. They can run anything they want to.

(21) Q Now I want to show you a few ads run in (22) the 2000 campaign.

Page 129

(1) MR. WITTEN: Are you skipping 15?

(2) MR. ABRAMS: Yes. No, I'm sorry. I (3) marked 15.

(4) BY MR. ABRAMS:

(5) Q All right. Now I will mark as Ex-

hibit 16 (6) an ad that was

(7) MR. BURCHFIELD: I'm not inviting you to (8) skip 15. I just want to know whether to - I mean, (9) seriously, we've got a U.S. Senator here.

(10) MR. ABRAMS: I will skip 15.

(11) MR. BURCHFIELD: We need to do these in-

(12) MR. ABRAMS: No, that's why I'm skipping (13) it.

(14) MR. WITTEN: Okay. Thank you.

(15) BY MR. ABRAMS:

(16) Q All right. Now, I will mark as Exhibit 16 (17) an ad that was run in the 2000 campaign. I ask you to (18) assume that it was run in Wisconsin in the last 60 (19) days prior to an election there.

(20) (Whereupon, the above-referred (21) to document was marked as (22) McCain Deposition Exhibit

Page 130

(1) No. 16 for identification.)

(2) Now, this is an ad, is it not, that under (3) the new law, if run within 60 days of the Wisconsin (4) election, would be subject to all the provisions with (5) respect to electioneering communications?

(6) MR. WITTEN: If run in Wisconsin, correct?

(7) MR. ABRAMS: Yes.

(8) THE WITNESS: Yes.

(9) BY MR. ABRAMS:

(10) Q Now I want to ask you for your personal (11) opinions about this ad without regard to the new law. (12) Do you view this ad as what you called an attack ad?

(13) A I view it as an ad on a very emotional (14) issue, which is extremely difficult. And Senators (15) Kohl and Feingold are mentioned, and Senators Kohl and (16) Feingold may say that they don't agree that they would (17) countenance such a scenario as described above, and so (18) - In the first six pages here.

(19) And it clearly infers that to them this is (20) an acceptable circumstance, and so I think it clearly (21) would be viewed as part of a campaign. And by the (22) way, one of these guys it wouldn't have applied to,

Page 131

(1) because they're not up for election at the same time. (2) So it really only applied to - McCain-Feingold only (3) applied to one of them.

(4) Q So this ad could have been run consistent (5) with the new law, and it could have mentioned the name (6) of the - in 2000 of -

(7) A Either Feingold or - I think Kohl was up. (8) I'm not sure. I don't think either one of them was.

(9) Yes, they were. I'll advise you that, in (10) 1998, the same ad ran. One of them was running.

(11) A Okay.

(12) Q And in 2000, the ad ran.

(13) A Okay.

(14) Q But for our purposes now, just assume that (15) one of them was running in 2000, right? And what (16) you've just told us is that this ad could have run on (17) limited amounts of time, funded however the National (18) Pro-Life Alliance wanted, so long as it only mentioned (19) the candidate who was not running, correct?

(20) A Yes. And any time prior to 30 days before (21) the primary, 60 days before the general election, they (22) could have run that ad attacking both of them for as

Page 132

(1) long as they wanted.

(2) Q However funded.

(3) A Yes.

(4) Q Ads like this are important, aren't they?

(5) A Important in what respect?

(6) Q Isn't it important that organizations like (7) the National Pro-Life Alliance be empowered to speak (8) to the public to express their strongly-held views (9) about partial birth abortion and to urge Senators to (10) vote in one way or the other on that issue?

(11) A Yes. And it's very important for (12) candidates to be able to express their views and (13) receive the vote of their constituents. And (14) candidates are restrained by hard money limitations (15) which have been declared constitutional by the Supreme (16) Court of the United States. So these organizations, (17) or any organization like them, should be subject to (18) the same funding restrictions.

(19) Q And assuming that the National Pro-Life (20) Alliance is a 501(c)(4) organization, do you believe (21) that speech of this sort reflected in this exhibit (22) should be made criminal for them to put on

Page 133

(1) television-

(2) A If they are - if they exceed the (3) constitutional - Supreme Court declared (4) constitutional limits on the contributions that they (5) received.

(6) Q Well, there never were any limits before, (7) were there?

(8) A No.

(9) Q You don't consider this a phony ad, do (10) you?

(11) MR. WITTEN: Object to the form.

(12) BY MR. ABRAMS:

(13) Q As you look at -

(14) MR. WITTEN: Object to the fact of the (15) question. You can answer it.  
 (16) THE WITNESS: You know, I don't know what (17) you mean by "phony." I know that - I know Herb Kohl, (18) but I know Russ Feingold much better. Russ Feingold (19) would be just as outraged as any other American if two (20) New Jersey teenagers checked into a Delaware hotel and (21) delivered and exposed their newborn baby in a (22) dumpster.

Page 134

(1) You are associating - this ad is (2) associating somehow in the minds of a viewer who has (3) seen a 30-second or a 60-second commercial with a (4) despicable act - a despicable act - having a baby (5) and putting it into a dumpster. (6) So do I believe that it's a good ad? No. (7) Why not have an ad that says, "Partial birth abortion (8) is a terrible thing. It's an awful thing to happen. (9) And I hope that - and every voter should urge all of (10) their elected representatives to outlaw partial birth (11) abortions." Why can't you do that? Why do you have (12) to have an example of teenagers who exposed a baby in (13) a dumpster that had nothing to do with partial birth (14) abortion?

(15) BY MR. ABRAMS:

(16) Q Well, aren't there some groups that, as (17) you suggested earlier, take a very passionate view-

(18) A As do I.

(19) Q - about this issue?

(20) A As do I. But I wouldn't cite an example (21) of teenagers killing a baby in a dumpster with the (22) issue of partial birth abortion, because there was no

Page 135

(1) partial birth abortion performed there. It was two (2) terrible, tragic teenagers that decided to kill a (3) baby.

(4) Q You don't believe, do you, that your views (5) as to which would be a better ad ought to be reflected (6) in law, do you?

(7) A No, I don't. But you asked me my personal (8) opinion about the ad, and I gave you my personal (9) opinion about the ad.

(10) Q I asked you if it wasn't important that (11) groups like this be able to speak out in this very (12) fashion.

(13) A Absolutely. As long as they are subject (14) to the same hard money restrictions that the candidate (15) is, because if I were Senator Feingold I would want to (16) respond to this ad. And my response would be limited (17) to the hard money contributions, while the people who (18) are running

the attack ad can use all the money they (19) want from anywhere in the world. To me, that's not a (20) level playing field.

(21) Q Well, would it make a difference to you, (22) Senator McCain, if there was a vote about to occur in

Page 136

(1) Congress with respect to banning partial birth (2) abortion?

(3) A That wouldn't bother me - that would not (4) bother me in the slightest.

(5) Q That wouldn't change -

(6) A That they would run - I still don't find (7) this a very tasteful advertisement, but that's just my (8) personal opinion. But, certainly, they could run it (9) right up until 30 days before the primary and 60 days (10) before the election.

(11) Q And you don't believe that after that that (12) they should be able to -

(13) A As long as they used hard money. As long (14) as they used hard money, I -

(15) Q Only if they use hard money.

(16) A Yes. The same way that Senator Feingold (17) would have to, because he would clearly have to (18) respond to such an ad like that. He would - clearly, (19) any candidate cannot let an advertisement like that go (20) unresponded to. So he's got to respond with \$2,000 (21) individual contributions and \$5,000 PAC contributions (22) while these people can run this ad with \$1 million

Page 137

(1) contribution.

(2) Q Think we should raise the money of money (3) that-

(4) (Laughter.)

(5) A We've been through that so many times.

(6) Q Just a few more of these.

(7) A Sure.

(8) Q I'll mark now as Exhibit 17 an (9) advertisement under the heading "Alliance for Quality (10) Nursing." And this one I cannot represent to you (11) where it ran or anything, but I will ask you to (12) assume, for our purposes, that it ran within 60 days (13) of the 2000 Presidential campaign.

(14) (Whereupon, the above-referred (15) to document was marked as (16) McCain Deposition Exhibit (17) No. 17 for identification.)

(18) A Sure. My answer is probably pretty much (19) the same.

(20) Q Why don't you tell us what your answer is.

(21) A Well -

(22) MR. WITTEN: I'm sorry. Could I hear the

Page 138

(1) question?

(2) MR. ABRAMS: Would you like to hear the (3) question?

(4) (Laughter.)

(5) MR. WITTEN: I apologize for -

(6) MR. ABRAMS: I think we have a (7) relationship now -

(8) (Laughter.)

(9) - where I don't need to ask questions.

(10) THE WITNESS: I'm sorry.

(11) MR. WITTEN: In other words, when I asked (12) to hear the question, I made the mistake that there (13) was one?

(14) (Laughter.)

(15) BY MR. ABRAMS:

(16) Q The question is understood by Senator (17) McCain. Senator McCain, looking at Exhibit 17, and (18) assuming, as I've asked you to, for argument's sake, (19) that this was run within 30 days of the 2000 (20) Presidential campaign, is this what you mean by sham (21) issue advocacy?

(22) A Well, again, my personal opinion about it

Page 139

(1) is that it implies that Al Gore was responsible for (2) Medicare cuts, which is a pretty damning indictment. (3) I think if Al Gore had a chance to respond, I think (4) that he would argue that - knowing his record, that (5) he was responsible for increases in Medicare funding. (6) So it alleges something that I - that I think that at (7) least Mr. Gore would say is not true.

(8) Q Exhibit 18. It's an advertisement (9) published in Kentucky by a group with a name something (10) like Coalition - oh, here it is - by a group called (11) Coalition for the Future American Worker. And my (12) question is: assuming that this ad ran within 60 days (13) of an election involving Congresswoman Northup, is (14) this a sham issue ad?

(15) (Whereupon, the above-referred (16) to document was marked as (17) McCain Deposition Exhibit (18) No. 18 for identification.)

(19) A I think that Congresswoman Northup, as I (20) remember the issue, was the increased number of visas (21) for people who were high tech, as I remember this, is (22) what they're calling a foreign worker bill. I think

Page 140

(1) It was the H1B issue.

(2) Foreign workers don't work for a lot less. (3) Foreign workers work for the same amount of money, and (4) these - if this is the one we're talking about, this (5) was the high tech side of it when there was a shortage (6) of

high tech workers.

(7) Again, I don't think that Congresswoman (8) Northup would agree that she is in favor of bringing (9) in foreign workers who will work for less and displace (10) American workers. I don't believe that any elected (11) representative, Republican or Democrat, would try to (12) do such a thing for obvious reasons.

(13) So, again, from my subject viewpoint, (14) which has nothing to do with the law, I think that (15) Congresswoman Northup would want to respond to that ad (16) as well.

(17) Q And do you view, in your own opinion, this (18) ad as a sham issue ad?

(19) A I think she would view it as an inaccurate (20) portrayal of her position and her voting record, (21) which, therefore, then would make it an ad that was (22) not true.

Page 141

(1) Q But when you use language of "sham issue (2) ad," is this the sort of ad you had in mind?

(3) A Actually, the kind of ads that I had in (4) mind are the ones that we see 999 times out of 1,000 (5) from my viewpoint, my subjective viewpoint, and that (6) is that are just outright distortions and attacks on (7) people's character and record, which is really what is (8) being run now as we speak.

(9) Q And would it be fair to say, then, that (10) this particular ad, even if run within 60 days of (11) Congresswoman Northup's bid for reelection, is not (12) what you have in mind now as a "sham issue ad"?

(13) A It is exactly what I have in mind as a (14) sham issue ad, because if the unions or corporations (15) are paying for it, then they shouldn't be. Only PAC (16) money should be used, as the candidates are required (17) to use, to run these ads.

(18) Q And is that because it is critical of (19) Congresswoman Northup?

(20) A I think it misportrays her position. I (21) don't know Congresswoman Northup very well, but I do (22) know enough about Congresswoman Northup that she's not

Page 142

(1) interested in displacing American workers.

(2) Q And that's the reason?

(3) A Yes, it's a misportrayal of her position.

(4) MR. WITTEN: Excuse me. He has given a (5) lot of reasons in response to this line of (6) questioning.

(7) BY MR. ABRAMS:

(8) Q All right. I want to turn now to some of (9) the answers provided by you.

response to certain (10) interrogatories served by a group called the Madison (11) Center Plaintiffs. I'll give you a copy of that, (12) which we'll mark as Exhibit 19.

(13) (Whereupon, the above-referred (14) to document was marked as (15) McCain Deposition Exhibit (16) No. 19 for identification.)

(17) This is a very long document. I would (18) point you first, Senator McCain, to - well, let me (19) ask you first. Have you seen this document before?

(20) A Yes, I signed it.

(21) Q Okay.

(22) MR. WITTEN: This happens to be a copy

Page 143

(1) that isn't signed.

(2) MR. ABRAMS: Yes. I happened to have (3) brought an unsigned copy, but -

(4) MR. WITTEN: Okay. Yes.

(5) BY MR. ABRAMS:

(6) Q Let me go through this quickly. On (7) page 3, please, there are certain statements about (8) you. And specifically in the third full paragraph (9) starting, "During the 106th Congress" -

(10) A Yes.

(11) Q - it refers to certain political (12) advertisements that you appeared in in Oregon and (13) Colorado and California regarding a variety of state (14) legislative issues, correct?

(15) A Correct. I think Michigan should also be (16) in there, that ad we saw before on Proposition 1.

(17) Q And do I understand correctly that with (18) respect to all of these ads, had they run within 60 (19) days of a Presidential campaign that you were involved (20) in, it would have been within the new provisions - or (21) with respect to electioneering communications -

(22) A Yes.

Page 144

(1) Q - of the Bipartisan Campaign Reform Act, (2) correct?

(3) A Yes.

(4) Q And that's true regardless of what you (5) happen to say in these Acts?

(6) A Yes. Yes.

(7) Q Could you turn to page 26.

(8) MR. WITTEN: Can you give me a paragraph (9) number? Because my copy doesn't have page numbers.

(10) MR. ABRAMS: Oh, it's paragraph - (11) interrogatory number 25. It starts on page 25.

(12) MR. WITTEN: Page 25 or 26?

(13) MR. ABRAMS: 26, under the word (14) "Response."

(15) MR. WITTEN: Okay. I don't think you and (16) I are at the same spot.

(17) THE WITNESS: Yes, I've got it.

Yes

(18) BY MR. ABRAMS:

(19) Q The last paragraph on the page talks about (20) the intervenors, members of your staff, and all others (21) acting for them being tainted with the appearance of (22) undue influence on their judgment, to the extent that

Page 145

(1) certain things have happened, and that's what I wanted (2) to ask you about.

(3) Have you benefitted from electioneering (4) communications?

(5) A What kind of communications do you have - (6) would you -

(7) Q It's hard for me to answer. I am really (8) repeating to you the language in this document drafted (9) on your behalf where it says that - it doesn't say (10) that you did. It simply says that intervenors are (11) tainted with the appearance of undue influence on (12) their judgment, to the extent they have -

(13) A I see what you mean.

(14) Q And I'm asking you: are you someone who (15) has benefitted from electioneering communications?

(16) A You know, I can't think of anything (17) specific right now, but I - I may have. This was (18) kind of a general view of the overall situation, but (19) I - I wouldn't be surprised if I had - if someone (20) ran an ad, an outside group ran an ad supporting my (21) candidacy. I think that has probably happened.

(22) Q Have you -

Page 146

(1) A At one time or another.

(2) Q Have you granted access to any donor of (3) soft money, to the Republican party or any entity (4) which financed an electioneering communication (5) benefitting you?

(6) A Well, when I was working with Senator (7) Gramm on the Republican Senatorial Campaign Committee, (8) I don't think there's any doubt that people gave (9) money, and then that paid for electioneering (10) communications.

(11) Q Which benefitted you?

(12) A Didn't particularly benefit me, (13) particularly.

(14) Q Well, that's what I'm limiting my question (15) to.

(16) A I see. I can't think of any off hand.

(17) Q All right.

(18) A I can't think of any right now.

(19) Q Could you turn two pages later to page 28. (20) You list here a number of ethics complaints that were (21) filed against you in 1996, 1997, 1999, and 2000, and (22) you say that all of these complaints were found to

## Page 147

(1) merit no further action on their face by the Senate (2) Select Committee on Ethics; and that, as to one of (3) them, after an investigation there was a finding of no (4) violation, correct?

(5) **A Yes.**

(6) **Q** Does the mere fact that a charge was made (7) against you, even though it was unfounded and found to (8) be unfounded, leave you in any sense with diminished (9) reputation?

(10) **A** It depends on the degree of the complaint (11) and the size of the investigation and the findings. (12) And the reason why I say that, I know that, for (13) example, most of these complaints that are in this (14) page, which I don't have the number of, are by POW (15) activist families who – one of them – for example, (16) McCain had violated the Military Code of Conduct while (17) he was a prisoner of war. That's one thing. I don't (18) think anybody believes or has – gives any credence to (19) those.

(20) The case of The Keating Five, of course. (21) Of course. There was a full public investigation, (22) which I was found to be guilty of poor judgment.

## Page 148

(1) Then, of course, my constituents are going to take (2) that in consideration when they make a judgment of me.

(3) **Q** Is it true that sometimes even when false (4) things are said about you that they can hurt you?

(5) **A Yes.**

(6) **Q** And is it true that the more people say (7) false things about you, the more they can hurt you?

(8) **A Yes.**

(9) **Q** You did some ads in June 2002 in Arizona, (10) did you not, urging people in Arizona to support (11) public financing of state – public financing of the (12) state races?

(13) **A Clean Election Laws, yes.**

(14) **Q** And they were paid for by the Clean (15) Elections Institute, correct?

(16) **A I believe so.**

(17) **Q** Do you know who funded that entity?

(18) **A I do not.**

(19) **Q** Does it make any difference to you?

(20) **A No.**

(21) **Q** And if that entity was funded by corporate (22) gifts, that wouldn't make any difference, correct?

## Page 149

(1) **A Not under the old rules, no. But under (2) the new rules, it would make a difference.**

(3) **Q** And how would it make a difference under (4) the new rules, as you understood?

(5) **A** If my name or face appeared and I was up (6) for election 30 days or 60 days before the primary, (7) then obviously the new rules would apply. But since (8) it was the 2000 election, it wouldn't matter.

(9) **Q** 2002 election.

(10) **A** Excuse me, 2002 election, it wouldn't (11) matter.

(12) **Q** Now, in terms of your own standards about (13) what has the – what gives and what does not give the (14) appearance of corruption, does it make any difference (15) to you where the money came from that funded the Clean (16) Elections Institute?

(17) **A** I think, of course, it always matters to (18) some degree where the money comes from. But I feel (19) that I am perfectly willing and able to live under the (20) new rules of the Campaign Finance Reform Law.

(21) **Q** I want to designate certain –

(22) **A** Could I just make one additional comment?

## Page 150

(1) **Q** Sure.

(2) **A** I think full disclosure is very important (3) in that scenario, as to who gave that money, even if (4) it's prior to 60 days or prior to 30 days. A (5) gratuitous statement, but I think full disclosure is (6) important. That way people can make a judgment.

(7) (Whereupon, statement by Mr. Abrams, (8) lines 8 through 12, page 150 excerpted as (9) For Counsel Only.)

(10) MR. ABRAMS: I would also like to ask for (11) a five-minute break, at the end of which I will either (12) have no questions or a very few, and Mr. Burchfield (13) can begin.

(14) (Whereupon, the proceedings in the (15) foregoing matter went off the record at (16) 3:02 p.m. and went back on the record at (17) 3:14 p.m.)

(18) CROSS EXAMINATION

(19) BY MR. BURCHFIELD:

(20) **Q** Good afternoon, Senator McCain. I am (21) Bobby Burchfield, and I am one of the lawyers (22) representing the Republican National Committee and the

## Page 151

(1) RNC Plaintiffs in this case.

(2) The first thing I wanted to do was to (3) follow up on a couple of questions that Mr. Abrams had (4) asked you. You had indicated at one point, I believe, (5) that the Millionaires Provision was something that you (6) did not seek to have included in the bill. What's (7) wrong with the Millionaires Provision?

(8) **A** Nothing particularly. Our focus was the (9) soft money issue and many of the other aspects of free (10) television time for candidates and those things, (11) although it might have been helpful – we wanted to (12) focus most of our attention on the soft money.

(13) **Q** In the event a candidate who has (14) substantial personal wealth puts enough funds into his (15) own campaign to trigger the Millionaire Provision, is (16) it your view that a \$12,000 contribution is less (17) likely or more likely to corrupt that wealthy (18) candidate than it is to corrupt his opponent?

(19) **A** I don't know. I don't know the answer.

(20) **Q** Was there any –

(21) **A** The whole purpose of the Millionaires (22) Amendment was, as I understood the debate on the floor

## Page 152

(1) and the argument before it by Senator Domenici, was (2) that it would at least give the person without the (3) money, either incumbent or challenger, at least some (4) additional funds, recognizing that if you run into a (5) race such as the Corzine race in New Jersey they just (6) – there literally isn't any – anything you can (7) really do. But this was to try to address, at least (8) to some degree, that imbalance.

(9) **Q** The imbalance in this relative funding (10) between the two candidates.

(11) **A Yes.**

(12) **Q** And that amendment, I take it, was (13) intended to, to some degree, level the playing field (14) as between the two of them?

(15) **A Yes.**

(16) MR. WITTEN: Excuse me. Bobby, the same (17) point I made with Floyd, and I'll make it only once (18) during your examination. When he talks about intent, (19) he's talking about his personal opinion, and so that's (20) not representing the intent of the entire Senate or (21) the Congress or the President.

(22) MR. BURCHFIELD: Understood.

## Page 153

(1) THE WITNESS: Particularly on this (2) particular amendment, since I was not heavily involved (3) in this particular amendment.

(4) BY MR. BURCHFIELD:

(5) **Q** You answered a number of questions, (6) Senator McCain, about pork barrel spending. As a (7) historical matter, you were aware, I take it, that (8) since the beginning of the federal appropriations (9) process there have been efforts by Congressmen to (10) bring

home the bacon to their respective Congressional (11) districts and states, is that right?

(12) **A Yes.** But I've also seen, since 1982, a (13) dramatic – and I can prove this to you – increase in (14) the so-called earmarks in the appropriations process. (15) There has been a veritable explosion of earmarks in (16) the appropriations process.

(17) In 1983 when I first came to Congress, an (18) earmark was a very unusual occurrence. Now it's not (19) only an everyday occurrence, in some appropriations (20) bills the entire amount of money is earmarked without (21) any of it ever being competitively contended for.

(22) **Q** What sort of empirical analysis would you

Page 154

(1) point me to?

(2) **A** Citizens Against Government Waste, (3) National Taxpayers Union, several other organizations, (4) including – I'm not sure, but there have been many (5) analyses done.

(6) **Q** And that traces back to about 1982 when (7) you arrived in Congress?

(8) **A No,** I think it traces back to the '70s (9) when – from a time that the Watergate reforms were (10) enacted is usually where they start, around 1974 or (11) '75.

(12) **Q** So you would know, and Citizen's Against (13) Government Waste has found, that pork barrel spending (14) has gotten worse since –

(15) **A Oh,** by far.

(16) **Q** – since FECA was enacted?

(17) **A Astronomically.**

(18) **Q** Senator, you talked quite a bit about the (19) appearance of corruption, and I don't want to replot (20) all that ground, but I did have a couple of followup (21) questions on it. I take it from – obviously, given (22) my client and my personal background, my client and I

Page 155

(1) are big admirers of yours, and we think that you're (2) quite an honorable, ethical, and, frankly, heroic (3) public servant.

(4) **A Thank you.**

(5) **Q** I take it you would agree with me that the (6) press coverage on the exchange of correspondence that (7) you had with the Federal Communications Commission and (8) the Paxson matter was unfair?

(9) **A I don't like to use the word "unfair,"** (10) because then that connotes a little bit of a (11) sentiment of self-pity. I don't think it was – I (12) don't think it was totally accurate. But I didn't (13) complain.

(14) **Q** Well, it does happen – I'm sure I've (15) seen it in your experience – other than that one (16) example where the public perception, as portrayed in (17) the media, is simply inaccurate, correct?

(18) **A Absolutely.** And I would just briefly add (19) that when there is so much money washing around, then (20) those suspicions are fueled.

(21) **Q** In that situation, no soft money was (22) involved, correct?

Page 156

(1) **A No.**

(2) **Q** Everything you did, in your view, was (3) fully consistent with the law, as it existed and as it (4) will exist, come November 6th, correct?

(5) **A Yes.** But let me, again, add in the case (6) of The Keating Five, everything I did was perfectly (7) lawful, but created an appearance of impropriety, and (8) that was correct in my view – that it was wrong for (9) five Senators to meet with a regulator. But no law (10) was broken. No – you know, those are – those, The (11) Keating Five that were judged guilty of certain (12) things. It wasn't because we met with the regulators. (13) It was because of other activities.

(14) **Q** But as an elected leader, one of your (15) responsibilities is to correct public misperceptions.

(16) **A Yes.** But superior to that is to not (17) conduct myself either in the course of my duties that (18) would create an appearance of impropriety, because the (19) public is – finds it very difficult to differentiate (20) between an appearance of impropriety and actual (21) impropriety.

(22) **Q** But in an extreme instance, you would

Page 157

(1) agree with me, wouldn't you, that a public (2) misperception on an important issue should not lead – (3) should not be the basis for legislative action.

(4) **MR. WITTEN:** Object to the form of the (5) question. It's very vague.

(6) **THE WITNESS:** An objection is lodged, but (7) I think the important lesson here – in politics, (8) appearance is reality, reality is appearance. At the (9) meeting of the five, which I will never forget, with (10) the regulators, I opened my remarks by saying, (11) "Understand," and a guy took notes and it was in his (12) notes, "I want nothing be done here to favor Charlie (13) Keating. We want nothing to appear," blah, blah, (14) blah, blah. It didn't matter. There was five (15) Senators and regulators. So it – it's your (16) obligation not to convey an appearance of impropriety, (17) even if what

you're doing is not improper.

(18) **MR. BURCHFIELD:**

(19) **Q** I don't want to replot The Keating Five –

(20) **A Yes, sir.**

(21) **Q** – but I –

(22) **A I don't enjoy it myself.**

Page 158

(1) **Q** I'm sure. But I did spend some time last (2) night reading your book. Congratulations, by the way, (3) on a fine book.

(4) **A Thank you.**

(5) **Q** I take it that one of the most (6) problematical aspects of The Keating Five episode was (7) that the regulator's staff assistant did take notes (8) and indicated in those notes – and I believe it was (9) Senator DeConcini had suggested that there would be a (10) tie between favorable regulatory action and Mr. (11) Keating's willingness to make home – more home (12) mortgages available to certain segments of society. (13) Is that right?

(14) **A That's correct.**

(15) **Q** And that became the otherwise missing (16) smoking gun or quid pro quo that made the situation (17) perhaps worse than it would have been absent that, (18) correct?

(19) **A Correct.** Just to complete the record, the (20) fact that fund raisers were set up by Cranston, I (21) believe, at about the same time, other – there were (22) other activities, you know, which each one of the

Page 159

(1) others were judged improper about.

(2) **Q** I know that you've sent fund raising (3) letters on behalf of Citizens Against Government (4) Waste. I am the fortunate recipient of some of those. (5) Have you made telephone calls on behalf of Citizens (6) Against Government Waste?

(7) **A I have not.** But if they asked me to do (8) that, I'd be glad to do it.

(9) **Q** Do you see anything wrong with a federal (10) office holder calling people directly, or meeting with (11) them directly, to ask for perceived important causes (12) to be funded by those other persons?

(13) **A No.**

(14) **Q** Would you entertain the possibility, (15) Senator –

(16) **A As long as it's not tied to anything else.** (17) Go ahead.

(18) **Q** But you would entertain the possibility, (19) wouldn't you, Senator, that some people out there (20) might view a person's willingness to support one of (21) your pet causes – and I don't use "pet" in a (22) pejorative sense –

(1) A I understand.  
 (2) Q – but one of your favorite causes, as a (3) way to curry favor with you?  
 (4) A You know, you never know the motivation (5) for a donor. Some are of the purest form; others are (6) not. That's why you have to have a curb on how (7) donations are spent in an electoral process.  
 (8) Q Putting aside the electoral component, (9) presumably the groups that are spending large amounts (10) of soft money are – the theory is that the people who (11) are donating large amounts of soft money are (12) interested in gaining access or influence with office (13) holders who are not even in threatened elections. (14) Would you agree with that hypothesis?  
 (15) MR. WITTEN: I object to the form of the (16) question. I don't know what you mean when you started (17) out by saying "putting aside the electoral side of (18) this."  
 (19) MR. BURCHFIELD: Let me –  
 (20) MR. WITTEN: It seems like you –  
 (21) MR. BURCHFIELD: Let me rephrase it. Let (22) me rephrase it.

(1) BY MR. BURCHFIELD:  
 (2) Q Senator, in your experience, are some of (3) the most effective fund raisers in the Senate those (4) Senators who are least likely to face a serious (5) electoral challenge?  
 (6) A Yes.  
 (7) Q And is it also your experience that (8) political parties tend to allocate their resources (9) toward races that are competitive as opposed to those (10) such as your last race where the candidate that – (11) where their candidate wins by 70 percent?  
 (12) A Yes. Those who are the most senior and (13) most powerful, as you say, are less likely to be (14) seriously challenged. But they are generally not (15) raising money for themselves; they are raising money (16) for the "party" or someone else's campaign.  
 (17) Q But I take it it's your view that the (18) people who are donating the money at the request of (19) those powerful and non-threatened Senators are (20) donating the money to curry favor with those powerful (21) and non-threatened Senators, nevertheless.  
 (22) A I don't know what their motives are. As

(1) I say, I know that in the case of Johnny Chung that he (2) thought he was going to get – I've forgotten now what (3) he was after. Mr. Tamiraz wanted a pipeline across (4) South-

east Asia, I believe it was. Other people (5) wanted to be able to shake hands. So I don't know (6) what the – but I do know what was offered in return (7) for this money, and that is access, which average (8) citizens that don't give these large amounts of money (9) don't get.  
 (10) Q If a business executive, pursuant to your (11) request on behalf of Citizens Against Government (12) Waste, were to give \$100,000 or a million dollars to (13) Citizens Against Government Waste, doesn't that create (14) the same perception, even though that money is not (15) going into the election cycle?  
 (16) A I don't think so, because I don't think it (17) goes into a political campaign. It goes into a cause, (18) which is, in the view of most, whether they agree with (19) their conclusions or not, they're basically a non- (20) partisan effort. They are as critical as Republicans (21) as they are of Democrats. It's the practice that they (22) are condemning.

(1) So no, I think it's very different from a (2) "come to the Greenbriar and meet with all the powerful (3) committee chairmen and give them your views."  
 (4) Q I think you testified earlier that you had (5) attended a Brennan Center fund raiser, is that (6) correct?  
 (7) A I was there to receive an award, and in (8) interest of straight talk we all know that's a method (9) of raising money.  
 (10) Q I have heard that. That's probably why I (11) haven't gotten any awards.  
 (12) (Laughter.)  
 (13) A But that's why there's an awards ceremony (14) 10 different places tonight all over this town.  
 (15) Q Do you think donors came to that event and (16) contributed to that event for the opportunity to meet (17) John McCain?  
 (18) A I'm sure that some of them did. And as I (19) say, it's very hard for me to define people's motives, (20) and I'm also sure that some came because they believe (21) in the cause. But I don't know.  
 (22) Q And, similarly, in a political party fund

(1) raiser, some come to meet the office holders and some (2) come because they believe in the cause, correct?  
 (3) A I understand that. But if I hold a fund (4) raiser for research for melanoma, I'm sure that (5) someone buys a ticket there to come and meet me. So (6) if it's a worthy cause, my

name is used to attract (7) people to an event, whatever the cause is.  
 (8) When it's the case of a party fund raiser, (9) then it is strictly for partisan purposes, (10) particularly for either party and for candidates. In (11) my view, there is a very big difference.  
 (12) Q But if I'm interested – if I'm most (13) interested in buying access to you, Senator, what does (14) it matter to me whether the money is going into an (15) election, or whether it's going into Citizens Against (16) Government Waste?  
 (17) A I think it matters because you attend a (18) function and for Citizens Against Government Waste, we (19) talk about Citizens Against Government Waste. The (20) normal functions that are held, party functions, are (21) in order to allow people to have access and talk to (22) and consult with elected officials.

(1) And the money that they donate does not go (2) to a worthy cause. It goes to political parties and (3) campaigns.  
 (4) Q And you don't think those are worthy (5) causes?  
 (6) A I think they're worthy causes, and I think (7) that the contributions should be limited, as the 1974 (8) law stated.  
 (9) Q You're the Chairman of the International (10) Republican Institute, correct?  
 (11) A Yes.  
 (12) Q And I assume you intend to continue as (13) Chairman of the International Republican Institute (14) after the –  
 (15) A Yes.  
 (16) Q – after this law becomes effective.  
 (17) A Yes.  
 (18) Q It's a wonderful organization. You've (19) done some fund raising for the IRI.  
 (20) A Yes.  
 (21) Q Have you made phone solicitations for the (22) IRI?

(1) A I don't remember, but let's say that I (2) did, because I wouldn't – if somebody asked me to (3) pick up the phone and call somebody and ask them to (4) come to a dinner, I'd be glad to do it. So let's say (5) yes.  
 (6) Q Okay. Why do you think it makes sense for (7) you to make that call as opposed to the Warren Kramer, who (8) used to be the President of IRI?  
 (9) A Obviously, because of the – my ability to (10) attract people to come.  
 (11) Q Well, Mr. Kramer is a very persuasive and (12) intelligent, knowledgeable fellow. Presumably, he can (13) make a compelling pitch. The difference,



though, is (14) that you're a well-known person, a Senator, and he's (15) not, right?

(16) **A That's true.**

(17) **Q** And in light of that, Senator McCain, it (18) is the case, isn't it, that federal office holders are (19) asked to raise money for as many causes as they could (20) shake a stick at for that reason?

(21) **A Yes.**

(22) **Q** And except for the money going into the

Page 167

(1) political system, that's going to continue after (2) November 6th, right?

(3) **A You just put your finger on the (4) difference. Money doesn't go into the political (5) system.**

(6) **Q** But a donor who is going to be influenced (7) by a telephone call from John McCain may still get (8) that telephone call, and may still get the opportunity (9) to get to John McCain's cause, correct?

(10) **A Yes.**

(11) **Q** Senator, are you familiar with House (12) Concurrent Resolution 175, which was passed July 11, (13) 1958, just about the time you were graduating from the (14) U.S. Naval Academy?

(15) **A I've been made aware of it.**

(16) **Q** Let me ask the Reporter to mark a copy of (17) that. This is Exhibit 20.

(18) (Whereupon, the above-referred (19) to document was marked as (20) McCain Deposition Exhibit (21) No.20 for identification.)

(22) And I will also ask you to mark as

Page 168

(1) Exhibit 21 a page from the Senate Ethics Manual.

(2) (Whereupon, the above-referred (3) to document was marked as (4) McCain Deposition Exhibit (5) No.21 for identification.)

(6) Senator, do you now have in front of you (7) Concurrent Resolution 175?

(8) **A Yes.**

(9) **Q** And this is a statement of the Code of (10) Ethics for Government Service. I would call your (11) attention to number 9 there. Are you with me?

(12) **A Yes.**

(13) **Q** And number 9 says, "Expose corruption (14) wherever discovered." Do you see that?

(15) **A Yes.**

(16) **Q** And if you would look at the Senate Ethics (17) Manual, which is McCain Exhibit 21, I have copied (18) page 434 for you, which states in the first line of (19) that page, "The Code of Ethics for Government Service (20) passed by Concurrent Resolution on July 11, 1958, is (21) also specifically listed in the Com-

tee's Rules as (22) a source of jurisdiction for the committee under

Page 169

(1) Senate Resolution 338." Do you see that?

(2) **A Yes.**

(3) **Q** Insofar as you know, Concurrent (4) Resolution 175 has been in effect ever since you (5) entered government service, is that right?

(6) **A Yes.**

(7) **Q** Let me ask the Reporter to mark, as (8) Exhibits 22 and 23, the responses to our Request for (9) Admissions. Exhibit 22 will be the Federal Election (10) Commission's responses to the RNC's Request for (11) Admissions.

(12) (Whereupon, the above-referred (13) to document was marked as (14) McCain Deposition Exhibit (15) No.22 for identification.)

(16) And I only have one copy of those. That's (17) 22.

(18) And 23 will be the Intervenor's responses: (19) to the RNC's Request for Admissions.

(20) (Whereupon, the above-referred (21) to document was marked as (22) McCain Deposition Exhibit

Page 170

(1) No.23 for identification.)

(2) Do you have in front of you, Senator (3) McCain, Exhibit 22, which is the Federal Election (4) Commission's Request for Admissions responses?

(5) **A Yes.**

(6) **Q** Could I ask you to turn to page 2 of that (7) document and let me just read to you Request for (8) Exhibit Number 1. "Defendants cannot identify any (9) evidence that any United States Senator changed his or (10) her vote on any legislation in exchange for a donation (11) of non-federal money to that Senator's political (12) party." (13) And the response is, "Admitted with (14) respect to evidence identified to date by the Federal (15) Election Commission." (16) The second request is, "Defendants cannot (17) identify any evidence that any member of the United (18) States House of Representatives changed his or her (19) vote on any legislation in exchange for a donation of (20) non-federal money to that Congressman's political (21) party." (22) Let me stop there and just ask you: do

Page 171

(1) you know of any Senator or Congressman that changed (2) his or her vote on any legislation in exchange for a (3) donation of non-federal money -

(4) **A No.**

(5) **Q** - to a political party?

(6) **A No.**

(7) **Q** On page 6, let me ask you to look

at (8) Requests 23 and 24. "The Federal Election Commission (9) can identify no evidence that, in exchange for a (10) contribution of federal funds, the Republican National (11) Committee ever attempted to change the position of a (12) federal candidate or office holder on pending (13) legislation. The response: "Admitted." (14) Are you aware of any instance in which the (15) Republican National Committee has attempted to change (16) the position of a federal candidate or office holder (17) on pending legislation in exchange for a contribution (18) of federal funds?

(19) **A No. But I can tell you there are many (20) times where the Republican National Committee tried to (21) change my votes and other votes of other Republicans. (22) I don't know if they were in exchange for donations or**

Page 172

(1) not. I have no idea. But I know the Republican (2) National Committee constantly weighs in on legislation (3) before the Congress of the United States. You know (4) that better than I do.

(5) **Q** At least as far as you can recall in your (6) own experience, no one from the RNC has ever said, "If (7) you'll vote this way on this legislation, we will (8) provide more coordinated spending for you in your next (9) election."

(10) **A I've never known anyone to be that (11) foolish.**

(12) **Q** And you're not aware of that happening (13) with any member, correct?

(14) **A No, but I will be glad to tell you what I (15) have seen, including legislation blocked on the floor (16) of the House or Senate because of the influence of (17) both committees when it's clear, in the view of many (18) objective observers, that the public good is not being (19) served, in my opinion.**

(20) **Q** Well, I do want to come back to that.

(21) **A Sure.**

(22) **Q** And I want to talk about the tobacco

Page 173

(1) example that you gave earlier. Let's look at (2) number 24, though, before we go there. The Federal (3) Election Commission -

(4) **MR. WITTEN:** This is number 24 of the (5) Federal Election Commission's -

(6) **MR. BURCHFIELD:** Correct.

(7) **MR. WITTEN:** - responses to -

(8) **MR. BURCHFIELD:** That's correct.

(9) **MR. WITTEN:** Not the Senator's answers.

(10) **MR. BURCHFIELD:** That's correct.

(11) **BY MR. BURCHFIELD:**

(12) Q "The Federal Election Commission can (13) identify no evidence that, in exchange for a donation (14) of non-federal funds, the Republican National (15) Committee has ever attempted to change the position of (16) a federal candidate or office holder on pending (17) legislation." "Admitted." (18) Can you identify any office holder who has (19) changed – can you identify any instance of the (20) Republican National Committee attempting to change the (21) position of a federal candidate or office holder on (22) pending legislation in exchange for a donation or a

Page 174

(1) disbursement of non-federal funds?  
 (2) **A No.**  
 (3) Q I'm sorry. Was your answer no?  
 (4) **A No. No, I'm sorry.**  
 (5) Q Now, you had mentioned, Senator McCain, (6) that you were aware of instances in which the (7) Republican National Committee had taken an aggressive (8) position with regard to members on particular (9) legislation. That was done irrespective of campaign (10) funding, is that correct?  
 (11) **A I don't know. I know that there's an (12) appearance when there's a million dollar contribution (13) from Merck and millions of dollars to your last fund (14) raiser that you held, and then there is no progress on (15) a prescription drug program. There's a terrible (16) appearance there.**  
 (17) **There's a terrible appearance when the (18) Generic Drug Bill, which passes by 78 votes through (19) the Senate, is not allowed to be brought up in the (20) House shortly after a huge fund raiser with (21) multimillion dollar contributions from the (22) pharmaceutical drug companies who are opposed to the**

Page 175

(1) legislation.  
 (2) Q Well –  
 (3) **A There is an appearance problem there, and (4) that's what I am concerned about is the appearance.**  
 (5) Q Well, let me – but let's focus in on a (6) more precise issue.  
 (7) **A I just got as precise as I can get.**  
 (8) Q Well, let me be a little bit more precise.  
 (9) **A Okay.**  
 (10) Q And hopefully you can –  
 (11) **A Okay.**  
 (12) Q – be precise with me.  
 (13) **A All right.**  
 (14) Q Are you aware of any contacts – meetings, (15) telephone calls, letters, faxes, e-mails, anything – (16) from the

RNC between – after the fund raiser you just (17) referred to – to members of the House urging them to (18) act one way or another, or not act one way or another, (19) on that prescription – on that Generic Drug Bill?  
 (20) **A There is no possible way I would know (21) that. I wouldn't be contacted by the RNC, nor would (22) the RNC share with me who they contact.**

Page 176

(1) Q So you don't know if it happened or not.  
 (2) **A I know what the appearance is.**  
 (3) Q I understand that.  
 (4) **A I know what the appearance is, you see? (5) And I'm in politics, and I'm in elected office, and I (6) care about appearance. And that's what's bad here, (7) and that's what the American people think is bad here, (8) not the RNC thinks is bad, but what the American (9) people think are bad.**  
 (10) Q I understand, but I just want the record (11) to be clear, Senator, and I do understand that you (12) believe there is an appearance. What I'm trying –  
 (13) **A Not just me.**  
 (14) Q But what I'm trying to find out is if  
 (15) you're aware of any contact between the RNC and (16) members of the House in connection with the example (17) you just stated, which is stalling a generic drug bill (18) in the House.  
 (19) MR. WITTEN: Asked and answered. You can (20) answer again.  
 (21) THE WITNESS: No.  
 (22) BY MR. BURCHFIELD:

Page 177

(1) Q Senator, you've been self-identified as a (2) Republican for your entire office-holding career, (3) correct?  
 (4) **A Yes.**  
 (5) Q And I believe in your book you describe (6) yourself as a Ronald Reagan Republican.  
 (7) **A Yes. Among others.**  
 (8) Q Let me read you the following passage, if (9) I can see it. "No one had a more pronounced influence (10) on my political convictions than Ronald Reagan. I (11) embrace all of the core Reagan convictions – faith in (12) the individual, skepticism of government, free trade (13) and vigorous capitalism, anti-Communism, a strong (14) defense, robust international wisdom that championed (15) our values abroad, and, most important, his eloquently (16) stated belief in America's national greatness, his (17) trust in our historical exceptionalism, the shining (18) city on the hill invoked so often, in which I heard (19) the echoes of my great political hero Teddy (20) Roosevelt." Your words from the

book that came out (21) yesterday.

(22) **A Yes.**

Page 178

(1) Q I take it, Senator, that you would agree (2) that identifying yourself with the Republican (3) tradition, which is a choice that you made on your (4) own, correct?  
 (5) **A Yes. Yes.**  
 (6) Q That that says something about you to (7) voters out there in the public.  
 (8) **A Yes.**  
 (9) Q Political parties stand for something.  
 (10) **A Yes.**  
 (11) Q They always have, and you hope they always (12) will.  
 (13) **A Yes.**  
 (14) Q They are not just money-raising machines.  
 (15) **A They have turned into them.**  
 (16) Q Well, even today – even today the (17) identification of a Republican or a Democrat on the (18) ballot will say something about a candidate, won't it?  
 (19) **A Yes.**  
 (20) Q You've had colleagues who have switched (21) parties on the stated ground that their ideals had (22) become more closely aligned to the other party than

Page 179

(1) the one that they were currently a member of, correct?  
 (2) **A Yes.**  
 (3) Q And you don't have any reason, at face (4) value, to question that, do you?  
 (5) **A Generally, no.**  
 (6) (Laughter.)  
 (7) Being in the majority party I'm sure plays (8) no role in those calculations.  
 (9) Q Well, in many instances, we would hope (10) not.  
 (11) The Republican party generally stands for, (12) I assume you would agree, lower taxes, smaller (13) government, strong defense.  
 (14) **A Yes.**  
 (15) Q You stand for those.  
 (16) **A Yes.**  
 (17) Q And you're proud of that.  
 (18) **A Yes.**  
 (19) Q Now, you also know that national party (20) committees report every penny that they raise to the (21) Federal Election Commission, hard and soft?  
 (22) **A Yes.**

Page 180

(1) Q They identify the donors of all monies, (2) hard and soft, over \$200?  
 (3) **A Yes.**  
 (4) Q Political parties report every penny they (5) spend, national political parties, to the Federal (6) Election Commission?

(7) **A Yes.**  
 (8) **Q** And every penny they spend over \$200 they (9) have to report the recipient of, correct?  
 (10) **A Yes.**  
 (11) **Q** State political parties report much of (12) their activity also to the Federal Election (13) Commission, correct?  
 (14) **A Yes.**  
 (15) **Q** And state political parties also, as do (16) the national parties, report to state regulatory (17) regimes?  
 (18) **A Yes. Varying from state to state how much (19) reporting is required, yes.**  
 (20) **Q** Correct. But in every state there is some (21) level of reporting obligation, at least so far as (22) you're aware?

Page 181

(1) **A Yes.**  
 (2) **Q** And it has been the sovereign judgment of (3) the 50-state legislatures, acting individually in what (4) they view to be their own - the self-interest as they (5) understand it, to adopt 50 separate campaign finance (6) laws.  
 (7) **A Yes.**  
 (8) **Q** Am I correct, Senator, that there is no (9) other entity in American public life that is as (10) transparent, in terms of its finances, as political (11) parties?  
 (12) **A Except -**  
 (13) **MR. WITTEN:** Object to the form of the (14) question. Go ahead.  
 (15) **THE WITNESS:** You may be correct, but (16) you're leaving out, of course, the whole business of (17) the money that goes to the organizations that call (18) themselves the Americans for or the Group for or (19) somebody else for or against, and then the money pours (20) in. And the RNC clearly has knowledge of those, the (21) siphoning of hard money washing back and forth, soft (22) money back and forth.

Page 182

(1) The Wiley brothers, \$2- or \$3 million, (2) form up an organization that runs attack ads against (3) me, millionaires from Texas claiming that I'm against (4) the government, and we never would have found out who (5) they were. We never would have found out who they (6) were if it hadn't been for the media. So your (7) description is not exactly complete.  
 (8) **BY MR. BURCHFIELD:**  
 (9) **Q** Well, the Wiley brothers were acting - (10) they were using their own money and running - so far (11) as you know, they were using their own money and (12) running those ads through their own organization, not (13) through the Republican National Committee, correct?  
 (14) **A There was nobody that knew**

where the money (15) came from. If it hadn't been for the media, we would (16) still never know.  
 (17) **Q** But if it had gone through a political (18) party, you would have known at the next reporting (19) period, is that correct?  
 (20) **A Yes, and we - and to this day, we don't (21) know whether organizations - how closely they (22) coordinate with the Republican National Committee, the**

Page 183

(1) Democratic National Committee, and others, and the (2) American people deserve to know about those (3) communications. Is it an accident? Is it an accident (4) that some of these attack ads just spring up that are (5) funded by some outfit we never heard of before?  
 (6) **Q** Separate issue.  
 (7) **A I don't think so.**  
 (8) **Q** Separate issue.  
 (9) **A Yes, they're all tied together.**  
 (10) **Q** But you understand that under current law, (11) if either a candidate or a political party requests or (12) authorizes one of these groups to run advertising, (13) that would be illegal.  
 (14) **A With a wink and a nod. I don't have to (15) request somebody who calls up and says, "How can I (16) help you?" and say, "You know, it would really be (17) great if there was a little campaign run down in the (18) southern part of my state," or a friend of mine says (19) that.**  
 (20) **Look, we know how the game is played. I (21) know how the game is played, and you know how the game (22) is played. And it's huge amounts of soft money**

Page 184

(1) washing around in these so-called independent (2) campaigns, which nobody ever knows anything about but (3) happens to end up in the priority list of both (4) national committees.  
 (5) **Q** Well, we'll talk about those (6) advertisements perhaps in a moment. I think Mr. (7) Abrams spent a lot of time on those -  
 (8) **A Yes, sure.**  
 (9) **Q** - this morning. I don't have any more (10) storyboards to show you. I know how disapproved you (11) would be to hear that. But I want to focus for now on (12) political parties.  
 (13) **A Good.**  
 (14) **Q** And the money that political parties (15) receive and spend is, you would agree, using the (16) terminology of the international election community, (17) that is transparent. People know where it comes from (18) into the political par-

ties and where it goes when it (19) leaves the political parties. Is that correct?  
 (20) **A Not always. Not always, no.**  
 (21) **Q** Give me an instance -  
 (22) **A There's hard money from some states that**

Page 185

(1) go up to the national committee, and then it's mixed (2) with soft money and it goes back down. There's all (3) kinds of things that happen that the American people (4) are not aware of, and you know it as well as I do.  
 (5) **Q** Well, the donors who make their direct (6) donations to the Republican National Committee, they (7) are disclosed.  
 (8) **A Yes.**  
 (9) **Q** The recipients of the money, once it (10) leaves the RNC, those are disclosed, correct?  
 (11) **A Not always. They go to - sometimes to (12) the state party, which then is not required to report (13) where they send the money, depending on the state. (14) Sometimes the state party sends the money back up to (15) the national committee, and the state party is not (16) required to disclose that, as to who gave it. I mean, (17) there's all kinds of things that go on, as we know.**  
 (18) **Q** Are you aware of any instance, Senator, in (19) which money has come in or gone out of the Republican (20) National Committee in which the source and the (21) destination of that money was not reported?  
 (22) **MR. WITTEN:** The immediate destination.

Page 186

(1) THE WITNESS: Immediate destination may (2) have been reported. Where it finally ended up is (3) always interesting.  
 (4) **BY MR. BURCHFIELD:**  
 (5) **Q** Well, and to the degree the state parties (6) are able, consistent with state law, to transfer that (7) money on without disclosing where they send it, that's (8) a state issue.  
 (9) **A Yes, they are a conduit. And that's why (10) we tried to pass a law that would prevent that from (11) happening.**  
 (12) **Q** So in your view, this statute regulates (13) the ability of state parties to spend non-federally (14) regulated money?  
 (15) **A No. What it does is allow the states to (16) raise a certain amount of soft money for party (17) activities, prohibits, at least until the FEC (18) emasculated, a federal official from soliciting that (19) money directly, and**

It also doesn't allow the money (1) from the state which is unregulated to wash up (2) nationally and back down again, which we all know is (3) what happens today.

Page 187

(1) State parties are a conduit for all kinds (2) of soft money which otherwise would not be available, (3) which many times then are used in another state for - (4) to run political campaigns.

(5) And let me just tell you the result of (6) this, and I probably shouldn't waste your time and (7) ours. But we always have to try to return to the real (8) world, because the real world that I live in we now (9) see the state parties going from robust, very vigorous (10) organizations that spend their time on getting (11) volunteers and working and manning phone banks, to (12) being just simply conduits for soft money up and down (13) from the national parties.

(14) So you have no participation in the (15) parties because all they are is conduits for big (16) money. And everybody knows that that's the situation. (17) It's true in my state, and it's true in every state in (18) America. And what you see is a lack of real party (19) activity as far as what we used to know of as (20) political activity. Now it's just money.

(21) Q Senator, let me give you a couple of (22) hypotheticals, and I'm going to then ask you some

Page 188

(1) questions about it.

(2) A Sure.

(3) Q John McCain - prior to the effective date (4) of this statute, John McCain makes a call to - pick (5) a company - Ajax Construction Company and says, "I'd (6) like you to make a donation of \$50,000 to the (7) Republican National Committee." Okay? Part 1 of the (8) hypothetical.

(9) Part 2 of the hypothetical. And John (10) McCain - assume, further, that John McCain is -

(11) A We can't do a hypothetical, because John (12) McCain would never do that.

(13) Q Okay. Well, let me use Senator Doe.

(14) A Okay.

(15) Q I'll start over. Senator Doe calls - (16) Senator Doe, who has won reelection in his home state (17) the last time he was on the ballot with 70 percent of (18) the vote, including 45 percent of the Hispanic vote, (19) 75 percent of the men, 60 percent of the women, broad (20) demographic support, makes a call to Ajax

Construction (21) Company and says "I'd like for you to donate \$50,000 (22) to the Republican National Committee." And the

Page 189

(1) company donates the money.

(2) Second part of the hypothetical. Senator (3) Doe calls up - the same Senator Doe calls up Ajax (4) Construction Company and says, "I'd like you to donate (5) \$50,000 to the Washington Shakespeare Theater." (6) What's the difference?

(7) A Well, one is that you are asking for a (8) donation that's directly related to political (9) activity, and the other one is not.

(10) Q Even though there's no realistic prospect (11) at the time a solicitation is made, or the donation is (12) made, or at the time the funds are spent, that they (13) will go to benefit Senator Doe?

(14) MR. WITTEN: Excuse me. I think we're (15) getting into questions that sound like arguments (16) instead - that sound like questions. But go ahead, (17) you can address it.

(18) THE WITNESS: Senator Doe is not raising (19) money for Senator Doe under the circumstances that you (20) described. Senator Doe is raising money so that he (21) will be in the majority and be - have a much more (22) greater position of power and influence. That's why

Page 190

(1) he's raising money.

(2) BY MR. BURCHFIELD:

(3) Q Why does he raise money for the opera, or (4) for the Shakespeare Theater in this example?

(5) A I would imagine that he's raising it (6) because he believes in the cause of the opera or the (7) - whatever it is. Is this a perfect solution that (8) we've come up with in this campaign finance reform (9) law? No. There may also be some obligation out there (10) to Ajax Company. But it certainly won't be along the (11) lines of the obligation that he enters into for the (12) massive donation to a political party.

(13) Q Under the statute - do you understand, (14) under the statute, that a federal office holder such (15) as you -

(16) A Yes.

(17) Q - may continue to raise non-federally (18) regulated money for 501(c)-type organizations, so long (19) as the primary purpose of those organizations is not (20) to engage in federal election activity?

(21) A Yes.

(22) Q Do you have a view as to whether the

Page 191

(1) primary purpose of the NAACP is to engage in federal (2) election activity?

(3) A I'm sure that the NAACP engages in (4) political activity like the Sierra Club does and a (5) number of other organizations. But I don't believe (6) that the primary activity of the NAACP is for (7) political activity.

(8) Q So I take it in this example - in this (9) situation it would be - it would be legal under the (10) statute for a federal office holder to engage in (11) person-to-person solicitations of non-federal money (12) for the NAACP.

(13) A But if the NAACP used that money for a (14) political campaign, then they could not use it in the (15) last 30 days or 60 days of an election unless they (16) raised it through the hard money donations.

(17) Q Well, they could use it for phone banks, (18) right?

(19) A Sure.

(20) Q They could use it for direct mail.

(21) A Sure.

(22) Q They could use it for door-to-door

Page 192

(1) A Yes.

(2) Q - Get Out the Vote activity.

(3) A Yes.

(4) Q They could use -

(5) A All those are good things. And as I (6) mentioned, we're not a perfect piece of legislation, (7) but we also know what affects voters, and that's (8) broadcast advertising. We know that that's what our (9) history tells us, that that's what affects elections.

(10) Q But I thought you said a few minutes ago, (11) Senator, that you wanted to get political parties (12) really out of the issue ad business and back to the (13) ground - the grass roots type of activities.

(14) A I did.

(15) Q Are you saying that the grass roots (16) activities are going to be less effective than the (17) broadcast activities?

(18) A The grass roots activities are the (19) fundamentals of a democratic process - Get Out the (20) Vote, voter registration, the kinds of activities that (21) should be the basis of political action. We are (22) encouraging that. We are discouraging the state

Page 193

(1) parties from being the conduits of soft money and all (2) kinds of money washing back and forth, and that being (3) their only business, which is the case today.

(4) Q Let's go back to my hypothetical for a (5) moment. A Senator raises money for the NAACP, soft (6) money,

non-federally regulated money, for the NAACP. (7) And the NAACP uses that 60 days before a federal (8) election in which that candidate is on the ballot for (9) direct mail or phone bank and Get Out the Vote (10) activities.

(11) A Yes. That's fine.

(12) Q It's legal under the statute.

(13) A Yes.

(14) Q Does that have the appearance of (15) corruption?

(16) A Of course not. It's the broadcast (17) television and radio ads that we believe are what is (18) the problem. We tried to address the problem in the (19) campaign finance reform bill. In fact, we want to do (20) everything we can, and the reason why we have the so- (21) called Levin Amendment for soft money is so that they (22) can do the Get Out the Vote and the phone banks and

Page 194

(1) the voter registration.

(2) Q One of the exhibits that we -

(3) A And, again -

(4) Q I'm sorry.

(5) A - 30 days - 30 days or 60 days before, (6) none of that soft money could be used for political (7) broadcast advertising.

(8) Q Would you look at the McCain Report, which (9) I think is McCain Exhibit 2. And I'm on page 3 of (10) that document under the appropriate heading "Campaign (11) Finance Reform." In the right-hand column next to the (12) bullet "Reality," it says, "The real myth is that soft (13) money, which has been used largely to finance thinly- (14) disguised television attack ads that rarely even (15) mention a political party, has strengthened parties at (16) all." Are you with me there?

(17) A Yes.

(18) Q Senator, what information do you have (19) about the percentage of political party soft money (20) that does go into attack ads versus into other more (21) traditional party-building activities, like Get Out (22) the Vote, voter education and registration?

Page 195

(1) A Well, I've heard various percentages. But (2) more importantly, I've campaigned all over America, (3) and I've seen the air waves inundated with soft money (4) attack ads, and that was not the way it was before the (5) loopholes were opened. So I don't have to have (6) statistics.

(7) I have the virtue of my own eyes and (8) talking to candidates like Adam Schiff who said he (9) would go home every day to watch the news to find out (10) what attack ads were be-

run. So I really don't (11) need any statistical data. I have the benefit of old (12) age.

(13) Q Senator McCain, if I were to suggest to (14) you that the amount of money - the amount of non- (15) federal money that has been spent on grass roots type (16) activities, voter mobilization and so forth, had (17) increased from around \$10 million to \$53 million (18) during the 1990s -

(19) A Ten to 53. And how much have the soft (20) money attack ads increased in the 1990s?

(21) Q Well, let me ask my question, and then (22) we'll get to yours.

Page 196

(1) (Laughter.)

(2) Then, maybe you can take my deposition.

(3) (Laughter.)

(4) But it won't be nearly as big a thrill for (5) you as it is for me, I assure you.

(6) MR. WITTEN: Could you start the question (7) over again?

(8) MR. BURCHFIELD: Absolutely.

(9) BY MR. BURCHFIELD:

(10) Q If I were to suggest to you that political (11) parties have increased through non-federal spending on (12) voter mobilization from about \$10 million to about (13) \$53million from 1992 to 2000, what would be wrong (14) with that?

(15) MR. WITTEN: Let me just ask a question (16) first. When you say "non-federal spending," are you (17) talking about the source of the money, or what it's (18) spent on?

(19) MR. BURCHFIELD: The source.

(20) MR. WITTEN: Okay.

(21) THE WITNESS: My only point is that -

(22) BY MR. BURCHFIELD:

Page 197

(1) Q Your answer was, "Nothing is wrong."

(2) A Yes. Nothing is wrong, except that I (3) think if you look at the amounts of soft money raised (4) and spent on broadcast advertising, it's a dramatic (5) increase - I mean, it's in triple numbers, and (6) whereas yours is in double numbers.

(7) Today, in South Dakota, every minute of (8) television advertising available has been bought by (9) both candidates and both parties and by outside (10) groups, and they are all attack ads on each other. (11) And the people of South Dakota are sick and tired of (12) it.

(13) Q Indulge me in a - in what you may (14) consider to be a fantastic hypothetical.

(15) A Okay.

(16) But let's assume that the Supreme Court (17) decides that it's going to stick with the express (18) advocacy standard and it strikes down the limitations (19) on interest group advertising, the 30- and 60-day (20) windows. Under that hypothetical situation where (21) interest groups can spend as much as they want on (22) these sham issue ads, as you call them, and political

Page 198

(1) parties are - have no federal/non-federal funds to (2) spend in response, what's the effect, in your view, on (3) candidates?

(4) A Well, you know, I thought about that, and (5) that's why we thought it was important to add the so- (6) called "Snowe-Jeffords." I think it would have a bad (7) effect. That's why I feel that a Snowe-Jeffords, or (8) something like it, is of significant importance. And (9) that's why I'm confident that the Supreme Court will (10) uphold it.

(11) Q "A bad effect" meaning that we, as a (12) society, would not like to see political parties (13) marginalized by interest group issue advertising, (14) right?

(15) A That's what's happening now. I mean -

(16) Q I think you're preaching to the choir on (17) that one.

(18) A - that's the case today.

(19) Q And the Annenburg study, which you've (20) seen, indicates that about two-thirds of the issue (21) advertising during the 2000 cycle was done not by the (22) political parties but by interest groups, right?

Page 199

(1) A Yes.

(2) Q Now, assuming that those provisions are (3) upheld, isn't it your expectation that interest groups (4) will use their money, their soft money, non-federally (5) regulated money, to engage in permissible activities (6) during those 30- and 60-day windows, agree?

(7) A Agree.

(8) Q Like phone banks.

(9) A Yes.

(10) Q Direct mail.

(11) A Yes.

(12) Q Door-to-door solicitations for voters.

(13) A Yes.

(14) Q Print Get Out the Vote advertising.

(15) A Yes.

(16) Q Generic non-candidate-specific Get Out the (17) Vote broadcast advertising.

(18) A Yes.

(19) Q And what do you think the effect of all of (20) that is going to be on political

parties?

(21) A I think it will be fine. I think what it (22) will - hopefully will do is increase voter turnout,

Page 200

(1) particularly in some of the areas that you mentioned. (2) Right now, the state parties do almost nothing, (3) because they are too busy washing money back and (4) forth.

(5) Q Well, the figures, which are publicly (6) available, will show what the state parties do or (7) don't do. But the question I'm getting at here is: (8) aren't political parties going to be at a pretty (9) severe disadvantage, even if these restrictions on (10) issue advertising are sustained?

(11) A I don't think so, because I think that the (12) political parties will go back to what they used to do (13) when they're no longer allowed to be - just be a (14) conduit for soft money as they are today.

(15) In my state, we used to have groups of (16) volunteers go out and knock on doors. We used to have (17) groups of volunteers man phone banks. That doesn't (18) happen anymore. It doesn't happen any place in (19) American anymore. In fact, voter registration of the (20) Republican party has declined, actually, in my state.

(21) Is that - doesn't some of that (22) responsibility lie with the state party and its

Page 201

(1) virtual paralysis? And that's true all over America. (2) California, the largest state in America, last time I (3) checked I think it's 32 percent registration for the (4) Republican party.

(5) If Republicans were really concerned about (6) the party, they would look at the effects of these (7) corrupt - perceived corrupt practices have done to (8) our parties. Before the soft money - it's not (9) coincidental - before all this soft money started (10) washing around, the Republican party in California was (11) up in the 40 percentiles. Now it's down in the 30 (12) percentiles of the registered voters. Shouldn't that (13) be a wakeup call to people like you?

(14) Q Well, I actually think our friend, Mr. (15) Reiff over there, who represents the Democratic (16) National Committee probably has a different (17) explanation, which is the good things the DNC is doing (18) out there in the California Democratic party.

(19) A Democrats have declined also. The (20) increase in registration has been independents.

(21) Q Isn't a lot of that due to Motocain (3) should choose to do so, to raise non-federally (4) regulated money in personal solicitations for a group (5) like the NAACP or the National Rifle Association, (6) correct?

Page 202

(1) A Not in my state. In my state it's because (2) they don't see satisfaction from either party. They (3) don't see either party doing anything but raising and (4) spending soft money. I'm stunned by the lack of (5) concern on the part of the Republican National (6) Committee about the state of the Republican party at (7) the grass roots level, which is reflected in the (8) decline in registered Republicans.

(9) It seems to me we ought to - as the (10) Republican you describe me as, that we should be very (11) concerned about the way we're doing business.

(12) Q Well, that's an issue for bigger minds (13) than mine.

(14) (Laughter.)

(15) I'm just here to ask questions.

(16) A All right.

(17) MR. WITTEN: Do you have many others?

(18) MR. BURCHFIELD: Pardon me?

(19) MR. WITTEN: Do you have many others?

(20) MR. BURCHFIELD: A few.

(21) THE WITNESS: It's all right. I'm fine.

(22) MR. BURCHFIELD: A few. If you'd like to

Page 203

(1) take a break at any time -

(2) THE WITNESS: No, no, no. We're fine. (3) Thank you. And I want to apologize for the diatribe, (4) but what I was trying to do was respond to your (5) question about my concern about what the parties could (6) be doing under the new law. And I guess what I was (7) trying to say in response is I'm concerned about what (8) they're doing now.

(9) BY MR. BURCHFIELD:

(10) Q Well, Senator -

(11) A And maybe it wasn't a very good response.

(12) Q Well, you have been very well-behaved (13) today.

(14) (Laughter.)

(15) Before we leave the topic of fund raising (16) for the NAACP entirely, let me back up for a moment (17) and say I take it that at least one of the principal (18) purposes of this bill, this statute, is to address the (19) perception by the public at large that federal office (20) holders are being corrupted or compromised in some way (21) by their ongoing solicitations and benefits from non- (22) federally regulated money, correct?

Page 204

(1) A Yes.

(2) Q Yet the statute allows, if John Mc-

(3) should choose to do so, to raise non-federally (4) regulated money in personal solicitations for a group (5) like the NAACP or the National Rifle Association, (6) correct?

(7) A Correct.

(8) Q But it does not allow the Chairman of the (9) Republican National Committee to do that, right?

(10) A That's correct.

(11) Q Why not?

(12) A Could I partially answer your question by (13) saying I understand, as a Republican, your reference (14) to the NAACP, because we all know that some ads that (15) were running attacked George Bush - President Bush in (16) the last election were particularly vicious that were (17) paid for by the NAACP. I've said that publicly. I've (18) said it anywhere. So I can see after ads like that (19) are run that people would have a reaction to that.

(20) I believe that when the Chairman of the (21) RNC solicits the money that money is going obviously (22) to - directly to the political campaign.

Page 205

(1) Our firewall when the head of the NAACP or (2) I try to raise money for the Grand Canyon Trust - (3) solicit money, then that money is fenced in by the (4) Snowe-Jeffords, 30 to 60 days prior. It cannot pour (5) directly right into a broadcast ad campaign.

(6) So that was a lot of the thinking that (7) went into the prohibition of elected federal officials (8) and a chairman of the committee holding fund raisers (9) where they directly solicited funds.

(10) Q Okay. But my question is a bit different, (11) and that is -

(12) A Okay.

(13) Q - and that is, why are the office (14) holders, whom the statute is intended to insulate from (15) the influence of soft money, allowed to raise money (16) for the NRA and the NAACP, but officials of the party, (17) about whom I assume there is not the same concern, are (18) not allowed to do -

(19) MR. WITTEN: In their official capacities.

(20) THE WITNESS: I can only respond to you, (21) again, that I believe that that money is prevented (22) from going into a broadcast campaign at the crucial

Page 206

(1) times of a campaign. So when I raise money for the (2) NRA or the National Right to Life, or anybody else, (3) then the majority of that money would be going into (4) the activities hopefully - Get Out the Vote, voter (5) registration, phone banks, etcetera - and not into (6)

the broadcast campaign, because of "Snowe-Jeffords."

(7) BY MR. BURCHFIELD:

(8) Q Understand it. But why can't Mark Racicot (9) appear with you when you walk up to a major donor and (10) ask for a donation to the National Rifle Association?

(11) A I'll have to look at that. I did not - (12) I knew that he couldn't solicit money for the (13) Republican National Committee from them, but I did not (14) - I'll have to check on the provision concerning (15) soliciting money for outside groups.

(16) Q There is also a provision in the statute, (17) Senator, that allows federal office holders and (18) candidates to appear at fund raising events for state (19) and local parties, those Lincoln Day dinner (20) receptions, if you will. Why can't Mark Racicot (21) appear at one of those dinners?

(22) A I think that Mark Racicot can appear at

Page 207

(1) one of those dinners. He can't ask for money.

(2) Q But a federal office holder can.

(3) A A federal office holder can't ask for (4) money. A federal office holder can appear, but the (5) federal office holder cannot solicit money. And the (6) reason why the law was crafted that way is because we (7) don't want to prevent federal office holders or the (8) Chairman of the RNC from appearing at events. We (9) don't see anything wrong with that. But we don't (10) believe that they should be soliciting funds there.

(11) Q Well, let me - do you have a copy of the (12) statute there on the table?

(13) A Yes. Let me see.

(14) Q If you don't, I've got a copy.

(15) MR. WITTEN: We've got one, Bobby. Thank (16) you. It's got some marks on it. Do you mind?

(17) MR. BURCHFIELD: No, that's all right. (18) That's fine.

(19) MR. WITTEN: Somewhere we had -

(20) MR. BURCHFIELD: Just so long as they're (21) not yes and no.

(22) (Laughter.)

Page 208

(1) MR. WITTEN: - we had a colloquy on-

(2) (Laughter.)

(3) BY MR. BURCHFIELD:

(4) Q Senator, I am focusing on the exception -

(5) A Let me read to you the - as I understand (6) it. "Federal candidates and office holders cannot (7) solicit soft money funds, funds that do not

comply (8) with federal contribution limits, and source (9) prohibition for any party committee - national, (10) state, or local. (11) "This means that a federal candidate or (12) office holder may continue to solicit hard money for (13) party committees. A federal candidate or office (14) holder may solicit up to \$25,000 per year for national (15) party committees from an individual. A candidate or (16) office holder may solicit up to \$15,000 per year for (17) a national party committee from a PAC. (18) "A federal candidate or office holder may (19) solicit hard money donations for state party (20) committees to spend in connection with a federal (21) election, including for voter registration and Get Out (22) the Vote activities, up to \$10,000 per year, from an

Page 209

(1) Individual and up to \$5,000 per year from a PAC." (2) That's the Levin - the so-called Levin Amendment. (3) "In addition, a federal candidate or (4) office holder may solicit money for a state party to (5) spend on non-federal elections. The amount, however, (6) will be subject to the federal limits and source (7) prohibitions. Therefore, a federal candidate or (8) office holder may solicit up to \$10,000 a year from an (9) individual, \$5,000 a year from a PAC, for a state (10) party's non-federal account, even if that same (11) individual or PAC has already given a similar amount (12) to the state party's federal or hard money," etcetera. (13) So that's my reading of it.

(14) MR. WITTEN: So just so it's clear, the (15) Senator was reading from his remarks on March 20th.

(16) BY MR. BURCHFIELD:

(17) Q Right. And it didn't sound like the (18) statute. What I want - and that's - I don't (19) disagree with what you just read, Senator, but I don't (20) think it specifically - it answers the specific (21) question I was interested in.

(22) Let me ask you to look - this is going to

Page 210

(1) be Section 323(e)(3), and I've -

(2) A Yes. Fund raising events, right?

(3) Q Right.

(4) A Okay.

(5) Q And that provision states, (6) "Notwithstanding paragraph 1 or" - which is the (7) general ban on federal - I guess the ban on federal (8) candidates raising soft money - "or Subsection (9) B(2)(c), a candidate or an individual holding federal (10) office may attend,

sp - or be a featured guest at a (11) fund raising event for a state, district, or local (12) committee of a political party." Do you see that?

(13) A Yes.

(14) Q My question is: why does that exception (15) relate only to federal candidates or office holders (16) and not to political party officials?

(17) MR. WITTEN: His views, right?

(18) MR. BURCHFIELD: Yes, his views.

(19) THE WITNESS: Because we believe that the (20) candidate or the individual holding the office is one (21) who obviously has a lot more individual clout.

(22) BY MR. BURCHFIELD:

Page 211

(1) Q But wouldn't that be a reason for the (2) federal office holder not to be allowed to go out and (3) raise -

(4) A They can - but they can attend, speak, or (5) be a featured guest at the fund raiser.

(6) Q But, again, wouldn't that be a reason why (7) you wouldn't want a federal office holder in that (8) situation, as opposed to a party official?

(9) A I think we're talking past each other (10) here. A candidate or a federal office holder can (11) attend, speak, be present, but not solicit funds. (12) Okay? At a - at any of these kinds of events. Why (13) can't the Chairman of the RNC - why isn't he (14) prohibited also?

(15) Q Why isn't he allowed to do the same thing (16) that a federal candidate or office holder can?

(17) A What, attend, speak, or be a featured (18) guest?

(19) Q Correct. As I read that exception, it (20) doesn't apply to federal - to political party (21) officials.

(22) A I'll have to give you an answer for the

Page 212

(1) record, but I didn't know that it prohibited that (2) person from attending.

(3) Q Well, under the general bar on soft money (4) - well, let me - before I go there, you understand (5) that the Federal Election Commission has interpreted (6) this exception to allow a federal office holder to (7) attend such a fund raising event and solicit funds.

(8) A And we'll be going to court.

(9) Q And I know you disagree with that, but (10) that is where the - that is the state of the (11) regulatory environment as we speak, correct?

(12) A Yes. We'll be going to court. As I said, (13) the Federal Election Commission is acting in the most (14) shameless and disgraceful fashion of any independent (15) agency I have

ever seen function, and they need to be (16) abolished. We'll be trying to do that, too.

(17) Q Let me ask you a different question now. (18) I'm now looking at the paragraph just above that. (19) It's (e)(1), and let me just read you some provisions (20) that - you've got the statute there. Perhaps you (21) could follow along. (22) "A candidate, individual holding federal

Page 213

(1) office, agent of a candidate, or an individual holding (2) federal office, or an entity directly or indirectly (3) established, financed, maintained, or controlled by or (4) acting on behalf of one or more candidates or (5) individuals holding federal office" - do you think (6) you got it all?

(7) (Laughter.)

(8) "Shall not solicit," and then down to (b), (9) "solicit, receive, direct, transfer, or spend funds in (10) connection with any election, other than an election (11) for federal office, or disburse funds in connection (12) with such an election, unless the funds: 1) are not (13) in excess of the amounts permitted with respect to (14) contributions to candidates and political committees (15) under - (16) A That's hard money.

(17) Q - the hard money - right. So, in other (18) words, you could - you, Senator McCain, can raise (19) money for the gubernatorial candidate in Arizona, so (20) long as you do not raise money for that gubernatorial (21) candidate in excess of \$2,000 per contribution, as I (22) understand it. Does that sound right?

Page 214

(1) A The next paragraph says, "Paragraph 1 does (2) not apply to the solicitation, receipt, or spending of (3) funds by an individual described in such paragraph who (4) is or was also a candidate for a state or local office (5) solely in connection with such election for state or (6) local office, if the solicitation, receipt, or (7) spending of funds is permitted under state law."

(8) Q I think that means if you decide to run (9) for governor, you can raise money consistent with (10) state law, as I read that. What I'm focusing on now (11) is your fund raising activities on behalf of another (12) person who is running for governor. And as I read (13) this - and if you either understand it differently or (14) don't have a present understanding of it, just feel (15) free to say so. (16) But as I read this, you can raise money (17) for a gubernatorial candidate consistent with state (18) law up to the federal limit of \$2,000 per election.

(19) A I'm not sure that that is the reading, and (20) maybe I can get you a - we'll get a written response (21) to you on that.

(22) Q That all is a big lead-up to this

Page 215

(1) question. Where is the exception in there for a - (2) for the Chairman of the Republican National Committee (3) to raise money for state gubernatorial candidates?

(4) A I don't see where he's prohibited.

(5) Q Wasn't he prohibited under Section (6) 323(a)(1), which is a general prohibition of any agent (7) or representative of a political party from raising (8) any money that's not strictly regulated by federal (9) law?

(10) A I'll have to get - I'll have to get back (11) to you on that.

(12) Q You do understand that money that's raised (13) for gubernatorial candidates goes into a state- (14) regulated account, not a federally-regulated account, (15) correct?

(16) A Yes.

(17) Q And so that would be soft money, right?

(18) A Yes.

(19) Q Even if it's only \$2,000, it would be soft (20) money because it goes into a state-regulated account, (21) correct?

(22) A Yes.

Page 216

(1) Q Let me ask the Reporter to mark as -

(2) A Hang on just one second.

(3) Q Okay. Take your time. Let me ask her to (4) mark this while you're looking at that, so we can save (5) some time.

(6) A Okay.

(7) Q As McCain Exhibit -

(8) A The prohibition applies to any such (9) national committee, any officer acting on behalf of (10) such a national committee, and any entity that is (11) directly or indirectly established, financed, (12) maintained, or controlled by such a national (13) committee. Okay?

(14) If you read the prohibition back on (15) Title1(a)(2) -

(16) Q Right. 323(a)(1) -

(17) A So what we're trying to do is keep - (18) prevent the Chairman of the Republican National (19) Committee to go to a state fund raiser and raise money (20) that is then funneled up from the state party to the (21) national party.

(22) Q Well -

Page 217

(1) A That's what we're trying to prevent here.

(2) Q And what do you - how do you

interpret (3) the term "solicit, receive, or direct to another," (4) not to prohibit the Chairman of the RNC from raising (5) - from suggesting to anyone that they give non- (6) federal money to anyone else at any time?

(7) A Because we don't want the Chairman of the (8) Republican National Committee or Democratic National (9) Committee doing what they do now. You go to a state (10) fund raiser, and then - which is unlimited amounts of (11) money, and then that money is funneled up to the (12) Republican National Committee, and the states are (13) doing what they do today and that's they are just (14) conduits for soft money.

(15) Q But your understanding, just to be (16) clear-

(17) A I'll have to get it to you in writing.

(18) Q Okay.

(19) A I'll have to give you my -

(20) Q Okay. But - all right.

(21) MR. WITTEN: Let's call a truce on that (22) one.

Page 218

(1) THE WITNESS: Yes.

(2) MR. BURCHFIELD: All right. What's our (3) next exhibit number? 24, is it? 22. It's 24. I (4) think that should be - this should be 24.

(5) (Whereupon, the above-referred (6) to document was marked as (7) McCain Deposition Exhibit (8) No.24 for identification.)

(9) BY MR. BURCHFIELD:

(10) Q Okay. McCain Exhibit 24 is going to be (11) the Federal Election Commission's 20-year report. (12) And, Senator McCain, this is the 20-year report (13) published by the FEC in April 1995. Feel free to look (14) through this to your heart's content. But the passage (15) that I was going to ask you about is on page 4 at the (16) bottom, under the heading "Soft Money." Are you with (17) me there?

(18) A Yes.

(19) Q Do you see the first paragraph there, (20) "Soft money is one of the most difficult issues the (21) Commission has addressed during the last 20 years. (22) The origins of soft money lie in the United States

Page 219

(1) federal system of government. The Constitution grants (2) each state the right to regulate certain activities (3) within that state. (4) "In the area of campaign finance, each (5) state may establish its own rules for financing the (6) non-federal elections held within its borders. As a (7) result, committees that support both federal and non- (8) federal



candidates frequently must adhere to two (9) different sets of campaign finance rule – federal and (10) state. Sometimes cities and counties create yet a (11) third set of rules governing the financing of local (12) elections." Do you see that?

(13) **A Yes.**

(14) **Q** You are aware, aren't you, Senator, that (15) the Republican National Committee, and the Democratic (16) National Committee, support not just federal (17) candidates but state and local candidates as well?

(18) **A** Here's what I know, sir. That in 1974 (19) they passed a law that put a \$1,000 contribution limit (20) on individual contributions and a PAC contribution (21) limit. Through actions of the Federal Election (22) Commission, the laws passed in 1907, 1947, and 1974

Page 220

(1) have been completely violated in the view of any (2) observer.

(3) Those who violated it now state – Bill (4) Brock, who was Chairman of the Republican National (5) Committee, has submitted testimony that it was a way (6) to violate and get around the campaign finance reform (7) laws of 1974, '47, and '07. That's what I know about (8) this outfit, and that's what I know about what's being (9) done today.

(10) And Theodore Roosevelt – you're talking (11) about Republicans? Theodore Roosevelt would be (12) ashamed of what the Republican party is doing today, (13) because he's the one that took on the robber barons (14) and got the ban on corporate contributions when we all (15) know today that corporations can get however much (16) money they want to into political campaigns.

(17) So, you know, I'll be glad to answer any (18) question that you want to about the FEC. But any (19) objective observer will tell you that beginning in (20) 1978, again in 1988, and then again in 1996, laws were (21) totally emasculated by rulings of the FEC, not through (22) acts of Congress.

Page 221

(1) **Q** Is it your understanding – and I'm just (2) asking your understanding – is it your understanding (3) that the 1974 Act, as amended, was intended to (4) federalize the national party's activities in purely (5) state and local elections?

(6) **MR. WITTEN:** Object to the form of the (7) question. I don't know what you mean by "federalize."

(8) **THE WITNESS:** Let me tell you

at the (9) 1974 was intended to do, and I – Morris Udall and I (10) discussed it many times, and he was one of the authors (11) of the legislation. It was intended to clean up the (12) corruption of the Watergate scandal.

(13) The Watergate scandal had Maurice Stans (14) walking around this town with a valise with a million (15) and a half dollars in cash in it. And what they (16) wanted to do was put a limit on contributions, so that (17) there would not be these massive infusions of money (18) into political campaigns.

(19) Now, they tried to sort through the state, (20) federal, all of these complicated issues that you're (21) referring to. But they certainly did not intend, in (22) the 1974 law, to have a situation as it exists today.

Page 222

(1) No framer of it had any intention of violating not (2) only the 1974 law but the 1947 law and 1907 law, which (3) clearly state no corporate contributions, no union (4) contributions, should be in federal campaigns. They (5) are in them today. Everybody knows that.

(6) **BY MR. BURCHFIELD:**

(7) **Q** There are five states that have elections (8) in odd-numbered years – Kentucky, Louisiana, (9) Mississippi, New Jersey, and Virginia. Right?

(10) **A I agree.**

(11) **Q** You know that the Republican National (12) Committee and the Democratic National Committee have, (13) in particular – at particular times played (14) substantial roles in those elections.

(15) **A Yes.**

(16) **Q** In the 2001 Virginia gubernatorial race, (17) both the DNC and the RNC spent a lot of money.

(18) **A Yes.**

(19) **Q** You know that. And in the 2001 New Jersey (20) gubernatorial race, the parties both spent a lot of (21) money.

(22) **A Yes.**

Page 223

(1) **Q** And hypothesize with me, because I do (2) think it's true, that they spent that money in those (3) state elections consistently – they raised it and (4) spent it consistently with state law. What's wrong (5) with that?

(6) **A** It's not in keeping with the intent of the (7) federal law. The intent of the federal law in 1974 – (8) the intent of the federal law in 1974 was to limit (9) contributions to political campaigns to \$1,000 per (10) individual, etcetera, and certainly not to have (11) corporate and union money go into these campaigns.

(12) **Q** Could they prevent it from going into a (13) state campaign? No. Be-

cause like you say, it's up (14) to the states.

(15) **Is it right? No, it's not right. That's (16) why we're trying to set up this firewall between the (17) money that goes – is contributed to the Republican (18) National Committee, the Democratic National Committee, (19) etcetera, and the state parties. That's why we have (20) the so-called Levin Amendment, to allow them some soft (21) money to – for party-building, but at the same time (22) not have this money washing back and forth the way**

Page 224

(1) that it is.

(2) **Q** Under the statute –

(3) **A Yes.**

(4) **Q** – state political parties are required to (5) use federal dollars for so-called federal election (6) activity.

(7) **A Yes.**

(8) **Q** Why weren't those same – why weren't (9) similar restrictions used for the national political (10) parties as opposed to a blanket ban on raising and (11) spending any non-federal money?

(12) **MR. WITTEN:** Can I have that – I'm sorry.

(13) **MR. BURCHFIELD:** In your view.

(14) **MR. WITTEN:** I got lost in the question.

(15) **MR. BURCHFIELD:** I'll repeat it.

(16) **THE WITNESS:** Are you referring to the (17) Levin Amendment, the so-called Levin Amendment?

(18) **BY MR. BURCHFIELD:**

(19) **Q** Well, no, that's my next question.

(20) **A Okay.**

(21) **Q** My question right now is: as you know, as (22) the co-author or the co-sponsor of the statute, the

Page 225

(1) statute prohibits national political parties from (2) soliciting, raising, directing, spending, diverting (3) non-federal money ever, in any circumstance, right?

(4) **A So-called soft money.**

(5) **Q Correct.**

(6) **A Yes.**

(7) **Q** State political parties are also (8) restricted under the statute, but only insofar as (9) their activities are within the definition of federal (10) election activity, right?

(11) **A Yes.**

(12) **Q** Now, why were national political parties (13) not allowed to continue raising and spending money (14) consistent with state law for activities that are not (15) federal election activities, such as in the five (16) states that have odd-year elections for –

(17) **A** If we could have placed restrictions on (18) state activities, that

would have been an issue that may have – may or may not have been addressed. But (20) the states control the funding and all election (21) activities for state offices. We're only allowed to (22) address – we felt it was only appropriate to address

Page 226

(1) federal elections.

(2) Q When the Republican National Committee (3) spends corporate money in support of a Virginia (4) gubernatorial candidate's campaign, either through (5) donations directly to the candidate, through (6) coordinated expenditures, or through independent (7) expenditures, what is the federal interest, in your (8) view, in regulating that?

(9) A The federal interest in regulating (10) national committees' involvement in state races?

(11) Q Yes.

(12) A If it's federal money, we have a role to (13) play. If it's not, if it's state money generated (14) within the state, and generated by the state, then the (15) Federal Government does not have a role.

(16) MR. WITTEN: I'm ready for a break (17) whenever you are, Bobby. I don't want to interrupt a (18) line.

(19) MR. BURCHFIELD: That's fine. I have one (20) – just a couple more followups on this topic, and (21) then we can start with something different when we get (22) back.

Page 227

(1) BY MR. BURCHFIELD:

(2) Q To make sure I understand your question, (3) if the Republican National Committee accepts donations (4) that are legal under the law of Virginia, and spends (5) that money solely in connection with an odd-numbered (6) year election in Virginia, in which there is no (7) federal candidate on the ballot, what is the federal (8) interest in prohibiting that?

(9) A The federal interest is in controlling the (10) activities of a national party.

(11) Q And why are the national parties, when (12) they're – what makes the national parties uniquely (13) subject to federal regulation?

(14) A Because they are national and they cross (15) state lines.

(16) Q So the national parties, in your view, are (17) just like a business?

(18) A Big business. Very big business. Billion (19) dollar business.

(20) Q Not quite a billion dollars.

(21) (Laughter.)

(22) A You're close.

Page 228

(1) MR. BURCHFIELD: Right. Why

don't we take (2) a break.

(3) THE WITNESS: Okay. Thanks.

(4) (Whereupon, the proceedings in the (5) foregoing matter went off the record at (6) 4:40 p.m. and went back on the record at (7) 4:55 p.m.)

(8) BY MR. BURCHFIELD:

(9) Q Senator, before we broke, you had (10) indicated that the reason that – well, you had (11) indicated that national political party committees – (12) well, would you state again, just for my clarity, the (13) reasons that you – the reason that you gave before (14) leaving as to why a national party's raising and (15) spending of money in, for example, the Virginia (16) gubernatorial election in 2001, in a manner consistent (17) with state law, is a matter appropriate for federal (18) legislation?

(19) MR. WITTEN: You've asked him to restate (20) his answer. He actually wanted to add to his answer, (21) so he – (22) MR. BURCHFIELD: Okay. This was a good

Page 229

(1) opportunity, then.

(2) THE WITNESS: Well, again, because we have (3) seen the washing of money back and forth between state (4) and federal fund raising activities, and the real (5) world situation is that we see that the campaign (6) finance laws that were enacted are being circumvented, (7) and it is a national party and the national party (8) crosses all state lines.

(9) And so we are trying to prevent what is (10) common practice now, and that is, as I said, the (11) washing of money back and forth, the state parties (12) being primarily a conduit for that money rather than (13) doing the things that state parties should be doing.

(14) BY MR. BURCHFIELD:

(15) Q If you were to view the national parties (16) as businesses, as you indicated before we broke, and (17) subject them to the same sort – the same regulatory (18) reach of the Federal Government that businesses are (19) often subjected to, why not regulate state parties (20) more extensively? Why not regulate all activities of (21) state parties?

(22) A Because the state parties operate within

Page 230

(1) the states, and they are, therefore, regulated by the (2) state governments. But national policies cross state (3) lines, as we all know.

(4) Q Well, isn't it the case that virtually all (5) state parties receive money from donations out of (6) state?

(7) A Yes. But the majority of their donations (8) should come from within their states, and, in fact, (9) that

used to be the case before –

(10) Q Why isn't – I'm sorry. Go ahead.

(11) A – before we developed these mechanisms (12) for washing money back and forth.

(13) Q Have you seen any analysis, Senator, any (14) financial analysis of the impact of this statute on (15) state parties? (16) A No.

(17) Q Have you see any analysis of the impact of (18) the statute on national parties? ...

(19) A No.

(20) Q Have you seen any analysis of whether (21) either state or national parties can make up the (22) shortfall for having been restricted in raising non

Page 231

(1) federal money as a result of the increased (2) contribution limits for federal money?

(3) A No. I have only seen the present system, (4) which I described to you before and will not bother (5) you by describing again, and the compelling need to (6) reform the system. So I really didn't need to see an (7) analysis of the effect. I spent seven years with Russ (8) Feingold trying to come up with fixes for the present (9) system, which is – as I've said before is totally (10) unsatisfactory, not just to me but to the people I (11) represent.

(12) Q And I understand that, but I do want to (13) make clear –

(14) A So our analysis was over seven years of a (15) system that is totally broken.

(16) Q Okay. But I just want to make clear that (17) – well, let me ask it in a series of questions. The (18) statute raises the federal hard money limit for both (19) the national parties and the state parties, correct?

(20) A Correct. Let me tell you why. In 1974, (21) \$1,000, which was deemed appropriate at the time, and (22) upheld by the United States Supreme Court as a

Page 232

(1) contribution limit, is roughly \$2,000 today. That's (2) why we came up with the \$2,000. And, actually, it was (3) come up with by Senator Thompson agreeing with Senator (4) Feinstein.

(5) Q The question is: is there – has there (6) been any effort, so far as you know, to determine if (7) those increased hard dollar contribution limits will (8) be sufficient to replace the non-federal money that (9) this statute will prohibit the political parties, (10) state and federal, from raising as of November 6th?

(11) A We're not particularly inter-

estimated whether (12) it will replace. What we're trying to do is return as (13) much as possible to the period after the 1974 law was (14) passed when there wasn't the absolute disappearance of (15) any - when there were reasonable restraints on (16) campaign contributions. Therefore, we didn't have the (17) system that we have today.

(18) We're trying to return to the period of (19) ban on corporate contributions, ban on union (20) contributions, and limits on campaign contributions. (21) That's what we're trying to return to, and so we (22) didn't really need to analyze the impact. What we

Page 233

(1) tried to do was return to a period where politics was (2) far better than it is today, or certainly the (3) financing of political campaigns.

(4) Q Okay. But none of the groups that have (5) worked with you in connection with this legislation - (6) the Brennan Center, Common Cause, Center for (7) Responsive Politics - have done an analysis of the (8) effect of this statute on political parties, financial (9) effect, or the ability of the political parties to (10) offset that effect through the increased hard money (11) limits, I take it is the case.

(12) A They may have. I -

(13) Q You're not aware of any.

(14) A - don't know of any.

(15) Q Okay. Thank you.

(16) Now, you talked earlier this morning when (17) - during the examination by Mr. Abrams about attack (18) ads, and so forth, and your general dissatisfaction (19) with them. I don't want to go over that again. But (20) I do take it - correct me if I'm wrong, Senator - (21) that your expectation is, in light of this statute, (22) there will be fewer of these attack ads, or sham issue

Page 234

(1) ads as you call them, aired during election campaigns.

(2) A I believe that because these entities who (3) run these ads will have to raise the money for the ads (4) the same - through hard money the same way that the (5) challengers and candidates have to raise their money.

(6) Q And the expectation is that because they (7) have to - they have to confront the greater challenge (8) of raising hard money, they will have less money to (9) spend on the ads, right?

(10) A Yes.

(11) Q Let me ask the Reporter to mark as (12) Exhibits 25 and 26 a couple of documents.

(13) (Whereupon, the above-referred

(14) to documents were marked as (15) McCain Deposition Exhibits (16) Nos. 25 and 26 for (17) identification.)

(18) A Let me add to that. The major reason is (19) that one individual or one entity or one corporation (20) or one union will not be able to spend unlimited (21) amounts of money that would then have a significant (22) effect on the outcome of an election, which, again, is

Page 235

(1) in direct violation of the intent of the laws of the (2) past, during the 20th century.

(3) Q Right. But a net - you would expect a (4) net reduction in the number of issue ads.

(5) A I would think maybe not. But the (6) important thing is to remove the single issue and (7) single entity influence on a campaign, which, (8) generally speaking, a viewer or listener to a campaign (9) ad has no idea who it is.

(10) Americans for a Better America, Americans (11) for a - what was the Wiley brothers - a Cleaner (12) Environment, I believe, was the Wiley brothers. We (13) don't think that's right. We don't think that's right (14) - for anonymous people to be able to contribute (15) millions of dollars, a special interest in a political (16) campaign, and then - and, therefore, have a (17) significant effect on a campaign. That's the major (18) benefit of what we've done.

(19) MR. WITTEN: Excuse me a second. Before (20) you ask your next question, can I consult with -

(21) MR. BURCHFIELD: Yes.

(22) (Pause.)

Page 236

(1) MR. WITTEN: Thank you.

(2) MR. BURCHFIELD: Are we ready?

(3) MR. WITTEN: Thank you.

(4) BY MR. BURCHFIELD:

(5) Q Senator McCain, I've just had the Reporter (6) mark as Exhibit 25 an agenda for a TEAM 100 meeting (7) that took place April 27 and 28, 1999, and what I (8) believe is called a line-by-line - as Exhibit 26 - (9) for that same meeting. Do you have those in front of (10) you?

(11) A Yes.

(12) Q Do you recall attending and speaking at a (13) TEAM 100 meeting in the spring of 1999?

(14) A I don't recall this particularly, but I (15) have spoken over the years at numerous gatherings of (16) contributors to political campaigns.

(17) Q Do you know what TEAM 100 is?

(18) A Yes.

(19) Q What is it?

(20) I believe it's an organization composed of (21) major givers, donors.

(22) Q Have you spoken - do you recall speaking

Page 237

(1) at TEAM 100 events - at a TEAM 100 event or events in (2) the past?

(3) A I'm sure that I have. I would be glad to (4) go back through my calendars of the past 20 years and (5) give you those times and places. I was Phil Gramm's (6) assistant when he was Chairman of the Republican (7) Senatorial Campaign Committee, so I am - I am (8) confident that I, in the early '90s particularly, that (9) I attended a number of these events.

(10) Q Do you recall any of the individuals who (11) were present at the time or times when you spoke to (12) TEAM 100?

(13) A I give 20 speeches a week. I don't - I (14) appear a place, talk, and leave. Of course not.

(15) Q Well, that - and Exhibit 26 seems to (16) indicate that this was a pretty quick - introduction (17) 11:43, remarks beginning 11:45, Q&A at 12:15, and (18) 12:25 you're - it's over. Does that sound like a (19) typical appearance by you?

(20) A Yes, sure.

(21) Q Okay. Do you recall any of the questions (22) or answers that you received during a TEAM 100 -

Page 238

(1) A I don't remember going there.

(2) Q I take it that none of the questions that (3) were asked of you during that session made enough of (4) an impression on you to influence any legislative (5) judgments?

(6) A No.

(7) Q Is that a no? I think it was a no.

(8) A No. No.

(9) Q You had spoken earlier, Senator, about the (10) tobacco statute. I just want to take a second and ask (11) a couple of questions about that.

(12) (Pause.)

(13) Let me ask the Reporter to mark as (14) Exhibit 27 an article from the Roll Call dated (15) April 8, 1999.

(16) (Whereupon, the above-referred (17) to document was marked as (18) McCain Deposition Exhibit (19) No. 27 for identification.)

(20) And then also an article from The St.

(21) Louis Post-Dispatch of June 16, 1998, as McCain (22) Exhibit 28.

Page 239

(1) (Whereupon, the above-referred (2) to document was marked as (3) McCain Deposition Exhibit (4) No. 28 for identification.)

(5) Senator McCain, you had men-

tioned earlier (6) in your testimony - tobacco legislation that I think (7) you sponsored that was ultimately - that ultimately (8) failed for lack of the 60 votes necessary to break - (9) to bring cloture, is that right? Do you recall that (10) testimony?

(11) A Yes.

(12) Q Let me ask you to look first at (13) Exhibit 28, which is the St. Louis Post-Dispatch (14) article. And this talks about the Harry and Louise (15) ads at the beginning. And then, in the third (16) paragraph, it says - and you remember the - you do (17) remember the Harry and Louise ads?

(18) A Sure.

(19) Q Then, in the third paragraph it says, (20) "Dick Gephardt remembers Harry and Louise, which is (21) why he's a little edgy about the tobacco company's (22) current ad campaign opposing Senate legislation."

Page 240

(1) "The tobacco companies have spent millions (2) and millions of dollars to change public opinion, and (3) they have done it," the House Democratic leader said (4) at a news conference last week. "I have read the (5) polls." Do you see that?

(6) A Yes.

(7) Q And is it your recollection, Senator, that (8) at the time the tobacco bill was coming up for a (9) cloture vote, that tobacco companies were running tens (10) of millions of dollars worth of advertising in (11) opposition to that statute, to that bill?

(12) A Yes, and spending tens of millions of (13) dollars on lobbying.

(14) Q And let's look at McCain Exhibit 27, which (15) confirms the point you just made. And in the first - (16) this is an April 8, 1999, article from Roll Call. It (17) says, "Two of the nation's largest tobacco firms spent (18) \$48 million in 1998 to pressure lawmakers to scuttle (19) anti-smoking bills in Congress, according to recently (20) filed reports that detail the company's record-setting (21) lobbying campaigns." Are you with me so far?

(22) A Yes.

Page 241

(1) Q "Brown and Williamson Tobacco Corp. set a (2) new record by one company for lobbying in 1998 (3) spending \$24.9 million, according to federal lobbying (4) experts. That's six times the amount Brown and (5) Williamson reported spending the previous year. The (6) money was used, among other things, to block federal (7) legislation that would have imposed more taxes and (8) title restrictions on the industry."

Do you see that?

(9) A Yes.

(10) Q And is that consistent with your (11) understanding that the tobacco companies saw this - (12) saw the bill you were sponsoring as essentially a (13) threat to their existence, and they poured tens of (14) millions of dollars into lobbying against it?

(15) A And tens of millions of dollars in (16) campaign contributions.

(17) Q Well, that number actually is a little (18) inflated, Senator. If you look on the next page of (19) this article, page - it says, "While the lobbying (20) campaign was a major factor in the bill's defeat, the (21) industry also spent a reported \$40 million on a (22) television ad campaign, and contributed more than

Page 242

(1) \$8.2 million to candidates in the last election (2) cycle."

(3) A That's - you know, as usual, that's due (4) directly to campaigns. They contributed huge amounts (5) of soft money to other campaigns. You know it as well (6) as I do.

(7) Q Well -

(8) A And we'll never know how much they gave to (9) this.

(10) Q Well, the -

(11) A Funneled through state parties, funneled (12) through sham organizations, funneled through all kinds (13) of different ways. We all know how the game is (14) played, sir.

(15) Q Well, it is the case, isn't it, Senator, (16) that many of the Senators who voted against cloture (17) did so at a time when public opinion was running (18) heavily against the bill?

(19) A No.

(20) Q Because of the \$40 million ad campaign?

(21) A No, I do not agree. I do not agree with (22) Gephardt. I do not agree with that. I think public

Page 243

(1) opinion was, is, and will be opposed to an industry (2) that kills our children, no matter how much you spend (3) on an ad campaign.

(4) The tobacco companies rank, in public (5) opinion polls, down there with serial killers in every (6) poll that I've ever seen, including then. So I (7) disagree.

(8) Q Well, I'm here neither to defend the (9) tobacco companies nor Dick Gephardt. But would you (10) agree that Dick Gephardt is usually a fairly (11) reasonable guy?

(12) A I think Dick Gephardt - you know, I think (13) Dick Gephardt was just wrong on this one.

(14) Q But do you doubt -

(15) A I think he was just wrong.

(16) Q Do you -

(17) A And I can show you polls that show the (18) opinion that Americans have of tobacco companies who (19) we have proved entice children to smoke.

(20) Q Well, my focus right now is on whether you (21) think Mr. Gephardt had a good faith belief that the (22) public support for this statute was -

Page 244

(1) A He may -

(2) Q - was evaporating?

(3) A He may have had a good faith belief. I (4) believe that it was campaign contributions and (5) promises of it and campaigns that were orchestrated in (6) a broad variety of ways.

(7) Q Were you aware that the - were you aware (8) that the campaign - the non-federal campaign (9) donations of the tobacco industry actually went down (10) during the year that the statute was under (11) consideration?

(12) A Maybe reported. Are you aware that they (13) provided a fleet of airplanes for lawmakers to - that (14) supported them to fly around the country? Where does (15) that show up?

(16) Q It would probably show up in the gift (17) rules of the Senate, wouldn't it?

(18) A No. It shows up probably somewhere in the (19) accounting of the - unless they were running for (20) office, in the accounting of the tobacco companies.

(21) MR. WITTEN: Why don't we get back to the (22) case we're actually litigating here.

Page 245

(1) THE WITNESS: So, look, I mean, everybody (2) knows - everybody knows that the tobacco companies, (3) one, are not held in high regard by the American (4) people. Two, they funnel massive amounts of money (5) into American political campaigns. And, three, they (6) won.

(7) BY MR. BURCHFIELD:

(8) Q Well, if the tobacco companies believed (9) that they could get what they wanted through soft (10) money donations, why did they spend a total - in your (11) view, why did they spend a total of \$80 million on (12) issue advertising and lobbying?

(13) MR. WITTEN: We're into a lot of - excuse (14) me. We're into a lot of speculation here, and he can (15) -

(16) THE WITNESS: Okay. I think like all (17) good -

(18) MR. WITTEN: - speculate, but it's for (19) what it's worth.

(20) THE WITNESS: I think, like all good

(21) corporations, they cover their bases. They do - take (22) every step - measure that they can. And I think it

Page 246

(1) was a multi-pronged approach. (2) BY MR. BURCHFIELD: (3) Q Let me ask the Reporter to mark as Exhibit (4) McCain 29 the comments that were submitted, of the (5) Senator and others, to the Federal Election Commission (6) in connection with the ongoing rulemaking. (7) (Whereupon, the above-referred (8) to document was marked as (9) McCain Deposition Exhibit (10) No.29 for identification.) (11) Senator, do you recognize these as the (12) comments that you and your co-Intervenors submitted to (13) the Federal Election Commission in connection with its (14) rulemaking on soft money earlier this year? (15) A Yes. (16) Q Would you look, please, at page 8? In the (17) next-to-the-last paragraph there, it says - it says, (18) "Under that practice, state and local party spending (19) on such activities must be allocated at the beginning (20) of a two-year election cycle, except in the case of (21) state and local parties located in the few states (22) holding regularly-scheduled state elections in odd

Page 247

(1) numbered years, in the latter case, unless a special (2) election for federal office is held during that non- (3) federal election year. All generic voter derived (4) expenses in that year may be 100 percent non-federal." (5) Are you with me? (6) A Yes. (7) Q And that is the - those are the few (8) states that we talked about before, right? (9) A Yes. (10) Q And you don't have any doubt that under (11) the new statute state parties can spend 100 percent (12) non-federally regulated money for Get Out the Vote (13) activities in those odd-numbered year state elections, (14) right? (15) A Right. (16) Q Now, have you considered, Senator, what (17) happens if a national party works with the state party (18) on a Get Out the Vote program in those states? (19) MR. WITTEN: Is there a question? (20) BY MR. BURCHFIELD: (21) Q Have you considered that? (22) A No.

Page 248

(1) Q Wouldn't it be the case that if a national (2) party field representative sat down with the state (3) party officials in New Jersey for the 2005 (4) gubernato-

l election, and talked about how to (5) allocate state regulated funds for Get Out the Vote (6) activity, that would be a crime?

(7) A I'll have to get back to you. I don't (3) recollect whether that specifically would be. I'd (9) have to get back to you. What we're trying to stop is (10) the money pouring in from all over the country, the (11) soft money that would then flood the state with (12) campaign contributions that clearly are inappropriate. (13) Q Well, but wouldn't a state - wouldn't a (14) national party official acting in his official (15) capacity, advising a state party on how to spend non- (16) federally regulated money, be prohibited under (17) Section 323(a)(1) of the statute, which prohibits not (18) just soliciting and receiving but directing? (19) A I'll have to look at it and - I don't (20) recall that exact provision. (21) Q Do you see anything - Senator, do you see (22) anything corrupting about the regional field director

Page 249

(1) for the Republican National Committee sitting around (2) a table much like this one and assisting the New (3) Jersey state party in drafting a Get Out the Vote plan (4) that is financed with non-federal money in an odd- (5) numbered year when there's no federal candidate on the (6) ballot? (7) A What I see now is the party coordinator (8) sitting around the table and allocating all of the (9) soft money that flows in and kicks back up and down, (10) because there are different allocations and different (11) rules for different states, which washes all around, (12) which destroys both the intent and the letter of the (13) law. That's what I see happening now. (14) Q But my example is a lot simpler than that. (15) My example is in a state where there's no federal (16) candidate on the ballot, where you have commented to (17) the FEC that the state is perfectly within its rights (18) under the new statute to spend 100 percent non- (19) federally regulated money on its Get Out the Vote (20) program. (21) And my only tweak to the comments you (22) submitted is there's an RNC official in the room when

Page 250

(1) it designs that program. (2) A As I said, I will have to get back to you (3) on it. I'm not totally clear on that provision of the (4) statute. (5) Q Do you see, as we sit here right now, any (6) federal interest in causing the state party to have to (7) pay for its Get Out the Vote activities with (8)

100 percent federal money solely as a result of the (9) participation of an RPD from the Republican National (10) Committee?

(11) A I see a big problem today in what goes on (12) in these five states: I believe that these (13) individuals have done a whole lot more than give (14) advice, and I don't believe that the state necessarily (15) needs that kind of help from the Republican National (16) Committee. (17) But I am not exactly clear on the (18) provision of the statute, so I'll have to get back to (19) you. (20) Q Senator, let's talk about a state - let's (21) talk about a state that has elections in even-numbered (22) years, the rest of the states, in which it - Levin

Page 251

(1) money is non-federal money, right? Is that a yes? (2) A Yes. (3) Q Let's look at page 7 of these comments. (4) It says, "There are certain instances" - at the (5) bottom. "There are certain instances where Get Out (6) the Vote activity that does not mention a federal (7) candidate can be paid for with a mixture of hard and (8) soft money under the Levin Amendment. But there is no (9) reason for the definition of Get Out the Vote activity (10) itself to reflect these limited circumstances." Okay? (11) Now, do you have a view, Senator, as to (12) what the participation of the Republican National (13) Committee's representative does in an instance - in (14) an even-numbered election state where a state party (15) without that Republican party representative's (16) participation could pay for Get Out the Vote activity (17) with Levin money and federal money? (18) MR. WITTEN: Could you try that one again? (19) MR. BURCHFIELD: I can try it one more (20) time, although I'm not sure I'm going to succeed. (21) BY MR. BURCHFIELD: (22) Q Do you know - have you considered,

Page 252

(1) Senator, whether a Republican National Committee (2) representative's participation in a Get Out the Vote (3) plan would preclude a state party from using federal (4) and Levin money as opposed to 100 percent federal (5) money in its Get Out the Vote program? (6) A I'd have to look at it and get back to (7) you. I'm not that clear on the statute. (8) Q Was it the intention of the statute - was (9) it your intention, as a drafter of the statute, to -

(10) **A** The Levin Amendment is obviously an (11) amendment by Senator Levin. But I will - I'd have to (12) get back to you on that.

(13) **Q** You're familiar with Victory Programs by (14) the Republican party hierarchy, right?

(15) **A** Yes.

(16) **Q** And correct me if I'm wrong, but those (17) programs typically are drafted in the initial instance (18) by the state party, correct?

(19) **A** I think it varies with the state and with (20) the - yes, it varies.

(21) **Q** But in any event, they are drafted by (22) someone, submitted and considered by the national,

Page 253

(1) state, and local parties who are going to implement (2) them. Funding is shared, typically, correct?

(3) **A** Yes.

(4) **Q** Is it the intention - was it the (5) intention of this statute - was it your intention, (6) speaking for you, to federalize, to make subject to (7) 100 percent federally regulated funding Victory (8) Programs whenever there's a federal candidate on the (9) ballot?

(10) **A** It's our intention to stop the washing of (11) money from back and forth, hard money, soft money, (12) certain states could raise a certain amount of hard (13) money, so it can spend a certain amount of hard money. (14) It was our intention to stop the state parties from (15) evolving or degenerating into what they are today, (16) which are just conduits of soft money. That was our (17) intention.

(18) **Q** Do you see it as advantageous for the (19) state parties to be able to fund certain of their (20) activities with a mix of federal money and Levin (21) money?

(22) **A** I see it as advantageous to stop the

Page 254

(1) washing of money back and forth between the state and (2) federal money, which makes the states simply the (3) conduits for soft money and destroys the parties as I (4) knew them. That's my intention, and I have nothing to (5) add to it.

(6) **Q** Well, I do - I understand that intention, (7) and I'm not asking you to add anything to that. But (8) I'm asking a different question.

(9) **A** I have the same answer.

(10) **Q** Well, let me try the question one more (11) time. If you want to give me the same answer, you (12) can.

(13) **A** Okay. And I'll give you the same answer (14) again.

(15) **Q** All right. Well, this is not a dare (16) This is just another effort to - do you, in your (17) experience in elected politics, now going back 20 (18) years, believe state parties would find it (19) advantageous to be able to pay for certain of their (20) activities with a mix of federal money and Levin (21) money? Or, alternatively, do you think the Levin (22) Amendment is non-advantageous to the state parties?

Page 255

(1) **MR. WITTEN:** Object to the form of the (2) question.

(3) **THE WITNESS:** I have the same answer. I (4) have the same answer.

(5) **BY MR. BURCHFIELD:**

(6) **Q** Let me ask the Reporter to mark as (7) Exhibit 30 a Vote Republican flyer signed by Tom Kean (8) of New Jersey. (9) (Whereupon, the above-referred (10) to document was marked as (11) McCain Deposition Exhibit (12) No. 30 for identification.)

(13) Senator, as you can see from the very, (14) very small copyright designation in the lower right- (15) hand corner, this is from 2001. And as you can see (16) from the very small disclaimer on the left-hand side (17) at the bottom, it was paid for by the Republican (18) National State Elections Committee, RNSEC. Do you see (19) that?

(20) **A** Yes. Washington, D.C.

(21) **Q** Correct. Now, this flyer sent to voters (22) in New Jersey on the eve of the New Jersey state

Page 256

(1) elections in 2001 when there was no federal candidate (2) on the ballot was paid for by RNSEC, the Republican (3) National Committee's soft money account. What's (4) corrupting about this? (5) **A** Where did the money come from? And what (6) state? What individual? Why should the - why (7) shouldn't the state party be able to take care of this (8) obligation on their own?

(9) **Q** Well, is the focus - is your focus on the (10) appearance of corruption on the solicitation of the (11) money or on the spending of the money?

(12) **A** My focus is on the washing of money back (13) and forth between major contributors, soft money, hard (14) money, mixing them up, sending them back and forth, (15) and then paying for things like this where we have (16) huge amounts of money which we believe comes into a (17) state, and we believe is inappropriate.

(18) **Q** Let me ask you to - ask the Reporter to (19) mark as McCain Exhibit 31 a form letter bearing the (20) date Octo-

ber 4, 2001, and signed - indicated to be (21) signed by Jack Oliver of the RNC. (22) (Whereupon, the above-referred

Page 257

(1) to document was marked as (2) McCain Deposition Exhibit (3) No. 31 for identification.)

(4) Senator, do you have in front of you (5) McCain Exhibit 31?

(6) **A** Yes.

(7) **Q** This is a letter, as I read it - let me (8) just read you the last paragraph at the bottom of the (9) first page. It says, "I would like you to make a (10) contribution to Bret's campaign" - Bret Schindler who (11) was running for Governor of New Jersey. (12) "New Jersey law allows individuals, (13) corporations, and PACs to contribute up to \$2,600. (14) Please make your checks payable to Schindler for (15) Governor, Inc. I would greatly appreciate it if you (16) would contribute at least \$2,000 to this effort and (17) send it to Schindler for Governor, P.O. Box 419, WOB, (18) West Orange, New Jersey," with the zip code. "Yours (19) truly, Jack Oliver." Do you see that?

(20) **A** Yes.

(21) **Q** Now, as I understand it, Senator, in this (22) situation an official of the RNC, the deputy chairman,

Page 258

(1) is soliciting money on behalf of a gubernatorial (2) candidate - soft money, legal under state law - that (3) will go directly to the state candidate, not through (4) the RNC. Do you read it the same way?

(5) **A** I believe so.

(6) **Q** What's wrong with that?

(7) **A** Many times the money goes to whatever the (8) designated recipient is, and then is sent to other (9) places. That's the habit now.

(10) **Q** But -

(11) **A** Arizona money ends up in California. (12) California money ends up in some other place.

(13) **Q** Well, why would you - what basis do you (14) have -

(15) **A** There's no need for it.

(16) **Q** What basis for -

(17) **A** There's no need for it.

(18) **Q** I'm sorry. What basis do you have to (19) believe that Mr. Schindler, who was in, some might (20) say, a desperate -

(21) **A** Yes.

(22) **Q** - race was for governor, would be sending

Page 259

(1) the money he received as a result of this solicitation (2) anywhere else but his own campaign?

(3) **MR. WITTEN:** Objection. Calls for (4) speculation.

(5) THE WITNESS: I have no idea. I just know (6) that the money has washed around from state to state, (7) from campaign to campaign, from ad to ad. And that is (8) the history of what happens to this money, and that's (9) undeniable.

(10) BY MR. BURCHFIELD:

(11) Q Couldn't Congress have passed a statute (12) that would have prohibited the washing around of the (13) money without prohibiting Jack Oliver from soliciting (14) donations to go directly to Bret Schindler?

(15) A For seven years, and debates on the floor (16) on numerous and many occasions, an amending process, (17) twice through the House and twice through the Senate, (18) that's the best we could come up with. (19) Q Let me ask the Reporter to mark as McCain (20) Exhibit 32 a letter dated October 1, 1993, to a Mr. (21) Frosser and signed by Haley Barbour, the Chairman of (22) the Republican National Committee.

Page 260

(1) (Whereupon, the above-referred (2) to document was marked as (3) McCain Deposition Exhibit (4) No.32 for identification.)

(5) Senator, do you have Exhibit 32 in front (6) of you?

(7) A Yes, I do.

(8) Q And in this situation, like the last one, (9) it's a solicitation for donations directly to a (10) gubernatorial candidate in a situation where the money (11) would never pass through the RNC's hands, and (12) presumably the RNC would never even know who (13) contributed. What's wrong with that?

(14) A Well, one of the first things that's wrong (15) with it is that on the second page it says, "Let me (16) point out there are no limits on political (17) contributions in Virginia, and corporate contributions (18) are completely acceptable." As I remember, at that (19) time, Governor Allen had a fairly easy race. It would (20) not surprise me at all to hear that some of this money (21) ended up in other races and other campaigns and other (22) purposes.

Page 261

(1) Q Well, actually -

(2) A And I'll bet you a dollar to a donut that (3) it did.

(4) Q Well, actually, Senator, my recollection (5) as a resident of Virginia is that when he ran against (6) Mary Sue Terry it was a very close race.

(7) A Unlimited corporate contributions, (8) unlimited PAC contributions. That's - it's fine with (9) me if the State of Virginia wants to do that.

...t we (10) are clearly trying to prevent that from finding its (11) way up into federal campaigns, and that's the reason (12) why we passed the law we did.

(13) Q So if this money stayed in George Allen's (14) race, or Bret Schindler in the prior example, you (15) don't have a problem with it?

(16) A We have no assurance whatsoever that it (17) wouldn't, because it doesn't.

(18) Q Do you have any facts - any -

(19) A I can find -

(20) Q - factual basis to show -

(21) A I can go LexisNexis and find you many (22) accounts of how the money washes around from state to

Page 262

(1) state and campaign to campaign.

(2) Q Well, my question, though, is: do you (3) have any factual basis to believe that George Allen (4) sent any money elsewhere as a result of the funds that (5) came in from this letter?

(6) A Specifically, this race? Of course not. (7) But I have plenty of evidence that it is a common (8) practice. It is - the Republican National Committee (9) admits it. I mean, I don't know why you wouldn't. (10) Come on.

(11) Q I think we're talking about two different (12) things, Senator.

(13) A No, we're not.

(14) Q I just want to make sure -

(15) A We're talking about money washing around, (16) some hard money, combinations of soft money, and going (17) from one state to another, and to the national (18) campaigns, and back down to state campaigns. It's a (19) fine art.

(20) Q Senator, I'm asking the Reporter to mark (21) as McCain Exhibit 33 a letter from Jim Nicholson, the (22) Chairman of the RNC, to a Mr. Green, dated October 8,

Page 263

(1) 1997.

(2) (Whereupon, the above-referred (3) to document was marked as (4) McCain Deposition Exhibit (5) No.33 for identification.)

(6) Senator, like the other letters we've just (7) seen, the Schindler letter and the Allen letter, this (8) is a letter from the RNC Chairman soliciting donations (9) directly to a candidate. This candidate is a mayoral (10) candidate, Mr. - Mayor Coleman, who many hope will (11) join you next year in the Senate. But this is for his (12) mayoral reelection campaign in 1997.

(13) A Yes.

(14) Q You are aware, aren't you, that many major (15) cities - Los Angeles,

New York, Minneapolis, Houston, (16) Indianapolis, and others - hold their mayoral (17) elections in odd-numbered years, correct?

(18) A Yes.

(19) Q Have you ever done fund raising for such (20) mayoral candidates?

(21) A I don't remember, but I - I've worked for (22) everybody else; I probably would have a mayoral

Page 264

(1) candidate.

(2) Q That would be soft money, wouldn't it?

(3) A I think if it's a state or a local race (4) it's governed by the state or local campaign limits. (5) New York City has a very stringent law. There's (6) others that have unlimited laws.

(7) Q But it's not federally regulated, and, (8) therefore, it's soft money, right?

(9) A I wouldn't say in New York City that (10) there's any such thing as soft money. It's all very (11) limited donations in size, so I would probably view it (12) as hard money, in that - what we view hard and soft (13) money. In other words, there is not allowed unlimited (14) contributions.

(15) The definition of soft money is not what (16) kind of a race it is. It's what kind of contribution (17) it is.

(18) Q Well, Section 323(a)(1) prohibits the RNC (19) from raising money that is not subject to the (20) regulations of the Federal Election Campaign Act. You (21) understand that.

(22) A Yes.

Page 265

(1) Q And even if the dollar amounts are low, (2) wouldn't you agree that it is non-federal money if it (3) goes into a non-federally regulated mayoral account?

(4) A But that doesn't mean it's "soft money." (5) Soft money is unlimited campaign contributions. There (6) are states and counties and cities and towns that (7) impose their own campaign contribution limits, New (8) York City being a prime example.

(9) Q Well, is it your understanding that this (10) statute prohibits the national parties only from (11) engaging in activities in states from raising non- (12) federal money when it is not subject to amount (13) limitations?

(14) A No. It is my understanding that they are (15) limited or prohibited from raising money. Period.

(16) Q And as of November 6th, a letter like (17) McCain Exhibit 33 will be a crime, right?

(18) A Yes.

(19) Q And why is that?

(20) A The same reason I gave you be-

fore. (21) Whether it's a mayoral race or a governor's race or a (22) Senate race or a dog catcher race.

Page 266

(1) Q On the second page, it says, "Dear Norm" (2) - this is under the return form. And as you see (3) there - do you see there the return address is to an (4) address in Rochester, Minnesota, the Coleman for Mayor (5) campaign?

(6) A Yes.

(7) Q And it says, "Dear Norm: In response to (8) RNC Chairman Jim Nicholson's urgent appeal, I am (9) sending an emergency contribution to help you win (10) reelection." And it gives options \$25, \$35, or \$50, (11) or other.

(12) A Yes.

(13) Q And do you - are you genuinely troubled (14) by the corrupt - potentially corrupting effect of the (15) Republican National Committee Chairman soliciting \$50 (16) donations for mayoral candidates?

(17) A No. But I am interested in "other."

(18) (Laughter.)

(19) Q You don't happen to know what the - you (20) don't know what the mayoral contribution limit is in (21) Minneapolis, do you?

(22) A I don't know. Sorry.

Page 267

(1) MR. WITTEN: Do you have enough left to (2) warrant a break?

(3) MR. BURCHFIELD: I am certainly amenable (4) to taking a break. That's fine. I don't have a whole (5) lot left, but I do have numbered documents, and I (6) think it just depends on how much - we're moving (7) pretty quickly. It just depends on how much (8) commentary he has on them. Let's go ahead and take a (9) break, though.

(10) (Whereupon, the proceedings in the (11) foregoing matter went off the record at (12) 5:41 p.m. and went back on the record at (13) 5:50 p.m.)

(14) BY MR. BURCHFIELD:

(15) Q Let me ask the Reporter to mark as McCain (16) Exhibit 34 a - what appears to be a radio script, or (17) maybe a phone script. Perhaps the Senator can tell us (18) what it is.

(19) (Whereupon, the above-referred (20) to document was marked as (21) McCain Deposition Exhibit (22) No.34 for identification.)

Page 268

(1) Senator, while you're reading it, just let (2) me read it in the record. It's fairly short. It's (3) entitled "McCain Script. Hello, this is Senator John (4) McCain calling to remind you that Governor George W. (5) Bush shares our commitment to a reform agenda. (6) "My friend

George W. Bush has a plan to (7) reform education and put parents and teachers in (8) charge of schools. Governor Bush takes on special (9) interests with a plan to reform and protect Social (10) Security, and he seeks to make prescription drugs (11) available for every American who needs them. (12) "Al Gore has a different agenda. Gore (13) does not believe in a reform agenda. He proposes (14) expanding government and has no plan for education or (15) Social Security. If you agree with George W. Bush's (16) reform agenda, please call 1-800-378-7338, and tell (17) Governor Bush to keep fighting for reform." (18) Do you recall this - it looks like a (19) phone script.

(20) A Vaguely I do.

(21) Q Do you know where it was aired?

(22) A I don't remember.

Page 269

(1) Q Is this the sort of thing that federal (2) office holders are often asked to do for other (3) candidates running for election?

(4) A Yes.

(5) Q Now, Senator, I take it you would agree (6) with me that as of November 6th, if not before, this (7) phone script would need to be paid with 100 percent (8) federal dollars.

(9) A Yes.

(10) Q Because it is referring to George Bush and (11) Al Gore, who were running for President, right?

(12) A Yes.

(13) Q And that would be true whether it's aired (14) - it would certainly be true if it was aired by a (15) national party, because they only have federal dollars (16) as of November 6th, right?

(17) A Yes.

(18) Q And it would -

(19) A Hard dollars -

(20) Q Hard dollars.

(21) A - I guess is the best way to -

(22) Q And it would also have to be paid for with

Page 270

(1) hard dollars if it were run by a state party because (2) it mentions the federal candidates.

(3) A Yes.

(4) Q Now, if an interest group were to run this (5) ad, it could be paid for with 100 percent soft money, (6) right?

(7) A No.

(8) Q Why not?

(9) A If it was 30 days prior to the election, (10) which I assume that this was - or 60 days prior to (11) the election, then they would have to fund it under (12) the same circumstances.

(13) Q But not if this is a phone script.

(14) A Oh, okay. I take it back. Yes. Yes.

(15) Q So as a phone script, this could be - (16) this phone script could be read by a federal office (17) holder within 60 days of a general election and paid (18) for with 100 percent soft money.

(19) A Yes.

(20) Q If it was run by an interest group.

(21) A Yes.

(22) Q Let me ask the Reporter to mark as McCain

Page 271

(1) Exhibit 35 a print ad paid for by the California (2) Democratic Party from 1996.

(3) (Whereupon, the above-referred (4) to document was marked as (5) McCain Deposition Exhibit (6) No.35 for identification.)

(7) Senator, do you have in front of you (8) McCain Exhibit 35?

(9) A Yes.

(10) Q This appears to be a print ad. In big (11) letters at the lower right-hand corner it has, "Vote (12) Democratic. It's too important not to - '96. Paid (13) for by the California Democratic Party." Do you see (14) that?

(15) A Yes.

(16) Q And I take it that under the statute, even (17) if there are more state and local candidates on the (18) ballot than there are federal candidates, this would (19) have to be paid for with 100 percent federal dollars.

(20) A Yes.

(21) Q If this print advertisement were done by (22) an interest group, it could be paid for with 100

Page 272

(1) percent soft money, is that right?

(2) A Yes.

(3) Q Let me ask the Reporter to mark as McCain (4) Exhibit 36 a California Democratic Party - well, a (5) flyer for Antonio Villaraigosa for Mayor of Los (6) Angeles.

(7) (Whereupon, the above-referred (8) to document was marked as (9) McCain Deposition Exhibit (10) No.36 for identification.)

(11) Now, Senator, this is one of those (12) situations in which the election was held on an odd- (13) numbered year. As you testified before, Los Angeles (14) holds its mayoral elections on odd-numbered years, (15) correct?

(16) A Yes.

(17) Q And unless there's a federal candidate on (18) the same ballot, this could be paid for by the state (19) - this could be paid for by the state with 100 (20) percent non-federal funds, as you understand it, (21) right?

(22) A As I understand it, and I know that

Page 273



(1) California has enacted some campaign finance laws that (2) would apply.

(3) Q Now, if there were a federal candidate on (4) the ballot, the California Democratic Party would need (5) to pay for this very same flyer, without any changes, (6) with 100 percent federal money, is that right?

(7) A That's my understanding.

(8) Q And an interest group, even if there were (9) a federal candidate on the ballot, could pay for this (10) flyer with 100 percent soft money?

(11) A Yes. And I guess it's time for me to (12) comment. We all know what affects elections, and (13) that's broadcast advertising. We all know because we (14) take poll after poll and talk to voter after voter.

(15) And the restrictions on broadcast (16) advertising is, of course, that a 30 days or 60 days (17) rule would apply, and we believe that that was one of (18) the compromises and agreements that we had to come to, (19) never claiming that we had a perfect piece of (20) legislation.

(21) Q Senator, speaking of political (22) compromises, the statute does not index the limits for

Page 274

(1) state political parties, is that right?

(2) A That's my understanding.

(3) Q And was that the result of a political (4) compromise as well?

(5) MR. WITTEN: Hold on.

(6) THE WITNESS: I don't -

(7) MR. WITTEN: Excuse me. I'm sorry. I (8) think for once I actually am going to have to object (9) on speech and debate clause grounds and instruct him (10) not to answer the question.

(11) THE WITNESS: I don't -

(12) MR. WITTEN: Sir, please don't answer that (13) question.

(14) BY MR. BURCHFIELD:

(15) Q Let me ask the Reporter to mark as McCain (16) Exhibit 37 a flyer with no evident disclaimer entitled (17) "Life Every Voice and Vote," November 3, 1998. (18) (Whereupon, the above-referred (19) to document was marked as (20) McCain Deposition Exhibit (21) No. 37 for identification.)

(22) Senator McCain, let's first assume that

Page 275

(1) Exhibit 37 was paid for by a state political party. (2) If so, it would be subject to the limits in the (3) Bipartisan Campaign Reform Act, correct?

(4) A I don't know, because this doesn't (5) advocate the election of a candidate or non-candidate. (6) So I'd have to ask the experts and get back

you on (7) this particular piece.

(8) Q Well, do you not understand that if (9) political parties advocate voting - (10) A No, I understand that what this says is (11) register your complaint if you've got a - if you've (12) got irregularities or civil - or damage to - I mean, (13) this could have been put out by the Justice Department (14) for all I know.

(15) Q Well, it does say at the bottom, "Lift (16) Every Voice and Vote," November 3, 1998. It is urging (17) people to vote. Isn't that how you read it?

(18) A The Justice Department urges the Navahos (19) to vote up on the Navaho Reservation, and urges them (20) to report any irregularity because of the Civil Rights (21) Act. So I - you know, it's - this is so (22) hypothetical, it's very hard for me to comment on.

Page 276

(1) Q Well, we do have a lot of documents of (2) this nature, in which political parties have actually (3) engaged in activities like this. So -

(4) A That's good.

(5) Q -- do you - is it your understanding that (6) as of November 6th, if political parties engage in (7) encouraging people to vote, even without naming a (8) federal candidate when there are federal candidates on (9) the ballot, that that would be regulated activity (10) under the statute?

(11) A That's why I believe we had the Levin (12) Amendment, which allows for soft money to be (13) contributed, so that you can have organizations and (14) Get Out the Vote and voter registration, etcetera. (15) That's why we have a provision for some soft money to (16) be raised by the state parties.

(17) Q And if this advertisement were run by an (18) interest group, it would be paid for with unregulated (19) money?

(20) A And if it were run by a state party or (21) organization, it could be paid, at least partially, by (22) soft money because that's why we have put the

Page 277

(1) provision in the bill.

(2) Q Now, you mentioned that one of the (3) purposes of the bill is to encourage more Get Out the (4) Vote type activity by parties, right?

(5) A Yes.

(6) Q Non-broadcast Get Out the Vote activity, (7) I take it you mean.

(8) A Yes.

(9) Q Isn't that going to be ineffective?

(10) A Well, as I mentioned before, I can only (11) cite history. And in the

early '80s when we didn't (12) have the sewer money, we had vibrant parties, we had (13) voter registration drives, we had barbecues, we had (14) political rallies.

(15) Instead, what we have today is the state (16) parties are conduits for soft money. That's the (17) political reality. That's what I've seen. That's a (18) product of my experience. And almost every other (19) elected official will tell you the same thing.

(20) Q Well, the reason I ask the question, (21) Senator, is several times you've indicated in our (22) discussion of these various flyers that everyone knows

Page 278

(1) it is broadcast advertising that has the electoral (2) effect.

(3) A Yes.

(4) Q To which I assumed you were suggesting (5) that these flyers did not have an electoral effect. (6) They would not be effective in getting people to the (7) polls.

(8) A They may have - they may have some (9) effect. But we all know that it's broadcast (10) advertising that does, and I want to reiterate again (11) in those other flyers you showed me there is funding (12) under the Levin Amendment with soft money - party (13) organizations to pay for that.

(14) So, yes, a non-state party can use soft (15) money. Also, the state party can use soft money, (16) certainly up to \$10,000. You can print a lot of (17) handouts for \$10,000.

(18) Q Senator, you serve as the Chairman of (19) Straight Talk America, your federal political action (20) committee -

(21) A Yes.

(22) Q - and you - should you decide to seek

Page 279

(1) reelection, you will be the candidate. Do you intend (2) any change in your relationship to Straight Talk (3) America during the time you would be actively running (4) as a candidate?

(5) A I have -

(6) MR. WITTEN: You can answer that question, (7) but it tells -

(8) THE WITNESS: I haven't made the decision (9) whether to run again, so I certainly haven't thought (10) about any changes or ideas. First, I've got to decide (11) whether I'm going to run for reelection or not.

(12) MR. BURCHFIELD: Okay. Give me just a (13) minute to look through my notes. I may be through.

(14) BY MR. BURCHFIELD:

(15) Q Senator, I don't think this is a disputed (16) fact, but I'll ask you anyway, and that is, you're (17) aware, aren't you,

that the composition of the (18) Republican National Committee is 165 people, three (19) from each state and territory, including the state or (20) territorial chairmen of each of the state or (21) territorial parties.

(22) A Yes.

Page 280

(1) Q And I take it that under this statute, so (2) long as those members of the RNC are acting in their (3) capacity as members of the RNC, they are subject to (4) the prohibition on soliciting, receiving, raising, (5) spending, directing, non-federal money.

(6) A Yes.

(7) Q Do you have any practical advice for a (8) state party chairman who is a member of the Republican (9) National Committee to keep that state party chairman (10) from going to jail if he raises money for his state (11) party?

(12) MR. WITTEN: That's not a real question. (13) That's an argument.

(14) THE WITNESS: Obey the law.

(15) BY MR. BURCHFIELD:

(16) Q That's always good advice, but the Federal (17) Election Commission has suggested that a state party (18) chairman can wear two hats. Is that an item on which (19) you agree with the Federal Election Commission?

(20) A I have not agreed with the Federal (21) Election Commission on anything, including a six-year (22) delay, before levying a fine on the Clinton-Gore

Page 281

(1) campaign, including their emasculation of the law. So (2) I'm sure I don't agree with them on that, and they are (3) going to have to be restructured or abolished, and (4) that would be a project that will be a bipartisan one (5) that we will achieve over time, just as we achieved (6) campaign finance reform over time.

(7) Q The Federal Election Commission will have (8) to be restructured or abolished?

(9) A Absolutely.

(10) Q What about the national - what about the (11) Republican National Committee? I think the Democratic (12) National Committee is similarly structured. What (13) about the national party committees, which - the (14) voting membership of which is comprised of the state (15) chairs, don't those state chairs, as a result of the (16) flat ban on agents of the Republican National Committee (17) soliciting or receiving or directing or spending soft (18) money, face a risk?

(19) A No, I think they face the challenge of (20) going back to what they

used to do before we had all (21) the soft money washing around, and that is organize (22) Get Out the Vote drives, get volunteers, get party

Page 282

(1) organizations going, get precinct committee men and (2) women recruited in every precinct in their state.

(3) I think they would have a very full

(4) platter if they wanted to focus the real nuts and (5) bolts of political campaigns. That's my advice - to (6) do what they used to do before money became the (7) dominant factor.

(8) Q But in -

(9) A And a lot of them, by the way, tell me (10) they don't like it.

(11) Q But in terms - in a state, for example, (12) such as, I don't know, Massachusetts that has (13) relatively low state limits on state contributions, (14) doesn't the Chairman of the Massachusetts Republican (15) or Democratic party face a risk that by raising money (16) for the state gubernatorial candidate this year, money (17) that will go into a non-federally regulated account, (18) that they're going to violate Section 323(a)(1) of the (19) statute.

(20) A The Chairman of the Republican State Party (21) in Massachusetts happens to be a close friend of mine (22) by the name of Jean Enman. And Jean Enman is a strong

Page 283

(1) supporter of campaign finance reform and feels very (2) comfortable with the new law. So I don't have any (3) advice for her. She has enthusiastically embraced-

(4) MR. WITTEN: Got 49 more states to-

(5) (Laughter.)

(6) THE WITNESS: No. I mean, Massachusetts (7) was brought up I thought because Massachusetts does (8) have very stringent campaign finance reform.

(9) MR. BURCHFIELD: Let me confer with my (10) colleagues for a minute. I think I'm done.

(11) THE WITNESS: Sure.

(12) (Pause.)

(13) BY MR. BURCHFIELD:

(14) Q Senator, two final questions. First is, (15) are you aware - can you point me to any specific (16) instance in which a state and local candidate has (17) received money as a result of a solicitation by a (18) national committee person and then transferred that (19) money out of state?

(20) A I'm sure through LexisNexis I could find (21) printed media reports of it. But I don't personally (22) know of it, because, obviously, I don't engage in

Page 284

(1) those activities. And I'm not brought in on the (2) strategies that are employed by the Republican (3) National Committee, whether it be that or getting a (4) loan from a Hong Kong business person.

(5) Q My final question - thank you. My final (6) question is this: would you do me the honor of (7) signing a copy of your book?

(8) (Laughter.)

(9) A It would be my honor, and I thank you for (10) the courtesy you have extended me during this (11) deposition. And I know that there are very strongly (12) held views on this issue, and I appreciate your (13) courtesy.

(14) Q Well, I appreciate your courtesy. You've (15) been quite genteel.

(16) And there is one other - at least one (17) other questioner back here, so I will give him the (18) chair.

(19) MR. WITTEN: Bobby, when I was a Watergate (20) prosecutor, we had John Connolly, then the Secretary (21) of the Treasury, and the Grand Jury - this is not a (22) violation of Rule 6(e). And, of course, we were

Page 285

(1) trying to make a criminal case against him. We were (2) we were in trouble when after he got done testifying (3) a couple of the grand jurors asked him to sign some (4) dollar bills.

(5) (Laughter.)

(6) MR. BURCHFIELD: Thank you, sir, very (7) much.

(8) MR. HENDERSON: May I ask the chair how (9) much time remains?

(10) THE WITNESS: Take as much time as you (11) want.

(12) MR. HENDERSON: Well, thank you. I'm not (13) sure counsel will be glad to hear that.

(14) CROSS EXAMINATION

(15) BY MR. HENDERSON:

(16) Q Good evening, Senator McCain.

(17) A Good evening.

(18) Q My name is James Henderson. I represent (19) the minors who have sued challenging the restriction (20) on giving to candidates and to committees of political (21) parties.

(22) Obviously, we're disappointed that you

Page 286

(1) didn't come in as a plaintiff-intervenor to challenge (2) this portion of the law, because I'm sure you have (3) doubts about its constitutionality.

(4) MR. WITTEN: Mr. Henderson, let's just ask (5) questions and get it over with. No horsing around. (6) It's been a long day.

(7) MR. HENDERSON: No. No horsing. I'm sure (8) it has been, and I would have loved to have gone (9) first, and then I could have done other things: as (10) well.

(11) BY MR. HENDERSON:

(12) Q You are the only person who explained on (13) the floor of either house the reason for the (14) restrictions applicable to minors. Are you aware of (15) that?

(16) A No, I am not.

(17) Q Your comments in response to an inquiry (18) from Ms. Collins -

(19) A Yes.

(20) Q - adverted to the inclusion of the (21) provision in the House version of the legislation.

(22) A Yes.

Page 287

(1) Q And offered a view, an explanation, for (2) the inclusion, and an approval of the idea of the (3) inclusion. I wonder, could you tell me, sir, what (4) materials might you have made reference to in (5) considering whether or not it was necessary to have (6) such a restriction.

(7) A We have documents which I can provide you, (8) which I recently reviewed, showing the cases where (9) minors contributed - children, very young children - (10) and one case where the FEC fined an individual \$4,000. (11) I guess my staff has it. Do you have that there? But (12) I do have certain information that I'd be glad to (13) provide you with where, at least in my way of (14) thinking, young children contributed money, and (15) clearly they had no idea as to who they were and what (16) they were, why they -

(17) Q Would it -

(18) A Go ahead. I'm sorry.

(19) Q I'm sorry. Would it refresh your memory (20) if I mentioned a Roll Call article, "Cashing In on (21) Kids' Contributions"?

(22) A That may be it.

Page 288

(1) Q Okay. Do you recall - you asked for the (2) inclusion in the record of certain articles about (3) campaign cash from kids or on behalf of kids.

(4) A Okay.

(5) Q Do you recall that?

(6) A You know, I don't. But I -

(7) Q You've undoubtedly put newspaper articles (8) in the record on other occasions, is that correct?

(9) A Oh, yes. All the time.

(10) Q When you offer a newspaper article in the (11) record, is it intended to be an endorsement by you of (12) the facts asserted in them?

(13) A No. But I think it's important to insert (14) credible media outlets such as The New York Times - (15) and in this case I think it was the L.A. Times, Los (16) Angeles Times - because most people give them (17) credibility, and that I think would help them (18) understand how we came to our conclusions.

(19) Q If you discovered after the fact that an (20) incredible fact were included in such an article, what (21) steps would you normally take to -

(22) A Probably issue additional information in

Page 289

(1) the record.

(2) Q For example, if you learned that the (3) article by Mr. Knott, which you asked to have put into (4) the record, "Members Cash in on Kids' Contributions," (5) cited Kathleen Kennedy Townsend as having been listed (6) as a student in a contribution to her Uncle Ted's (7) reelection campaign, and that he has subsequently (8) discovered that, in fact, she was listed as a lawyer (9) for Maryland Student Services Alliance, would that (10) influence your view of the value of the kind of (11) research and writing that Mr. Knott did in this case?

(12) A I think it would depend on what role she (13) played. I mean, if she was mislabeled, that's one (14) thing. But if a four-year old child gave a (15) contribution and the father of that child was fined (16) \$4,000, that would certainly have weight. We had to (17) consider when people have to serve their country, at (18) what age they can vote, what the drinking age is, what (19) - all of the factors that go into our society.

(20) And we came up - and I will clearly, and (21) in the interest of straight talk, tell you we thought (22) that 17 was an appropriate age. And that is open to

Page 290

(1) debate, discussion, and lawsuits.

(2) Q Okay. If I could - please, if you could (3) explain, you said 17 was an appropriate age. Do you (4) mean 17 and lower was -

(5) A Yes, prohibits 17 years old or younger (6) from making contributions or donations to a candidate (7) or a committee of a political party.

(8) Q And the "we" to whom you referred, was (9) that Senator Feingold? You said we had to consider (10) various factors, including -

(11) A Oh, I think it was Feingold, Shays, (12) Meehan, all participants.

(13) MR. WITTEN: Under the speech and debate (14) clause, you're not going

to into conversations (15) with particular legislators.

(16) THE WITNESS: Yes. Let me just say it was (17) a collaborative effort - decision.

(18) BY MR. HENDERSON:

(19) Q Thank you, Senator.

(20) Are you aware that after November 5th, (21) when this law goes into effect on November 6th, that (22) a person who is aged 17 or younger may not make a

Page 291

(1) contribution to a candidate for federal office?

(2) A Yes.

(3) Q Are you aware that a person who is (4) possessing their parents' consent to do so is eligible (5) to enlist in the United States military at age 17?

(6) A I'll check on it, but I thought it was 18. (7) But -

(8) Q Would it make any difference to you that (9) persons who serve in the United States military, (10) admittedly with parental consent, will be barred from (11) using their meager pay to support any candidate during (12) the period of time that they are serving and are under (13) age 18?

(14) A I'm not sure I accept your premise that (15) you can join at 17. I believe it's 18. We'll find (16) out. We'll have someone find out.

(17) Q But if you discovered that it was less (18) than 18 with parental consent, would you consider that (19) that's something you might want to address with (20) subsequent legislation, for example?

(21) A Yes, perhaps. Perhaps. Given a whole (22) variety of factors, yes. I believe that someone who

Page 292

(1) is 17 in my state is not allowed to drink alcohol, but (2) they're allowed to go and fight in Afghanistan. So (3) it's all these things are a trade-off and decisions (4) are made.

(5) And as I will repeat to you, it's a (6) somewhat subjective assessment. But there were clear (7) violations of what anybody believes is proper conduct (8) when four-year old children give thousands of dollars. (9) And that, in my view, is wrong.

(10) Now, whether a person is fully informed at (11) 16 or whatever it is, one of the factors that went (12) into the 17-year old aspect was you can't vote until (13) you're 18.

(14) Q Do you recall having an earlier version of (15) the McCain-Feingold legislation when the idea was (16) being considered, before it had been voted on, which (17) would have barred anybody who was ineligible to vote (18) from con-

tributing to a campaign?

(19) **A** We went through 20 iterations of this law (20) over a seven-year period, so I don't recall a specific (21) aspect of it. I just know what we arrived at.

(22) **Q** But you did use the factor that a person

Page 293

(1) would be ineligible to vote at 17, that you considered (2) it-

(3) **A** I think we used a broad variety of (4) factors.

(5) **Q** And it was one of -

(6) **A** You can't drink until you're 21. You (7) can't-

(8) **Q** Sure.

(9) **A** You know, I mean, there's different age (10) limits. You can't drive until you - in my state (11) until you're 16. You can't drive in some states until (12) you're 18. I mean, so there's a variety of judgments (13) that are made about when people are qualified to (14) involve themselves in various activities as a citizen.

(15) **Q** Senator McCain, this morning you made a (16) reference to the inspiration that you hoped your book (17) would provide, including, among others, to hundreds or (18) thousands of young people.

(19) **A** Yes.

(20) **Q** I won't claim that my clients are the only (21) young people who are concerned about this statute or (22) this portion of it, but my clients are concerned about

Page 294

(1) this portion of the statute. It's the only portion (2) that we challenge here. What about - tell me - you (3) said you considered that they couldn't vote, and, (4) therefore, they shouldn't necessarily I guess have the (5) right to -

(6) **MR. WITTEN:** Wait a minute. He did not (7) say that.

(8) **MR. HENDERSON:** That was one factor.

(9) **BY MR. HENDERSON:**

(10) **Q** Senator, do you understand that it's (11) entirely within the realm of possibility that a (12) candidate who had run for federal office could be (13) excluded at the primary stage because they simply (14) failed to get their party's primary nod, and, (15) therefore, are ineligible to run as the party's (16) candidate in the general election?

(17) **A** Yes.

(18) **Q** Okay. A person might turn 18 between the (19) primary and the general election.

(20) **A** Yes.

(21) **Q** And be ineligible to support the (22) Republican or Democrat of their

choice in the primary.

Page 295

(1) And by the time the general election comes around, the (2) candidate of their preference is clearly out of the (3) running.

(4) **A** Yes, I understand that.

(5) **Q** Is there any concern that we're depriving (6) eligible voters of the right to participate (7) meaningfully in the full process of choosing (8) candidates for an election?

(9) **MR. WITTEN:** Excuse me. You're here to (10) ask questions, not to make arguments.

(11) **MR. HENDERSON:** I'm not making arguments.

(12) **MR. WITTEN:** It's been a long day. If you (13) can ask some questions, we'll answer them. Otherwise, (14) the deposition is over.

(15) **MR. HENDERSON:** I'm not making an (16) argument; I'm asking questions.

(17) **THE WITNESS:** I think what we tried to do (18) - and I may - I'm sorry if I appear repetitious - (19) is come up with a - I'll admit certain arbitrariness. (20) There's an arbitrariness to the drinking age in my (21) home state of being 21. There's an arbitrariness to (22) a driver's license at 16.

Page 296

(1) If I asked our state legislators, "Why did (2) you choose 16 instead of 18 or 14?" they probably (3) couldn't give me a good answer. But it seemed to be (4) consensus.

(5) All I can tell you is that we, because of (6) the clear abuses that had taken place, that we came up (7) with this formula, and understanding and appreciating (8) that there would be objections to it. And I (9) appreciate those objections.

(10) **BY MR. HENDERSON:**

(11) **Q** Senator McCain, you stated that the FEC (12) had made a legislative recommendation to Congress, and (13) that the legislative recommendation cited "substantial (14) evidence that minors are being used by their parents (15) or others to circumvent the limits imposed on (16) contributors" -

(17) **A** We used a variety of factors. We used (18) newspaper articles. We've used the FEC Reports. We (19) used people's judgment. We used consultation with (20) people who are "experts" on electoral laws and (21) campaign financing. We talked to a whole variety of (22) individuals and interests.

Page 297

(1) **Q** In your view, did the FEC fall down on the (2) job with respect to contributions by minors?

(3) **A** It's hard for me to say that.

They (4) obviously levied at least one fine. But I haven't (5) seen the FEC do a good job on anything, so I would (6) doubt that they did a good job on that. (7) **Q** Do you understand the state of the law (8) prior to the effective date of this Act to be that any (9) person is prohibited from giving a donation to a (10) federal candidate in the name of another?

(11) **A** Yes.

(12) **Q** So that the present state of the law, as (13) you understand it, would prohibit a parent from giving (14) a donation in the name of their child, whether a minor (15) or not?

(16) **A** Yes, but that's not the whole picture. (17) Some of these children have their own trust funds. (18) Some of them have their own sources of income that are (19) handed down to them. So I don't think that that (20) covers the issue.

(21) **Q** It's fortunate when there are children who (22) have trust funds. But, of course, not all children-

Page 298

(1) **A** Well, in the case of the \$4,000 - (2) **Q** It's not a question.

(3) **A** - it came out of his trust fund.

(4) **Q** That's correct. And the FEC apparently (5) has recently identified a second instance in which a (6) \$7,000 fine or penalty was agreed to out of thousands (7) of investigations of campaign finance reform - (8) campaign finance irregularities. But did you -

(9) **MR. WITTEN:** Mr. Henderson?

(10) **MR. HENDERSON:** Listen -

(11) **MR. WITTEN:** That's not a question.

(12) **THE WITNESS:** Go ahead. It's okay. Go (13) ahead. It's all right. Go ahead.

(14) **MR. HENDERSON:** I know you all have had a (15) long day here. I understand that.

(16) **MR. WITTEN:** You're here to ask questions. (17) Ask them and he'll answer it.

(18) **THE WITNESS:** Go ahead, please.

(19) **BY MR. HENDERSON:**

(20) **Q** I think your phrase was - and I'm sure (21) counsel will correct me if I'm wrong - "I have not (22) agreed with the FEC on anything."

Page 299

(1) **A** Right.

(2) **Q** That's right.

(3) **A** Practically speaking.

(4) **Q** Except substantial evidence that minors (5) are being used by their parents.

(6) **A** As I said to you before, we didn't just (7) rely on information from the FEC when we decided to (8) con-

sider this issue.

(9) Q You've promised or represented that you (10) would provide other materials. It may be that counsel (11) will tell me when we're done that these are the (12) materials I've already received. I don't know.

(13) A I'm sure it probably is.

(14) Q I would look forward to seeing -- to make (15) sure that I've seen all those materials. If it's the (16) articles that are in the Congressional Record, then (17) I've already got those.

(18) To your recollection, beyond the articles (19) in the Congressional Record, are there any other (20) materials that --

(21) A No, except that I believe perhaps my (22) colleagues who also took part in this decision may

Page 300

(1) have additional materials that they used. You might (2) want to ask them.

(3) Q Why did it matter that in some states or (4) others the drinking age was a certain age or the (5) driving age was a certain age? What did that (6) represent?

(7) A It represents that there is different (8) decisions made on different issues as the -- there's (9) different decisions made about different times when (10) young citizens are prepared to take on certain (11) responsibilities.

(12) Q And that was an important consideration in (13) selecting an age, even admittedly an arbitrary age?

(14) A Not an important consideration. A (15) consideration.

(16) Q In selecting an age, admittedly arbitrary (17) but selecting an age.

(18) A Yes.

(19) Q Okay.

(20) MR. HENDERSON: Unless I'm going to find (21) out that there are other materials than have already (22) been produced, that's the sum of my questions.

Page 301

(1) THE WITNESS: Well, I thank you, sir. (2) You've been mercifully brief, and I --

(3) (Laughter.)

(4) -- thank you, and I hope that it's been (5) helpful to you. But I do want -- if I were you, I (6) would -- maybe we could ask Shays and Meehan and the (7) others what --

(8) (Laughter.)

(9) -- what they use.

(10) (Whereupon, at 6:30 p.m., the taking of (11) deposition in the above-entitled matter (12) was adjourned, signature not having been (13) waived.)

Look-See Concordance Report

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 UNIQUE WORDS: 3,170  
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 NOISE WORDS: 385  
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 IGNORES PURE NUMBERS  
 ---  
 WORD RANGES @ BOTTOM OF PAGE

- \$ -

\$1 [1] 126:22  
 \$1,000 [3] 209:19; 213:9; 221:21  
 \$10 [2] 185:17; 186:12  
 \$10,000 [4] 198:22; 199:8; 268:16, 17  
 \$100,000 [1] 152:12  
 \$108,000.00 [4] 13:7; 14:1, 14, 18  
 \$12,000 [1] 141:16  
 \$12,000.00 [3] 8:12, 21; 47:2  
 \$14 [1] 71:8  
 \$15,000 [1] 198:16  
 \$2 [1] 172:1  
 \$2,000 [9] 76:16; 77:15; 126:20; 203:21;  
 204:18; 205:19; 222:1, 2; 247:16  
 \$2,000.00 [2] 8:1; 29:11  
 \$2,600 [1] 247:13  
 \$20,000.00 [1] 31:15  
 \$200 [2] 170:2, 8  
 \$220,000.00 [1] 19:3  
 \$24.9 [1] 231:3  
 \$25 [1] 256:10  
 \$25,000 [1] 198:14  
 \$3 [1] 172:1  
 \$35 [1] 256:10  
 \$4,000 [4] 76:16; 277:10; 279:16; 288:1  
 \$40 [2] 231:21; 232:20  
 \$48 [1] 230:18  
 \$48,000.00 [2] 8:17; 13:4  
 \$5,000 [3] 126:21; 199:1, 9  
 \$5,000.00 [2] 9:3; 29:11  
 \$50 [2] 256:10, 15  
 \$50,000 [5] 71:3, 10; 178:6, 21; 179:5  
 \$53 [1] 185:17  
 \$53million [1] 186:13  
 \$6,858.00 [1] 32:22  
 \$60,000.00 [2] 9:8; 13:3  
 \$7,000 [1] 288:6  
 \$750,000.00 [1] 19:3  
 \$8,000 [1] 76:16  
 \$8,000.00 [1] 8:5  
 \$8.2million [1] 232:1  
 \$80 [2] 106:9; 235:11  
 \$9,000.00 [2] 32:19; 47:4

- 1 -

1-800-378-7338 [1] 258:16  
 100percent [1] 240:8  
 106th [1] 133:9  
 11:17 [1] 7:2  
 11:43 [1] 227:17

11:45 [1] 227:17  
 12:15 [1] 227:17  
 12:25 [1] 227:18  
 12:52 [1] 78:13  
 15th [1] 39:12  
 17-year [1] 282:12  
 17th [2] 35:2; 36:15  
 1980s [2] 110:19, 21  
 1988/1989 [1] 77:6  
 1990s [2] 185:18, 20  
 1:48 [1] 79:2

- 2 -

20-year [2] 208:11, 12  
 20th [2] 199:15; 225:2  
 23rd [1] 32:5

- 3 -

30-second [1] 124:3  
 3:02 [1] 140:16  
 3:14 [1] 140:17

- 4 -

4:40 [1] 218:6  
 4:55 [1] 218:7

- 5 -

50-state [1] 171:3  
 527s [1] 69:18  
 5:41 [1] 257:12  
 5:50 [1] 257:13  
 5th [1] 280:20

- 6 -

60-day [2] 187:19; 189:6  
 60-second [1] 124:3  
 6:30 [1] 291:10  
 6th [8] 146:4; 157:2; 222:10; 255:16;  
 259:6, 16; 266:6; 280:21

- 7 -

70s [1] 144:8

- 8 -

80s [1] 267:11

- 9 -

90s [1] 227:8

- A -

a.m. [1] 7:2  
 ability [4] 70:6; 156:9; 176:13; 223:9  
 able [16] 30:1; 66:18; 70:14; 73:4; 92:12;  
 122:12; 125:11; 126:12; 139:19; 152:5;  
 176:6; 224:20; 225:14; 243:19; 244:19;  
 246:7  
 abolish [1] 68:20  
 abolished [3] 202:16; 271:3, 8  
 abortion [6] 122:9; 124:7, 14, 22; 125:1;  
 126:2  
 abortions [1] 124:11  
 above-entitled [1] 291:11  
 above-referred [28] 71:15; 84:10; 99:13;  
 101:4, 10, 16, 22; 119:20; 127:14; 129:15;  
 132:13; 157:18; 158:2; 159:12, 20; 208:5;  
 224:13; 228:16; 229:1; 236:7; 245:9;

246:22; 250:1; 253:2; 257:19; 261:3;  
 262:7; 264:18  
 ABRAMS [75] 7:7, 15, 19; 10:5, 16, 22;  
 14:12; 15:18; 16:17; 17:2; 26:15, 17, 19;  
 28:1; 32:3, 9; 34:22; 35:6; 38:10, 16;  
 39:18, 19; 55:11; 64:1, 7, 10; 67:7, 14, 20;  
 69:20; 70:9, 20; 71:1, 22; 74:12; 76:4;  
 78:12; 79:3; 80:1; 83:10, 14; 86:4,  
 7, 8; 87:5; 95:13; 96:13; 98:5; 102:18, 21;  
 108:15, 18; 109:6; 114:9, 21; 115:19;  
 119:2, 4, 10, 12, 15; 120:7, 9; 123:12;  
 124:15; 128:2, 6, 15; 132:7; 133:2, 5;  
 134:10, 13, 18; 140:10  
 Abrams [23] 7:8; 13:12, 18; 20:1; 21:3;  
 24:5, 8; 28:12; 30:4; 41:5; 43:21; 48:3, 16;  
 49:5; 60:4; 70:13; 72:2; 75:10; 106:20;  
 140:7; 141:3; 174:7; 223:17  
 abroad [1] 167:15  
 absent [1] 148:17  
 absolute [1] 222:14  
 Absolutely [12] 47:10; 54:4; 58:7; 77:17;  
 80:3; 92:10; 111:2; 116:15; 125:13;  
 145:18; 186:8; 271:9  
 absolutely [3] 62:10; 91:14; 112:17  
 abundantly [1] 46:3  
 abused [1] 111:2  
 abuses [1] 286:6  
 academic [1] 104:5  
 Academy [1] 157:14  
 accept [8] 31:20; 33:18; 34:13; 56:13;  
 66:8, 11; 71:7; 281:14  
 acceptable [2] 120:20; 250:18  
 accepted [2] 14:3; 65:11  
 accepting [3] 33:11; 51:4; 87:13  
 accepts [3] 51:11; 63:16; 217:3  
 access [5] 136:2; 150:12; 152:7; 154:13,  
 21  
 accident [2] 173:3  
 accompanied [1] 45:19  
 accomplish [1] 30:1  
 According [1] 108:22  
 according [4] 33:1; 84:2; 230:19; 231:3  
 account [7] 199:10; 205:14, 20; 246:3;  
 255:3; 272:17  
 accounting [2] 234:19, 20  
 accounts [1] 251:22  
 accurate [3] 9:12; 34:7; 145:12  
 achieve [1] 271:5  
 achieved [1] 271:5  
 acknowledged [1] 19:14  
 Act [10] 70:5; 72:20; 87:21; 100:5;  
 111:22; 134:1; 211:3; 254:20; 265:21;  
 287:8  
 act [24] 7:21; 37:22; 41:10; 42:2, 11, 22;  
 43:1; 47:14; 48:1, 6, 7, 18, 19, 22; 49:1,  
 10; 51:15; 79:11; 124:4; 165:18  
 acted [6] 39:9, 11; 41:9; 43:8; 44:18;  
 48:14  
 acting [10] 22:14; 42:4; 134:21; 171:3;  
 172:9; 202:13; 203:4; 206:9; 238:14;  
 270:2  
 Action [1] 9:14  
 action [14] 12:10; 27:18; 33:14; 34:8;  
 39:21; 41:17; 48:8; 49:2; 74:16; 137:1;  
 147:3; 148:10; 182:21; 268:19  
 actions [2] 29:3; 209:21  
 actively [3] 56:21; 64:15; 269:3  
 activist [1] 137:15  
 activities [37] 11:13; 38:3; 66:20; 146:13;  
 148:22; 176:17; 182:13, 16, 17, 18, 20;  
 183:10; 184:21; 185:16; 189:5; 196:4;

198:22; 204:11; 209:2; 211:4; 215:9, 14, 15, 18, 21; 217:10; 219:4, 20; 236:19; 237:13; 240:7; 243:20; 244:20; 255:11; 266:3; 274:1; 283:14  
**activity** [21] 98:1; 170:12; 177:19, 20; 179:9; 180:20; 181:2, 4, 6, 7; 182:2; 214:6; 215:10; 238:6; 241:6, 9, 16; 263:9; 267:4, 6  
**Acts** [1] 134:5  
**acts** [4] 23:6; 48:1; 53:7; 210:22  
**actual** [4] 21:15; 23:6; 46:10; 146:20  
**actuality** [1] 27:7  
**Adam** [2] 90:11; 185:8  
**add** [15] 22:10; 36:11; 43:20; 54:21; 64:19; 66:13; 89:18; 119:6; 145:18; 146:5; 188:5; 218:20; 224:18; 244:5, 7  
**added** [1] 41:21  
**addition** [1] 199:3  
**additional** [4] 139:22; 142:4; 278:22; 290:1  
**address** [9] 22:1; 142:7; 179:17; 183:18; 215:22; 256:3, 4; 281:19  
**addressed** [2] 208:21; 215:19  
**addressing** [3] 9:20; 26:3; 94:9  
**adhere** [1] 209:8  
**adjourned** [1] 291:12  
**administered** [1] 59:9  
**Administrative** [1] 58:18  
**admirers** [1] 145:1  
**Admissions** [2] 159:9, 11  
**admit** [1] 285:19  
**admits** [1] 252:9  
**Admitted** [3] 160:13; 161:13; 163:17  
**admittedly** [3] 281:10; 290:13, 16  
**adopt** [1] 171:5  
**Ads** [1] 122:4  
**ads** [61] 70:6; 81:18; 83:3, 8; 84:2; 90:2, 3, 13, 14, 18, 19; 91:7, 8, 16; 94:10; 97:13; 98:14; 100:19, 21; 103:17, 22; 104:2; 105:10; 107:16; 108:5, 16; 110:3; 111:7, 8; 113:22; 117:5, 6; 118:21; 131:3, 17; 133:18; 138:9; 172:2, 12; 173:4; 183:17; 184:14, 20; 185:4, 10, 20; 187:10, 22; 194:14, 18; 223:18, 22; 224:1, 3, 9; 225:4; 229:15, 17  
**advantage** [1] 116:6  
**advantageous** [3] 243:18, 22; 244:19  
**adverted** [1] 276:20  
**advertisement** [7] 84:8; 126:7, 19; 127:9; 129:8; 261:21; 266:17  
**advertisements** [4] 69:3; 97:20; 133:12; 174:6  
**advertising** [17] 173:12; 182:8; 184:7; 187:4, 8, 19; 188:13, 21; 189:14, 17; 190:10; 230:10; 235:12; 263:13, 16; 268:1, 10  
**advice** [5] 240:14; 270:7, 16; 272:5; 273:3  
**advise** [2] 39:6; 121:9  
**advising** [1] 238:15  
**advocacy** [5] 73:14; 81:17; 83:4; 128:21; 187:18  
**advocate** [2] 265:5, 9  
**AF** [4] 104:16, 22; 105:8; 107:10  
**Affairs** [1] 72:19  
**affairs** [1] 69:2  
**affect** [8] 46:17; 47:8, 16, 19; 49:6; 91:18; 109:11, 12  
**affected** [1] 23:20  
**affecting** [1] 54:10  
**affects** [5] 51:20; 54:8; 182:7, 9; 263:12  
**affiliation** [2] 106:17, 22

**Afghanistan** [1] 282:2  
**AFL-CIO** [2] 101:2; 107:14  
**afternoon** [1] 140:20  
**age** [17] 185:12; 279:18, 22; 280:3; 281:5, 13; 283:9; 285:20; 290:4, 5, 13, 16, 17  
**aged** [1] 280:22  
**agency** [1] 202:15  
**agenda** [6] 38:22; 226:6; 258:5, 12, 13, 16  
**agent** [2] 203:1; 205:6  
**agents** [1] 271:16  
**aggressive** [1] 164:7  
**Agree** [1] 189:7  
**agree** [27] 34:15; 47:7; 48:20; 54:10, 13; 93:4; 108:22; 120:16; 130:8; 145:5; 147:1; 150:14; 152:18; 168:1; 169:12; 174:15; 189:6; 212:10; 232:21, 22; 233:10; 255:2; 258:15; 259:5; 270:19; 271:2  
**agreed** [5] 10:8; 93:3; 270:20; 288:6, 22  
**agreeing** [1] 222:3  
**agreement** [1] 20:12  
**agreements** [1] 263:18  
**air** [3] 56:8; 58:3; 185:3  
**aired** [4] 224:1; 258:21; 259:13, 14  
**airfare** [1] 46:10  
**airlines** [1] 57:10  
**airplanes** [1] 234:13  
**airwaves** [2] 90:4; 117:4  
**Ajax** [4] 178:5, 20; 179:3; 180:10  
**AI** [4] 129:1, 3; 258:12; 259:11  
**Alaska** [2] 17:22; 23:21  
**Albertson** [1] 32:21  
**alcohol** [1] 282:1  
**alerting** [1] 9:19  
**aligned** [1] 168:22  
**allegation** [1] 54:7  
**allegations** [1] 43:7  
**allege** [2] 104:6; 105:20  
**alleges** [1] 129:6  
**Allen** [3] 250:19; 251:13; 252:3  
**Alliance** [5] 121:18; 122:7, 20; 127:9; 279:9  
**allocate** [2] 151:8; 238:5  
**allocated** [1] 236:19  
**allocating** [1] 239:8  
**allocations** [1] 239:10  
**allow** [11] 29:10, 14; 72:12, 21; 73:5; 154:21; 176:15, 19; 194:8; 202:6; 213:20  
**allowed** [19] 29:7; 65:10, 11; 72:13; 76:17; 95:11, 15; 110:3; 164:19; 190:13; 195:15, 18; 201:2, 15; 215:13, 21; 254:13; 282:1, 2  
**allows** [4] 194:2; 196:17; 247:12; 266:12  
**alone** [1] 74:18  
**alternatively** [1] 244:21  
**amenable** [1] 257:3  
**amended** [1] 211:3  
**amending** [1] 249:16  
**Amendment** [18] 52:13; 69:1, 5, 11; 70:16; 96:18; 97:3; 141:22; 183:21; 199:2; 213:20; 214:17; 241:8; 242:10; 244:22; 266:12; 268:12  
**amendment** [5] 69:15; 142:12; 143:2, 3; 242:11  
**America** [19] 9:3, 13; 10:4; 12:4, 5, 9; 13:3, 8; 14:14; 60:9; 117:3; 167:16; 177:18; 185:2; 191:1, 2; 225:10; 268:19; 269:3  
**American** [36] 20:7, 12; 21:5; 23:8, 10; 25:9; 26:9; 27:1; 30:3; 48:3, 4, 6; 57:11; 60:6; 61:10; 68:15; 75:13; 77:7; 78:1, 4;

91:1; 97:2, 13; 123:19; 129:11; 130:10; 132:1; 166:7, 8; 171:9; 173:2; 175:3; 190:19; 235:3, 5; 258:11  
**Americans** [14] 60:8, 13, 18; 73:12, 14; 74:3, 7, 10; 108:10; 110:7; 171:18; 225:10; 233:18  
**amongst** [1] 21:13  
**amount** [15] 15:11; 28:5; 63:3; 68:18; 130:3; 143:20; 176:16; 185:14; 199:5, 11; 231:4; 243:12, 13; 255:12  
**amounts** [14] 63:17; 66:12; 121:17; 150:9, 11; 152:8; 173:22; 187:3; 207:10; 224:21; 232:4; 235:4; 246:16; 255:1  
**analyses** [1] 144:5  
**analysis** [8] 143:22; 220:13, 14, 17, 20; 221:7, 14; 223:7  
**analyze** [1] 222:22  
**Angeles** [3] 253:15; 262:6; 278:16  
**anger** [1] 78:3  
**Annenburg** [1] 188:19  
**announcement** [1] 37:15  
**anonymous** [1] 225:14  
**answer** [56] 14:20; 22:6, 7; 24:20; 26:21; 39:10, 12; 42:20; 43:12, 20; 50:13; 52:4; 53:19; 54:18; 61:19; 67:15, 18; 79:19; 85:21; 99:9; 103:16; 115:13, 16; 116:7, 9, 13, 16, 19, 21; 118:11; 123:15; 127:18, 20; 135:7; 141:19; 164:3; 166:20; 187:1; 194:12; 201:22; 210:17; 218:20; 244:9, 11, 13; 245:3, 4; 264:10, 12; 269:6; 285:13; 286:3; 288:17  
**answered** [6] 54:17; 79:15, 18; 117:18; 143:5; 166:19  
**answering** [2] 22:9; 67:5  
**answers** [4] 132:9; 163:9; 199:20; 227:22  
**anti-Communism** [1] 167:13  
**anti-smoking** [1] 230:19  
**Antonio** [1] 262:5  
**anybody** [6] 54:6; 91:17; 137:18; 196:2; 282:7, 17  
**anymore** [3] 28:13; 190:18, 19  
**Anyway** [1] 87:4  
**anyway** [2] 58:16; 269:16  
**anywhere** [3] 125:19; 194:18; 249:2  
**apologize** [2] 128:5; 193:3  
**apparently** [1] 288:4  
**appeal** [1] 256:8  
**appear** [10] 14:16; 100:22; 147:13; 196:9, 18, 21, 22; 197:4; 227:14; 285:18  
**appearance** [62] 15:1, 6; 19:8; 20:5, 6, 8; 21:6, 15, 17; 22:2; 23:8; 25:3, 19; 26:12; 27:8, 16; 28:10, 17; 29:1; 49:18; 51:2, 7, 13, 20; 52:19; 54:3, 16; 58:2; 62:14; 64:12; 71:3; 76:15, 20; 81:5, 9, 12, 15; 97:21; 134:21; 135:11; 139:14; 144:19; 146:7, 18, 20; 147:8, 16; 164:12, 16, 17; 165:3, 4; 166:2, 4, 6, 12; 183:14; 227:19; 246:10  
**appearances** [2] 22:1; 74:19  
**appeared** [4] 63:12; 64:20; 133:12; 139:5  
**appearing** [3] 18:11; 64:14; 197:8  
**appears** [4] 56:5, 22; 257:16; 261:10  
**applicable** [1] 276:14  
**application** [2] 35:21; 36:3  
**applications** [4] 39:2, 9, 11; 40:5  
**applied** [5] 37:2; 69:17; 120:22; 121:2, 3  
**applies** [4] 48:2; 83:12; 85:17; 206:8  
**apply** [8] 84:22; 85:11; 94:20; 139:7; 201:20; 204:2; 263:2, 17  
**appointee** [1] 42:14  
**appreciate** [5] 7:9; 247:15; 274:12, 14;

286:9  
 appreciating [1] 286:7  
 appreciative [2] 61:20, 21  
 approach [1] 236:1  
 appropriate [9] 42:10; 76:14; 99:2;  
 184:10; 215:22; 218:17; 221:21; 279:22;  
 280:3  
 appropriately [1] 49:4  
 Appropriations [1] 56:19  
 appropriations [9] 17:10; 21:1; 24:7, 9,  
 17; 143:8, 14, 16, 19  
 approval [4] 35:12; 37:6; 48:14; 277:2  
 approve [1] 38:1  
 approved [1] 35:17  
 approving [1] 48:12  
 April [3] 208:13; 226:7; 230:16  
 arbitrariness [3] 285:19, 20, 21  
 arbitrary [2] 290:13, 16  
 area [4] 82:15; 98:12; 99:2; 209:4  
 areas [1] 190:1  
 aren't [7] 116:22; 122:4; 124:16; 190:8;  
 209:14; 253:14; 269:17  
 argue [2] 53:13; 129:4  
 argument [4] 128:18; 142:1; 270:13;  
 285:16  
 arguments [3] 179:15; 285:10, 11  
 Arizona [10] 61:6; 75:15; 84:18; 85:10;  
 86:17; 87:8; 138:9, 10; 203:19; 248:11  
 arrived [2] 144:7; 282:21  
 art [1] 252:19  
 article [16] 11:17; 32:4; 44:9, 11, 14;  
 55:21; 56:15; 62:3; 229:14; 230:16;  
 231:19; 277:20; 278:10, 20; 279:3  
 articles [5] 278:2, 7; 286:18; 289:16, 18  
 ashamed [1] 210:12  
 Asla [1] 152:4  
 aside [4] 75:7; 87:10; 150:8, 17  
 asking [22] 7:11, 16; 37:22; 38:1; 41:17;  
 43:4; 54:9, 10; 62:12; 65:13; 96:22; 103:8;  
 115:22; 116:17; 117:14; 135:14; 179:7;  
 211:2; 244:7, 8; 252:20; 285:16  
 aspect [2] 282:12, 21  
 aspects [2] 141:9; 148:6  
 aspirations [1] 29:5  
 asserted [2] 10:10; 278:12  
 assertion [1] 79:8  
 assess [1] 28:9  
 assessment [1] 282:6  
 assignment [1] 35:10  
 assistance [1] 60:16  
 Assistant [2] 47:1; 58:19  
 assistant [2] 148:7; 227:6  
 assisted [1] 65:21  
 assisting [2] 65:21; 239:2  
 associated [4] 13:4; 59:10; 113:16, 17  
 associates [1] 58:17  
 associating [2] 124:1, 2  
 Association [2] 194:5; 196:10  
 association [1] 107:7  
 assume [22] 9:11; 31:14; 37:13; 48:14;  
 75:21; 84:17; 86:10, 20, 22; 87:6; 93:13;  
 104:16; 108:15; 119:18; 121:14; 127:12;  
 155:12; 169:12; 178:10; 187:16; 195:17;  
 260:10  
 assumed [1] 268:4  
 assuming [6] 98:7; 111:18; 122:19;  
 128:18; 129:12; 189:2  
 assumptions [1] 108:14  
 assurance [1] 251:16  
 assure [1] 40:4  
 Astronomically [1] 144:17

atmosphere [1] 117:11  
 attack [35] 21:17; 23:17; 88:10; 90:2, 6,  
 13, 14; 91:7, 9, 14, 22; 92:8, 10, 12, 16;  
 93:12; 94:18; 104:2, 6, 14; 105:16; 117:5;  
 118:4; 120:12; 125:18; 172:2; 173:4;  
 184:14, 20; 185:4, 10, 20; 187:10; 223:17,  
 22  
 attacked [3] 88:10; 89:17; 194:15  
 attacking [5] 89:12; 90:19; 92:17; 93:5;  
 121:22  
 attacks [5] 44:22; 81:22; 90:4; 112:3;  
 131:6  
 attempted [3] 161:11, 15; 163:15  
 attempting [1] 163:20  
 attend [7] 65:18; 154:17; 200:10; 201:4,  
 11, 17; 202:7  
 attendance [1] 10:10  
 attended [2] 153:5; 227:9  
 attending [2] 202:2; 226:12  
 attention [3] 48:17; 141:12; 158:11  
 attract [2] 154:6; 156:10  
 attributed [2] 33:6, 10  
 attributes [1] 17:7  
 authenticate [1] 82:14  
 authorizes [2] 10:7; 173:12  
 authors [3] 80:14, 21; 211:10  
 availability [1] 50:2  
 available [8] 49:14; 50:5, 11; 148:12;  
 177:2; 187:8; 190:6; 258:11  
 average [3] 75:13, 14; 152:7  
 award [3] 17:13; 21:6; 153:7  
 awards [2] 153:11, 13  
 aware [21] 143:7; 157:15; 161:14; 162:12;  
 164:6; 165:14; 166:15; 170:22; 175:4, 18;  
 209:14; 223:13; 234:7, 12; 253:14;  
 269:17; 273:15; 276:14; 280:20; 281:3  
 awful [1] 124:8

---

 - B -
 

---

baby [5] 123:21; 124:4, 12, 21; 125:3  
 background [2] 58:11; 144:22  
 bacon [1] 143:10  
 ballot [15] 61:1; 62:20; 168:18; 178:17;  
 183:8; 217:7; 239:6, 16; 243:9; 246:2;  
 261:18; 262:18; 263:4, 9; 266:9  
 ballpark [1] 33:4  
 ban [11] 28:3; 54:22; 66:19; 95:7; 200:7;  
 210:14; 214:10; 222:19; 271:16  
 bank [1] 183:9  
 banks [6] 177:11; 181:17; 183:22; 189:8;  
 190:17; 196:5  
 banned [3] 29:17; 55:9; 68:19  
 banning [4] 30:2; 97:22; 98:1; 126:1  
 bar [1] 202:3  
 barbecues [1] 267:13  
 Barbour [1] 249:21  
 barons [1] 210:13  
 barred [2] 281:10; 282:17  
 barrel [6] 17:11; 19:10, 15; 66:4; 143:6;  
 144:13  
 based [3] 29:3; 84:3; 85:21  
 bases [1] 235:21  
 basically [2] 72:11; 152:19  
 basis [9] 64:17; 74:18; 147:3; 182:21;  
 248:13, 16, 18; 251:20; 252:3  
 battle [1] 63:6  
 Bay [1] 23:21  
 Beach [1] 46:18  
 bearing [1] 246:19  
 beat [2] 109:3, 8

becomes [1] 155:16  
 behalf [14] 41:2, 15; 43:8; 48:6; 90:14;  
 135:9; 149:3, 5; 152:11; 203:4; 204:11;  
 206:9; 248:1; 278:3  
 behavior [1] 65:8  
 beholder [1] 94:17  
 belief [8] 20:4, 15; 21:13; 25:14; 77:7;  
 167:16; 233:21; 234:3  
 believe [73] 13:6, 11, 20; 14:13; 15:12;  
 17:15; 21:12; 26:2, 8; 27:3; 29:18, 19;  
 41:8; 42:13; 43:6; 51:6; 54:1; 65:1; 75:19;  
 76:14; 77:2, 10; 79:13, 20; 80:6, 16;  
 91:13; 92:17; 93:1, 2; 94:4; 96:10; 107:10,  
 14; 122:20; 124:6; 125:4; 126:11;  
 130:10; 138:16; 141:4; 148:8, 21; 152:4;  
 153:20; 154:2; 166:12; 167:5; 181:5;  
 183:17; 194:20; 195:21; 197:10; 200:19;  
 224:2; 225:12; 226:8, 20; 234:4; 240:12,  
 14; 244:18; 246:16, 17; 248:5, 19; 252:3;  
 258:13; 263:17; 266:11; 281:15, 22;  
 289:21  
 believed [2] 28:5; 235:8  
 believes [3] 137:18; 180:6; 282:7  
 benefit [11] 27:19; 48:8; 49:6; 58:16;  
 61:5, 6; 76:12; 136:12; 179:13; 185:11;  
 225:18  
 benefiting [3] 46:17; 47:9; 59:2  
 benefitted [5] 48:13; 49:2; 135:3, 15;  
 136:11  
 benefiting [1] 136:5  
 beseech [1] 57:6  
 beseeched [1] 57:1  
 besides [1] 55:9  
 bet [1] 251:2  
 bi-partisan [1] 7:21  
 bid [2] 87:9; 131:11  
 bigger [1] 192:12  
 Bill [3] 164:18; 165:19; 210:3  
 bill [23] 13:13; 24:7, 9, 11, 17; 28:15;  
 29:10; 52:9; 53:9; 55:8; 73:12; 77:12;  
 129:22; 141:6; 166:17; 183:19; 230:8, 11;  
 231:12, 20; 232:18; 267:1, 3  
 billboards [1] 111:5  
 Billion [1] 217:18  
 billion [2] 106:9; 217:20  
 billions [1] 19:4  
 bills [4] 17:10; 143:20; 230:19; 275:4  
 Bipartisan [4] 70:5; 87:20; 111:22; 134:1  
 bipartisan [2] 27:15; 271:4  
 birth [7] 122:9; 124:7, 10, 13, 22; 125:1;  
 126:1  
 bit [4] 144:18; 145:10; 165:8; 195:10  
 blah [4] 147:13, 14  
 blank [2] 52:11; 69:12  
 blanket [1] 214:10  
 blatant [1] 90:4  
 block [1] 231:6  
 blocked [1] 162:15  
 bluntly [1] 44:16  
 board [1] 26:16  
 boards [1] 83:16  
 Bobby [5] 140:21; 142:16; 197:15;  
 216:17; 274:19  
 bolts [1] 272:5  
 bono [2] 63:9  
 Book [1] 66:2  
 book [21] 55:13, 21; 58:4, 16, 19; 59:1, 3,  
 18, 21; 60:6, 10, 12, 18; 61:12, 16; 148:2,  
 3; 167:5, 20; 274:7; 283:16  
 books [1] 21:9  
 boost [1] 106:2



booth [1] 61:1  
 borders [1] 209:6  
 Boston [2] 43:15; 44:15  
 bother [4] 86:6; 126:3, 4; 221:4  
 bought [1] 187:8  
 Box [1] 247:17  
 branch [2] 21:21, 22  
 break [10] 70:19; 78:11, 15; 140:11;  
 193:1; 216:16; 218:2; 257:2, 4, 9  
 Brennan [10] 62:17; 63:13, 16; 64:5, 7;  
 65:6; 83:17; 84:2; 153:5; 223:6  
 Bret [4] 247:10; 249:14; 251:14  
 bribery [3] 21:10; 26:6; 34:4  
 brief [1] 291:2  
 briefed [2] 9:19; 36:8  
 briefing [1] 10:3  
 briefly [2] 67:18; 145:18  
 bringing [1] 130:8  
 broad [4] 9:21; 178:19; 234:6; 283:3  
 broadcast [19] 83:9; 84:18; 95:2, 3;  
 99:12; 105:15; 182:8, 17; 183:16; 184:7;  
 187:4; 189:17; 195:5, 22; 196:6; 263:13,  
 15; 268:1, 9  
 broadcasts [1] 83:11  
 Brock [1] 210:4  
 broke [2] 218:9; 219:16  
 broken [2] 146:10; 221:15  
 brothers [4] 172:1, 9; 225:11, 12  
 Brown [2] 231:1, 4  
 bullet [1] 184:12  
 BURCHFIELD [63] 119:7, 11; 140:19;  
 142:22; 143:4; 147:18; 150:19, 21; 151:1;  
 163:6, 8, 10, 11; 166:22; 172:8; 176:4;  
 180:2; 186:8, 9, 19, 22; 192:18, 20, 22;  
 193:9; 196:7; 197:17, 20; 198:3; 199:16;  
 200:18, 22; 208:2, 9; 212:6; 214:13, 15,  
 18; 216:19; 217:1; 218:1, 8, 22; 219:14;  
 225:21; 226:2, 4; 235:7; 236:2; 237:20;  
 241:19, 21; 245:5; 249:10; 257:3, 14;  
 264:14; 269:12, 14; 270:15; 273:9, 13;  
 275:6  
 Burchfield [2] 140:12, 21  
 Bureaucracies [1] 41:6  
 bureaucracies [3] 41:15; 42:1; 47:12  
 bureaucracy [4] 41:5; 42:19, 21; 48:1  
 bus [2] 12:9, 12  
 Bush [9] 50:19; 194:15; 258:5, 6, 8, 15,  
 17; 259:10  
 business [16] 25:20, 21; 37:7; 39:7; 54:3;  
 75:5; 152:10; 171:16; 182:12; 183:3;  
 192:11; 217:17, 18, 19; 274:4  
 businesses [2] 219:16, 18  
 busy [1] 190:3  
 buy [2] 59:18; 90:19  
 buying [1] 154:13  
 buys [2] 90:18; 154:5

- C -

Cabazon [1] 72:10  
 calculator [1] 9:10  
 calendars [1] 227:4  
 California [11] 133:13; 191:2, 10, 18;  
 248:11, 12; 261:1, 13; 262:4; 263:1, 4  
 Call [3] 112:13; 230:16; 277:20  
 call [17] 17:20; 27:12; 105:3, 4; 156:3, 7;  
 157:7, 8; 158:10; 171:17; 178:4, 20;  
 187:22; 191:13; 207:21; 224:1; 258:16  
 calling [5] 27:8; 105:3; 129:22; 149:10;  
 258:4  
 Calls [1] 249:3

calls [6] 149:5; 165:15; 173:15; 178:15;  
 193:3  
 Campaign [10] 11:18; 70:5; 87:20;  
 111:22; 134:1; 136:7; 139:20; 184:10;  
 227:7; 254:20  
 campaigned [1] 185:2  
 campaigns [34] 9:17; 17:14; 19:18;  
 20:22; 23:2, 10; 30:3; 67:2; 68:15; 90:17;  
 110:13, 15, 18; 155:3; 174:2; 177:4;  
 210:16; 211:18; 212:4; 213:9, 11; 223:3;  
 224:1; 226:16; 230:21; 232:4, 5; 234:5;  
 235:5; 250:21; 251:11; 252:18; 272:5  
 candidacy [3] 93:21; 107:8; 135:21  
 Candidate [1] 90:16  
 candidate [74] 37:11; 82:2; 90:16; 92:11,  
 14; 94:10, 12; 95:17; 97:15, 20; 98:12, 15;  
 99:1, 5; 103:5; 108:6; 121:19; 125:14;  
 126:19; 141:13, 18; 151:10, 11; 161:12,  
 16; 163:16, 21; 168:18; 173:11; 183:8;  
 198:11, 13, 15, 18; 199:3, 7; 200:9,  
 20; 201:10, 16; 202:22; 203:1, 19, 21;  
 204:4, 17; 216:4, 5; 217:7; 239:5, 16;  
 241:7; 243:8; 246:1; 248:2, 3; 250:10;  
 254:1; 262:17; 263:3, 9; 265:5; 266:8;  
 269:1, 4; 272:16; 273:16; 280:6; 281:1,  
 11; 284:12, 16; 285:2; 287:10  
 candidates [40] 11:8; 55:2, 4; 83:9, 12;  
 90:4; 96:12; 98:3; 113:16, 17; 122:12, 14;  
 131:16; 141:10; 142:10; 154:10; 185:8;  
 187:9; 188:3; 196:18; 198:6; 200:8, 15;  
 203:4; 205:3, 13; 209:8, 17; 224:5; 232:1;  
 253:20; 256:16; 259:3; 260:2; 261:17,  
 18; 266:8; 275:20; 285:8  
 Canyon [8] 88:12; 89:13, 14, 15, 16;  
 92:19; 93:17; 195:2  
 capability [1] 23:5  
 capacities [1] 195:19  
 capacity [2] 238:15; 270:3  
 capitalism [1] 167:13  
 Capitol [1] 56:22  
 care [10] 27:1; 48:18; 49:5, 7; 57:16, 17;  
 90:21; 114:13; 166:6; 246:7  
 career [1] 167:2  
 cargo [2] 56:8; 58:3  
 carrier [2] 56:8; 58:4  
 carries [1] 79:21  
 carry [2] 16:1; 49:8  
 carrying [1] 42:3  
 case [42] 7:11; 8:14; 15:2, 5, 12, 15;  
 26:14, 17; 32:2, 15; 42:13; 43:4, 5, 6;  
 58:21; 62:16; 63:9; 88:17; 96:17; 108:8;  
 109:19; 137:20; 141:1; 146:5; 152:1;  
 154:8; 156:18; 183:3; 188:18; 220:4, 9;  
 223:11; 232:15; 234:22; 236:20; 237:1;  
 238:1;  
 275:1; 277:10; 278:15; 279:11; 288:1  
 cases [1] 277:8  
 Cash [1] 279:4  
 cash [2] 211:15; 278:3  
 Cashing [1] 277:20  
 casino [1] 71:5  
 casinos [2] 72:6, 7  
 catcher [1] 255:22  
 category [1] 69:19  
 caused [1] 49:3  
 celebrating [2] 55:13, 22  
 Center [12] 62:17; 63:13, 16; 64:6, 8;  
 65:6; 83:17; 84:2; 132:11; 153:5; 223:6  
 Central [2] 112:20; 113:10  
 century [1] 225:2  
 CEO [2] 56:1; 58:13

CE [1] 57:10  
 ceremony [1] 153:13  
 Chair [1] 58:5  
 chair [2] 274:18; 275:8  
 Chairman [29] 34:18; 37:9; 38:11; 40:16;  
 41:4, 22; 42:8; 49:9; 56:1; 62:6; 155:9, 11;  
 194:8, 20; 197:8; 201:13; 205:2; 206:18;  
 207:4, 7; 210:4; 227:6; 249:21; 252:22;  
 256:8, 15; 268:18; 272:14, 20  
 chairman [6] 72:18; 195:8; 247:22; 270:8,  
 9, 18  
 chairmen [2] 153:3; 269:20  
 chairs [2] 271:15  
 challenge [6] 9:11; 151:5; 224:7; 271:19;  
 276:1; 284:2  
 challenged [1] 151:14  
 challenger [1] 142:3  
 challengers [1] 224:5  
 challenging [1] 275:19  
 championed [1] 167:14  
 chance [2] 96:15; 129:3  
 change [11] 26:8; 65:7; 95:10; 126:5;  
 161:11, 15, 21; 163:15, 20; 230:2; 269:2  
 changed [4] 160:9, 18; 161:1; 163:19  
 changes [2] 263:5; 269:10  
 character [1] 131:7  
 charge [3] 106:5; 137:6; 258:8  
 charities [1] 59:6  
 charity [3] 58:21; 59:12; 62:10  
 Charlie [1] 147:12  
 chartered [1] 66:17  
 charts [1] 46:11  
 check [3] 52:11; 196:14; 281:6  
 checked [3] 56:13; 123:20; 191:3  
 checks [1] 247:14  
 chief [1] 89:1  
 child [3] 279:14, 15; 287:14  
 children [9] 233:2, 19; 277:9, 14; 282:8;  
 287:17, 21, 22  
 choice [2] 168:3; 284:22  
 choir [1] 188:16  
 choose [4] 8:9; 18:5; 194:3; 286:2  
 chooses [1] 59:6  
 choosing [1] 285:7  
 Chung [1] 152:1  
 circumstance [2] 120:20; 215:3  
 circumstances [8] 28:8; 74:13; 76:8, 13;  
 113:14; 179:19; 241:10; 260:12  
 circumvent [1] 286:15  
 circumvented [1] 219:6  
 cite [3] 82:14; 124:20; 267:11  
 cited [3] 24:21; 279:5; 286:13  
 cities [3] 209:10; 253:15; 255:6  
 citizen [6] 7:22; 8:11; 41:11; 75:14;  
 76:15; 283:14  
 Citizens [12] 19:1; 64:20; 65:22; 144:2,  
 12; 149:3, 5; 152:11, 13; 154:15, 18, 19  
 citizens [4] 77:16; 106:5; 152:8; 290:10  
 City [3] 254:5, 9; 255:8  
 city [1] 167:18  
 Civil [1] 265:20  
 civil [1] 265:12  
 claim [2] 53:8; 283:20  
 claiming [2] 172:3; 263:19  
 clarity [1] 218:12  
 class [1] 46:10  
 clause [3] 85:22; 264:9; 280:14  
 Clean [3] 138:13, 14; 139:15  
 clean [3] 25:15, 16; 211:11  
 cleaned [2] 20:13; 27:11  
 Cleaner [1] 225:11

clear [15] 9:6; 46:3; 49:19; 117:21; 162:17; 166:11; 199:14; 207:16; 221:13, 16; 240:3, 17; 242:7; 282:6; 286:6  
 client [2] 144:22  
 clients [2] 283:20, 22  
 Clinton [1] 92:20  
 Clinton-Gore [1] 270:22  
 clipping [1] 71:12  
 cloture [2] 230:9; 232:16  
 clout [1] 200:21  
 Club [7] 84:9; 90:18; 92:3, 11, 12; 98:6; 181:4  
 co-author [1] 214:22  
 co-leader [1] 12:17  
 co-sponsor [1] 214:22  
 Coalition [2] 129:10, 11  
 Code [4] 66:17; 137:16; 158:9, 19  
 code [1] 247:18  
 codify [1] 73:4  
 coincidental [1] 191:9  
 Coleman [1] 256:4  
 collaborative [1] 280:17  
 colleagues [5] 32:19; 80:17; 168:20; 273:10; 289:22  
 Collins [2] 11:10; 276:18  
 colloquy [1] 198:1  
 Colorado [2] 15:5; 133:13  
 column [1] 184:11  
 combat [2] 19:8; 58:8  
 combinations [1] 252:16  
 comfortable [1] 273:2  
 coming [1] 230:8  
 comment [6] 69:2; 97:6; 113:13; 139:22; 263:12; 265:22  
 commentary [1] 257:8  
 commented [1] 239:16  
 comments [5] 70:3; 236:4; 239:21; 241:3; 276:17  
 Commerce [9] 37:9; 40:16; 41:22; 47:13; 56:5, 16; 58:5; 62:5, 6  
 commercial [1] 124:3  
 Commission [35] 15:20; 16:8, 10; 34:18; 39:1, 6; 40:11, 17; 41:3, 9, 10; 42:5, 9, 10; 76:7; 145:7; 159:10; 160:15; 161:8; 163:3, 5, 12; 169:21; 170:6, 13; 202:5, 13; 208:11, 21; 209:22; 236:5; 270:17, 19, 21; 271:7  
 commission [1] 15:21  
 commitment [2] 28:7; 258:5  
 committed [1] 65:3  
 Committee [72] 9:14; 22:22; 37:9; 40:16; 41:4, 22; 42:2; 47:13; 49:10; 56:5, 17, 19; 58:6; 62:5, 6; 72:19; 90:18; 91:21; 112:20; 113:10; 136:7; 137:2; 140:22; 158:21; 161:11, 15, 20; 162:2; 163:15, 20; 164:7; 172:13, 22; 173:1; 175:6, 20; 178:7, 22; 191:16; 192:6; 194:9; 196:13; 205:2; 206:19; 207:8, 9, 12; 209:15, 16; 210:5; 212:12; 213:18; 216:2; 217:3; 227:7; 239:1; 240:10, 16; 241:13; 242:1; 246:3; 249:22; 252:8; 256:15; 269:18; 270:9; 271:11, 12, 16; 274:3  
 committee [16] 12:11; 153:3; 158:22; 175:1, 15; 195:8; 198:9, 17; 200:12; 206:9, 10, 13; 268:20; 272:1; 273:18; 280:7  
 committees [13] 13:8; 14:15; 162:17; 169:20; 174:4; 198:13, 15, 20; 209:7; 216:10; 218:11; 271:13; 275:20  
 Common [2] 64:21; 223:6  
 common [4] 50:21; 58:10; 219:10; 252:7

communication [1] 136:4  
 Communications [6] 34:18; 40:10, 17; 42:9; 44:18; 145:7  
 communications [7] 40:5; 133:21; 135:4, 5, 15; 136:10; 173:3  
 community [1] 174:16  
 compacts [1] 72:22  
 companies [11] 13:16; 164:22; 230:1, 9; 231:11; 233:4, 9, 18; 234:20; 235:2, 8  
 Company [4] 178:5, 21; 179:4; 180:10  
 company [19] 28:14, 18; 29:8, 14; 31:16; 44:19; 45:2, 4, 13; 46:8, 9; 47:1; 59:9; 77:14; 178:5; 179:1; 229:21; 230:20; 231:2  
 comparable [1] 72:13  
 compelling [2] 156:13; 221:5  
 compensate [1] 23:18  
 competitive [1] 151:9  
 competitively [1] 143:21  
 complain [1] 145:13  
 complaint [3] 41:9; 137:10; 265:11  
 complaints [3] 136:20, 22; 137:13  
 complete [2] 148:19; 172:7  
 completely [7] 27:13; 28:4; 52:4; 73:8, 9; 210:1; 250:18  
 complicated [1] 211:20  
 comply [1] 198:7  
 component [1] 150:8  
 composed [1] 226:20  
 composition [1] 269:17  
 comprised [1] 271:14  
 compromise [1] 264:4  
 compromises [2] 263:18, 22  
 concern [4] 192:5; 193:5; 195:17; 285:5  
 concerned [9] 34:5; 61:7; 77:17; 165:4; 191:5; 192:11; 193:7; 283:21, 22  
 concerning [3] 10:9; 21:10; 196:14  
 concerns [1] 29:5  
 concluded [3] 22:14; 23:1; 83:5  
 conclusion [1] 106:11  
 conclusions [2] 152:19; 278:18  
 Concurrent [3] 157:12; 158:20; 159:3  
 condemning [1] 152:22  
 Conduct [1] 137:16  
 conduct [3] 28:10; 146:17; 282:7  
 conducted [1] 25:20  
 conduit [4] 176:9; 177:1; 190:14; 219:12  
 conduits [7] 177:12, 15; 183:1; 207:14; 243:16; 244:3; 267:16  
 confer [1] 273:9  
 conference [1] 230:4  
 confidence [2] 27:5; 77:7  
 confident [3] 12:22; 188:9; 227:8  
 confirms [1] 230:15  
 conflict [1] 57:20  
 conform [1] 16:15  
 confront [1] 224:7  
 Congratulations [1] 148:2  
 Congress [23] 16:16; 17:9; 53:7, 10; 54:6; 64:15; 77:3, 13; 86:2; 95:11; 106:8; 107:5; 110:4; 126:1; 133:9; 142:21; 143:17; 144:7; 162:3; 210:22; 230:19; 249:11; 286:12  
 Congressional [3] 143:10; 289:16, 19  
 Congressman [3] 90:11; 160:20; 161:1  
 Congressmen [1] 143:9  
 Congresswoman [18] 102:18; 105:3, 5, 12, 16, 18, 20; 106:12; 107:18; 108:1; 129:13, 19; 130:7, 15; 131:11, 19, 21, 22  
 connecting [1] 107:5  
 connection [7] 9:5; 166:16; 198:20;

204:5; 217:5; 223:5; 236:6  
 Connelly [1] 274:20  
 connotes [1] 145:10  
 consensus [1] 286:4  
 consent [3] 281:4, 10, 18  
 conservation [1] 92:7  
 conservative [1] 104:7  
 consider [10] 29:6, 13; 74:18; 88:3; 123:9; 187:14; 279:17; 280:9; 281:18; 289:8  
 consideration [8] 35:20; 36:2; 39:3; 138:2; 234:11; 290:12, 14, 15  
 considered [10] 55:3, 4; 111:21; 237:16, 21; 241:22; 242:22; 282:16; 283:1; 284:3  
 considering [2] 66:16; 277:5  
 consistent [9] 33:20; 121:4; 146:3; 176:6; 204:9, 17; 215:14; 218:16; 231:10  
 consistently [2] 213:3, 4  
 constantly [1] 162:2  
 constituent [3] 42:17; 48:2; 76:18  
 constituents [9] 21:13; 25:9; 29:4; 41:15; 66:5; 106:16, 21; 122:13; 138:1  
 Constitution [1] 209:1  
 constitutional [7] 16:2, 15; 68:21; 88:19; 122:15; 123:3, 4  
 constitutionality [3] 88:9; 89:20; 276:3  
 Construction [3] 178:5, 20; 179:4  
 consult [2] 154:22; 225:20  
 consultation [1] 286:19  
 contact [2] 165:22; 166:15  
 contacted [3] 36:11, 15; 165:21  
 contacts [1] 165:14  
 contain [1] 83:4  
 contemplated [1] 18:7  
 contended [1] 143:21  
 content [1] 208:14  
 continue [7] 21:17; 27:14; 155:12; 157:1; 180:17; 198:12; 215:13  
 continuing [2] 62:12; 116:4  
 contravention [1] 79:22  
 contribute [7] 8:1, 12; 9:2; 63:19; 225:14; 247:13, 16  
 contributed [14] 11:10; 31:22; 47:2; 74:1, 4, 17; 153:16; 213:17; 231:22; 232:4; 250:13; 266:13; 277:9, 14  
 contributing [2] 44:18; 282:18  
 contribution [31] 13:7, 22; 14:14; 29:11; 33:1, 12, 14; 34:9; 54:5; 68:18; 77:12; 127:1; 141:16; 161:10, 17; 164:12; 198:8; 203:21; 209:19, 20; 221:2; 222:1, 7; 247:10; 254:16; 255:7; 256:9, 20; 279:6, 15; 281:1  
 Contributions [2] 277:21; 279:4  
 contributions [57] 9:16; 13:2; 15:11; 18:17; 22:15, 16; 24:3; 28:4; 29:8, 15; 30:2; 31:2, 6, 10, 20; 51:4; 53:12, 22; 65:6, 12; 68:19; 71:4; 72:8; 73:19, 20; 74:14; 76:9; 95:7, 8; 123:4; 125:17; 126:21; 155:7; 164:21; 209:20; 210:14; 211:16; 212:3, 4; 213:9; 222:16, 19, 20; 231:16; 234:4; 238:12; 250:17; 251:7, 8; 254:14; 255:5; 272:13; 280:6; 287:2  
 contributor [3] 27:18, 19; 43:8  
 Contributors [2] 64:5, 7  
 contributors [6] 64:3; 67:2; 68:10; 226:16; 246:13; 286:16  
 control [5] 27:14; 75:3, 18; 90:17; 215:20  
 controlled [3] 17:9; 203:3; 206:12  
 controlling [1] 217:9  
 convenient [1] 78:11

**conversant** [1] 34:3  
**conversation** [3] 45:8; 115:17; 116:6  
**conversations** [1] 280:14  
**convey** [1] 147:16  
**conveying** [2] 25:7, 8  
**convictions** [2] 167:10, 11  
**coordinate** [1] 172:22  
**coordinated** [2] 162:8; 216:6  
**coordinator** [1] 239:7  
**copied** [1] 158:17  
**copies** [1] 83:21  
**copy** [16] 10:6, 17; 16:17; 35:7; 38:17, 21; 43:14; 55:15; 132:11, 22; 133:3; 134:9; 157:16; 197:11, 14; 274:7  
**core** [1] 167:11  
**corner** [1] 261:11  
**Corp** [1] 231:1  
**corporate** [22] 30:2; 44:20; 45:19; 50:21; 55:1; 57:12; 65:12; 68:19; 70:4; 95:7; 98:7, 14, 15; 100:13; 138:21; 210:14; 212:3; 213:11; 216:3; 222:19; 250:17; 251:7  
**corporation** [5] 95:19, 20; 98:17; 100:10; 224:19  
**corporations** [11] 63:17, 18; 65:5; 66:9, 12; 69:2; 97:11; 131:14; 210:15; 235:21; 247:13  
**correctly** [3] 100:3; 118:9; 133:17  
**correspondence** [1] 145:6  
**corrupt** [13] 13:10; 14:16; 15:21, 22; 16:5; 79:9; 80:2, 11; 141:17, 18; 191:7; 256:14  
**corrupting** [3] 238:22; 246:4; 256:14  
**corruption** [39] 14:22; 15:1, 6; 16:9, 12; 20:5; 21:7, 15; 23:6; 25:3; 26:3, 12; 27:8, 9, 17; 28:11; 30:4; 51:2, 7, 19, 20; 52:3, 19; 54:3, 16; 58:2; 62:14; 64:12; 75:4; 81:5, 7, 9; 139:14; 144:19; 158:13; 183:15; 211:12; 246:10  
**Corzine** [1] 142:5  
**cost** [1] 46:10  
**Counsel** [2] 30:7; 140:9  
**counsel** [4] 117:18; 275:13; 288:21; 289:10  
**countenance** [1] 120:17  
**counties** [2] 209:10; 255:6  
**country** [7] 26:1; 45:17; 73:14; 74:11; 234:14; 238:10; 279:17  
**couple** [8] 78:10; 141:3; 144:20; 177:21; 216:20; 224:12; 228:11; 275:3  
**course** [25] 13:9; 14:15; 18:3, 18, 20; 28:3; 59:20; 60:1; 61:21; 73:19; 74:20; 88:9; 114:19; 137:20, 21; 138:1; 139:17; 146:17; 171:16; 183:16; 227:14; 252:6; 263:16; 274:22; 287:22  
**Court** [10] 15:5; 67:19; 72:10; 73:5; 88:8; 122:16; 123:3; 187:16; 188:9; 221:22  
**court** [6] 20:9; 26:4; 80:9, 10; 202:8, 12  
**courtesy** [3] 274:10, 13, 14  
**courts** [1] 88:20  
**cover** [1] 235:21  
**coverage** [2] 53:17; 145:6  
**covered** [1] 103:9  
**covers** [1] 287:20  
**crab** [1] 23:19  
**crafted** [1] 197:6  
**Cranston** [1] 148:20  
**create** [7] 88:12; 89:13, 16; 92:19; 146:18; 152:13; 209:10  
**created** [8] 23:7; 25:18, 19; 89:14; 93:1; 95:5; 97:21; 146:7

**ates** [1] 21:17  
**audience** [1] 137:18  
**credibility** [1] 278:17  
**credible** [1] 278:14  
**credit** [2] 63:2, 3  
**crews** [1] 23:20  
**crime** [6] 97:12; 98:20; 99:4; 100:14; 238:6; 255:17  
**criminal** [3] 22:15; 122:22; 275:1  
**criteria** [14] 82:16, 20; 87:17; 88:16; 93:15; 94:8, 19, 20; 103:3, 19; 105:13, 14; 107:20; 113:21  
**critical** [2] 131:18; 152:20  
**CROSS** [1] 275:14  
**cross** [2] 217:14; 220:2  
**crosses** [1] 219:8  
**crowded** [1] 78:7  
**crucial** [1] 195:22  
**crumbs** [1] 112:16  
**crusade** [2] 12:15, 16  
**curb** [1] 150:6  
**current** [2] 173:10; 229:22  
**currently** [1] 169:1  
**curry** [2] 150:3; 151:20  
**cut** [4] 104:7; 106:10, 11; 112:14  
**cuts** [8] 104:11, 12; 105:22; 106:4, 13; 107:6; 129:2  
**cutting** [1] 104:22  
**cycle** [4] 152:15; 188:21; 232:2; 236:20

- D -

**D.C.** [4] 20:5; 32:20; 61:2; 245:20  
**daily** [1] 45:17  
**Dakota** [3] 90:5; 187:7, 11  
**damage** [1] 265:12  
**damning** [2] 106:5; 129:2  
**Dan** [1] 33:6  
**dare** [1] 244:15  
**data** [2] 78:2; 185:11  
**date** [6] 71:20, 22; 160:14; 178:3; 246:20; 287:8  
**dated** [2] 249:20; 252:22  
**dates** [1] 46:4  
**David** [2] 109:11, 15  
**Day** [1] 196:19  
**day** [9] 46:5; 49:17; 79:8; 91:22; 172:20; 185:9; 276:6; 285:12; 288:15  
**days** [49] 45:17; 70:7; 83:4; 85:3, 4, 5, 6; 86:16; 87:2, 3; 94:6, 11, 14, 15, 22; 97:13; 98:10; 99:2; 100:4, 13, 22; 108:19; 111:19; 119:19; 121:20, 21; 126:9; 127:12; 128:19; 129:12; 131:10; 133:19; 139:6; 140:4; 181:15; 183:7; 184:5; 195:4; 260:9, 10, 17; 263:16  
**deal** [4] 32:22; 63:2; 89:4; 107:4  
**dealing** [2] 52:15; 96:16  
**deals** [1] 92:6  
**dealt** [2] 52:2, 19  
**Dear** [2] 256:1, 7  
**debate** [5] 85:22; 141:22; 264:9; 280:1, 13  
**debates** [1] 249:15  
**December** [12] 32:5; 34:17; 38:7, 21; 39:1, 8, 12; 44:16; 46:5; 49:13, 17; 50:4  
**decide** [4] 88:8; 204:8; 268:22; 269:10  
**decided** [3] 52:7; 125:2; 289:7  
**decides** [1] 187:17  
**Decision** [1] 72:11  
**decision** [11] 37:5; 38:5; 46:4; 72:9, 16; 73:4; 76:10; 93:3; 269:8; 280:17; 289:22

**decisions** [5] 41:7; 95:10; 282:3; 290:8, 9  
**decided** [3] 49:18; 122:15; 123:3  
**decline** [1] 192:8  
**declined** [2] 190:20; 191:19  
**DeConcini** [1] 148:9  
**deemed** [1] 221:21  
**defeat** [1] 231:20  
**defeating** [2] 82:1; 108:6  
**defend** [1] 233:8  
**Defendant** [1] 18:11  
**Defendants** [2] 160:8, 16  
**defense** [2] 167:14; 169:13  
**define** [1] 153:19  
**definition** [4] 34:1; 215:9; 241:9; 254:15  
**degenerating** [1] 243:15  
**degeneration** [1] 74:22  
**degree** [6] 93:3; 137:10; 139:18; 142:8, 13; 176:5  
**Delaware** [1] 123:20  
**delay** [3] 35:20; 37:4; 270:22  
**deliberately** [2] 115:1, 3  
**delivered** [1] 123:21  
**democracy** [1] 27:4  
**Democrat** [4] 42:14; 130:11; 168:17; 284:22  
**Democratic** [18] 22:13; 112:20; 113:9; 173:1; 191:15, 18; 207:8; 209:15; 212:12; 213:18; 230:3; 261:2, 12, 13; 262:4; 263:4; 271:11; 272:15  
**democratic** [1] 182:19  
**Democrats** [7] 17:13; 19:17, 19; 20:21; 113:2; 152:21; 191:19  
**demographic** [1] 178:20  
**deny** [3] 33:19; 34:14; 38:1  
**Department** [3] 21:11; 265:13, 18  
**depend** [1] 279:12  
**depending** [1] 175:13  
**depends** [3] 137:10; 257:6, 7  
**Deposition** [29] 7:13; 71:17; 84:12; 99:15; 101:6, 12, 18; 102:2; 119:22; 127:16; 129:17; 132:15; 157:20; 158:4; 159:14, 22; 208:7; 224:15; 228:18; 229:3; 236:9; 245:11; 247:2; 250:3; 253:4; 257:21; 261:5; 262:9; 264:20  
**deposition** [3] 274:11; 285:14; 291:11  
**depriving** [1] 285:5  
**deputy** [1] 247:22  
**derelict** [1] 42:6  
**derived** [1] 237:3  
**describe** [3] 80:21; 167:5; 192:10  
**described** [6] 12:5; 45:7; 120:17; 179:20; 204:3; 221:4  
**describing** [1] 221:5  
**description** [2] 79:22; 172:7  
**deserve** [2] 63:3; 173:2  
**designate** [1] 139:21  
**designated** [1] 248:8  
**designation** [2] 65:1, 10  
**designed** [2] 9:15; 109:8  
**designs** [1] 240:1  
**desperate** [1] 248:20  
**despicable** [2] 124:4  
**despite** [1] 93:14  
**destination** [3] 175:21, 22; 176:1  
**destroys** [2] 239:12; 244:3  
**detail** [1] 230:20  
**details** [2] 72:3, 15  
**determine** [2] 82:18; 222:6  
**determined** [1] 74:15  
**developed** [2] 18:22; 220:11  
**diatribe** [1] 193:3

Dick [5] 229:20; 233:9, 10, 12, 13  
 difference [13] 43:2; 75:13; 125:21;  
 138:19, 22; 139:2, 3, 14; 154:11; 156:13;  
 157:4; 179:6; 281:8  
 differentiate [1] 146:19  
 differently [1] 204:13  
 difficult [4] 28:9; 120:14; 146:19; 208:20  
 diminished [2] 96:2; 137:8  
 diminishing [2] 96:10; 112:4  
 dinner [2] 156:4; 196:19  
 dinners [2] 196:21; 197:1  
 DIRECT [1] 7:18  
 Direct [1] 189:10  
 direct [8] 79:21; 90:3; 104:2; 175:5;  
 181:20; 183:9; 207:3; 225:1  
 directing [4] 215:2; 238:18; 270:5; 271:17  
 director [1] 238:22  
 disadvantage [1] 190:9  
 disagree [4] 47:18; 199:19; 202:9; 233:7  
 disagreement [1] 94:17  
 disappearance [1] 222:14  
 disappointed [2] 174:10; 275:22  
 disapproval [1] 35:12  
 disbursement [1] 164:1  
 disclaimer [1] 264:16  
 disclose [1] 175:16  
 disclosed [2] 175:7, 10  
 disclosing [1] 176:7  
 disclosure [2] 140:2, 5  
 discouraging [1] 182:22  
 discovered [4] 158:14; 278:19; 279:8;  
 281:17  
 discussed [2] 57:9; 211:10  
 discussion [3] 88:6; 267:22; 280:1  
 discussions [1] 45:10  
 disgraceful [1] 202:14  
 displace [1] 130:9  
 displacing [1] 132:1  
 disposition [6] 38:5; 41:1, 18; 43:4, 5, 6  
 disputed [1] 269:15  
 dissatisfaction [3] 78:1, 3; 223:18  
 distinguished [1] 27:7  
 distortions [1] 131:6  
 distribute [1] 59:10  
 distributed [1] 59:15  
 district [3] 97:16; 102:19; 200:11  
 districts [1] 143:11  
 diverting [1] 215:2  
 DNC [2] 191:17; 212:17  
 document [47] 10:13, 17, 19; 11:1, 22;  
 16:21; 21:2; 24:22; 32:6, 14, 18; 33:7;  
 35:3; 38:13; 43:17; 55:18; 71:16; 84:11;  
 99:14; 101:2, 5, 11, 17; 102:1; 119:21;  
 127:15; 129:16; 132:14; 135:8; 157:19;  
 158:3; 159:13, 21; 160:7; 184:10; 208:6;  
 228:17; 229:2; 236:8; 245:10; 247:1;  
 250:2; 253:3; 257:20; 261:4; 262:8;  
 264:19  
 documents [6] 71:11; 224:12, 14; 257:5;  
 266:1; 277:7  
 Doe [9] 178:13, 15, 16; 179:3, 13, 18, 19,  
 20  
 doesn't [25] 26:22; 57:6; 65:6; 75:13;  
 94:11; 103:3; 105:11; 107:10; 113:11;  
 114:1, 4, 22; 134:9; 135:9; 152:13; 157:4;  
 176:19; 190:17, 18, 21; 201:20; 251:17;  
 255:4; 265:4; 272:14  
 dog [2] 19:13; 255:22  
 dollar [12] 31:2; 32:22; 51:21; 53:11;  
 77:12; 164:12, 21; 217:19; 222:7; 251:2;  
 255:1; 275:4

dollars [36] 8:18, 19, 20; 13:15; 23:18;  
 28:14, 18, 19, 21; 31:22; 51:21, 22; 54:5;  
 59:1, 13; 74:1; 92:2; 152:12; 164:13;  
 211:15; 214:5; 217:20; 225:15; 230:2, 10,  
 13; 231:14, 15; 259:8, 15, 19, 20; 260:1;  
 261:19; 282:8  
 Domenici [1] 142:1  
 dominant [1] 272:7  
 donate [3] 155:1; 178:21; 179:4  
 donated [3] 32:19, 22; 58:21  
 donates [1] 179:1  
 donating [3] 150:11; 151:18, 20  
 donation [13] 92:1; 160:10, 19; 161:3;  
 163:13, 22; 178:6; 179:8, 11; 180:12;  
 196:10; 287:9, 14  
 donations [16] 150:7; 161:22; 175:6;  
 181:16; 198:19; 216:5; 217:3; 220:5, 7;  
 234:9; 235:10; 249:14; 250:9; 254:11;  
 256:16; 280:6  
 donor [5] 19:20; 136:2; 150:5; 157:6;  
 196:9  
 donors [9] 17:14; 19:18; 20:22; 23:2;  
 71:4; 153:15; 170:1; 175:5; 226:21  
 donut [1] 251:2  
 Door-to-door [1] 189:12  
 door-to-door [1] 181:22  
 doors [1] 190:16  
 double [1] 187:6  
 doubt [7] 73:2, 11; 113:10; 136:8; 233:14;  
 237:10; 287:6  
 doubts [1] 276:3  
 Dow [1] 32:20  
 drafted [5] 76:6; 85:17; 135:8; 242:17, 21  
 drafter [2] 89:1; 242:9  
 drafting [1] 239:3  
 dramatic [3] 53:15; 143:13; 187:4  
 dramatically [3] 17:10; 19:10; 53:5  
 draw [1] 106:11  
 drawing [1] 69:12  
 dreams [1] 29:5  
 drink [2] 282:1; 283:6  
 drinking [3] 279:18; 285:20; 290:4  
 drive [2] 283:10, 11  
 driver [1] 285:22  
 drives [2] 267:13; 271:22  
 driving [1] 290:5  
 Drug [2] 164:18; 165:19  
 drug [7] 13:13; 28:15, 17; 77:12; 164:15,  
 22; 166:17  
 drugs [1] 258:10  
 dubious [1] 65:17  
 due [2] 191:21; 232:3  
 dumpster [4] 123:22; 124:5, 13, 21  
 dungeness [1] 23:19  
 duties [6] 10:12; 16:15; 42:3, 6; 79:21;  
 146:17

## - E -

e-mails [1] 165:15  
 early [2] 227:8; 267:11  
 earmark [2] 59:8; 143:18  
 earmarked [1] 143:20  
 earmarks [3] 17:9; 143:14, 15  
 easily [1] 45:15  
 easy [1] 250:19  
 echoes [1] 167:19  
 economy [2] 104:8; 106:2  
 edgy [1] 229:21  
 education [3] 184:22; 258:7, 14  
 effect [19] 76:1, 5; 112:4; 159:4; 188:2, 7,

11; 189:19; 221:7; 223:8, 9, 10; 224:22;  
 225:17; 256:14; 268:2, 5, 9; 280:21  
 effective [6] 151:3; 155:16; 178:3;  
 182:16; 268:6; 287:8  
 effects [1] 191:6  
 effort [8] 12:8; 65:3; 72:16; 152:20;  
 222:6; 244:16; 247:16; 280:17  
 efforts [3] 55:7; 66:6; 143:9  
 egregious [2] 67:1; 68:10  
 elaborated [1] 54:19  
 elected [12] 21:14; 48:5; 60:22; 94:3;  
 124:10; 130:10; 146:14; 154:22; 166:5;  
 195:7; 244:17; 267:19  
 electing [3] 82:1; 83:6; 108:6  
 Election [22] 15:20; 76:7; 138:13; 159:9;  
 160:15; 161:8; 163:3, 5, 12; 169:21;  
 170:6, 12; 202:5, 13; 208:11; 209:21;  
 236:5; 254:20; 270:17, 19, 21; 271:7  
 election [62] 8:2, 13, 18, 19; 13:5; 33:1;  
 70:7; 85:4, 19; 94:7, 15; 97:14; 98:11;  
 101:1; 104:3; 106:10; 108:5; 119:19;  
 121:1, 21; 126:10; 129:13; 139:6, 8, 9, 10;  
 152:15; 154:15; 162:9; 174:16; 180:20;  
 181:2, 15; 183:8; 194:16; 198:21; 204:5,  
 18; 214:5; 215:10, 15, 20; 217:6; 218:16;  
 224:1, 22; 232:1; 236:20; 237:2, 3; 238:4;  
 241:14; 259:3; 260:9, 11, 17; 265:5;  
 284:16, 19; 285:1, 8  
 electioneering [5] 133:21; 135:3, 15;  
 136:4, 9  
 Elections [2] 138:15; 139:16  
 elections [19] 83:4; 108:8; 150:13; 182:9;  
 199:5; 209:6, 12; 211:5; 212:7, 14; 213:3;  
 215:16; 216:1; 236:22; 237:13; 240:21;  
 246:1; 253:17; 263:12  
 electoral [7] 150:7, 8, 17; 151:5; 268:1, 5;  
 286:20  
 eligible [2] 281:4; 285:6  
 eliminate [4] 20:4, 11; 21:6; 75:3  
 eloquent [1] 60:18  
 eloquently [1] 167:15  
 elsewhere [2] 17:22; 252:4  
 emasculated [3] 16:3; 176:18; 210:21  
 emasculation [2] 74:22; 271:1  
 embark [1] 52:7  
 embrace [1] 167:11  
 embraced [1] 273:3  
 emergency [1] 256:9  
 emotional [1] 120:13  
 emphasize [1] 40:2  
 empirical [1] 143:22  
 employed [1] 274:2  
 employees [1] 77:15  
 empowered [1] 122:7  
 enacted [4] 144:10, 16; 219:6; 263:1  
 encompassed [1] 24:6  
 encourage [1] 267:3  
 encouraging [2] 182:22; 266:7  
 end [9] 36:3; 46:21; 47:5; 49:22; 78:9;  
 115:1, 3; 140:11; 174:3  
 endeavors [1] 58:14  
 ended [2] 176:2; 250:21  
 endorsement [4] 11:21; 73:17; 74:6;  
 278:11  
 ends [2] 248:11, 12  
 enemy [1] 62:1  
 enforce [2] 25:16; 26:5  
 enforcement [1] 22:12  
 engage [8] 73:3; 104:4; 180:20; 181:1,  
 10; 189:5; 266:6; 273:22  
 engaged [3] 56:21; 68:14; 266:3

engages [1] 181:3  
 engaging [1] 255:11  
 engine [1] 49:14  
 enjoy [1] 147:22  
 enlist [1] 281:5  
 Enman [2] 272:22  
 Ensign [4] 111:20; 112:13; 113:7, 11  
 entered [2] 72:22; 159:5  
 entering [2] 93:20; 109:2  
 enters [1] 180:11  
 entertain [3] 40:6; 149:14, 18  
 enthusiastically [1] 273:3  
 entice [1] 233:19  
 entirety [1] 13:19  
 entities [1] 224:2  
 entitled [6] 10:17; 12:1; 16:18; 38:4;  
 258:3; 264:16  
 entity [10] 56:4; 64:14; 136:3; 138:17, 21;  
 171:9; 203:2; 206:10; 224:19; 225:7  
 entourage [1] 49:15  
   environment [1] 225:12  
 environment [2] 26:22; 202:11  
 episode [1] 148:6  
 equation [1] 65:7  
 essentially [1] 231:12  
 establish [1] 209:5  
 established [3] 14:19; 203:3; 206:11  
 estimate [2] 36:17, 19  
 etcetera [8] 29:12; 66:19; 196:5; 199:12;  
 213:10, 19; 266:14  
 ethereal [1] 117:11  
 ethical [1] 145:2  
   ethics [5] 22:22; 137:2; 158:10, 16, 19  
 ethics [1] 136:20  
 evaporating [1] 234:2  
 eve [1] 245:22  
 even-numbered [2] 240:21; 241:14  
 evening [3] 90:12; 275:16, 17  
 event [12] 63:13; 65:18, 19; 67:6; 141:13;  
 153:15, 16; 154:7; 200:11; 202:7; 227:1;  
 242:21  
 events [13] 44:21; 53:21; 54:15; 64:2;  
 70:4; 97:6; 196:18; 197:8; 200:2; 201:12;  
 227:1, 9  
 Everybody [2] 117:6; 212:5  
 everybody [6] 38:4; 93:7; 177:16; 235:1,  
 2; 253:22  
 everyday [1] 143:19  
 evidence [11] 33:15; 34:9; 47:18; 160:9,  
 14, 17; 161:9; 163:13; 252:7; 286:14;  
 289:4  
 evident [1] 264:16  
 evolving [1] 243:15  
 ex [1] 40:4  
 exact [3] 31:21; 32:1; 238:20  
 exactly [4] 33:22; 131:13; 172:7; 240:17  
 EXAMINATION [2] 7:18; 275:14  
 examination [2] 142:18; 223:17  
 example [19] 23:14; 57:3; 124:12, 20;  
 137:13, 15; 145:16; 163:1; 166:16; 180:4;  
 181:8; 218:15; 239:14, 15; 251:14; 255:8;  
 272:11; 279:2; 281:20  
 examples [4] 17:19; 23:16; 24:21  
 exceed [1] 123:2  
 Except [2] 171:12; 289:4  
 except [7] 10:9; 27:10; 60:11; 156:22;  
 187:2; 236:20; 289:21  
 exception [6] 90:10; 198:4; 200:14;  
 201:19; 202:6; 205:1  
 exceptionalism [1] 167:17  
 excerpted [2] 30:7; 140:8

access [1] 203:21  
 exchange [11] 33:14; 34:8; 145:6;  
 160:10, 19; 161:2, 9, 17, 22; 163:13, 22  
 excluded [1] 284:13  
 exclusive [1] 12:4  
 Excuse [10] 83:7; 114:6, 15; 132:4;  
 139:10; 142:16; 179:14; 225:19; 264:7;  
 285:9  
 excuse [4] 18:14; 46:1; 54:12; 235:13  
 executive [1] 152:10  
 executives [3] 31:7, 16; 57:11  
 exercise [1] 104:5  
 Exhibit [74] 10:6, 14, 17, 20; 16:20, 22;  
 32:3, 7, 17; 35:1, 4; 38:10, 14; 43:15, 18;  
 55:15, 19; 71:14, 17; 84:8, 12; 99:11, 15;  
 101:2, 6, 12, 18; 102:2; 108:10; 111:14;  
 119:22; 127:8, 16; 128:17; 129:8, 17;  
 132:12, 15; 157:17, 20; 158:4,  
 17; 159:9, 14, 22; 160:8; 184:9; 206:7;  
 208:7, 10; 226:6, 8; 227:15; 228:18;  
 229:3; 230:14; 236:3, 9; 245:11; 246:19;  
 247:2; 249:20; 250:3; 252:21; 253:4;  
 255:17; 257:16, 21; 261:1, 5; 262:4, 9;  
 264:16, 20  
 exhibit [3] 23:15; 122:21; 208:3  
 Exhibit16 [2] 119:5, 16  
 Exhibit28 [1] 229:13  
 Exhibit30 [1] 245:7  
 Exhibits [3] 159:8; 224:12, 15  
 exhibits [1] 184:2  
 exist [2] 48:2; 146:4  
 existed [2] 89:5; 146:3  
 existence [2] 18:2; 231:13  
 existing [1] 21:19  
 exists [1] 211:22  
 expanding [1] 258:14  
 expect [1] 225:3  
 expectation [3] 189:3; 223:21; 224:6  
 expedited [1] 36:2  
 expenditures [2] 216:6, 7  
 expenses [1] 237:4  
 experience [8] 60:21; 82:14; 145:15;  
 151:2, 7; 162:6; 244:17; 267:18  
 experts [3] 231:4; 265:6; 286:20  
 explain [1] 280:3  
 explained [1] 276:12  
 explanation [2] 191:17; 277:1  
 explore [2] 25:4; 65:15  
 explosion [2] 74:21; 143:15  
 Expose [1] 158:13  
 exposed [2] 123:21; 124:12  
 Express [3] 56:2, 4; 58:13  
 express [4] 105:9; 122:8, 12; 187:17  
 extended [1] 274:10  
 extensively [1] 219:20  
 extent [4] 25:5; 35:19; 134:22; 135:12  
 extreme [1] 146:22  
 extremely [1] 120:14  
 eye [1] 94:16  
 eyes [1] 185:7

## - F -

face [9] 93:15; 99:7; 137:1; 139:5; 151:4;  
 169:3; 271:18, 19; 272:15  
 fact [18] 19:12; 26:12; 31:19; 51:14; 62:9;  
 65:5; 69:1; 104:10; 116:7; 137:6; 148:20;  
 183:19; 190:19; 220:8; 269:16; 278:19,  
 20; 279:8  
 factor [5] 118:19; 231:20; 272:7; 282:22;  
 284:8

fact [10] 82:22; 113:18; 118:6, 17;  
 275:10; 280:10; 281:22; 282:11; 283:4;  
 286:17  
 facts [2] 251:18; 278:12  
 factual [2] 251:20; 252:3  
 failed [3] 16:1; 100:16; 284:14  
 fair [1] 131:9  
 fairly [3] 233:10; 250:19; 258:2  
 faith [4] 76:10; 167:11; 233:21; 234:3  
 fall [2] 86:18; 287:1  
 false [2] 138:3, 7  
 familiar [2] 157:11; 242:13  
 families [1] 137:15  
 family [6] 8:17; 31:4, 17; 46:22; 58:17  
 family-oriented [1] 46:19  
 fantastic [1] 187:14  
 fare [1] 55:1  
 fashion [6] 27:15; 42:2; 79:12; 105:10;  
 125:12; 202:14  
 father [1] 279:15  
 favor [12] 24:2; 61:11, 18; 74:17; 76:11,  
 12, 18; 112:2; 130:8; 147:12; 150:3;  
 151:20  
 favorable [4] 38:5; 41:1, 18; 148:10  
 favorably [2] 41:10; 51:15  
 favoring [1] 44:17  
 favorite [1] 150:2  
 faxes [1] 165:15  
 FCC [17] 33:18; 34:13; 35:17, 20; 36:1, 2;  
 37:4; 38:12; 44:17; 46:4, 16; 47:7; 48:8,  
 21; 50:10; 51:3, 15  
 featured [4] 41:16; 200:10; 201:5, 17  
 FEC [19] 53:7; 79:9, 11; 81:3; 95:10;  
 110:1; 176:17; 208:13; 210:18, 21;  
 239:17; 277:10; 286:11, 18; 287:1, 5;  
 288:4, 22; 289:7  
 FECA [1] 144:16  
 Federal [32] 15:20; 34:18; 40:10, 17;  
 42:8; 56:1, 4; 58:13; 76:7; 145:7; 159:9;  
 160:14; 161:8; 163:2, 5, 12; 169:21;  
 170:5, 12; 198:6; 202:5, 13; 208:11;  
 209:21; 216:15; 219:18; 236:5; 254:20;  
 270:16, 19, 20; 271:7  
 federalize [3] 211:4, 7; 243:6  
 federally [2] 243:7; 254:7  
 federally-regulated [1] 205:14  
 Feel [1] 208:13  
 feel [6] 12:2; 41:18; 78:6; 139:18; 188:7;  
 204:14  
 feeling [1] 65:17  
 feels [1] 273:1  
 Feingold [14] 12:18; 52:8; 54:21; 89:21;  
 120:15, 16; 121:7; 123:18; 125:15;  
 126:16; 221:8; 280:9, 11  
 Feinstein [1] 222:4  
 fellow [2] 77:16; 156:12  
 felt [2] 62:4; 215:22  
 fenced [1] 195:3  
 ferry [1] 49:14  
 fewer [1] 223:22  
 field [4] 125:20; 142:13; 238:2, 22  
 fight [2] 14:7; 282:2  
 Fighting [1] 55:14  
 fighting [1] 258:17  
 figured [1] 24:1  
 figures [1] 190:5  
 file [1] 36:3  
 filed [2] 136:21; 230:20  
 final [4] 39:21; 273:14; 274:5  
 Finance [3] 11:18; 139:20; 184:11  
 finance [27] 9:21; 11:15; 20:2, 3; 25:15;

28:5; 29:10; 51:18; 52:8; 64:16; 65:68:17; 75:20; 171:5; 180:8; 183:19; 184:13; 209:4, 9; 210:6; 219:6; 263:1; 271:6; 273:1, 8; 288:7, 8  
**financed** [6] 91:20; 93:22; 136:4; 203:3; 206:11; 239:4  
**finances** [1] 171:10  
**financial** [2] 220:14; 223:8  
**financially** [2] 59:3; 74:10  
**financing** [8] 69:3; 91:6; 138:11; 209:5, 11; 223:3; 286:21  
**find** [15] 28:9; 70:21; 74:2; 108:7; 117:7; 126:6; 166:14; 185:9; 244:18; 251:19, 21; 273:20; 281:15, 16; 290:20  
**finding** [3] 57:19; 137:3; 251:10  
**findings** [1] 137:11  
**finds** [1] 146:19  
**fine** [16] 33:5; 53:2; 92:1; 148:3; 183:11; 189:21; 192:21; 193:2; 197:18; 216:19; 251:8; 252:19; 257:4; 270:22; 287:4; 288:6  
**fined** [2] 277:10; 279:15  
**finger** [1] 157:3  
**finish** [7] 44:10; 52:21; 53:1; 64:13; 70:18; 104:19; 112:11  
**finished** [1] 23:11  
**fired** [1] 113:12  
**firewall** [2] 195:1; 213:16  
**firm** [3] 31:8, 11; 32:20  
**firms** [1] 230:17  
**First** [3] 10:6; 269:10; 273:14  
**first** [29] 7:10; 20:19; 23:15; 36:18, 20; 44:10, 13; 45:1; 46:10, 15; 49:12; 50:5, 11; 68:5; 77:5, 20; 110:4; 120:18; 141:2; 143:17; 158:18; 186:16; 208:19; 229:12; 230:15; 247:9; 250:14; 276:9  
**fish** [1] 23:19  
**fisherman** [1] 23:19  
**fishing** [2] 23:20, 21  
**fits** [1] 79:22  
**Five** [5] 137:20; 146:6, 11; 147:19; 148:6  
**five** [9] 17:19; 53:11; 146:9; 147:9, 14; 212:7; 215:15; 237:7; 240:12  
**five-minute** [1] 140:11  
**fixes** [1] 221:8  
**flat** [1] 271:16  
**fleet** [1] 234:13  
**flew** [1] 45:16  
**flood** [1] 238:11  
**flooded** [1] 117:4  
**floor** [6] 19:7; 28:15; 141:22; 162:15; 249:15; 276:13  
**Florida** [3] 46:7, 8, 18  
**flows** [1] 239:9  
**Floyd** [3] 7:8; 78:8; 142:17  
**fly** [2] 43:9; 234:14  
**flyer** [6] 245:7, 21; 262:5; 263:5, 10; 264:16  
**flyers** [3] 267:22; 268:5, 11  
**flying** [2] 45:14; 51:3  
**focus** [12] 55:6; 68:3, 7; 141:8, 12; 165:5; 174:11; 233:20; 246:9, 12; 272:4  
**Focusing** [1] 50:1  
**focusing** [3] 75:8; 198:4; 204:10  
**follow** [3] 67:3; 141:3; 202:21  
**following** [3] 17:7; 23:16; 167:8  
**follows** [1] 46:2  
**followup** [1] 144:20  
**followups** [1] 216:20  
**foolish** [1] 162:11  
**forces** [1] 56:9

**foregoing** [5] 67:17; 78:14; 140:15; 218:5; 257:11  
**Foreign** [2] 130:2, 3  
**foreign** [2] 129:22; 130:9  
**forests** [3] 88:11; 89:13; 92:18  
**forget** [2] 14:6; 147:9  
**forgotten** [3] 58:22; 70:15; 152:2  
**form** [16] 70:4, 10; 109:10; 114:18; 115:12; 123:11, 14; 147:4; 150:5, 15; 171:13; 172:2; 211:6; 245:1; 246:19; 256:2  
**formal** [1] 37:15  
**former** [1] 42:8  
**formula** [1] 286:7  
**forth** [16] 104:21; 118:8; 171:21, 22; 183:2; 185:16; 190:4; 213:22; 219:3, 11; 220:12; 223:18; 243:11; 244:1; 246:13, 14  
**fortunate** [2] 149:4; 287:21  
**forward** [1] 289:14  
**fought** [1] 63:5  
**found** [6] 136:22; 137:7, 22; 144:13; 172:4, 5  
**foundation** [1] 59:16  
**founder** [1] 47:2  
**fountain** [1] 91:6  
**four** [6] 17:19; 44:20; 49:14; 53:11; 100:21  
**four-year** [2] 279:14; 282:8  
**frame** [1] 84:6  
**framer** [1] 212:1  
**frankly** [3] 12:8; 88:13; 145:2  
**Frederick** [1] 56:1  
**free** [16] 55:3; 63:10; 64:17; 66:11; 91:15; 96:10; 98:3; 107:14; 109:4; 110:7, 20; 112:17; 141:9; 167:12; 204:15; 208:13  
**frequently** [2] 56:22; 209:8  
**friend** [6] 58:8; 61:9; 173:18; 191:14; 258:6; 272:21  
**friends** [1] 58:10  
**front** [3] 50:3; 56:5; 226:9  
**Frosser** [1] 249:21  
**frustration** [1] 78:4  
**fueled** [1] 145:20  
**Full** [1] 27:11  
**full** [7] 55:1; 133:8; 137:21; 140:2, 5; 272:3; 285:7  
**fully** [4] 76:5; 112:10; 146:3; 282:10  
**function** [3] 41:5; 154:18; 202:15  
**functioning** [1] 41:6  
**functions** [4] 9:18, 22; 154:20  
**Fund** [1] 200:2  
**fund** [32] 59:8; 63:12; 64:2, 14, 20; 97:19; 98:14; 99:5; 148:20; 149:2; 151:3; 153:5, 22; 154:3, 8; 155:19; 164:13, 20; 165:16; 195:8; 196:18; 200:11; 201:5; 202:7; 204:11; 206:19; 207:10; 219:4; 243:19; 253:19; 260:11; 288:3  
**fundamentals** [1] 182:19  
**funded** [12] 9:14; 93:19; 107:20; 118:16, 20; 121:17; 122:2; 138:17, 21; 139:15; 149:12; 173:5  
**Funding** [1] 243:2  
**funding** [9] 40:17; 91:16; 122:18; 129:5; 142:9; 164:10; 215:20; 243:7; 268:11  
**fundraiser** [2] 13:13; 28:14  
**fundraising** [1] 12:11  
**funds** [29] 12:19, 21; 29:16; 59:10; 66:18; 97:19; 100:12, 13; 141:14; 142:4; 161:10, 18; 163:14; 164:1; 179:12; 188:1; 195:9; 197:10; 198:7; 201:11; 202:7; 204:3, 7; 238:5; 252:4; 262:20; 287:17, 22

**funnel** [1] 235:4  
**Funneled** [1] 232:11  
**funneled** [4] 206:20; 207:11; 232:11, 12  
**furnish** [2] 43:14; 88:20  
**Future** [1] 129:11  
**future** [2] 58:5; 62:6

---

- G -

---

**gain** [2] 60:11, 15  
**gained** [1] 99:7  
**gaining** [1] 150:12  
**gambling** [1] 71:5  
**game** [4] 173:20, 21; 232:13  
**Gaming** [1] 72:20  
**gaming** [7] 72:6, 7, 12; 73:1, 3, 6, 8  
**gatherings** [1] 226:15  
**gave** [10] 47:4; 125:8; 136:8; 140:3; 163:1; 175:16; 218:13; 232:8; 255:20; 279:14  
**Gazette** [1] 32:4  
**generated** [2] 216:13, 14  
**Generic** [3] 164:18; 165:19; 189:16  
**generic** [2] 166:17; 237:3  
**genteel** [1] 274:15  
**genuinely** [1] 256:13  
**geographic** [1] 99:2  
**geographical** [1] 98:12  
**George** [7] 194:15; 251:13; 252:3; 258:4, 6, 15; 259:10  
**Georgia** [1] 17:21  
**Gephardt** [7] 229:20; 232:22; 233:9, 10, 12, 13, 21  
**gets** [1] 98:15  
**gift** [1] 234:16  
**gifts** [1] 138:22  
**Give** [2] 174:21; 269:12  
**give** [29] 23:16; 28:21; 36:2; 59:12; 76:8; 85:13; 103:17; 116:13, 15; 132:11; 134:8; 139:13; 142:2; 152:8, 12; 153:3; 177:21; 201:22; 207:5, 19; 227:5, 13; 240:13; 244:11, 13; 274:17; 278:16; 282:8; 286:3  
**Given** [1] 281:21  
**given** [10] 13:16; 15:11; 28:18; 72:1; 73:19; 100:10; 116:7; 132:4; 144:21; 199:11  
**givers** [1] 226:21  
**gives** [4] 28:14; 137:18; 139:13; 256:10  
**giving** [3] 275:20; 287:9, 13  
**Glacier** [1] 23:21  
**glad** [19] 21:4; 37:21; 47:10, 22; 63:15; 73:4; 88:7; 103:15, 17; 104:4; 149:8; 156:4; 162:14; 210:17; 227:3; 275:13; 277:12  
**Globe** [2] 43:15; 44:15  
**goes** [15] 59:8; 112:14; 152:17; 155:2; 171:17; 174:18; 175:2; 205:13, 20; 213:17; 240:11; 248:7; 255:3; 280:21  
**GOP** [3] 106:10, 12; 107:5  
**Gore** [6] 129:1, 3, 7; 258:12; 259:11  
**gotten** [3] 53:17; 144:14; 153:11  
**governed** [1] 254:4  
**governing** [1] 209:11  
**Government** [16] 19:1; 64:21; 66:1; 144:2, 13; 149:3, 6; 152:11, 13; 154:16, 18, 19; 158:10, 19; 216:15; 219:18  
**government** [9] 21:22; 41:12, 14; 159:5; 167:12; 169:13; 172:4; 209:1; 258:14  
**governments** [1] 220:2  
**Governor** [8] 50:19; 247:11, 15, 17; 250:19; 258:4, 8, 17

governor [5] 93:7; 204:9, 12; 248:22; 255:21  
 graduating [1] 157:13  
 Gramm [2] 136:7; 227:5  
 Grand [9] 88:12; 89:13, 14, 15, 16; 92:19; 93:17; 195:2; 274:21  
 grand [1] 275:3  
 granted [1] 136:2  
 grants [1] 209:1  
 grass [5] 182:13, 15, 18; 185:15; 192:7  
 grateful [2] 73:13, 20  
 gratuitous [1] 140:5  
 grave [1] 29:20  
 gray [1] 82:15  
 great [5] 60:8; 61:10; 93:18; 167:19; 173:17  
 greater [3] 77:6; 179:22; 224:7  
 greatly [1] 247:15  
 greatness [1] 167:16  
 Green [1] 252:22  
 Greenbriar [1] 153:2  
 ground [3] 144:20; 168:21; 182:13  
 grounds [1] 264:9  
 Group [1] 171:18  
 group [17] 51:11; 100:11; 110:6; 112:12, 17; 129:9, 10; 132:10; 135:20; 187:19; 188:13; 194:4; 260:4, 20; 261:22; 263:3; 266:18  
 groups [14] 74:2, 7; 124:16; 125:11; 150:9; 173:12; 187:10, 21; 188:22; 189:3; 190:15, 17; 196:15; 223:4  
 guaranteed [1] 52:16  
 gubernatorial [13] 203:19, 20; 204:17; 205:3, 13; 212:16, 20; 216:4; 218:16; 238:4; 248:1; 250:10; 272:16  
 guess [7] 50:13; 193:6; 200:7; 259:21; 263:11; 277:11; 284:4  
 guest [3] 200:10; 201:5, 18  
 guilty [2] 137:22; 146:11  
 guise [1] 117:5  
 gun [1] 148:16  
 guy [2] 147:11; 233:11  
 guys [1] 120:22

- H -

H1B [1] 130:1  
 habit [1] 248:9  
 hadn't [3] 73:7; 172:6, 15  
 Haley [1] 249:21  
 half [2] 84:4; 211:15  
 hall [1] 25:22  
 Hampshire [5] 49:15, 18; 85:6, 9, 12  
 hand [1] 136:16  
 handed [1] 287:19  
 handouts [1] 268:17  
 hands [2] 152:5; 250:11  
 Hang [1] 206:2  
 happening [7] 27:3; 78:6; 117:3; 162:12; 176:11; 188:15; 239:13  
 happens [8] 93:8; 117:1; 132:22; 174:3; 176:22; 237:17; 249:8; 272:21  
 Hard [2] 259:19, 20  
 hard [62] 9:15; 20:10; 27:21; 32:1; 51:18; 54:5; 73:20; 74:14; 75:9, 14, 16; 76:9, 16; 91:15, 17, 20; 92:9, 13; 93:22; 94:6; 98:3; 99:7; 107:21; 109:4, 22; 110:9; 114:8, 16; 122:14; 125:14, 17; 126:13, 14, 15; 135:7; 153:19; 169:21; 170:2; 171:21; 174:22; 181:16; 198:12, 19; 199:12; 203:16, 17; 221:18; 222:7;

10; 224:4, 8; 241:7; 243:11, 12, 13; 246:13; 252:16; 254:12; 260:1; 265:22; 287:3  
 harm [2] 104:11; 107:7  
 harmed [1] 117:12  
 Harry [9] 111:20; 112:13; 113:7; 229:14, 17, 20  
 hats [1] 270:18  
 haven't [8] 34:4; 52:1; 56:13; 58:1; 153:11; 269:8, 9; 287:4  
 he'll [1] 288:17  
 head [1] 195:1  
 heading [3] 127:9; 184:10; 208:16  
 hear [6] 127:22; 128:2, 12; 174:11; 250:20; 275:13  
 heard [4] 153:10; 167:18; 173:5; 185:1  
 heart [1] 208:14  
 heavily [3] 68:14; 143:2; 232:18  
 held [8] 13:13; 85:18; 154:20; 164:14; 209:6; 235:3; 237:2; 274:12  
 hell [1] 113:12  
 Hello [1] 258:3  
 help [11] 61:16; 66:2; 68:2; 69:5; 74:4; 106:1; 173:16; 240:15; 256:9; 278:17  
 helpful [1] 141:11  
 helping [2] 47:17; 61:15  
 helps [3] 88:8; 93:21, 22  
 HENDERSON [15] 275:8, 12, 15; 276:7, 11; 280:18; 284:8, 9; 285:11, 15; 286:10; 288:10, 14, 19; 290:20  
 Henderson [3] 275:18; 276:4; 288:9  
 Herb [1] 123:17  
 hero [1] 167:19  
 heroic [1] 145:2  
 hierarchy [1] 242:14  
 high [4] 129:21; 130:5, 6; 235:3  
 Hill [1] 56:22  
 hill [1] 167:18  
 Hispanic [1] 178:18  
 historians [1] 30:5  
 historical [2] 143:7; 167:17  
 history [3] 182:9; 249:8; 267:11  
 hmm [2] 22:9; 32:16  
 Hold [1] 264:5  
 hold [2] 154:3; 253:16  
 holder [24] 149:10; 161:12, 16; 163:16, 18, 21; 180:14; 181:10; 197:2, 3, 4, 5; 198:12, 14, 16, 18; 199:4, 8; 201:2, 7, 10, 16; 202:6; 260:17  
 holders [9] 150:13; 154:1; 156:18; 195:14; 196:17; 197:7; 198:6; 200:15; 259:2  
 holding [9] 9:18; 61:12; 195:8; 200:9, 20; 202:22; 203:1, 5; 236:22  
 home [8] 73:15; 90:12; 143:10; 148:11; 178:16; 185:9; 285:21  
 honest [1] 57:19  
 Hong [1] 274:4  
 honor [2] 274:6, 9  
 honorable [1] 145:2  
 hope [3] 124:9; 168:11; 169:9  
 hoped [1] 283:16  
 hopefully [4] 61:15; 165:10; 189:22; 196:4  
 hopes [1] 29:5  
 horsing [2] 276:5, 7  
 hotel [1] 123:20  
 hours [1] 78:10  
 House [10] 157:11; 160:18; 162:16; 164:20; 165:17; 166:16, 18; 230:3; 249:17; 276:21

hour [1] 276:13  
 Houston [1] 253:15  
 huge [4] 164:20; 173:22; 232:4; 246:16  
 hundred [1] 82:12  
 Hundreds [1] 13:15  
 hundreds [8] 25:22; 41:13; 44:1; 47:11; 58:22; 60:13; 103:17; 283:17  
 Hunt [2] 42:8, 14  
 hunt [1] 37:17  
 hurt [3] 113:11; 138:4, 7  
 hurts [2] 93:21, 22  
 husband [1] 8:18  
 hypothesis [1] 150:14  
 hypothesize [1] 213:1  
 hypothetical [9] 100:1; 178:8, 9, 11; 179:2; 183:4; 187:14, 20; 265:22  
 hypotheticals [1] 177:22

- I -

I'd [23] 10:2, 5; 16:19; 22:17; 32:10; 38:10; 46:14; 71:14; 87:19; 103:17; 111:15; 118:5; 149:8; 156:4; 178:5, 21; 179:4; 238:8; 242:6, 11; 265:6; 277:12  
 I've [36] 8:14; 18:7; 20:10; 25:22; 27:10; 32:12; 44:1, 12; 47:11; 51:8; 57:9; 58:22; 70:15; 108:15; 128:18; 134:17; 143:12; 152:2; 157:15; 162:10; 185:1, 2, 3; 194:17; 197:14; 200:1; 221:9; 226:5; 233:6; 253:21; 267:17; 269:10; 289:12, 15, 17  
 idea [10] 19:22; 23:16; 57:14; 94:5; 162:1; 225:9; 249:5; 277:2, 15; 282:15  
 ideals [1] 168:21  
 ideas [1] 269:10  
 identification [37] 10:15, 21; 17:1; 32:8; 35:5; 38:15; 43:19; 55:20; 71:18; 84:13; 99:16; 101:7, 13, 19; 102:3; 120:1; 127:17; 129:18; 132:16; 157:21; 158:5; 159:15; 160:1; 168:17; 208:8; 224:17; 228:19; 229:4; 236:10; 245:12; 247:3; 250:4; 253:5; 257:22; 261:6; 262:10; 264:21  
 identified [2] 160:14; 288:5  
 identify [14] 16:19; 17:22; 18:10, 12; 21:8, 18; 75:8; 160:8, 17; 161:9; 163:13, 18, 19; 170:1  
 identifying [1] 168:2  
 ill [1] 62:2  
 illegal [4] 33:13; 34:1, 2; 173:13  
 imagination [1] 61:18  
 imagine [3] 56:18; 63:20; 180:5  
 imbalance [2] 142:8, 9  
 immediate [1] 176:1  
 immediate [2] 31:4; 175:22  
 impact [3] 220:14, 17; 222:22  
 impair [1] 68:20  
 imperative [1] 73:9  
 implement [1] 243:1  
 implied [1] 109:16  
 implies [3] 105:18; 106:3; 129:1  
 imply [1] 114:19  
 importance [2] 11:7; 188:8  
 important [1] 122:5  
 important [21] 40:21; 64:19; 96:17; 107:17; 113:1; 122:4, 6, 11; 125:10; 140:2, 6; 147:2, 7; 149:11; 167:15; 188:5; 225:6; 261:12; 278:13; 290:12, 14  
 importantly [1] 185:2  
 impose [1] 255:7

**imposed** [2] 231:7; 286:15  
**impression** [1] 228:4  
**improper** [3] 79:12; 147:17; 149:1  
**impropriety** [6] 76:20; 146:7, 18, 20, 21; 147:16  
**improve** [1] 53:5  
**improvement** [1] 53:15  
**inaccurate** [3] 93:11; 130:19; 145:17  
**inappropriate** [2] 238:12; 246:17  
**inc** [1] 247:15  
**include** [3] 19:3; 56:18; 100:12  
**included** [2] 141:6; 278:20  
**inclusion** [4] 276:20; 277:2, 3; 278:2  
**income** [1] 287:18  
**increase** [5] 104:8; 143:13; 187:5; 189:22; 191:20  
**increased** [11] 17:10; 19:10, 11; 77:11; 129:20; 185:17, 20; 186:11; 221:1; 222:7; 223:10  
**increases** [1] 129:5  
**incredible** [2] 74:22; 278:20  
**incumbent** [1] 142:3  
**independent** [5] 16:10; 46:20; 174:1; 202:14; 216:6  
**independents** [1] 191:20  
**index** [1] 263:22  
**Indian** [9] 72:7, 12, 18, 20; 73:1, 3, 6, 17  
**Indianapolis** [1] 253:16  
**indicate** [1] 227:16  
**indicated** [7] 141:4; 148:8; 218:10, 11; 219:16; 246:20; 267:21  
**indicates** [1] 188:20  
**indictment** [1] 129:2  
**indirectly** [2] 203:2; 206:11  
**individual** [25] 7:22; 8:11; 9:2; 51:12; 71:4; 81:22; 95:8; 109:14; 126:21; 167:12; 198:15; 199:1, 9, 11; 200:9, 20, 21; 202:22; 203:1; 204:3; 209:20; 213:10; 224:19; 246:6; 277:10  
**individually** [1] 171:3  
**individuals** [10] 21:19; 29:12; 74:16; 76:8; 91:9; 203:5; 227:10; 240:13; 247:12; 286:22  
**indulge** [1] 187:13  
**industry** [5] 71:5; 231:8, 21; 233:1; 234:9  
**ineffective** [1] 267:9  
**ineligible** [4] 282:17; 283:1; 284:15, 21  
**infern** [1] 120:19  
**inflated** [1] 231:18  
**influence** [14] 23:9; 49:20; 75:5; 104:3; 134:22; 135:11; 150:12; 162:16; 167:9; 179:22; 195:15; 225:7; 228:4; 279:10  
**influenced** [1] 157:6  
**information** [14] 11:7; 35:18; 36:6, 10; 66:3, 5; 82:5; 88:21; 97:2; 104:17; 184:18; 277:12; 278:22; 289:7  
**informed** [3] 76:14; 115:6; 282:10  
**infusions** [1] 211:17  
**initial** [1] 242:17  
**innocently** [1] 49:3  
**inouye** [2] 72:17; 73:10  
**input** [1] 93:2  
**inquiry** [1] 276:17  
**insert** [1] 278:13  
**inserted** [2] 24:7, 17  
**insistent** [2] 46:16; 49:13  
**insofar** [1] 159:3  
**insofar** [2] 63:17; 215:8  
**inspiration** [1] 283:16  
**inspired** [1] 60:14  
**inspiring** [1] 60:17

**instance** [9] 146:22; 161:14; 163:19; 174:21; 175:18; 241:13; 242:17; 273:16; 288:5  
**instances** [4] 164:6; 169:9; 241:4, 5  
**institute** [4] 138:15; 139:16; 155:10, 13  
**institution** [1] 79:9  
**instruct** [1] 264:9  
**insulate** [1] 195:14  
**insult** [1] 60:5  
**integrity** [1] 60:5  
**intelligence** [1] 60:5  
**intelligent** [1] 156:12  
**intend** [4] 80:8; 155:12; 211:21; 269:1  
**intended** [6] 142:13; 195:14; 211:3, 9, 11; 278:11  
**intent** [16] 46:17; 47:8, 16; 80:8, 13, 15, 21; 82:22; 86:2; 142:18, 20; 213:6, 7, 8; 225:1; 239:12  
**intention** [13] 82:6, 10; 212:1; 242:8, 9; 243:4, 5, 10, 14, 17; 244:4, 6  
**intentionally** [1] 97:22  
**interest** [31] 17:9; 25:11, 12; 26:9; 34:20; 35:14; 51:12; 60:2, 19; 73:13; 75:4; 153:8; 187:19, 21; 188:13, 22; 189:3; 216:7, 9; 217:8, 9; 225:15; 240:6; 260:4, 20; 261:22; 263:8; 266:18; 279:21  
**interested** [9] 26:2; 60:20; 132:1; 150:12; 154:12, 13; 199:21; 222:11; 256:17  
**interesting** [1] 176:3  
**interests** [6] 25:21; 31:12; 44:6, 22; 258:9; 286:22  
**interference** [1] 38:2  
**international** [2] 155:9, 13  
**international** [2] 167:14; 174:16  
**interpret** [1] 207:2  
**interpreted** [1] 202:5  
**interpreting** [1] 16:2  
**interrogatories** [1] 132:10  
**interrogatory** [1] 134:11  
**interrupt** [1] 216:17  
**intervening** [1] 18:11  
**intervenor** [2] 134:20; 135:10  
**introduction** [1] 227:16  
**inundated** [1] 185:3  
**investigate** [2] 23:4, 5  
**investigation** [3] 137:3, 11, 21  
**investigations** [1] 288:7  
**investment** [1] 28:6  
**invitation** [2] 57:17, 21  
**inviting** [1] 119:7  
**invoked** [1] 167:18  
**involve** [1] 283:14  
**involved** [5] 13:2; 27:5; 133:19; 143:2; 145:22  
**involvement** [1] 216:10  
**involving** [3] 34:19; 111:20; 129:13  
**iraq** [1] 96:16  
**IRI** [3] 155:19, 22; 156:8  
**irregularities** [2] 265:12; 288:8  
**irregularity** [1] 265:20  
**irrelevant** [2] 88:13; 115:15  
**irrespective** [1] 164:9  
**issue** [66] 11:9; 29:1; 35:20; 36:12; 42:5; 44:4; 46:17; 47:8; 53:14; 64:12, 18; 71:2; 73:13; 81:5, 16, 18, 21; 82:2; 87:11, 12, 14; 88:4; 89:10; 90:3; 95:16; 102:22; 111:21; 112:7, 9; 113:17; 117:5; 118:4; 120:14; 122:10; 124:19, 22; 128:21; 129:14, 20; 130:1, 18; 131:1, 12, 14; 141:9; 147:2; 165:6; 173:6, 8; 176:8; 182:12; 187:22; 188:13, 20; 190:10;

192:12; 215:18; 223:22; 225:4, 6; 235:12; 274:12; 278:22; 287:20; 289:8  
**issued** [1] 12:1  
**issues** [10] 9:20; 11:6; 47:14; 57:9; 61:4; 83:5; 133:14; 208:20; 211:20; 290:8  
**item** [2] 24:15; 270:18  
**items** [4] 18:2, 13, 16; 52:14  
**iterations** [1] 282:19  
**itsyourcountry.com** [1] 16:18

- J -

**Jack** [3] 246:21; 247:19; 249:13  
**jail** [1] 270:10  
**James** [1] 275:18  
**January** [9] 37:15; 43:16; 44:14; 84:18, 20; 85:8; 86:13; 87:13; 89:7  
**Jean** [2] 272:22  
**Jersey** [12] 123:20; 142:5; 212:9, 19; 238:3; 239:3; 245:8, 22; 247:11, 12, 18  
**jet** [13] 43:10; 44:20; 45:13, 19; 46:6, 8; 49:14; 50:2, 5, 11, 14, 20; 51:3  
**jets** [3] 50:21; 53:22; 55:1  
**Jim** [2] 252:21; 256:8  
**job** [15] 21:5, 8, 10, 22; 22:4, 7; 26:6, 7; 41:4; 42:22; 48:5; 55:5; 287:2, 5, 6  
**John** [22] 33:15, 17; 34:9, 12; 49:20; 58:16; 90:6; 111:20; 112:13; 113:7, 11; 153:17; 157:7, 9; 178:3, 4, 9, 10, 11; 194:2; 258:3; 274:20  
**Johnny** [1] 152:1  
**Johnson** [2] 90:7; 91:22  
**join** [1] 281:15  
**Judge** [1] 29:2  
**judge** [1] 84:7  
**judged** [2] 146:11; 149:1  
**judgment** [10] 103:16; 113:4; 115:6; 134:22; 135:12; 137:22; 138:2; 140:6; 171:2; 286:19  
**judgments** [3] 88:15; 228:5; 283:12  
**judicial** [2] 21:22; 22:3  
**July** [1] 158:20  
**July11** [1] 157:12  
**June** [1] 138:9  
**jurisdiction** [1] 158:22  
**jurors** [1] 275:3  
**Jury** [1] 274:21  
**Justice** [3] 21:10; 265:13, 18  
**justified** [2] 54:2, 7

- K -

**Kathleen** [1] 279:5  
**Kean** [1] 245:7  
**Keating** [7] 137:20; 146:6, 11; 147:13, 19; 148:6, 11  
**keep** [5] 109:20; 117:2; 206:17; 258:17; 270:9  
**keeping** [1] 213:6  
**Kennedy** [1] 279:5  
**Kenner** [1] 38:12  
**Kentucky** [3] 102:20; 129:9; 212:8  
**key** [1] 46:4  
**kicks** [1] 239:9  
**Kids** [2] 277:21; 279:4  
**kids** [2] 278:3  
**kill** [1] 125:2  
**killers** [1] 233:5  
**killing** [1] 124:21  
**kills** [1] 233:2  
**kinds** [10] 66:19; 74:3, 7; 175:3, 17; 177:1; 182:20; 183:2; 201:12; 232:12



knock [1] 190:16  
 Knott [2] 279:3, 11  
 knowing [3] 60:12; 113:5; 129:4  
 knowledge [1] 171:20  
 knowledgeable [2] 88:22; 156:12  
 Kohl [4] 120:15; 121:7; 123:17  
 Kong [1] 274:4  
 Koon [1] 90:6  
 Kramer [2] 156:7, 11

- L -

L.A. [1] 278:15  
 label [1] 12:8  
 laced [1] 23:16  
 lack [2] 177:18; 192:4  
 landed [1] 77:1  
 language [6] 17:4; 80:22; 81:1; 84:1; 131:1; 135:8  
 large [4] 93:3; 150:9, 11; 152:8  
 largely [1] 184:13  
 largest [5] 46:19; 56:7; 58:3; 191:2; 230:17  
 Last [2] 15:7, 19  
 last [28] 17:8; 40:21; 46:1; 49:11; 59:1; 60:12; 67:3, 15; 68:7; 108:19; 109:18; 111:19; 116:22; 119:18; 134:19; 148:1; 151:10; 164:13; 178:17; 181:15; 191:2; 194:16; 208:21; 230:4; 232:1; 247:8; 250:8  
 latter [1] 237:1  
 Laughter [26] 57:8; 67:9, 11, 13; 76:3; 96:6; 127:4; 128:4, 8, 14; 153:12; 169:3; 186:1, 3; 192:14; 193:14; 197:22; 198:2; 203:7; 217:21; 256:18; 273:5; 274:8; 275:5; 291:3, 8  
 Law [1] 139:20  
 law [95] 8:10; 16:3, 16; 21:20; 22:12; 31:11; 32:20; 33:12; 53:18; 65:10, 11, 13; 66:17; 73:7; 76:1, 5, 9, 17; 79:22; 80:8, 13, 15, 18, 21; 85:16; 88:6, 9, 14, 19; 89:2, 4, 6; 90:9; 91:12; 95:15; 97:7, 18; 103:18; 113:19; 114:4; 115:10, 15, 18, 22; 116:1, 14, 16, 20; 117:16; 118:10; 120:11; 121:5; 125:6; 130:14; 146:3, 9; 155:8, 16; 173:10; 176:6, 10; 180:9; 193:6; 197:6; 204:7, 10, 18; 205:9; 209:19; 211:22; 212:2; 213:4, 7, 8; 215:14; 217:4; 218:17; 222:13; 239:13; 247:12; 248:2; 251:12; 254:5; 270:14; 271:1; 273:2; 276:2; 280:21; 282:19; 287:7, 12  
 lawful [1] 146:7  
 lawmakers [2] 230:18; 234:13  
 Laws [1] 138:13  
 laws [17] 22:15; 25:15, 17; 68:17; 75:1; 95:6, 9, 11; 171:6; 209:22; 210:7, 20; 219:6; 225:1; 254:6; 263:1; 286:20  
 lawsuits [1] 280:1  
 lawyer [4] 7:10; 14:2; 29:2; 279:8  
 lawyers [2] 31:17; 140:21  
 lead [2] 82:20; 147:2  
 lead-up [1] 204:22  
 leader [3] 12:16; 146:14; 230:3  
 leads [2] 19:18; 76:19  
 learned [1] 279:2  
 lease [1] 50:19  
 leave [2] 137:8; 227:14  
 leaves [2] 174:19; 175:10  
 leaving [2] 171:16; 218:14  
 legal [6] 21:9; 111:12; 181:9; 183:12;

legislation [37] 13:17; 24:3, 6; 29:7, 9, 14; 52:10, 11; 55:5, 10; 72:19; 73:10; 76:11; 80:17; 94:5; 160:10, 19; 161:2, 13, 17; 162:2, 7, 15; 163:17, 22; 164:9; 165:1; 182:6; 211:11; 218:18; 223:5; 229:22; 231:7; 263:20; 276:21; 281:20; 282:15  
 legislative [8] 10:11; 52:16; 74:16; 133:14; 147:3; 228:4; 286:12, 13  
 Legislator [1] 26:7  
 legislator [2] 48:5; 61:3  
 legislators [3] 93:7; 280:15; 286:1  
 legislatures [1] 171:3  
 legitimate [1] 41:8  
 legitimately [1] 77:8  
 lend [1] 65:18  
 lesson [1] 147:7  
 letter [28] 35:1, 8; 37:21, 22; 38:1, 11, 17, 20; 40:7, 9, 20, 22; 44:17; 46:6, 7; 49:12, 13; 50:4, 5; 59:11; 80:8; 239:12; 246:19; 247:7; 249:20; 252:5, 21; 255:16  
 letters [12] 38:8; 40:13, 15, 21; 41:14; 43:11; 47:11; 50:10; 51:3; 149:3; 165:15; 261:11  
 level [4] 125:20; 142:13; 170:21; 192:7  
 levied [1] 287:4  
 Levin [17] 183:21; 199:2; 213:20; 214:17; 240:22; 241:8, 17; 242:4, 10, 11; 243:20; 244:20, 21; 266:11; 268:12  
 levying [1] 270:22  
 LexisNexis [2] 251:21; 273:20  
 license [3] 35:13; 42:19; 285:22  
 licenses [1] 35:11  
 lie [2] 190:22; 208:22  
 Life [2] 196:2; 264:17  
 life [2] 7:12; 171:9  
 Lift [1] 265:15  
 light [4] 62:8, 9; 156:17; 223:21  
 likeness [2] 87:18; 105:14  
 limit [11] 15:11; 69:1; 95:8; 204:18; 209:19, 21; 211:16; 213:8; 221:18; 222:1; 256:20  
 limitations [4] 97:7; 122:14; 187:18; 255:13  
 Limited [1] 108:10  
 limited [9] 68:17, 18; 70:5; 121:17; 125:16; 155:7; 241:10; 254:11; 255:15  
 limiting [1] 136:14  
 Limits [6] 108:21; 109:3, 9, 17, 19; 110:7  
 limits [17] 108:22; 109:4; 123:4, 6; 198:8; 199:6; 221:2; 222:7, 20; 223:11; 250:16; 254:4; 255:7; 263:22; 272:13; 283:10; 286:15  
 Lincoln [1] 196:19  
 line [7] 23:12; 48:15; 62:12; 78:9; 132:5; 158:18; 216:18  
 line-by-line [1] 226:8  
 lines [5] 140:8; 180:11; 217:15; 219:8; 220:3  
 list [5] 17:20; 18:22; 19:21; 136:20; 174:3  
 listed [4] 39:2; 158:21; 279:5, 8  
 Listen [1] 288:10  
 listener [1] 225:8  
 lists [1] 113:21  
 literally [1] 142:6  
 litigating [1] 234:22  
 litigation [3] 10:8; 18:10; 76:1  
 live [2] 139:19; 177:8  
 loan [1] 274:4  
 lobbies [1] 56:16  
 lobbying [9] 56:9, 21; 230:13, 21; 231:2,

3, 10, 19; 235:12  
 lobbyist [6] 44:19; 45:2, 4, 18; 58:3, 12  
 lobbyists [1] 49:19  
 local [16] 93:2; 196:19; 198:10; 200:11; 204:4, 6; 209:11, 17; 211:5; 236:18, 21; 243:1; 254:3, 4; 261:17; 273:16  
 located [1] 236:21  
 lodged [1] 147:6  
 Londus [1] 32:20  
 looks [1] 258:18  
 loophole [3] 95:5; 110:1, 2  
 loopholes [4] 25:18, 19; 53:6; 185:5  
 Los [3] 253:15; 262:5; 278:15  
 lose [1] 80:10  
 lost [5] 69:16; 90:17; 100:18; 214:14  
 lot [24] 7:12; 20:7; 49:22; 50:18; 55:9; 59:15; 113:12; 116:8; 130:2; 132:5; 174:7; 191:21; 195:6; 200:21; 212:17, 20; 235:13, 14; 239:14; 240:13; 257:5; 266:1; 268:16; 272:9  
 louder [1] 22:17  
 Louis [1] 229:13  
 Louise [3] 229:14, 17, 20  
 Louisiana [1] 212:8  
 loved [1] 276:8  
 low [2] 255:1; 272:13  
 Lowell [2] 31:3; 47:2  
 lower [3] 169:12; 261:11; 280:4  
 lunch [2] 78:15; 96:16

- M -

machines [1] 168:14  
 Madison [1] 132:10  
 mail [4] 111:4; 181:20; 183:9; 189:10  
 main [4] 11:12, 14, 15  
 Maine [1] 17:21  
 maintained [2] 203:3; 206:12  
 major [13] 17:13; 19:17, 20; 20:22; 23:2; 57:10; 196:9; 224:18; 225:17; 226:21; 231:20; 246:13; 253:14  
 majority [6] 25:8, 9; 90:2; 179:21; 196:3; 220:7  
 man [2] 57:19; 190:17  
 manifest [1] 45:16  
 manifested [1] 78:1  
 manner [1] 218:16  
 manning [1] 177:11  
 Manual [1] 158:17  
 March [5] 31:1, 17; 86:17, 21; 199:15  
 marginalized [1] 188:13  
 marine [1] 58:9  
 Mark [3] 196:8, 20, 22  
 mark [31] 10:5, 16; 16:17, 19; 32:3; 34:22; 38:10; 43:15; 55:15; 71:14; 84:8; 101:2; 119:5, 16; 127:8; 132:12; 157:16; 159:7; 206:1, 4; 224:11; 226:6; 236:3; 245:6; 246:19; 249:19; 252:20; 257:15; 260:22; 262:3; 264:15  
 marked [37] 10:14, 20; 16:22; 32:7; 35:4; 38:14; 43:18; 55:19; 71:16; 84:11; 99:14; 101:5, 11, 17; 102:1; 119:3, 21; 127:15; 129:16; 132:14; 157:19; 158:3; 159:13, 21; 208:6; 224:14; 228:17; 229:2; 236:8; 245:10; 247:1; 250:2; 253:3; 257:20; 261:4; 262:8; 264:19  
 market [1] 36:5  
 marks [1] 197:16  
 marvelous [1] 66:7  
 Mary [1] 251:6  
 Maryland [1] 279:9

Massachusetts [5] 272:12, 14, 21; 276:6, 7  
**massive** [3] 180:12; 211:17; 235:4  
**materially** [1] 60:11  
**materials** [7] 277:4; 289:10, 12, 15, 20; 290:1, 21  
**matter** [28] 19:12; 27:1; 36:20; 39:22; 41:1; 45:22; 52:3; 67:17; 78:14; 112:14; 113:18; 114:1, 4, 19, 22; 139:8, 11; 140:15; 143:7; 145:8; 147:14; 154:14; 218:5, 17; 233:2; 257:11; 290:3; 291:11  
**matters** [5] 10:9; 45:2; 114:7; 139:17; 154:17  
**Maurice** [1] 211:13  
**Mayor** [2] 256:4; 262:5  
**mayoral** [7] 253:16, 20, 22; 255:3, 21; 256:16, 20  
**McCAIN** [7] 7:14; 14:8, 11; 15:16; 26:18; 27:22; 54:20  
**McCain-Felngold** [4] 84:22; 86:18; 121:2; 282:15  
**McConnell** [2] 7:9; 84:9  
**meager** [1] 281:11  
**mean** [27] 14:22; 15:21; 16:1; 25:7; 81:20; 104:3; 107:2; 114:11; 119:8; 123:17; 128:20; 135:13; 150:16; 175:16; 187:5; 188:15; 211:7; 235:1; 252:9; 255:4; 265:12; 267:7; 273:6; 279:13; 280:4; 283:9, 12  
**meaning** [2] 57:19; 188:11  
**meaningful** [1] 60:18  
**meaningfully** [1] 285:7  
**means** [5] 14:4; 16:5; 80:19; 198:11; 204:8  
**meant** [1] 104:2  
**measure** [2] 106:10; 235:22  
**mechanisms** [1] 220:11  
**media** [6] 53:16; 145:17; 172:6, 15; 273:21; 278:14  
**Medicare** [2] 129:2, 5  
**Meehan** [1] 280:12  
**Meet** [2] 15:19; 79:8  
**meet** [7] 103:3; 107:19; 146:9; 153:2, 16; 154:1, 5  
**meeting** [6] 39:1; 147:9; 149:10; 226:6, 9, 13  
**meetings** [2] 26:1; 165:14  
**meets** [1] 87:17  
**melanoma** [1] 154:4  
**member** [11] 39:6; 40:10; 54:2, 14; 58:4; 62:5; 72:18; 160:17; 162:13; 169:1; 270:8  
**Members** [1] 279:4  
**members** [15] 9:19; 10:3; 22:22; 31:4, 11, 17; 46:22; 53:10; 107:17; 134:20; 164:8; 165:17; 166:16; 270:2, 3  
**membership** [1] 271:14  
**memoir** [2] 55:13, 22  
**memory** [1] 277:19  
**men** [2] 178:19; 272:1  
**mention** [9] 83:9, 12; 93:14; 95:16; 105:11; 108:7; 113:15; 184:15; 241:6  
**mentioned** [14] 43:3; 72:5; 116:7; 117:18; 118:11; 120:15; 121:5, 18; 164:5; 182:6; 190:1; 267:2, 10; 277:20  
**mentioning** [4] 87:18; 98:11; 105:14; 107:4  
**mentions** [4] 94:3, 10; 99:6; 260:2  
**mercifully** [1] 291:2  
**Merck** [2] 92:2; 164:13  
**mere** [1] 137:6  
**merged** [1] 27:13

**merit** [1] 137:1  
**merits** [2] 40:5; 74:15  
**method** [1] 153:8  
**Mexico** [1] 77:2  
**Michigan** [5] 99:12; 100:4, 11, 14; 133:15  
**middle** [1] 48:16  
**Military** [1] 137:16  
**military** [2] 281:5, 9  
**million** [21] 23:18; 28:14, 21; 32:22; 51:22; 71:8; 77:11; 92:2; 126:22; 152:12; 164:12; 172:1; 185:17; 186:12; 211:14; 230:18; 231:3, 21; 232:20; 235:11  
**Millionaire** [1] 141:15  
**millionaire** [1] 8:9  
**Millionaires** [4] 52:13; 141:5, 7, 21  
**millionaires** [1] 172:3  
**millions** [10] 19:4; 31:22; 164:13; 225:15; 230:1, 2, 10, 12; 231:14, 15  
**mind** [11] 64:18; 65:7, 16; 70:13; 72:4; 86:5; 131:2, 4, 12, 13; 197:16  
**minds** [2] 124:2; 192:12  
**mine** [4] 58:8; 173:18; 192:13; 272:21  
**Minneapolis** [2] 253:15; 256:21  
**Minnesota** [1] 256:4  
**minor** [1] 287:14  
**minors** [6] 275:19; 276:14; 277:9; 286:14; 287:2; 289:4  
**minute** [4] 187:7; 269:13; 273:10; 284:6  
**minutes** [2] 45:8; 182:10  
**misabeled** [1] 279:13  
**mislead** [1] 103:7  
**misperception** [1] 147:2  
**misperceptions** [1] 146:15  
**misportrayal** [1] 132:3  
**misportrays** [1] 131:20  
**missed** [1] 71:21  
**missing** [1] 148:15  
**Mississippi** [1] 212:9  
**Missouri** [1] 15:15  
**mistake** [1] 128:12  
**mix** [2] 243:20; 244:20  
**mixed** [1] 175:1  
**mixing** [1] 246:14  
**mixture** [1] 241:7  
**mobilization** [2] 185:16; 186:12  
**moment** [8] 50:1; 75:8, 22; 87:10; 117:18, 19; 174:6; 183:5  
**Money** [2] 157:4; 208:16  
**money-raising** [1] 168:14  
**monies** [2] 58:20; 170:1  
**Monument** [3] 89:15, 17; 92:19  
**monuments** [1] 93:1  
**moral** [1] 40:4  
**morning** [5] 7:7; 96:15; 174:9; 223:16; 283:15  
**Morris** [1] 211:9  
**mortgages** [1] 148:12  
**motivated** [1] 60:7  
**motivation** [1] 150:4  
**motives** [2] 151:22; 153:19  
**Motor** [1] 191:21  
**move** [2] 13:19; 86:9  
**moved** [4] 14:3, 5, 6; 42:15  
**moving** [1] 257:6  
**Ms** [2] 104:6; 276:18  
**muck** [1] 27:12  
**multi-pronged** [1] 236:1  
**multimillion** [1] 164:21  
**myself** [3] 72:17; 146:17; 147:22  
**myth** [1] 184:12

## - N -

**NAACP** [13] 181:1, 3, 6, 12, 13; 183:5, 6, 7; 194:5, 14, 17; 195:1, 16  
**name** [28] 7:8; 11:18, 20; 59:16; 65:19; 82:2; 87:18; 93:14; 94:3, 10, 21; 97:14; 98:11; 99:1, 6; 105:12, 14; 107:5, 18; 108:7; 121:5; 129:9; 139:5; 154:6; 272:22; 275:18; 287:10, 14  
**names** [1] 113:16  
**naming** [1] 266:7  
**nation** [4] 46:19; 58:3; 61:6; 230:17  
**National** [61] 23:21; 89:15, 17; 90:17; 91:21; 92:19; 121:17; 122:7, 19; 140:22; 144:3; 161:10, 15, 20; 162:2; 163:14, 20; 164:7; 172:13, 22; 173:1; 175:6, 20; 178:7, 22; 191:16; 192:5; 194:5, 9; 196:2, 10, 13; 205:2; 206:18; 207:8, 12; 209:15, 16; 210:4; 212:11, 12; 213:18; 216:2; 217:3; 239:1; 240:9, 15; 241:12; 242:1; 246:3; 249:22; 252:8; 256:15; 269:18; 270:9; 271:11, 12, 16; 274:3  
**national** [47] 88:11; 89:13; 92:18; 167:16; 169:19; 170:5, 16; 174:4; 175:1, 15; 177:13; 198:9, 14, 17; 206:9, 10, 12, 21; 211:4; 214:9; 215:1, 12; 216:10; 217:10, 11, 12, 14, 16; 218:11, 14; 219:7, 15; 220:2, 18, 21; 221:19; 237:17; 238:1, 14; 242:22; 252:17; 255:10; 259:15; 271:10, 13; 273:18  
**nationally** [1] 176:21  
**Native** [3] 73:11, 14; 74:10  
**nature** [1] 266:2  
**Navaho** [1] 265:19  
**Navahos** [1] 265:18  
**Naval** [1] 157:14  
**needs** [4] 27:11; 105:19; 240:15; 258:11  
**negative** [1] 117:5  
**negatively** [1] 23:20  
**net** [2] 225:3, 4  
**network** [1] 46:18  
**neutral** [1] 94:2  
**Nevada** [2] 111:19; 113:4  
**newborn** [1] 123:21  
**news** [2] 185:9; 230:4  
**newspaper** [5] 43:3; 111:8; 278:7, 10; 286:18  
**next-to-the-last** [1] 236:17  
**nice** [2] 61:12; 66:19  
**Nicholson** [2] 252:21; 256:8  
**night** [2] 91:22; 148:2  
**Ninety-nine** [2] 82:7, 12  
**No.10** [1] 84:13  
**No.11** [1] 99:16  
**No.12** [1] 101:7  
**No.13** [1] 101:13  
**No.14** [1] 101:19  
**No.15** [1] 102:3  
**No.16** [1] 120:1  
**No.17** [1] 127:17  
**No.18** [1] 129:18  
**No.19** [1] 132:16  
**No.20** [1] 157:21  
**No.21** [1] 158:5  
**No.22** [1] 159:15  
**No.23** [1] 160:1  
**No.24** [1] 208:8  
**No.27** [1] 228:19  
**No.28** [1] 229:4  
**No.29** [1] 236:10  
**No.30** [1] 245:12

**No.31** [1] 247:3  
**No.32** [1] 250:4  
**No.33** [1] 253:5  
**No.34** [1] 257:22  
**No.35** [1] 261:6  
**No.36** [1] 262:10  
**No.37** [1] 264:21  
**noble** [1] 60:8  
**nobody** [2] 172:14; 174:2  
**nod** [2] 173:14; 284:14  
**nomination** [1] 99:21  
**non** [1] 220:22  
**non-advantageous** [1] 244:22  
**Non-broadcast** [1] 267:6  
**non-candidate** [1] 265:5  
**non-candidate-specific** [1] 189:16  
**non-commercial** [1] 36:4  
**non-constitutionality** [1] 89:20  
**non-federal** [27] 160:11, 20; 161:3; 163:14; 164:1; 181:11; 185:14; 186:11, 16; 188:1; 199:5, 10; 207:5; 209:6, 7; 214:11; 215:3; 222:8; 234:8; 237:2, 4; 239:4; 241:1; 255:2, 11; 262:20; 270:5  
**non-federally** [10] 176:13; 180:17; 183:6; 189:4; 194:3; 237:12; 238:15; 239:18; 255:3; 272:17  
**non-partisan** [1] 152:19  
**non-sham** [1] 87:12  
**non-state** [1] 268:14  
**non-threatened** [2] 151:19, 21  
**Norm** [2] 256:1, 7  
**normal** [1] 154:20  
**normally** [1] 278:21  
**Northup** [19] 102:18; 104:6; 105:3, 5, 12, 17, 19, 20; 106:12; 107:18; 108:1; 129:13, 19; 130:8, 15; 131:11, 19, 21, 22  
**Nos.25** [1] 224:16  
**note** [1] 38:21  
**notes** [5] 147:11, 12; 148:7, 8; 269:13  
**Notice** [1] 38:22  
**notion** [1] 107:10  
**notorious** [1] 41:6  
**Notwithstanding** [1] 200:6  
**notwithstanding** [1] 65:20  
**November** [17] 34:16; 35:1; 36:15; 49:13; 50:4; 146:4; 157:2; 222:10; 255:16; 259:6, 16; 264:17; 265:16; 266:6; 280:20, 21  
**nowadays** [1] 27:12  
**NRA** [2] 195:16; 196:2  
**Number** [2] 38:11; 160:8  
**number** [24] 25:4; 31:7, 21; 32:1; 52:14; 55:4; 64:22; 101:3; 106:21; 115:5; 129:20; 134:9, 11; 136:20; 137:14; 143:5; 158:11, 13; 163:4; 181:5; 208:3; 225:4; 227:9; 231:17  
**number24** [1] 163:2  
**numbered** [2] 237:1; 257:5  
**numbers** [7] 9:11; 13:1; 27:14; 31:21; 134:9; 187:5, 6  
**numerous** [4] 37:4; 62:22; 226:15; 249:16  
**Nursing** [1] 127:10  
**nuts** [1] 272:4

- O -

**oath** [1] 79:5  
**Obey** [1] 270:14  
**Object** [7] 96:4; 123:11, 14; 147:4; 171:13; 211:6; 245:1  
**object** [4] 70:10; 115:12; 150:15; 264:8

**objecting** [1] 79:17  
**objection** [3] 79:14; 114:12; 249:3  
**objection** [1] 147:6  
**objections** [2] 286:8, 9  
**objective** [17] 53:3, 14; 82:16, 20; 87:17; 88:16; 93:15; 94:8, 19, 20; 103:3, 19; 105:13; 107:20; 113:20; 162:18; 210:19  
**obligation** [6] 23:4; 147:16; 170:21; 180:9, 11; 246:8  
**observation** [1] 19:14  
**observer** [2] 210:2, 19  
**observers** [3] 53:4, 14; 162:18  
**obtain** [1] 41:1  
**obvious** [1] 130:12  
**Obviously** [2] 156:9; 275:22  
**obviously** [8] 61:15; 139:7; 144:21; 194:21; 200:21; 242:10; 273:22; 287:4  
**occasion** [2] 64:17; 81:17  
**occasional** [1] 90:22  
**occasionally** [1] 59:7  
**occasions** [4] 44:2; 45:13; 249:16; 278:8  
**occur** [1] 125:22  
**occurrence** [2] 143:18, 19  
**occurs** [1] 15:1  
**October** [3] 100:3; 246:20; 249:20  
**October8** [1] 252:22  
**odd** [1] 236:22  
**odd-numbered** [5] 212:8; 217:5; 237:13; 239:4; 253:17  
**odd-year** [1] 215:16  
**offer** [2] 115:5; 278:10  
**offered** [2] 152:6; 277:1  
**office** [49] 32:13; 60:22; 91:9; 106:20; 149:10; 150:12; 154:1; 156:18; 161:12, 16; 163:16, 18, 21; 166:5; 180:14; 181:10; 195:13; 196:17; 197:2, 3, 4, 5, 7; 198:6, 12, 13, 16, 18; 199:4, 8; 200:10, 15, 20; 201:2, 7, 10, 16; 202:6; 203:1, 2, 5; 204:4, 6; 234:20; 237:2; 259:2; 260:16; 281:1; 284:12  
**office-holding** [1] 167:2  
**officeholder** [1] 51:11  
**officer** [1] 206:9  
**officers** [1] 46:22  
**offices** [1] 215:21  
**official** [8] 176:18; 195:19; 201:8; 238:14; 239:22; 247:22; 267:19  
**officials** [8] 22:13; 47:4; 154:22; 195:7, 16; 200:16; 201:21; 238:3  
**offset** [1] 223:10  
**Oh** [8] 15:16; 89:16; 108:15; 134:10; 144:15; 260:14; 278:9; 280:11  
**oh** [1] 129:10  
**Okay** [5] 14:20; 37:8; 63:22; 82:8; 87:4; 108:3, 17; 116:5, 18; 117:15, 20; 119:14; 121:11, 13; 132:21; 133:4; 134:15; 156:6; 165:9, 11; 178:7, 13, 14; 186:20; 187:15; 195:10, 12; 200:4; 201:12; 206:3, 6, 13; 207:18, 20; 208:10; 214:20; 218:3, 22; 221:16; 223:4, 15; 227:21; 235:16; 241:10; 244:13; 269:12; 278:1, 4; 280:2; 284:18; 290:19  
**okay** [4] 15:16; 70:19; 260:14; 288:12  
**old** [6] 139:1; 185:11; 279:14; 280:5; 282:8, 12  
**Olliver** [3] 246:21; 247:19; 249:13  
**ones** [2] 17:21; 131:4  
**ongoing** [1] 236:6  
**open** [3] 39:1; 43:7; 279:22  
**opened** [5] 53:7; 110:1, 2; 147:10; 185:5  
**opera** [2] 180:3, 6

**operate** [4] 26:22; 66:18; 68:14; 219:22  
**operator** [18] 42:14; 85:22; 103:18; 104:13; 105:9; 125:8, 9; 126:8; 128:22; 130:17; 142:19; 162:19; 230:2; 232:17; 233:1, 5, 18  
**opinions** [1] 120:11  
**opponent** [4] 8:8; 90:19; 99:6; 141:18  
**opportunity** [4] 65:2; 153:16; 157:8; 219:1  
**opposed** [9] 20:9; 22:2; 151:9; 156:7; 164:22; 201:8; 214:10; 233:1; 242:4  
**opposing** [1] 229:22  
**opposition** [1] 230:11  
**options** [1] 256:10  
**oral** [1] 40:6  
**Orange** [1] 247:18  
**orchestrated** [1] 234:5  
**order** [11] 33:16; 34:11; 40:4; 50:19; 82:5; 105:19; 106:14, 18; 115:5; 116:9; 154:21  
**ordered** [1] 57:7  
**Oregon** [1] 133:12  
**organization** [12] 19:13; 59:13; 65:20; 70:3; 114:10; 122:17, 20; 155:18; 172:2, 12; 226:20; 266:21  
**organizations** [21] 13:4; 63:1; 64:22; 65:9; 66:22; 68:13; 74:2; 97:3; 122:6, 16; 144:3; 171:17; 172:21; 177:10; 180:18, 19; 181:5; 232:12; 266:13; 268:13; 272:1  
**organize** [1] 271:21  
**organized** [2] 66:22; 70:4  
**origins** [1] 208:22  
**ought** [6] 65:18; 93:8; 105:8; 108:14; 125:5; 192:9  
**ours** [2] 53:8; 177:7  
**ourselves** [1] 52:11  
**outcome** [2] 93:4; 224:22  
**outer** [1] 84:3  
**outfit** [2] 173:5; 210:8  
**outlaw** [1] 124:10  
**outlets** [1] 278:14  
**outraged** [1] 123:19  
**outrageous** [1] 19:2  
**outright** [1] 131:6  
**outside** [4] 53:13; 135:20; 187:9; 196:15  
**overall** [1] 135:18  
**Oversight** [1] 49:9  
**oversight** [2] 42:1; 47:13  
**overwhelming** [2] 26:1; 90:1  
**owner** [1] 46:20

- P -

**p.m.** [9] 78:13; 79:2; 140:16, 17; 218:6, 7; 257:12, 13; 291:10  
**P.O.** [1] 247:17  
**PAC** [17] 11:10; 12:5, 7, 9, 14, 21; 29:11; 98:14, 15; 126:21; 131:15; 198:17; 199:1, 9, 11; 209:20; 251:8  
**PACs** [2] 71:4; 247:13  
**Page** [5] 17:4; 32:18; 46:2, 14; 134:12  
**page** [21] 17:18; 23:15; 49:11; 134:7, 9, 11, 19; 137:14; 140:8; 158:19; 160:6; 161:7; 184:9; 208:15; 231:18, 19; 236:16; 241:3; 247:9; 250:15; 256:1  
**page28** [1] 136:19  
**page3** [1] 133:7  
**page434** [1] 158:18  
**pages** [3] 30:6; 120:18; 136:19  
**Paid** [1] 261:12  
**paid** [21] 12:22; 55:1; 79:11; 114:5, 11; 136:9; 138:14; 194:17; 241:7; 246:2;

259:7, 22; 260:5, 17; 261:1, 19, 22;  
262:18, 19; 266:18, 21  
**Palm** [1] 46:18  
**panel** [1] 56:15  
**paper** [1] 118:3  
**Paragraph** [1] 204:1  
**paragraph** [20] 35:19; 40:21; 44:13; 46:1,  
2, 15; 49:11; 133:8; 134:8, 10, 19; 200:6;  
202:18; 204:1, 3; 208:19; 229:16, 19;  
236:17; 247:8  
**paragraphs** [1] 44:9  
**paralysis** [1] 191:1  
**Pardon** [1] 192:18  
**parent** [1] 287:13  
**parental** [2] 281:10, 18  
**parents** [4] 258:7; 281:4; 286:14; 289:5  
**Park** [1] 23:21  
**Part** [2] 178:7, 9  
**part** [18] 33:8; 68:7; 75:22; 77:7; 95:11,  
21; 103:14; 107:19; 112:4, 6, 8; 113:6;  
120:21; 173:18; 179:2; 192:5; 289:22  
**parte** [1] 40:4  
**Partial** [1] 124:7  
**partial** [6] 122:9; 124:10, 13, 22; 125:1;  
126:1  
**partially** [3] 92:22; 194:12; 266:21  
**participants** [1] 280:12  
**participate** [2] 10:8; 285:6  
**participated** [1] 63:5  
**participation** [5] 177:14; 240:9; 241:12,  
16; 242:2  
**parties** [82] 32:21; 151:8; 155:2; 168:9,  
21; 170:4, 5, 11, 15, 16; 171:11; 174:12,  
14, 18, 19; 176:5, 13; 177:1, 9, 13, 15;  
182:11; 183:1; 184:15; 186:11; 187:9;  
188:1, 12, 22; 189:20; 190:2, 6, 8, 12;  
191:8; 193:5; 196:19; 212:20; 213:19;  
214:4, 10; 215:1, 7, 12; 217:11, 12, 16;  
219:11, 13, 15, 19, 21, 22; 220:5, 15, 18,  
21; 221:19; 222:9; 223:8, 9; 232:11;  
236:21; 237:11; 243:1, 14, 19; 244:3, 18,  
22; 255:10; 264:1; 265:9; 266:2, 6, 16;  
267:4, 12, 16; 269:21; 275:21  
**partisan** [1] 154:9  
**Party** [5] 261:2, 13; 262:4; 263:4; 272:20  
**party** [96] 15:13; 41:2; 55:13, 21; 57:13;  
58:4; 61:12; 82:10; 106:17, 22; 136:3;  
151:16; 153:22; 154:8, 10, 20; 160:12, 21;  
161:5; 168:22; 169:11, 19; 172:18;  
173:11; 175:12, 14, 15; 176:16; 177:18;  
180:12; 184:15, 19; 190:20, 22; 191:4, 6,  
10, 18; 192:2, 3, 6; 195:16; 198:9, 13, 15,  
17, 19; 199:4, 10, 12; 200:12, 16; 201:8,  
20; 205:7; 206:20, 21; 210:12; 211:4;  
217:10; 218:11, 14; 219:7; 236:18;  
237:17; 238:2, 3, 14, 15; 239:3, 7; 240:6;  
241:14, 15; 242:3, 14, 18; 246:7; 259:15;  
260:1; 266:20;  
268:12, 14, 15; 270:8, 9, 11, 17; 271:13,  
22; 272:15; 280:7; 284:14, 15  
**party-building** [2] 184:21; 213:21  
**pass** [4] 55:15; 73:10; 176:10; 250:11  
**passage** [3] 53:18; 167:8; 208:14  
**passed** [18] 11:15; 16:16; 25:17; 53:9;  
73:7, 12; 75:1; 88:14; 90:9; 103:18;  
117:16; 157:12; 158:20; 209:19, 22;  
222:14; 249:11; 251:12  
**Passes** [1] 11:19  
**passes** [1] 164:18  
**passionate** [1] 124:17  
**Pause** [3] 225:22; 228:12; 273:12

**Paxson** [37] 31:3, 12; 32:18; 34:19;  
35:14; 36:12, 20; 41:8; 42:17; 43:9; 44:6,  
18, 20; 45:3, 9, 12, 18; 46:3, 6, 18, 21;  
47:2, 4, 9, 20; 48:8; 49:2, 6, 14; 50:5, 10,  
14; 51:3, 4, 15; 53:21; 145:8  
**pay** [12] 12:21; 48:17; 57:12; 70:6; 91:15;  
240:7; 241:16; 244:19; 263:5, 9; 268:13;  
281:11  
**payable** [1] 247:14  
**paying** [5] 58:4; 94:6; 98:21; 131:15;  
246:15  
**pejorative** [1] 149:22  
**penalty** [1] 288:6  
**pending** [5] 39:22; 161:12, 17; 163:16, 22  
**penny** [4] 58:15; 169:20; 170:4, 8  
**People** [1] 174:17  
**people** [73] 9:20; 10:3; 20:7, 12; 21:6;  
23:8; 25:10; 26:1, 9; 27:1, 5; 28:19; 48:3,  
4, 6; 49:20; 59:18, 21; 60:3, 6, 21, 22;  
61:15; 63:6; 77:8; 78:1, 4; 80:18; 81:7, 8,  
10, 11, 14; 90:11; 125:17; 126:22; 129:21;  
131:7; 136:8; 138:6, 10; 140:6;  
149:10, 19; 150:10; 151:18; 152:4;  
153:19; 154:7, 21; 156:10; 166:7, 9;  
173:2; 175:3; 187:11; 191:13; 194:19;  
221:10; 225:14; 235:4; 265:17; 266:7;  
268:6; 269:18; 278:16; 279:17; 283:13,  
18, 21; 286:19, 20  
**peoples** [1] 25:20  
**perceived** [2] 149:11; 191:7  
**percent** [19] 151:11; 178:17, 18, 19;  
191:3; 237:4, 11; 239:18; 242:4; 243:7;  
259:7; 260:5, 18; 261:19; 262:1, 20;  
263:6, 10  
**percentage** [1] 184:19  
**percentages** [1] 185:1  
**percentiles** [2] 191:11, 12  
**perception** [5] 24:1; 25:13, 14; 145:16;  
152:14  
**perfect** [7] 52:9, 17; 53:8; 55:8; 180:7;  
182:6; 263:19  
**perfectly** [3] 139:19; 146:6; 239:17  
**performance** [1] 10:11  
**performed** [1] 125:1  
**Period** [1] 255:15  
**period** [16] 9:8; 13:3; 43:10; 44:19; 47:5;  
49:22; 50:9; 51:5; 87:20; 100:20; 172:19;  
222:13, 18; 223:1; 281:12; 282:20  
**permissible** [1] 189:5  
**permitted** [3] 76:9; 112:10; 204:7  
**person** [18] 24:18; 62:1, 2; 82:13; 142:2;  
149:20; 156:14; 202:2; 204:12; 273:18;  
274:4; 276:12; 280:22; 281:3; 282:10, 22;  
284:18; 287:9  
**person-to-person** [1] 181:11  
**Personal** [1] 47:1  
**personal** [14] 47:16; 58:10; 82:14; 85:22;  
88:2; 120:10; 125:7, 8; 126:8; 128:22;  
141:14; 142:19; 144:22; 194:4  
**personally** [3] 45:9; 58:20; 273:21  
**persons** [2] 149:12; 281:9  
**persuasive** [1] 156:11  
**pet** [2] 149:21  
**petition** [2] 33:19; 34:14  
**pharmaceutical** [7] 13:16; 28:13; 29:8,  
14; 77:12, 14; 164:22  
**Phil** [1] 227:5  
**philosophical** [1] 88:5  
**phone** [15] 155:21; 156:3; 177:11;  
181:17; 183:9, 22; 189:8; 190:17; 196:5;  
257:17; 258:19; 259:7; 260:13, 15, 16

**phony** [2] 123:9, 17  
**phrase** [2] 25:3; 288:20  
**pick** [2] 156:3; 178:4  
**picks** [1] 84:5  
**picture** [2] 97:14; 287:16  
**pictures** [2] 84:3; 86:11  
**piece** [4] 118:3; 182:6; 263:19; 265:7  
**Plg** [1] 66:2  
**pilot** [1] 58:9  
**pipeline** [1] 152:3  
**pitch** [1] 156:13  
**Pittsburgh** [5] 32:4; 35:11; 36:1; 43:3;  
46:16  
**place** [7] 40:6; 73:1; 190:18; 226:7;  
227:14; 248:12; 286:6  
**placed** [2] 80:18; 215:17  
**places** [5] 15:2; 17:19; 153:14; 227:5;  
248:9  
**plaintiff-intervenor** [1] 276:1  
**Plaintiffs** [2] 132:11; 141:1  
**plan** [7] 92:20; 93:6; 239:3; 242:3; 258:6,  
9, 14  
**plans** [3] 88:11; 89:12; 92:18  
**platter** [1] 272:4  
**play** [4] 67:14; 96:11, 12; 216:13  
**played** [7] 67:19; 173:20, 21, 22; 212:13;  
232:14; 279:13  
**playing** [3] 91:19; 125:20; 142:13  
**Please** [1] 247:14  
**please** [13] 7:16; 20:20; 60:4; 67:15;  
70:22; 87:16; 133:7; 236:16; 258:16;  
264:12; 280:2; 288:18  
**pleased** [5] 22:6; 65:1; 66:6; 73:16; 104:4  
**pledge** [4] 109:4, 9, 17, 19  
**plenty** [1] 252:7  
**point** [12] 14:7; 37:8, 11; 64:17; 86:13;  
141:4; 142:17; 144:1; 186:21; 230:15;  
250:16; 273:15  
**policies** [1] 220:2  
**Political** [3] 9:14; 168:9; 170:4  
**political** [89] 9:17; 12:10; 13:8; 14:15;  
15:12; 21:21; 23:10; 30:3; 33:12; 67:2;  
68:15; 91:4; 95:22; 96:1; 133:11; 151:8;  
152:17; 153:22; 155:2; 157:1, 4; 160:11,  
20; 161:5; 167:10, 19; 170:5, 11, 15;  
171:10; 172:17; 173:11; 174:12, 14, 18,  
19; 177:4, 20; 179:8; 180:12; 181:4, 7, 14;  
182:11, 21; 184:6, 15, 19; 186:10; 187:22;  
188:12, 22; 189:20; 190:8, 12; 194:22;  
200:12, 16; 201:20; 205:7; 210:16;  
211:18; 213:9; 214:4, 9; 215:1, 7, 12;  
218:11; 222:9; 223:3, 8, 9; 225:15;  
226:16; 235:5; 250:16;  
263:21; 264:1, 3; 265:9; 266:2, 6; 267:14,  
17; 268:19; 272:5; 275:20; 280:7  
**Politician** [1] 26:7  
**politician** [1] 29:2  
**Politics** [1] 223:7  
**politics** [11] 20:9; 22:2; 77:19; 91:5;  
107:3; 117:2, 13; 147:7; 166:5; 223:1;  
244:17  
**poll** [5] 20:11; 233:6; 263:14  
**polling** [1] 78:2  
**polls** [4] 230:5; 233:5, 17; 268:7  
**poor** [1] 137:22  
**pork** [9] 17:11, 20; 18:22; 19:9, 15, 21;  
66:4; 143:6; 144:13  
**portion** [4] 276:2; 283:22; 284:1  
**portrayal** [1] 130:20  
**portrayed** [1] 145:16  
**portraying** [1] 93:11

position [17] 33:18, 20; 34:13; 89:18; 104:21; 105:2, 4; 107:15; 130:20; 131:20; 132:3; 161:11, 16; 163:15, 21; 164:8; 179:22  
 positions [2] 61:5; 64:15  
 possessing [1] 281:4  
 possibility [3] 149:14, 18; 284:11  
 Post [1] 32:4  
 Post-Dispatch [1] 229:13  
 potential [2] 8:16; 13:2  
 potentially [1] 256:14  
 pour [1] 195:4  
 poured [1] 231:13  
 pouring [1] 238:10  
 pours [1] 171:19  
 POW [1] 137:14  
 power [1] 179:22  
 powerful [5] 56:14; 151:13, 19, 20; 153:2  
 practical [1] 270:7  
 Practically [1] 289:3  
 practice [6] 50:21; 117:12; 152:21; 219:10; 236:18; 252:8  
 practices [2] 117:9; 191:7  
 praise [2] 93:16, 17  
 praised [1] 57:18  
 preaching [1] 188:16  
 precinct [2] 272:1, 2  
 precise [4] 165:6, 7, 8, 12  
 precisely [1] 100:2  
 preclude [1] 242:3  
 preference [1] 285:2  
 premise [2] 115:17; 281:14  
 prepared [2] 83:17; 290:10  
 prescription [5] 13:13; 28:15; 164:15; 165:19; 258:10  
 presence [1] 65:19  
 present [6] 201:11; 204:14; 221:3, 8; 227:11; 287:12  
 Presidency [1] 97:15  
 President [14] 29:18; 49:21; 85:19; 86:3; 88:11; 89:12, 18; 92:18, 20; 93:6; 142:21; 156:8; 194:15; 259:11  
 president [1] 37:12  
 Presidential [7] 87:4, 9; 95:17; 98:11; 127:13; 128:20; 133:19  
 presidential [4] 12:13; 31:3; 48:16; 50:22  
 Press [2] 15:19; 79:8  
 press [1] 145:6  
 pressure [2] 48:21; 230:18  
 Presumably [1] 156:12  
 presumably [2] 150:9; 250:12  
 pretty [7] 33:22; 106:5; 127:18; 129:2; 190:8; 227:16; 257:7  
 prevailed [1] 113:14  
 prevent [7] 176:10; 197:7; 206:18; 207:1; 213:12; 219:9; 251:10  
 prevented [1] 195:21  
 previous [2] 67:18; 231:5  
 primarily [1] 219:12  
 primary [27] 8:1, 13, 20, 21; 62:21; 85:4, 7, 12, 18; 86:17, 21; 87:2, 4; 94:16; 100:4, 14; 121:21; 126:9; 139:6; 180:19; 181:1, 6; 284:13, 14, 19, 22  
 prime [1] 255:8  
 Print [1] 189:14  
 print [4] 261:1, 10, 21; 268:16  
 printed [1] 273:21  
 prior [15] 36:15; 86:16; 94:11, 15; 119:19; 121:20; 140:4; 178:3; 195:4; 251:14; 260:9, 10; 287:8  
 priority [1] 174:3

prisoner [1] 137:17  
 privilege [2] 10:9; 41:19  
 pro [5] 33:17; 34:11; 63:8, 9; 148:16  
 Pro-Life [3] 121:18; 122:7, 19  
 problem [9] 28:12, 13; 74:18; 103:14; 165:3; 183:18; 240:11; 251:15  
 problematical [1] 148:6  
 problems [2] 57:2; 75:7  
 procedures [1] 26:8  
 proceeding [2] 22:3; 41:2  
 proceedings [6] 22:21; 67:16; 78:14; 140:14; 218:4; 257:10  
 proceeds [3] 58:15, 19; 62:9  
 process [11] 19:2, 9; 52:16; 93:4; 143:9, 14, 16; 150:7; 182:19; 249:16; 285:7  
 processors [1] 23:19  
 produced [1] 290:22  
 product [3] 52:17; 53:4; 267:18  
 profit [1] 60:19  
 program [5] 164:15; 237:18; 239:20; 240:1; 242:5  
 Programs [2] 242:13; 243:8  
 programs [1] 242:17  
 progress [1] 164:14  
 prohibit [3] 207:4; 222:9; 287:13  
 prohibited [8] 201:14; 202:1; 205:4, 5; 238:16; 249:12; 255:15; 287:9  
 prohibiting [2] 217:8; 249:13  
 prohibition [6] 195:7; 198:9; 205:6; 206:8, 14; 270:4  
 prohibitions [1] 199:7  
 prohibitive [1] 77:14  
 prohibits [6] 176:17; 215:1; 238:17; 254:18; 255:10; 280:5  
 project [1] 271:4  
 projects [1] 19:4  
 promised [2] 36:1; 289:9  
 promises [1] 234:5  
 prompted [2] 67:7; 116:19  
 pronounced [1] 167:9  
 Prop1 [2] 100:12, 18  
 proper [1] 282:7  
 propose [1] 72:19  
 proposed [4] 18:1, 13, 16; 52:1  
 proposes [1] 258:13  
 Proposition [1] 133:16  
 propriety [1] 65:8  
 prosecute [1] 21:19  
 prosecutor [1] 274:20  
 prospect [1] 179:10  
 protect [4] 88:11; 89:12; 92:18; 258:9  
 protected [1] 91:10  
 proud [3] 12:18; 65:2; 66:5; 73:16; 74:5, 8, 9; 169:17  
 prove [2] 80:9; 143:13  
 proved [1] 233:19  
 provide [7] 41:12; 70:17; 162:8; 277:7, 13; 283:17; 289:10  
 provided [2] 132:9; 234:13  
 Provision [3] 141:5, 7, 15  
 provision [12] 8:10; 24:17; 54:22; 196:14, 16; 200:5; 238:20; 240:3, 18; 266:15; 267:1; 276:21  
 provisions [4] 55:5; 133:20; 189:2; 202:19  
 public [1] 57:20  
 Public [1] 38:22  
 public [26] 25:11; 28:4; 45:22; 54:2, 14; 60:7; 69:2; 70:3; 97:6; 122:8; 137:21; 138:11; 145:3, 16; 146:15, 19; 147:1; 162:18; 168:7; 171:9; 230:2; 232:17, 22;

233:22  
 publication [2] 12:4, 19  
 publicly [2] 190:5; 194:17  
 published [5] 32:4; 44:15; 60:17; 129:9; 208:13  
 purchase [3] 35:16; 37:2, 3  
 purely [1] 211:4  
 purest [1] 150:5  
 purport [2] 83:20; 84:1  
 purporting [1] 86:1  
 purpose [13] 20:1, 3; 23:4; 39:16, 17, 21; 40:2; 82:1; 83:6; 108:5; 141:21; 180:19; 181:1  
 purposes [10] 37:7; 84:17; 87:1, 7; 115:15; 121:14; 127:12; 154:9; 250:22; 267:3  
 pursuant [1] 152:10  
 puts [1] 141:14  
 Putting [1] 150:8  
 putting [5] 54:22; 75:7; 97:13; 124:5; 150:17

## - Q -

qualified [1] 283:13  
 Quality [1] 127:9  
 question [89] 13:6, 21; 19:18; 20:14, 19, 20; 23:22; 36:19; 39:10; 45:1; 50:7, 13; 52:5; 54:13, 17; 61:8; 62:14; 64:13; 65:16; 66:16; 67:6; 70:8, 11; 75:6; 76:13; 78:8; 79:18; 85:20; 88:17; 90:10; 91:1; 99:9; 100:1; 104:19; 112:11; 115:13, 22; 116:9, 17, 20, 22; 117:8, 19; 118:9; 123:15; 128:1, 3, 12, 16; 129:12; 136:14; 147:5; 150:16; 169:4; 171:14; 185:21; 186:6, 15; 190:7; 193:5; 194:12; 195:10; 199:21; 200:14; 202:17; 205:1; 210:18; 211:7; 214:14, 19, 21; 217:2; 222:5; 225:20; 237:19; 244:8, 10; 245:2; 252:2; 264:10, 13; 267:20; 269:6; 270:12; 274:5, 6; 288:2, 11  
 questionable [1] 65:17  
 questioner [1] 274:17  
 questioning [4] 23:12; 48:15; 78:10; 132:6  
 questions [34] 7:11, 16; 15:3; 22:5, 11; 25:2; 39:12; 44:4; 62:12; 71:3; 79:7; 89:2; 96:14; 101:1; 103:16; 115:13; 140:12; 141:3; 143:5; 144:21; 178:1; 179:15, 16; 221:17; 227:21; 228:2, 11; 273:14; 276:5; 285:10, 13, 16; 288:16; 290:22  
 quick [1] 227:16  
 quickly [2] 133:6; 257:7  
 quid [5] 33:16, 17; 34:11, 12; 148:16  
 quiz [1] 69:7  
 quo [3] 33:17; 34:11; 148:16  
 Quote [1] 46:2  
 quote [19] 16:9; 17:7; 33:13; 35:19, 22; 36:2, 3; 39:5, 20; 44:16; 46:15; 47:5; 49:12, 18, 22; 52:18; 55:14; 56:22; 57:18  
 quoted [1] 57:18

## - R -

race [17] 8:8; 142:5; 151:10; 212:16, 20; 248:22; 250:19; 251:6, 14; 252:6; 254:3, 16; 255:21, 22  
 races [4] 138:12; 151:9; 216:10; 250:21  
 Racicot [3] 196:8, 20, 22  
 radio [4] 111:7; 117:4; 183:17; 257:16  
 raise [26] 66:2; 98:2; 109:22; 110:7, 9, 10; 127:2; 156:19; 169:20; 176:16; 180:3, 17;

194:3; 195:2, 15; 196:1; 201:3; 203:20; 204:9, 16; 205:3; 206:19; 224:3, 5; 243:12  
**raised** [7] 44:4; 71:8; 181:16; 187:3; 205:12; 213:3; 266:16  
**raiser** [11] 64:14; 153:5; 154:1, 4, 8; 164:14, 20; 165:16; 201:5; 206:19; 207:10  
**raisers** [4] 64:20; 148:20; 151:3; 195:8  
**raises** [3] 183:5; 221:18; 270:10  
**raising** [35] 63:13; 64:2; 97:19; 149:2; 151:15; 153:9; 155:19; 179:18, 20; 180:1, 5; 192:3; 196:18; 200:2, 8, 11; 202:7; 204:11; 205:7; 207:4; 214:10; 215:2, 13; 218:14; 219:4; 220:22; 222:10; 224:8; 253:19; 254:19; 255:11, 15; 270:4; 272:15  
**rallies** [1] 267:14  
**ran** [20] 73:18; 77:5, 20; 85:7, 10; 87:7, 9, 13; 100:2; 110:4; 112:19; 121:10, 12; 127:11, 12; 129:12; 135:20; 251:5  
**ranchers** [1] 93:6  
**rank** [1] 233:4  
**ranking** [3] 58:4; 62:5; 72:18  
**ranks** [1] 56:9  
**rarely** [1] 184:14  
**rates** [1] 46:10  
**re-election** [1] 8:2  
**reach** [1] 219:18  
**reaction** [1] 194:19  
**read** [31] 17:5; 19:21; 32:10, 12; 39:18; 44:12; 50:8; 55:16; 59:21; 60:19; 62:3; 87:14; 106:19; 112:7; 160:7; 167:8; 198:5; 199:19; 201:19; 202:19; 204:10, 12, 16; 206:14; 230:4; 247:7, 8; 248:4; 258:2; 260:16; 265:17  
**reading** [5] 148:2; 199:13, 15; 204:19; 258:1  
**reads** [1] 46:2  
**Reagan** [3] 167:6, 10, 11  
**real** [12] 89:22; 90:1; 94:9; 107:3; 108:4; 177:7, 8, 18; 184:12; 219:4; 270:12; 272:4  
**realistic** [1] 179:10  
**Reality** [1] 184:12  
**reality** [10] 20:9, 17; 21:7; 22:1, 2; 23:22; 26:12; 147:8; 267:17  
**realize** [1] 79:4  
**realm** [1] 284:11  
**reason** [23] 51:17; 60:21; 90:9; 91:10; 95:4; 103:18; 113:15; 132:2; 137:12; 156:20; 169:3; 183:20; 197:6; 201:1, 6; 218:10, 13; 224:18; 241:9; 251:11; 255:20; 267:20; 276:13  
**reasonable** [6] 54:14; 62:1, 2; 63:3; 222:15; 233:11  
**reasons** [6] 51:17; 68:21; 86:1; 130:12; 132:5; 218:13  
**recall** [26] 8:14, 15; 15:13; 35:16; 45:3, 11, 12, 15, 16, 18, 21; 50:2, 8; 69:19; 162:5; 226:12, 14, 22; 227:10, 21; 238:20; 258:18; 278:1, 5; 282:14, 20  
**receipt** [2] 204:2, 6  
**receive** [9] 19:5; 58:19, 20; 73:16; 122:13; 153:7; 174:15; 207:3; 220:5  
**received** [14] 24:18; 31:2, 16; 44:5; 71:3; 72:7; 74:5, 14; 81:3; 123:5; 227:22; 249:1; 273:17; 289:12  
**receives** [1] 27:17  
**receiving** [5] 74:9; 76:16; 238:18; 270:4; 271:17  
**recent** [2] 23:17; 58:14  
**Recently** [1] 13:12  
**recently** [4] 47:14; 230:19; 277:8; 288:5  
**receptions** [1] 196:20  
**recipient** [3] 149:4; 170:9; 248:8  
**recipients** [1] 175:9  
**recognized** [1] 77:8  
**recognizing** [1] 142:4  
**recollect** [1] 238:8  
**recollection** [4] 33:2; 230:7; 251:4; 289:18  
**recommendation** [2] 286:12, 13  
**Record** [2] 289:16, 19  
**record** [34] 17:6; 18:10; 26:10; 40:19, 20; 41:13; 43:13; 45:22; 47:11; 59:17; 67:17; 70:18; 78:15; 107:1; 117:21; 129:4; 130:20; 131:7; 140:15, 16; 148:19; 166:10; 202:1; 218:5, 6; 231:2; 257:11, 12; 258:2; 278:2, 8, 11; 279:1, 4  
**record-setting** [1] 230:20  
**records** [1] 33:1  
**recruited** [1] 272:2  
**reduce** [1] 75:3  
**reduction** [1] 225:4  
**Reed** [2] 42:8, 14  
**reelection** [8] 60:16; 73:18; 131:11; 178:16; 256:10; 269:1, 11; 279:7  
**refer** [7] 15:4; 17:3, 18; 35:19; 44:13; 46:14; 97:14  
**reference** [4] 16:6; 194:13; 277:4; 283:16  
**referred** [7] 13:1; 15:5, 20; 16:8; 21:1; 165:17; 280:8  
**Referring** [1] 32:17  
**referring** [5] 70:17; 84:9; 211:21; 214:16; 259:10  
**refers** [4] 12:14, 15; 99:1; 133:11  
**reflect** [1] 241:10  
**reflected** [3] 122:21; 125:5; 192:7  
**Reform** [7] 11:18; 70:5; 87:21; 111:22; 134:1; 139:20; 184:11  
**reform** [26] 7:21; 9:21; 11:15; 20:2, 3; 29:10; 51:19; 52:8; 64:16; 65:4, 11; 75:20; 180:8; 183:19; 210:6; 221:6; 258:5, 7, 9, 13, 16, 17; 271:6; 273:1, 8; 288:7  
**reforms** [1] 144:9  
**refresh** [2] 33:2; 277:19  
**refused** [4] 109:1, 10, 11, 17  
**regard** [4] 116:16; 120:11; 164:8; 235:3  
**regarding** [1] 133:13  
**regardless** [1] 134:4  
**regimes** [1] 170:17  
**regional** [1] 238:22  
**register** [1] 265:11  
**registered** [2] 191:12; 192:8  
**registration** [10] 182:20; 184:1, 22; 190:19; 191:3, 20; 196:5; 198:21; 266:14; 267:13  
**regularly-scheduled** [1] 236:22  
**regulate** [3] 209:2; 219:19, 20  
**regulated** [16] 176:14; 180:18; 183:6; 189:5; 194:4; 205:8; 220:1; 237:12; 238:5, 16; 239:19; 243:7; 254:7; 255:3; 266:9; 272:17  
**regulates** [1] 176:12  
**regulating** [2] 216:8, 9  
**regulation** [1] 217:13  
**regulations** [4] 16:15; 76:6; 80:6; 254:20  
**regulator** [2] 146:9; 148:7  
**regulators** [3] 146:12; 147:10, 15  
**Regulatory** [1] 72:20  
**regulatory** [4] 148:10; 170:16; 202:11; 219:17  
**Reid** [3] 111:20; 112:13; 113:7  
**Reiff** [1] 191:15  
**reimbursed** [1] 46:9  
**reiterate** [1] 268:10  
**reject** [1] 23:8  
**relate** [1] 200:15  
**related** [5] 7:11; 17:12; 19:16; 61:8; 179:8  
**relates** [2] 23:22; 55:21  
**relating** [1] 95:16  
**relation** [1] 116:13  
**relationship** [3] 62:8; 128:7; 269:2  
**relative** [1] 142:9  
**relatively** [2] 12:22; 272:13  
**relatives** [1] 32:19  
**relevant** [9] 88:21; 115:11; 116:22; 117:1; 118:11, 13, 15, 17, 19  
**rely** [1] 289:7  
**remains** [1] 275:9  
**remarks** [3] 147:10; 199:15; 227:17  
**remember** [15] 32:1; 36:21; 69:15; 71:9, 10; 96:20; 129:20, 21; 156:1; 228:1; 229:16, 17; 250:18; 253:21; 258:22  
**remembers** [1] 229:20  
**remind** [2] 95:4; 258:4  
**remove** [1] 225:6  
**repeat** [4] 21:4; 50:7; 214:15; 282:5  
**repeatedly** [1] 115:14  
**repeating** [2] 109:20; 135:8  
**repetitious** [1] 285:18  
**rephrase** [4] 7:17; 36:18; 150:21, 22  
**replace** [2] 222:8, 12  
**replot** [2] 144:19; 147:19  
**Report** [6] 10:1, 18; 11:4; 12:1, 20; 184:8  
**report** [13] 11:13, 14, 16; 22:12; 169:20; 170:4, 9, 11, 16; 175:12; 208:11, 12; 265:20  
**reported** [5] 175:21; 176:2; 231:5, 21; 234:12  
**Reporter** [15] 67:19; 157:16; 159:7; 206:1; 224:11; 226:5; 236:3; 245:6; 246:18; 249:19; 252:20; 257:15; 260:22; 262:3; 264:15  
**reporting** [3] 170:19, 21; 172:18  
**Reports** [1] 286:18  
**reports** [3] 55:12; 230:20; 273:21  
**represent** [9] 7:8; 21:14; 61:2; 100:20; 111:15; 127:10; 221:11; 275:18; 290:6  
**representation** [1] 87:13  
**representative** [7] 61:1; 130:11; 205:7; 238:2; 241:13, 15; 242:2  
**Representatives** [1] 160:18  
**representatives** [1] 124:10  
**represented** [8] 31:12; 62:16, 19; 63:9; 64:16; 75:19; 77:9; 289:9  
**representing** [5] 32:21; 63:8, 10; 140:22; 142:20  
**represents** [2] 191:15; 290:7  
**Republic** [1] 271:16  
**Republican** [70] 22:13; 62:21; 90:17; 91:21; 106:8, 15; 130:11; 136:3, 7; 140:22; 155:10, 13; 161:10, 15, 20; 162:1; 163:14, 20; 164:7; 167:2, 6; 168:2, 17; 169:11; 172:13, 22; 175:6, 19; 178:7, 22; 190:20; 191:4, 10; 192:5, 6, 10; 194:9, 13; 196:13; 205:2; 206:18; 207:8, 12; 209:15; 210:4, 12; 212:11; 213:17; 216:2; 217:3; 227:6; 239:1; 240:9, 15; 241:12, 15; 242:1, 14; 245:7; 246:2; 249:22; 252:8; 256:15; 269:18; 270:8; 271:11; 272:14, 20; 274:2; 284:22  
**Republicans** [11] 17:8, 13; 19:17, 19; 20:20; 104:7; 152:20; 161:21; 191:5; 192:8; 210:11

reputation [1] 137:9  
 Request [3] 159:8, 10; 160:7  
 request [8] 22:17; 39:16, 21; 44:19;  
 151:18; 152:11; 160:16; 173:15  
 Requests [1] 161:8  
 requests [2] 32:14; 173:11  
 required [7] 96:12; 103:20; 131:16;  
 170:19; 175:12, 16; 214:4  
 requirement [1] 103:4  
 requirer [1] 94:5  
 requisite [1] 98:12  
 research [3] 66:7; 154:4; 279:11  
 Reservation [1] 265:19  
 reservations [3] 72:12; 73:2, 6  
 resident [1] 251:5  
 Resolution [4] 10:7; 157:12; 158:20;  
 159:1  
 Resolution175 [1] 159:4  
 resources [1] 151:8  
 respect [15] 19:20; 20:15, 16, 22; 22:7;  
 34:19; 83:5; 85:18; 92:21; 122:5; 126:1;  
 133:18, 21; 160:14; 287:2  
 respective [1] 143:10  
 respond [7] 125:16; 126:18, 20; 129:3;  
 130:15; 193:4; 195:20  
 responding [1] 103:5  
 Response [1] 134:14  
 response [19] 13:20; 21:3; 25:2; 32:14;  
 41:12; 42:2, 21; 53:17; 125:16; 132:5, 9;  
 160:13; 161:13; 188:2; 193:7, 11; 204:20;  
 256:7; 276:17  
 responses [4] 40:6; 159:8, 10; 163:7  
 responsibilities [4] 16:2; 49:9; 146:15;  
 290:11  
 responsibility [4] 18:6; 41:20, 21; 190:22  
 responsible [2] 129:1, 5  
 Responsive [1] 223:7  
 rest [1] 240:22  
 restate [1] 218:19  
 restrained [2] 92:14; 122:14  
 restraints [1] 222:15  
 restricted [3] 77:15; 215:8; 220:22  
 restriction [2] 275:19; 277:6  
 restrictions [10] 23:20; 97:19; 122:18;  
 125:14; 190:9; 214:9; 215:17; 231:8;  
 263:15; 276:14  
 restructured [2] 271:3, 8  
 result [9] 177:5; 209:7; 221:1; 240:8;  
 249:1; 252:4; 264:3; 271:15; 273:17  
 return [9] 77:19; 152:6; 177:7; 222:12, 18,  
 21; 223:1; 256:2, 3  
 Returning [1] 71:2  
 revealed [1] 82:22  
 revering [1] 60:8  
 reviewed [1] 277:8  
 reviews [1] 44:11  
 reward [4] 19:17, 20; 20:21; 23:1  
 Rifle [2] 194:5; 196:10  
 Right [15] 87:6; 98:9, 19; 118:7, 13;  
 190:2; 196:2; 199:17; 200:3; 206:16;  
 212:9; 218:1; 225:3; 237:15; 289:1  
 right [77] 12:3; 17:3, 5; 29:19; 41:11;  
 66:12; 68:4; 71:9; 81:13; 86:9; 87:21;  
 90:8; 98:17; 105:9; 111:7, 10, 17; 118:14;  
 119:5, 16; 121:15; 126:9; 132:8; 135:17;  
 136:17, 18; 143:11; 148:13; 156:15;  
 157:2; 159:5; 165:13; 181:18; 188:14, 22;  
 192:16, 21; 194:9; 195:5; 197:17; 200:2,  
 17; 203:17, 22; 205:17; 207:20; 208:2;  
 209:2; 213:15; 214:21; 215:3, 10; 224:9;  
 225:13; 233:20; 237:8, 14; 240:5; 241:1;

2:14; 244:15; 254:8; 255:17; 259:11,  
 260:6; 262:1, 21; 263:6; 264:1; 267:4;  
 284:5; 285:6;  
 288:13; 289:2  
 right-hand [2] 184:11; 261:11  
 Rights [1] 265:20  
 rights [3] 96:2, 10; 239:17  
 rise [4] 17:11, 12; 19:15, 16  
 rises [2] 78:3, 4  
 risk [2] 271:18; 272:15  
 RNC [26] 141:1; 159:10; 162:6; 165:16,  
 21, 22; 166:8, 15; 171:20; 175:10; 194:21;  
 197:8; 201:13; 207:4; 212:17; 239:22;  
 246:21; 247:22; 248:4; 250:11, 12;  
 252:22; 254:18; 256:8; 270:2, 3  
 RNSEC [1] 246:2  
 robber [1] 210:13  
 robust [2] 167:14; 177:9  
 Rochester [1] 256:4  
 role [3] 216:12, 15; 279:12  
 roles [1] 212:14  
 Roll [2] 230:16; 277:20  
 Ronald [2] 167:6, 10  
 room [1] 239:22  
 Roosevelt [7] 29:18, 19, 20; 30:1; 167:20;  
 210:10, 11  
 roots [5] 182:13, 15, 18; 185:15; 192:7  
 Roswell [1] 77:1  
 rotten [1] 27:11  
 roughly [1] 222:1  
 RPD [1] 240:9  
 Rule [1] 274:22  
 rule [2] 209:9; 263:17  
 ruled [2] 15:8, 10  
 rulemaking [1] 236:6  
 Rules [1] 158:21  
 rules [11] 91:19; 96:11; 139:1, 2, 4, 7, 20;  
 209:5, 11; 234:17; 239:11  
 rulings [1] 210:21  
 run [50] 8:3, 9; 49:20; 60:16; 83:3; 85:9;  
 91:9, 14; 98:3; 100:4; 105:5; 107:15;  
 108:5, 18, 19; 109:21; 114:2; 118:20, 21;  
 119:17, 18; 120:6; 121:4, 16, 22; 126:6, 8,  
 22; 128:19; 131:8, 10, 17; 133:18; 142:4;  
 173:12, 17; 177:4; 185:10; 194:19;  
 204:8; 224:3; 260:1, 4, 20; 266:17, 20;  
 269:9, 11; 284:12, 15  
 running [21] 90:2, 14; 108:21; 113:11;  
 114:3; 121:10, 15, 19; 125:18; 172:10, 12;  
 194:15; 204:12; 230:9; 232:17; 234:19;  
 247:11; 259:3, 11; 269:3; 285:3  
 runs [1] 172:2  
 Russ [6] 12:17; 52:10; 54:21; 123:18;  
 221:7

- S -

sake [1] 128:18  
 sale [1] 35:13  
 sales [1] 61:16  
 Salter [1] 58:18  
 sat [1] 238:2  
 satisfaction [2] 60:12; 192:2  
 satisfactory [1] 76:6  
 save [3] 105:19, 21; 206:4  
 saved [1] 107:13  
 saying [18] 16:9; 53:9; 68:1, 8; 76:21;  
 77:1; 79:10; 86:6; 98:6; 107:9; 112:12, 18;  
 113:7, 8; 147:10; 150:17; 182:15; 194:13  
 scandal [2] 211:12, 13  
 scenario [2] 120:17; 140:3

School [2] 90:11; 185:8  
 Schooler [6] 247:10, 14, 17; 248:19;  
 249:14; 251:14  
 schools [1] 258:8  
 scramble [2] 17:13; 19:17  
 scrambled [2] 19:20; 23:1  
 scrambling [1] 20:21  
 Script [1] 258:3  
 script [7] 257:16, 17; 258:19; 259:7;  
 260:13, 15, 16  
 scrutiny [1] 19:5  
 scuttle [1] 230:18  
 se [1] 72:6  
 searching [1] 57:19  
 Seattle [1] 17:21  
 Second [1] 179:2  
 second [11] 35:18; 36:4; 40:22; 44:13;  
 160:16; 206:2; 225:19; 228:10; 250:15;  
 256:1; 288:5  
 seconds [1] 84:4  
 Secretary [1] 274:20  
 Section [4] 200:1; 205:5; 254:18; 272:18  
 Section323 [1] 238:17  
 secure [2] 39:16, 21  
 Security [14] 104:11, 22; 105:1, 20, 22;  
 106:1, 4, 9; 107:11, 12, 15, 16; 258:10, 15  
 seek [2] 141:6; 268:22  
 seeks [1] 258:10  
 segments [1] 148:12  
 Select [1] 137:2  
 selecting [3] 290:13, 16, 17  
 self-identified [1] 167:1  
 self-interest [1] 171:4  
 self-pity [1] 145:11  
 sell [1] 36:3  
 Senate [21] 10:6, 10; 13:17; 19:6; 22:22;  
 23:1; 37:9; 40:16; 56:16; 58:5; 137:1;  
 142:20; 151:3; 158:16; 159:1; 162:16;  
 164:19; 229:22; 234:17; 249:17; 255:22  
 senate [3] 13:9, 14; 14:16  
 SENATOR [7] 7:14; 14:8, 11; 15:16;  
 26:18; 27:22; 54:20  
 Senatorial [4] 8:8; 111:19; 136:7; 227:7  
 senatorial [1] 9:6  
 Senators [14] 10:7; 18:1, 12, 15; 22:13;  
 120:14, 15; 122:9; 146:9; 147:15; 151:4,  
 19, 21; 232:16  
 send [6] 59:7, 12; 66:4; 175:13; 176:7;  
 247:17  
 sending [3] 246:14; 248:22; 256:9  
 sends [1] 175:14  
 senior [2] 106:5; 151:12  
 sense [4] 16:13; 137:8; 149:22; 156:6  
 sentiment [1] 145:11  
 Separate [3] 40:13; 173:6, 8  
 separate [1] 171:5  
 separately [1] 47:6  
 September [1] 46:21  
 serial [1] 233:5  
 series [1] 221:17  
 serious [1] 151:4  
 seriously [3] 113:10; 119:9; 151:14  
 servant [1] 145:3  
 serve [7] 21:5; 48:3, 4; 60:8; 268:18;  
 279:17; 281:9  
 served [3] 77:20; 132:10; 162:19  
 Service [2] 158:10, 19  
 service [3] 57:20; 60:7; 159:5  
 Services [1] 279:9  
 serving [1] 281:12  
 session [1] 228:3

<b>sets</b> [1] 209:9	24:18; 27:20; 44:5; 74:21; 75:8, 14, 17; 77:4, 10; 78:3; 81:3; 91:6; 93:20; 95:9; 105:7; 136:3; 141:9, 12; 145:21; 150:10, 11; 169:21; 170:2; 171:21; 173:22; 175:2; 176:16; 177:2, 12; 183:1, 5, 21; 184:6, 12, 19; 185:3, 19; 187:3; 189:4; 190:14; 191:8, 9; 192:4; 195:15; 198:7; 200:8; 202:3; 205:17, 19; 207:14; 208:22; 213:20; 215:4; 232:5; 235:9; 238:11; 239:9; 241:8; 243:11, 16; 244:3; 246:3, 13; 248:2; 252:16; 254:2, 8, 10, 12, 15; 255:4; 260:5, 18; 262:1; 263:10; 266:12, 15, 22; 267:16; 268:12, 14, 15; 271:17, 21	<b>Specifically</b> [2] 24:14; 252:6
<b>setting</b> [1] 38:22	<b>sold</b> [1] 59:3	<b>specifically</b> [5] 12:14; 133:8; 158:21; 199:20; 238:8
<b>seven</b> [3] 221:7, 14; 249:15	<b>Sole</b> [1] 39:17	<b>specifics</b> [1] 34:4
<b>seven-year</b> [1] 282:20	<b>sole</b> [1] 39:21	<b>specify</b> [1] 83:8
<b>severe</b> [1] 190:9	<b>solely</b> [3] 204:5; 217:5; 240:8	<b>speculate</b> [3] 19:22; 63:21; 235:18
<b>sewer</b> [2] 27:12; 267:12	<b>solicit</b> [13] 195:3; 196:12; 197:5; 198:7, 12, 14, 16, 19; 199:4, 8; 201:11; 202:7; 207:3	<b>speculation</b> [2] 235:14; 249:4
<b>shake</b> [2] 152:5; 156:20	<b>solicitation</b> [7] 179:11; 204:2, 6; 246:10; 249:1; 250:9; 273:17	<b>speech</b> [6] 85:22; 96:2, 10; 122:21; 264:9; 280:13
<b>Shakespeare</b> [2] 179:5; 180:4	<b>solicitations</b> [4] 155:21; 181:11; 189:12; 194:4	<b>speeches</b> [2] 27:7; 227:13
<b>sham</b> [24] 81:17, 21; 82:19; 87:11, 14; 88:4; 89:10, 21; 102:22; 103:21; 111:21; 118:4; 128:20; 129:14; 130:18; 131:1, 12, 14; 187:22; 223:22; 232:12	<b>solicited</b> [1] 195:9	<b>spend</b> [23] 20:6; 97:12; 106:9; 110:8; 148:1; 170:5, 8; 174:15; 176:13; 177:10; 187:21; 188:2; 198:20; 199:5; 224:9, 20; 233:2; 235:10, 11; 237:11; 238:15; 239:18; 243:13
<b>shameless</b> [1] 202:14	<b>soliciting</b> [10] 176:18; 196:15; 197:10; 215:2; 238:18; 248:1; 249:13; 256:15; 270:4; 271:17	<b>spending</b> [25] 17:11; 19:10, 15; 66:4; 105:1; 143:6; 144:13; 150:9; 162:8; 186:11, 16; 192:4; 204:2, 7; 214:11; 215:2, 13; 218:15; 230:12; 231:3, 5; 236:18; 246:11; 270:5; 271:17
<b>share</b> [1] 165:22	<b>solicits</b> [1] 194:21	<b>spends</b> [2] 216:3; 217:4
<b>shared</b> [1] 243:2	<b>solution</b> [1] 180:7	<b>spent</b> [17] 81:6; 105:11; 107:11; 150:7; 174:7; 179:12; 185:15; 186:18; 187:4; 212:17, 20; 213:2, 4; 221:7; 230:1, 17; 231:21
<b>shares</b> [1] 258:5	<b>solve</b> [1] 57:1	<b>spigot</b> [2] 77:4; 95:12
<b>Shays</b> [1] 280:11	<b>somebody</b> [7] 60:17; 79:11; 82:17; 156:2, 3; 171:19; 173:15	<b>spirit</b> [1] 68:16
<b>shining</b> [1] 167:17	<b>somehow</b> [3] 97:21; 104:11; 124:2	<b>spoke</b> [3] 36:20; 45:6; 227:11
<b>Shnur</b> [3] 33:7, 8	<b>someone</b> [12] 26:5; 42:18; 76:21; 77:1; 83:6; 135:14, 19; 151:16; 154:5; 242:22; 281:16, 22	<b>spoken</b> [3] 226:15, 22; 228:9
<b>shortage</b> [1] 130:5	<b>somewhat</b> [2] 52:12; 282:6	<b>spokesperson</b> [1] 33:9
<b>shortfall</b> [1] 220:22	<b>Somewhere</b> [1] 197:19	<b>sponsor</b> [3] 76:11; 89:1; 113:1
<b>show</b> [20] 13:11; 20:11; 71:14; 78:2; 83:13, 15, 16; 84:6; 91:2; 100:19, 22; 105:14; 118:21; 174:10; 190:6; 233:17; 234:15, 16; 251:20	<b>somewhere</b> [1] 234:18	<b>sponsored</b> [3] 55:22; 92:11; 113:2
<b>showing</b> [2] 87:18; 277:8	<b>Sorry</b> [6] 22:20; 27:20; 67:3; 100:17; 108:17; 256:22	<b>sponsoring</b> [1] 231:12
<b>shows</b> [2] 78:2; 234:18	<b>sorry</b> [22] 15:9, 16; 50:17; 53:18; 82:9; 85:15; 96:4; 104:20; 113:13; 119:2; 127:22; 128:10; 164:3, 4; 184:4; 214:12; 220:10; 248:18; 264:7; 277:18, 19; 285:18	<b>sponsors</b> [1] 80:17
<b>Shrink</b> [1] 15:15	<b>sort</b> [9] 27:18; 36:7; 88:3; 122:21; 131:2; 143:22; 211:19; 219:17; 259:1	<b>spot</b> [1] 134:16
<b>sick</b> [1] 187:11	<b>sought</b> [2] 51:18; 75:7	<b>spouse</b> [3] 7:22; 8:12; 9:2
<b>Sierra</b> [7] 84:9; 90:18; 92:3, 11, 12; 98:6; 181:4	<b>sound</b> [5] 179:15, 16; 199:17; 203:22; 227:18	<b>spring</b> [2] 173:4; 226:13
<b>sign</b> [5] 108:22; 109:8, 17, 18; 275:3	<b>sounded</b> [1] 78:8	<b>St</b> [1] 229:13
<b>signature</b> [1] 291:12	<b>soundly</b> [1] 23:8	<b>staff</b> [7] 36:8; 69:17; 70:14; 71:11; 134:20; 148:7; 277:11
<b>signed</b> [7] 86:3; 132:20; 133:1; 245:7; 246:20, 21; 249:21	<b>source</b> [6] 158:22; 175:20; 186:17, 19; 198:8; 199:6	<b>stage</b> [1] 284:13
<b>significant</b> [3] 188:8; 224:21; 225:17	<b>sources</b> [1] 287:18	<b>stalling</b> [1] 166:17
<b>signing</b> [2] 109:3; 274:7	<b>South</b> [3] 90:5; 187:7, 11	<b>stand</b> [3] 61:4; 168:9; 169:15
<b>simpler</b> [1] 239:14	<b>Southeast</b> [1] 152:4	<b>standard</b> [1] 187:18
<b>single</b> [2] 225:6, 7	<b>southern</b> [1] 173:18	<b>standards</b> [1] 139:12
<b>slphoning</b> [1] 171:21	<b>sovereign</b> [1] 171:2	<b>standpoint</b> [1] 21:9
<b>Sir</b> [1] 264:12	<b>space</b> [2] 34:2; 84:4	<b>stands</b> [2] 61:4; 169:11
<b>sir</b> [9] 29:6; 79:5; 103:15; 147:20; 209:18; 232:14; 275:6; 277:3; 291:1	<b>speak</b> [15] 22:17; 29:21; 45:1, 5; 64:3; 114:3; 117:3; 122:7; 125:11; 131:8; 200:10; 201:4, 11, 17; 202:11	<b>Stans</b> [1] 211:13
<b>sit</b> [1] 240:5	<b>speaking</b> [6] 225:8; 226:12, 22; 243:6; 263:21; 289:3	<b>start</b> [5] 112:11; 144:10; 178:15; 186:6; 216:21
<b>sitting</b> [2] 239:1, 8	<b>special</b> [9] 17:9; 25:12, 21; 44:22; 49:19; 75:4; 225:15; 237:1; 258:8	<b>started</b> [2] 150:16; 191:9
<b>situation</b> [15] 82:21; 89:5; 94:9; 135:18; 145:21; 148:16; 177:16; 181:9; 187:20; 201:8; 211:22; 219:5; 247:22; 250:8, 10	<b>specific</b> [7] 24:14; 33:13; 34:8; 135:17; 199:20; 273:15; 282:20	<b>starters</b> [1] 112:19
<b>six</b> [6] 9:8; 13:3, 9; 14:16; 120:18; 231:4		<b>starting</b> [1] 133:9
<b>six-year</b> [1] 270:21		<b>starts</b> [1] 134:11
<b>size</b> [2] 137:11; 254:11		<b>State</b> [9] 62:20; 112:20; 113:3, 9; 170:11; 177:1; 215:7; 251:9; 272:20
<b>skepticism</b> [1] 167:12		<b>state-regulated</b> [2] 205:13, 20
<b>skip</b> [2] 119:8, 10		<b>stated</b> [6] 34:3; 155:8; 166:17; 167:16; 168:21; 286:11
<b>skipping</b> [2] 119:1, 12		<b>statement</b> [10] 32:18; 33:6, 10; 34:15; 53:1; 56:13; 67:4; 140:5, 7; 158:9
<b>slightest</b> [2] 65:22; 126:4		<b>statements</b> [2] 47:6; 133:7
<b>smaller</b> [2] 29:8; 169:12		<b>States</b> [18] 13:17; 15:4; 19:6; 28:16; 49:21; 54:7; 60:9; 72:10; 73:5; 86:2; 122:16; 160:9, 18; 162:3; 208:22; 221:22; 281:5, 9
<b>smart</b> [1] 78:5		<b>states</b> [31] 44:15; 46:15; 72:11, 13, 22; 104:17; 143:11; 158:18; 174:22; 176:15; 200:5; 207:12; 212:7; 213:14; 215:16, 20; 220:1, 8; 236:21; 237:8, 18; 239:11; 240:12, 22; 243:12; 244:2; 255:6, 11;
<b>Smith</b> [12] 56:1, 20, 21; 57:5, 18; 58:7, 12; 61:9, 11, 14; 62:9		
<b>smoke</b> [1] 233:19		
<b>smoking</b> [1] 148:16		
<b>Snowe-Jeffords</b> [4] 188:6, 7; 195:4; 196:6		
<b>So-called</b> [1] 215:4		
<b>so-called</b> [10] 8:9; 83:16; 143:14; 174:1; 183:20; 188:5; 199:2; 213:20; 214:5, 17		
<b>Social</b> [14] 104:11, 22; 105:1, 19, 21; 106:1, 4, 9; 107:11, 12, 15, 16; 258:9, 15		
<b>society</b> [4] 15:13; 148:12; 188:12; 279:19		
<b>Soft</b> [3] 208:16, 20; 255:5		
<b>soft</b> [90] 17:12; 18:2, 16; 19:10, 16; 23:9;		



273:4; 283:11; 290:3  
**stating** [2] 104:10; 105:4  
**station** [2] 36:4; 37:3  
**stations** [3] 35:15; 46:19, 20  
**statistical** [1] 185:11  
**statistics** [1] 185:6  
**statute** [48] 80:4; 87:10, 22; 103:9; 176:12; 178:4; 180:13, 14; 181:10; 183:12; 194:2; 195:14; 196:16; 197:12; 199:18; 202:20; 214:2, 22; 215:1, 8; 220:14, 18; 221:18; 222:9; 223:8, 21; 228:10; 230:11; 233:22; 234:10; 237:11; 238:17; 239:18; 240:4, 18; 242:7, 8, 9; 243:5; 249:11; 255:10; 261:16; 263:22; 266:10; 270:1; 272:19; 283:21; 284:1  
**statutes** [4] 21:9, 19; 26:6; 34:4  
**stayed** [1] 251:13  
**step** [1] 235:22  
**steps** [1] 278:21  
**stick** [3] 112:9; 156:20; 187:17  
**stimulate** [1] 104:8  
**stipulate** [1] 76:2  
**stop** [6] 117:9; 160:22; 238:9; 243:10, 14, 22  
**story** [1] 83:16  
**storyboards** [1] 174:10  
**Straight** [11] 9:3, 13; 10:4; 12:4, 5, 9; 13:2, 8; 14:14; 268:19; 269:2  
**straight** [2] 153:8; 279:21  
**strategies** [1] 274:2  
**street** [1] 75:15  
**strengthened** [1] 184:15  
**stretch** [1] 61:18  
**strictly** [2] 154:9; 205:8  
**strike** [3] 13:19; 14:3, 5  
**strikes** [1] 187:18  
**stringent** [2] 254:5; 273:8  
**strong** [3] 167:13; 169:13; 272:22  
**strongest** [1] 89:19  
**strongly** [1] 274:11  
**strongly-held** [1] 122:8  
**structured** [1] 271:12  
**struggling** [1] 36:4  
**Student** [1] 279:9  
**student** [1] 279:6  
**study** [1] 188:19  
**stuff** [1] 110:3  
**stunned** [1] 192:4  
**subject** [15] 38:8; 45:10; 81:16; 97:7; 100:5; 122:17; 125:13; 130:13; 199:6; 217:13; 219:17; 243:6; 254:19; 255:12; 270:3  
**subjected** [1] 219:19  
**subjective** [5] 88:15; 104:13; 105:13; 131:5; 282:6  
**submitted** [4] 210:5; 236:4; 239:22; 242:22  
**Subsection** [1] 200:8  
**subsequent** [1] 281:20  
**subsequently** [1] 279:7  
**substantial** [4] 141:14; 212:14; 286:13; 289:4  
**succeed** [1] 241:20  
**success** [1] 63:4  
**successful** [1] 58:13  
**Sue** [1] 251:6  
**sued** [1] 275:19  
**sufficient** [1] 222:8  
**suggest** [4] 40:3; 47:19; 185:13; 186:10  
**suggested** [3] 124:17; 148:9; 270:17

**gesting** [3] 81:2; 207:5; 268:4  
**am** [1] 290:22  
**Sunday** [2] 15:7, 19  
**superior** [1] 146:16  
**supply** [4] 43:12; 47:11; 59:16; 66:3  
**support** [19] 65:2, 22; 66:6; 74:6, 9, 16; 92:20; 93:17; 94:18; 107:10; 138:10; 149:20; 178:20; 209:7, 16; 216:3; 233:22; 281:11; 284:21  
**supported** [6] 18:1, 13, 16; 29:9; 74:8; 234:14  
**supporter** [2] 93:18; 273:1  
**supporters** [1] 11:6  
**supporting** [6] 29:6, 13; 90:20; 94:11; 100:11; 135:20  
**suppose** [1] 94:2  
**Supreme** [9] 15:5; 72:10; 73:5; 88:8; 122:15; 123:3; 187:16; 188:9; 221:22  
**surplus** [6] 104:9; 105:1; 106:9, 10; 107:6, 11  
**surprise** [1] 250:20  
**surprised** [1] 135:19  
**surrounding** [2] 43:10; 46:4  
**survives** [1] 27:4  
**Susan** [1] 11:10  
**suspicious** [2] 53:10; 145:20  
**sustained** [1] 190:10  
**switched** [1] 168:20  
**system** [20] 20:13; 21:16, 18; 27:11; 44:2; 51:8; 53:5; 75:12, 18, 20; 81:11; 111:3; 157:1, 5; 209:1; 221:3, 6, 9, 15; 222:17

- T -

**table** [3] 197:12; 239:2, 8  
**taint** [8] 51:19; 52:2, 18; 54:8, 9; 59:4; 75:4; 77:21  
**tainted** [8] 44:2; 51:8, 10; 74:20; 75:2; 134:21; 135:11  
**takes** [4] 27:18; 76:1, 5; 258:8  
**Talk** [11] 9:3, 13; 10:4; 12:4, 5, 9; 13:2, 8; 14:14; 268:19; 269:2  
**talk** [12] 107:2; 109:21; 153:8; 154:19, 21; 162:22; 174:5; 227:14; 240:20, 21; 263:14; 279:21  
**talked** [8] 54:1; 68:9; 90:11; 144:18; 223:16; 237:8; 238:4; 286:21  
**talking** [17] 13:12, 18; 15:14; 54:15; 83:7; 89:19; 91:4; 117:11; 130:4; 142:19; 185:8; 186:17; 201:9; 210:10; 252:11, 15  
**talks** [4] 11:9; 134:19; 142:18; 229:14  
**Tamiraz** [1] 152:3  
**tasteful** [1] 126:7  
**Tax** [1] 66:17  
**tax** [11] 55:6; 104:7, 10, 12; 105:22; 106:3, 10, 11, 13; 107:6  
**taxes** [3] 112:15; 169:12; 231:7  
**Taxpayers** [1] 144:3  
**teachers** [1] 258:7  
**TEAM** [7] 226:6, 13, 17; 227:1, 12, 22  
**tech** [3] 129:21; 130:5, 6  
**Technically** [1] 24:15  
**technically** [1] 24:13  
**Ted** [1] 279:6  
**Teddy** [1] 167:19  
**teenagers** [4] 123:20; 124:12, 21; 125:2  
**telephone** [4] 149:5; 157:7, 8; 165:15  
**television** [19] 35:11, 13, 15; 46:20; 69:4; 70:6; 90:5, 13; 97:13; 98:21; 110:5, 14; 117:4; 123:1; 141:10; 183:17; 184:14; 187:8; 231:22

**tell** [3] 92:7; 94:4; 105:3  
**tell** [3] 69:17; 182:9; 269:7  
**Ten** [1] 185:19  
**tend** [1] 151:8  
**tens** [4] 230:9, 12; 231:13, 15  
**Term** [7] 108:11, 20; 109:2, 9, 17, 19; 110:7  
**term** [6] 13:9; 14:16; 81:17; 108:22; 109:4; 207:3  
**terminology** [1] 174:16  
**terms** [5] 89:19; 106:21; 139:12; 171:10; 272:11  
**terrible** [4] 124:8; 125:2; 164:15, 17  
**terribly** [1] 88:22  
**territorial** [2] 269:20, 21  
**territory** [1] 269:19  
**Terry** [1] 251:6  
**testified** [2] 20:16; 153:4  
**testify** [3] 7:13; 10:8; 86:1  
**testifying** [1] 275:2  
**Testimony** [1] 30:6  
**testimony** [2] 85:13; 210:5  
**Texas** [1] 172:3  
**text** [1] 86:9  
**Thank** [11] 22:19; 119:14; 145:4; 148:4; 193:3; 197:15; 223:15; 226:1, 3; 275:6; 280:19  
**thank** [4] 274:5, 9; 275:12; 291:1  
**Thanks** [1] 218:3  
**thanks** [1] 29:17  
**Theater** [2] 179:5; 180:4  
**theme** [1] 12:15  
**Theodore** [6] 29:18, 19, 20; 30:1; 210:10, 11  
**theory** [2] 84:5; 150:10  
**thereabouts** [1] 31:18  
**thereby** [2] 109:12; 112:3  
**they're** [15] 75:19; 80:14; 95:21; 98:21; 121:1; 129:22; 152:19; 155:6; 173:9; 190:13; 193:8; 197:20; 217:12; 272:18; 282:2  
**thinking** [2] 195:6; 277:14  
**thinly-disguised** [1] 184:13  
**third** [4] 133:8; 209:11; 229:15, 19  
**Thirty** [2] 87:2, 3  
**Thompson** [1] 222:3  
**thousand** [11] 8:18, 19, 20; 28:18; 31:2; 51:21; 53:11; 54:4; 59:12  
**thousands** [10] 13:15; 41:13; 51:9; 58:22; 60:13; 113:22; 282:8; 283:18; 288:6  
**threat** [1] 231:13  
**threatened** [1] 150:13  
**three** [6] 36:1; 84:4; 100:21; 235:5; 269:18  
**ticket** [1] 154:5  
**tie** [1] 148:10  
**tied** [2] 149:16; 173:9  
**ties** [1] 46:3  
**Tim** [1] 90:7  
**timely** [1] 42:2  
**Times** [8] 55:12; 56:7; 57:18; 62:3; 71:13; 278:14, 15, 16  
**times** [22] 22:11; 25:4; 33:9; 43:9; 44:20; 51:9; 82:7, 12, 15; 127:5; 131:4; 161:20; 177:3; 196:1; 211:10; 212:13; 227:5, 11; 231:4; 248:7; 267:21; 290:9  
**tired** [1] 187:11  
**title** [1] 231:8  
**Title** [1] 206:15  
**titled** [3] 11:18; 12:12; 101:2  
**Tobacco** [1] 231:1

tobacco [15] 162:22; 228:10; 229:2  
230:1, 8, 9, 17; 231:11; 233:4, 9, 18;  
234:9, 20; 235:2, 8  
Tom [1] 245:7  
tonight [1] 153:14  
topic [5] 11:12, 14, 16; 62:11; 216:20  
total [7] 8:5, 16; 9:7; 31:15; 80:15;  
235:10, 11  
totally [5] 145:12; 210:21; 221:9, 15;  
240:3  
towards [1] 17:5  
town [3] 25:22; 153:14; 211:14  
towns [1] 255:6  
Townsend [1] 279:5  
traces [2] 144:6, 8  
trade [1] 167:12  
trade-off [1] 282:3  
tradition [1] 168:3  
traditional [1] 184:21  
tragic [1] 125:2  
transaction [2] 34:19; 48:13  
transfer [1] 176:6  
transferred [1] 273:18  
transparent [2] 171:10; 174:17  
Transportation [1] 56:16  
transportation [2] 56:9; 57:11  
travel [1] 44:21  
Treasury [1] 274:21  
treasury [1] 29:15  
treated [2] 103:4, 6  
tribe [1] 73:17  
tribes [3] 73:1, 3, 18  
tries [1] 91:18  
triganosis [1] 23:17  
trigger [1] 141:15  
triggered [1] 72:16  
triggers [1] 8:9  
trip [1] 46:6  
triple [1] 187:5  
trips [1] 45:19  
trouble [1] 275:2  
troubled [1] 256:13  
truce [1] 207:21  
true [24] 9:1; 46:11; 56:5, 10, 17; 57:4;  
81:6; 97:2; 100:7; 107:22; 108:9; 110:9;  
129:7; 130:22; 134:4; 138:3, 6; 156:16;  
177:17; 191:1; 213:2; 259:13, 14  
truly [1] 247:19  
Trust [1] 195:2  
trust [5] 77:6; 167:17; 287:17, 22; 288:3  
Tuesday [1] 39:8  
turning [1] 29:20  
turnout [2] 112:4; 189:22  
TV [1] 36:4  
tweak [1] 239:21  
Twelve [3] 8:17, 18, 20  
Twenty-six [1] 23:18  
twice [2] 249:17  
two-person [1] 8:17  
two-thirds [1] 188:20  
two-year [1] 236:20  
type [4] 180:18; 182:13; 185:15; 267:4  
typical [1] 227:19  
typically [2] 242:17; 243:2

## - U -

U.S. [8] 66:17; 108:12, 20; 109:2, 9, 19;  
119:9; 157:14  
Udall [1] 211:9  
UFO [1] 77:1

Umm [2] 22:9; 32:16  
unable [1] 18:4  
unauthorized [1] 19:5  
unchecked [1] 73:8  
Uncle [1] 279:6  
unclear [1] 7:16  
unconstitutional [3] 66:21; 68:9; 80:4  
undated [1] 71:13  
undeniable [1] 249:9  
underlying [1] 89:5  
Understand [2] 147:11; 196:8  
understand [47] 14:21; 44:3; 50:12;  
53:20; 61:22; 62:13; 66:18; 76:21, 22;  
87:11; 95:14; 100:3; 103:11, 13; 116:3;  
117:17; 118:9; 133:17; 150:1; 154:3;  
166:3, 10, 11; 171:5; 173:10; 180:13;  
194:13; 198:5; 202:4; 203:22; 204:13;  
205:12; 217:2;  
221:12; 244:6; 247:21; 254:21; 262:20,  
22; 265:8, 10; 278:18; 284:10; 285:4;  
287:7, 13; 288:15  
understandably [3] 77:11, 13  
understanding [21] 7:20; 8:6, 7; 16:4;  
68:22; 69:21; 70:2; 85:16; 91:8; 204:14;  
207:15; 211:1, 2; 231:11; 255:9, 14;  
263:7; 264:2; 266:5; 286:7  
Understood [1] 142:22  
understood [4] 27:19; 128:16; 139:4;  
141:22  
undoubtedly [2] 67:10; 278:7  
undue [2] 134:22; 135:11  
unelected [1] 15:21  
unethical [2] 34:2, 8  
unfair [2] 145:8, 9  
unfavorable [1] 41:18  
unfavorably [1] 41:10  
unfortunately [1] 94:14  
unfounded [2] 137:7, 8  
unhappiness [1] 77:22  
unintentionally [1] 97:22  
Union [2] 101:2; 144:3  
union [9] 65:11; 68:19; 95:7, 14; 98:17;  
212:3; 213:11; 222:19; 224:20  
Unions [1] 57:3  
unions [4] 63:17, 18; 65:5; 131:14  
uniquely [1] 217:12  
United [18] 13:17; 15:4; 19:5; 28:15;  
49:21; 54:7; 60:9; 72:10; 73:5; 86:2;  
122:16; 160:9, 17; 162:3; 208:22; 221:22;  
281:5, 9  
Unlimited [1] 251:7  
unlimited [9] 63:17; 66:12; 105:10;  
207:10; 224:20; 251:8; 254:6, 13; 255:5  
unquote [12] 17:14; 33:19; 34:14; 35:20;  
36:5; 39:6; 40:7; 44:22; 46:11; 55:14;  
57:4, 20  
unregulated [3] 73:9; 176:20; 266:18  
unresponded [1] 126:20  
unresponsive [1] 13:21  
unsatisfactory [1] 221:10  
unsigned [1] 133:3  
unusual [1] 143:18  
update [1] 10:3  
updating [1] 11:5  
upheld [2] 189:3; 221:22  
uphill [1] 63:6  
uphold [1] 188:10  
urge [5] 42:22; 44:17; 47:13; 122:9; 124:9  
urgent [1] 256:8  
urges [2] 265:18, 19  
urging [6] 42:10; 46:16; 47:7; 138:10;

165:17; 265:16  
uses [4] 106:10; 107:6; 183:7  
usual [1] 232:3

## - V -

vague [1] 147:5  
Vaguely [1] 258:20  
valise [1] 211:14  
value [2] 169:4; 279:10  
values [1] 167:15  
varies [2] 242:19, 20  
variety [10] 9:16, 21; 118:6; 133:13;  
234:6; 281:22; 283:3, 12; 286:17, 21  
Varying [1] 170:18  
veritable [1] 143:15  
versa [1] 90:20  
version [2] 276:21; 282:14  
versus [1] 184:20  
veteran [1] 59:13  
veterans [2] 74:3, 5  
vibrant [1] 267:12  
vice [1] 90:20  
vicious [1] 194:16  
Victory [2] 242:13; 243:7  
Vietnam [2] 58:8, 9  
view [51] 26:11; 27:16; 30:4; 34:6; 51:1;  
53:3, 15; 68:15; 88:3; 93:11, 19; 102:16,  
22; 103:21; 104:12; 105:8; 109:7, 12, 13;  
112:16; 120:12, 13; 124:17; 130:17, 19;  
135:18; 141:16; 146:2, 8; 149:20; 151:17;  
152:18; 154:11; 162:17; 171:4;  
176:12; 180:22; 188:2; 210:1; 214:13;  
216:8; 217:16; 219:15; 235:11; 241:11;  
254:11, 12; 277:1; 279:10; 282:9; 287:1  
viewed [2] 60:17; 120:21  
viewer [2] 124:2; 225:8  
viewpoint [3] 130:13; 131:5  
views [12] 25:8; 62:13; 92:6, 7; 93:11;  
122:8, 12; 125:4; 153:3; 200:17, 18;  
274:12  
vigorous [2] 167:13; 177:9  
Villaraigosa [1] 262:5  
violate [3] 87:22; 210:6; 272:18  
violated [3] 137:16; 210:1, 3  
violating [2] 16:14; 212:1  
violation [13] 22:14; 68:16; 74:22; 79:21;  
80:7, 12, 15; 95:6, 9; 97:18; 137:4; 225:1;  
274:22  
violations [1] 282:7  
Virginia [9] 212:9, 16; 216:3; 217:4, 6;  
218:15; 250:17; 251:5, 9  
virtual [1] 191:1  
virtually [1] 220:4  
virtue [1] 185:7  
visas [1] 129:20  
Voice [2] 264:17; 265:16  
voice [1] 78:6  
volunteered [1] 61:14  
volunteers [4] 177:11; 190:16, 17; 271:22  
Vote [29] 109:14; 182:2, 20; 183:9, 22;  
184:22; 189:14, 17; 196:4; 198:22;  
237:12, 18; 238:5; 239:3, 19; 240:7;  
241:6, 9, 16; 242:2, 5; 245:7; 261:11;  
264:17; 265:16; 266:14; 267:4, 6; 271:22  
vote [30] 24:4, 14; 40:3, 4; 44:17; 46:16;  
47:8, 20, 21; 61:1; 76:11; 109:12; 122:10,  
13; 125:22; 160:10, 19; 161:2; 162:7;  
178:18; 230:9; 265:17, 19; 266:7; 279:18;  
282:12, 17; 283:1; 284:3  
voted [11] 24:2, 8, 9; 47:22; 60:21; 69:16;

104:12; 105:22; 106:12; 232:16; 282:16  
**Voter** [1] 191:21  
**voter** [16] 112:4; 124:9; 182:20; 184:1,  
 22; 185:16; 186:12; 189:22; 190:19;  
 196:4; 198:21; 237:3; 263:14; 266:14;  
 267:13  
**voters** [8] 91:18; 109:10; 168:7; 182:7;  
 189:12; 191:12; 245:21; 285:6  
**votes** [3] 161:21; 164:18  
**voting** [7] 22:16; 76:18; 106:3; 107:1;  
 130:20; 265:9; 271:14  
**voting-wise** [1] 74:9

---

- W -

---

**Walt** [1] 284:6  
**waived** [1] 291:13  
**wakeup** [1] 191:13  
**walk** [1] 196:9  
**walked** [1] 75:15  
**walking** [1] 211:14  
**wanted** [22] 25:14, 16; 37:3, 6; 39:5;  
 75:20; 105:6, 7; 116:21; 121:18; 122:1;  
 135:1; 141:2, 11; 152:3, 5; 182:11;  
 211:16; 218:20; 235:9; 272:4  
**wants** [7] 76:19; 91:21; 92:3; 105:10;  
 106:8; 109:3; 251:9  
**war** [3] 58:8, 9; 137:17  
**warrant** [1] 257:2  
**Warren** [1] 156:7  
**wash** [1] 176:20  
**washed** [1] 249:6  
**washes** [2] 239:11; 251:22  
**washing** [16] 145:19; 171:21; 174:1;  
 183:2; 190:3; 191:10; 213:22; 219:3, 11;  
 220:12; 243:10; 244:1; 246:12; 249:12;  
 252:15; 271:21  
**Washington** [13] 20:5; 25:10; 32:20;  
 46:8; 49:16, 20; 51:12; 56:10; 61:2; 71:13;  
 112:14; 179:5; 245:20  
**Waste** [12] 19:2; 64:21; 66:1; 144:2, 13;  
 149:4, 6; 152:12, 13; 154:16, 18, 19  
**waste** [1] 177:6  
**wasteful** [1] 66:4  
**wasting** [1] 113:12  
**watch** [2] 19:13; 185:9  
**watching** [1] 109:14  
**Watergate** [4] 144:9; 211:12, 13; 274:19  
**waves** [1] 185:3  
**ways** [3] 107:12; 232:13; 234:6  
**we'd** [1] 55:8  
**We'll** [5] 71:14; 202:12, 16; 281:15, 16  
**we'll** [7] 132:12; 174:5; 185:22; 202:8;  
 204:20; 232:8; 285:13  
**We're** [8] 90:22; 193:2; 215:21; 222:11,  
 18; 235:13, 14; 252:15  
**we're** [24] 13:11, 18; 89:19; 90:21; 91:4;  
 117:9; 130:4; 179:14; 182:6; 192:11;  
 201:9; 206:17; 207:1; 213:16; 222:12, 21;  
 234:22; 238:9; 252:11, 13; 257:6; 275:22;  
 285:5; 289:11  
**We've** [4] 78:10; 127:5; 197:15; 286:18  
**we've** [8] 53:4, 17; 54:15; 58:9; 81:6;  
 119:9; 180:8; 225:18  
**wealth** [1] 141:14  
**wealthy** [1] 141:17  
**wear** [1] 270:18  
**website** [1] 16:18  
**week** [3] 47:14; 227:13; 230:4  
**weighs** [1] 162:2  
**weight** [2] 42:15; 279:16

**well-behaved** [1] 193:12  
**well-known** [1] 156:14  
**Wellstone** [6] 69:1, 5, 11; 70:16; 96:18;  
 97:3  
**weren't** [3] 113:16; 214:8  
**West** [2] 46:18; 247:18  
**whatever** [1] 251:16  
**whenever** [3] 42:16; 216:17; 243:8  
**whereas** [1] 187:6  
**Whereupon** [43] 10:13, 19; 16:21; 32:6;  
 35:3; 38:13; 43:17; 55:18; 67:16; 71:15;  
 78:13; 84:10; 99:13; 101:4, 10, 16, 22;  
 119:20; 127:14; 129:15; 132:13; 140:7,  
 14; 157:18; 158:2; 159:12, 20; 208:5;  
 218:4; 224:13; 228:16; 229:1; 236:7;  
 245:9;  
 246:22; 250:1; 253:2; 257:10, 19; 261:3;  
 262:7; 264:18; 291:10  
**wherever** [3] 110:8; 111:1; 158:14  
**whoever** [2] 71:12; 90:18  
**widespread** [3] 20:4, 15; 21:13  
**wife** [3] 8:19; 47:1; 59:9  
**Wiley** [4] 172:1, 9; 225:11, 12  
**willfully** [1] 79:21  
**William** [1] 38:12  
**Williamson** [2] 231:1, 5  
**willing** [3] 63:18; 76:2; 139:19  
**willingness** [2] 148:11; 149:20  
**win** [2] 63:7; 256:9  
**wind** [1] 35:14  
**windows** [2] 187:20; 189:6  
**wink** [1] 173:14  
**wins** [2] 75:22; 151:11  
**wiped** [1] 106:4  
**Wisconsin** [2] 119:18; 120:6  
**wisdom** [1] 167:14  
**wish** [1] 62:2  
**WITNESS** [55] 63:22; 64:9; 69:14; 70:12,  
 21; 72:2; 79:16, 20; 83:11; 87:3; 95:3;  
 96:9; 97:17; 108:20; 114:7, 13, 16;  
 115:16; 120:8; 123:16; 128:10; 134:17;  
 143:1; 147:6; 166:21; 171:15; 176:1;  
 179:18; 186:21; 192:21; 193:2; 195:20;  
 200:19;  
 208:1; 211:8; 214:16; 218:3; 219:2; 235:1,  
 16, 20; 245:3; 249:5; 264:6, 11; 269:8;  
 270:14; 273:6, 11; 275:10; 280:16;  
 285:17; 288:12, 18; 291:1  
**Witness** [1] 44:11  
**WOB** [1] 247:17  
**women** [2] 178:19; 272:2  
**won** [2] 178:16; 235:6  
**won't** [7] 9:11; 72:15; 77:21; 86:5;  
 168:18; 180:10; 283:20  
**wonder** [1] 277:3  
**wonderful** [1] 155:18  
**word** [8] 14:22; 15:22; 16:5, 12; 34:2;  
 54:18; 134:13; 145:9  
**worded** [1] 44:16  
**words** [11] 13:20; 14:22; 25:6; 84:5;  
 86:11; 87:8; 91:16; 128:11; 167:20;  
 203:18; 254:13  
**work** [4] 19:1; 130:2, 3, 9  
**worked** [4] 20:10; 51:18; 223:5; 253:21  
**Worker** [1] 129:11  
**worker** [1] 129:22  
**workers** [7] 57:4; 130:2, 3, 6, 9, 10; 132:1  
**working** [2] 136:6; 177:11  
**works** [2] 71:12; 237:17  
**world** [11] 14:6; 56:8; 89:22; 90:1; 94:9;  
 107:3; 108:4; 125:19; 177:8; 219:5

**would** [2] 90:22; 91:3  
**would** [2] 144:14; 148:17  
**Worth** [1] 55:14  
**worth** [3] 55:14; 230:10; 235:19  
**worthy** [4] 154:6; 155:2, 4, 6  
**Wouldn't** [2] 110:20; 238:1  
**wouldn't** [31] 28:19; 52:13; 70:13; 75:16;  
 88:14; 100:15; 103:20; 107:22; 120:22;  
 124:20; 126:3, 5; 135:19; 138:22; 139:8,  
 10; 147:1; 149:19; 156:2; 165:21; 201:1,  
 6, 7; 234:17; 238:13; 251:17; 252:9;  
 254:2, 9; 255:2  
**WQED** [2] 36:1, 3  
**WQEX** [1] 36:4  
**write** [5] 11:17; 37:21, 22; 38:1; 42:22  
**writes** [1] 42:17  
**writing** [6] 39:7; 43:10; 51:2; 80:7;  
 207:17; 279:11  
**written** [11] 11:18, 20; 14:5; 16:3; 38:20;  
 40:22; 41:14; 47:12; 52:10; 204:20  
**wrong** [24] 19:9; 26:8; 28:17, 20, 22;  
 51:14, 16; 141:7; 146:8; 149:9; 186:13;  
 187:1, 2; 197:9; 213:4; 223:20; 233:13,  
 15; 242:16; 248:6; 250:13, 14; 282:9;  
 288:21  
**wrote** [14] 34:17; 35:8, 22; 38:7, 11, 17;  
 40:9, 15; 43:3, 4; 50:10; 60:6, 10; 80:13  
**Wu** [6] 108:21; 109:3, 8, 11, 15, 21

---

- X -

---

**Xmillions** [1] 74:1

---

- Y -

---

**Yeah** [5] 11:20; 24:12; 33:22; 37:18;  
 54:20  
**yeah** [1] 15:17  
**year** [24] 9:3, 8; 13:3, 5, 9; 14:16; 37:4;  
 66:2; 86:14; 106:10; 198:14, 16, 22;  
 199:1, 8, 9; 217:6; 231:5; 234:10; 237:3,  
 4, 13; 239:5; 272:16  
**years** [23] 17:8; 26:10; 36:1; 40:1; 42:5;  
 58:10, 14; 60:22; 72:9; 77:2, 3; 208:21;  
 212:8; 221:7, 14; 226:15; 227:4; 237:1;  
 240:22; 244:18; 249:15; 253:17; 280:5  
**yesterday** [1] 167:21  
**York** [10] 46:7; 55:12; 62:3, 20, 21;  
 253:15; 254:5, 9; 255:8; 278:14  
**you'd** [7] 41:13; 103:17; 106:14; 115:5,  
 11; 116:8; 192:22  
**you'll** [2] 108:7; 162:7  
**You've** [9] 7:12; 96:5; 155:18; 168:20;  
 218:19; 274:14; 278:7; 289:9; 291:2  
**you've** [13] 45:7; 79:18; 83:3; 86:12;  
 121:16; 145:14; 149:2; 167:1; 188:19;  
 202:20; 265:11; 267:21  
**young** [6] 60:13; 277:9, 14; 283:18, 21;  
 290:10  
**younger** [2] 280:5, 22  
**Yours** [1] 247:18  
**yours** [6] 33:20; 61:9; 62:1; 145:1;  
 185:22; 187:6  
**yourself** [4] 32:11; 84:7; 167:6; 168:2

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- Z -

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**zip** [1] 247:18

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**09/25/02: McConnell v FEC: Depo: John McCain: FOR COUNSEL ONLY**

**PAGE 31 TO PAGE 38**

**NEAL R. GROSS & CO., INC.**

**(202) 234-4433**

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**CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:**

**NEAL R. GROSS & CO., INC.  
1323 RHODE ISLAND AVE., NW  
WASHINGTON, DC 20005  
Phone: (202) 234-4433  
FAX: (202) 387-7330**

Page 31

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DEPOSITION

IN THE MATTER OF:

SENATOR MITCH MCCONNELL, et al.,

Plaintiffs Case No. 02-0582 (CCK, KLH, RJL)

FEDERAL ELECTION COMMISSION, et al., Defendants All consolidated cases

IN THE MATTER OF:

REPUBLICAN NATIONAL COMMITTEE, et al.,

Plaintiffs Case No. 02-874 (CCK, KLH, RJL)

FEDERAL ELECTION COMMISSION, et al., Defendants

Wednesday, September 25, 2002

DEPOSITION OF: JOHN MCCAIN

Page 32

called for examination by Counsel for the National Rifle Association, pursuant to notice of deposition, at 11:15 a.m., in Room 236 of the Russell Senate Office Building, First Street and Independence Avenue, N.E., Washington, D.C., when were present on behalf of the respective parties:

Page 33

APPEARANCES: On Behalf of the National Rifle Association:

CHARLES COOPER, ESQ. DAVID H. THOMPSON, ESQ. Cooper & Kirk 1500 K Street, N.W., Suite 200 Washington, D.C. 20005 (202) 220-9660

On Behalf of the Defendant/Intervenor:

RANDOLPH MOSS, ESQ. ROGER WITTEN, ESQ. ANYA MANUEL, ESQ. Wilmer, Cutler & Pickering 2445 N Street, N.W. Washington, D.C. 20037 (202) 663-6640

On behalf of the United States Senate:

MORGAN J. FRANKEL, ESQ. Deputy Senate Legal Counsel United States Senate 642 Hart Senate Building Washington, D.C. 20510 (202) 224-4435

On Behalf of United States Senator McConnell:

FLOYD ABRAMS, ESQ. BRIAN T. HARKLEY, ESQ. Cahill Gordon & Reindel 80 Pine Street New York, NY 10005 (212) 701-3000

Page 34

APPEARANCES: (cont.) On Behalf of the Chamber of Commerce of the United States:

JAN WITOLD BARAM, ESQ. Wiley, Rein & Fielding 1776 K Street, N.W. Washington, D.C. 20006 (202) 719-7330

On Behalf of the Republican National Committee:

BOBBY R. BURCHFIELD, ESQ. Covington & Burling 1201 Pennsylvania Avenue, N.W. P.O. Box 7566

Washington, D.C. 20044-7566 (202) 662-5350 On behalf of the American Center for Law and Justice: JAMES H. HENDERSON, SR., ESQ. The American Center for Law and Justice 205 Third Street, S.E. Washington, D.C. 20003 (202) 546-8890

Page 35

(1) P-R-O-C-E-E-D-I-N-G-S (2) (11:45 a.m.) (3) BY MR. ABRAMS (4) Q I asked you a few minutes ago if there are (5) any situations in which you found it to be sort of a (6) close call in deciding for yourself whether particular (7) conduct of a member of the Senate, say, had the (8) appearance of corruption or did not have the (9) appearance of corruption. Have you given any thought (10) to that?

(11) A I can give you one example. When the (12) Tobacco Bill was about to fail and we knew that it was (13) going to fail, Senator McConnell, at the Republican (14) Policy Lunch, which I attended, said don't worry about (15) voting against the Tobacco Bill because I've been (16) assured by the tobacco companies that they will spend (17) lots of money on your campaigns. (18) That troubled me. I don't know if it's (19) the appearance of corruption or not, but it's (20) certainly troubling when you see something like that (21) happens. (22) And the only way the tobacco companies

Page 36

(1) could have had an impact was through the infusion of (2) soft money. So, I'm not accusing it as the appearance (3) of soft money, but certainly it is troubling when you (4) see something like that. (5) Q And that was said, you say, in the context (6) of a caucus meeting? (7) A A Republican Conference, the Republican (8) Senators lunch. (9) Q And did you know that charges had been (10) made against Senator McConnell before the Federal (11) Election Commission and that a determination had been (12) made that there was no basis for the charges? (13) A Any action on the part of the Federal (14) Election Commission, Mr. Abrams, that opened the (15) loopholes for this unrestricted flow of soft money is (16) meaningless to me. (17) Q That's because it's corruption? (18) A Because they have obviously opened (19) loopholes which have emasculated existing law. (20) Theodore Roosevelt got a law passed

in 1907, that said (21) corporate contributions would not be allowed. (22) The Congress acted in 1947, and said Union

Page 37

(1) contributions would not be allowed. Loopholes were (2) opened up in 1978, 1988, 1996. (3) We all know the history of how those (4) loopholes were opened up without the Congress ever (5) acting. Without us ever passing a law. (6) So any conference whatsoever that I might (7) have had with the FAC would enforce the law because it (8) is nonexistent. Finally, you may noticed that in the (9) paper the last few days, the FAC got around to finding (10) campaigns that violated the law six years ago.

(11) Six years ago. Remarkable. (12) Q I move to strike the entirety of the (13) answer as unresponsive. My question is this, Senator. (14) Did you know that Senator McConnell had been (15) determined, by the Federal Election Commission - (16) A I did not - (17) Q - to have, let me finish the question. (18) Did you know that the Federal Election Commission made (19) a determination that Senator McConnell had not done (20) anything wrong with respect to the subject that you - (21) MR. WITTEN: Hold on one second. (22) SENATOR MCCAIN: I believe I heard that,

Page 38

(1) yes, but it was meaningless to me. (2) BY MR. ABRAMS: (3) Q Did you know that the Department of (4) Justice had made a similar finding? (5) A No. (6) Q Now the question that started this line of (7) inquiry about, I asked if there were any situations in (8) which you had found it a close call to decide for (9) yourself whether a member of the Senate was or was not (10) acting in a manner that had the appearance of (11) corruption. And I ask you that question again. (12) A And I'll answer it again. I cited you a (13) case where I think it was a close call. But, as I've (14) also mentioned to you several times, and previously in (15) our line of questioning, I believe that the way to (16) address this issue is not for me to try to bring (17) charges against anyone. It's for me to try to reform (18) the system.

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MR. ABRAMS: I want to designate as For  
Counsel Only a part of -- this part of this deposition  
which related to the Republican Conference testified  
to with respect to tobacco matters identified and  
testified to by Senator McCain.

(End of "For Counsel Only" Testimony.)

Look-See Concordance Report

UNIQUE WORDS: 131
TOTAL OCCURANCES: 203
NOISE WORDS: 385
TOTAL WORDS IN FILE: 938

SINGLE FILE CONCORDANCE

CASE SENSITIVE

NOISE WORD LIST(S): NOISE.NOI

INCLUDES ALL TEXT OCCURRENCES

IGNORES PURE NUMBERS

WORD RANGES @ BOTTOM OF PAGE

MAXIMUM TRACKED OCCURRENCE THRESHOLD: 100

- 1 -

11:45 [1] 35:2

- A -

a.m. [1] 35:2
ABRAMS [1] 38:2
Abrams [1] 36:14
accusing [1] 36:2
acted [1] 36:22
acting [2] 37:5; 38:10
action [1] 36:13
address [1] 38:16
allowed [2] 36:21; 37:1
answer [2] 37:13; 38:12
appearance [5] 35:8, 9, 19; 36:2; 38:10
assured [1] 35:16
attended [1] 35:14

- B -

basis [1] 36:12
believe [2] 37:22; 38:15
Bill [2] 35:12, 15

- C -

call [3] 35:6; 38:8, 13
campaigns [2] 35:17; 37:10
case [1] 38:13
caucus [1] 36:6
charges [3] 36:9, 12; 38:17
cited [1] 38:12
Commission [4] 36:11, 14; 37:15, 18
companies [2] 35:16, 22
conduct [1] 35:7
Conference [1] 36:7
conference [1] 37:6
Congress [2] 36:22; 37:4
context [1] 36:5
contributions [2] 36:21; 37:1
corporate [1] 36:21
corruption [5] 35:8, 9, 19; 36:17; 38:11

- D -

days [1] 37:9
decide [1] 38:8
deciding [1] 35:6

Department [1] 38:3
determination [2] 36:11; 37:19
determined [1] 37:15

- E -

Election [4] 36:11, 14; 37:15, 18
emasculated [1] 36:19
enforce [1] 37:7
entirety [1] 37:12
example [1] 35:11
existing [1] 36:19

- F -

FAC [2] 37:7, 9
fall [2] 35:12, 13
Federal [4] 36:10, 13; 37:15, 18
finding [2] 37:9; 38:4
finish [1] 37:17
flow [1] 36:15
found [2] 35:5; 38:8

- G -

give [1] 35:11
given [1] 35:9

- H -

happens [1] 35:21
heard [1] 37:22
history [1] 37:3
Hold [1] 37:21

- I -

I've [2] 35:15; 38:13
Impact [1] 36:1
Infusion [1] 36:1
Inquiry [1] 38:7
issue [1] 38:16

- J -

Justice [1] 38:4

- L -

last [1] 37:9
law [5] 36:19, 20; 37:5, 7, 10
line [2] 38:6, 15
Loopholes [1] 37:1
loopholes [3] 36:15, 19; 37:4
lots [1] 35:17
Lunch [1] 35:14
lunch [1] 36:8

- M -

manner [1] 38:10
McCain [1] 37:22
McConnell [4] 35:13; 36:10; 37:14, 19
meaningless [2] 36:16; 38:1
meeting [1] 36:6
member [2] 35:7; 38:9
mentioned [1] 38:14
minutes [1] 35:4
money [4] 35:17; 36:2, 3, 15
move [1] 37:12

- N -

nonexistent [1] 37:8
noticed [1] 37:8

- O -

obviously [1] 36:18
opened [4] 36:14, 18; 37:2, 4

- P -

paper [1] 37:9
part [1] 36:13
passed [1] 36:20
passing [1] 37:5
Policy [1] 35:14
previously [1] 38:14

- Q -

question [4] 37:13, 17; 38:6, 11
questioning [1] 38:15

- R -

reform [1] 38:17
Remarkable [1] 37:11
Republican [3] 35:13; 36:7
respect [1] 37:20
Roosevelt [1] 36:20

- S -

second [1] 37:21
Senate [2] 35:7; 38:9
SENATOR [1] 37:22
Senator [5] 35:13; 36:10; 37:13, 14, 19
Senators [1] 36:8
situations [2] 35:5; 38:7
Six [1] 37:11
six [1] 37:10
soft [3] 36:2, 3, 15
sort [1] 35:5
spend [1] 35:16
started [1] 38:6
strike [1] 37:12
subject [1] 37:20
system [1] 38:18

- T -

Theodore [1] 36:20
times [1] 38:14
Tobacco [2] 35:12, 15
tobacco [2] 35:16, 22
troubled [1] 35:18
troubling [2] 35:20; 36:3

- U -

Union [1] 36:22
unresponsive [1] 37:13
unrestricted [1] 36:15

- V -

violated [1] 37:10
voting [1] 35:15

- W -

whatsoever [1] 37:6
WITTEN [1] 37:21
worry [1] 35:14
wrong [1] 37:20

- Y -

years [2] 37:10, 11

