

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 - - - - - X

4 SENATOR MITCH McCONNELL, et al.,:

5 Plaintiffs, : Case No.

6 v. : 02-0582

7 FEDERAL ELECTION COMMISSION, et : (CKK, KLH, RJL)

8 al., :

9 Defendants. :

10 - - - - - X

11 REPUBLICAN NATIONAL COMMITTEE, :

12 et al., :

13 Plaintiffs, : Civil No.

14 v. : 02-874

15 FEDERAL ELECTION COMMISSION, et : (CKK, KLH, RJL)

16 al., :

17 Defendants. :

18 - - - - - X

19 Washington, D.C.

20 Thursday, October 10, 2002

21 Deposition of SENATOR JOHN McCAIN, a
22 witness herein, called for examination by counsel for
23 Plaintiffs in the above-entitled matter, pursuant to
24 notice, the witness being duly sworn by SUSAN L.
25 CIMINELLI, a Notary Public in and for the District of

<p style="text-align: right;">Page 2</p> <p>1 Columbia, taken at the offices of Senate Russell 2 Office Building, Room 241, Washington, D.C., at 3 3:20 p.m., Thursday, October 11, 2002, and the 4 proceedings being taken down by Stenotype by SUSAN L. 5 CIMINELLI, CRR. RPR, and transcribed under her 6 direction. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (Continued): 2 3 On behalf of Senator McCain: 4 ROGER M. WITTEN, ESQ. 5 RANDOLPH D. MOSS, ESQ. 6 ANJA MANUEL, ESQ. 7 Wilmer, Cutler & Pickering 8 2445 M Street, N.W. 9 Washington, D.C. 20037-1420 10 (202) 663-6640 11 12 ROBERT W. CHAMBERLIN, ESQ. 13 Republican Chief Counsel 14 JEANNE BUMPUS, ESQ. 15 Republican Chief of Staff 16 United States Senate 17 Committee on Commerce, Science & 18 Transportation 19 560 Dirksen Senate Office Building 20 Washington, D.C. 20510 21 (202) 224-4852 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 On behalf of the McConnell Plaintiffs: 4 FLOYD ABRAMS, ESQ. 5 BRIAN T. MARKLEY, ESQ. 6 Cahill Gordon & Reindel 7 80 Pine Street 8 New York, NY 10005 9 (212) 701-3000 10 11 On behalf of the Plaintiffs RNC, et al. 12 BOBBY BURCHFIELD, ESQ. 13 GARY M. RUBMAN, ESQ. 14 Covington & Burling 15 1201 Pennsylvania Avenue, N.W. 16 Washington, D.C. 20004-2401 17 (202)662-5407 18 19 On behalf of the Plaintiffs Chamber of Commerce 20 and Senator Mitch McConnell: 21 JAN WITOLD BARAN, ESQ. 22 Wiley, Rein & Fielding, LLP 23 1776 K Street, N.W. 24 Washington, D.C. 20006 25 (202) 719-7330</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES (Continued): 2 3 On behalf of the United States: 4 MARC L. KESSELMAN, ESQ. 5 U.S. Department of Justice 6 Federal Programs Branch 7 P.O. Box 883 8 901 E Street, N.W. 9 Washington, D.C. 20044 10 (202) 307-3937 11 12 ALSO PRESENT: 13 TREVOR POTTER, Campaign & Media Legal 14 Center, Inc. 15 ED WARREN, ESQ. 16 17 18 19 20 21 22 23 24 25</p>

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9 EXHIBITS

10 McCAIN EXHIBIT NO.	PAGE NO
11 A New York Times article, 10/10/02	
12 B List of roll call votes on cloture	8
13 C Report of Receipts and Disbursements	36
14 D Itemized Disbursements	38
15 E Report of Receipts and Disbursements	39
16 F Report of Receipts and Disbursements	41
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1 paragraph two, and in particular the last line of

2 paragraph two, which states that "in addition to

3 making such contributions to political parties,

4 corporations and unions are spending their money on

5 sham issue ads that pretend to address issues, but in

6 fact have the purpose and effect of influencing

7 Federal elections."

8 When you wrote ads that pretend to address

9 issues, Senator McCain, do you include ads that in

10 fact address issues, but also have the purpose and

11 effect of influencing Federal elections?

12 A. I think that any ad that shows the face or

13 likeness of a candidate is then part of a Federal

14 election, yes.

15 Q. Do you think that some ads in the last 60

16 days of a Federal election for the United States

17 Senate that do show a name or likeness also address

18 issues?

19 A. They may or they may not, depending on the

20 ad itself.

21 Q. Let me show you an article from today's

22 New York Times, which I'll mark as McCain Exhibit A

23 and ask you first if you have seen this document?

24 A. I have not seen this.

25 (McCain Exhibit A was

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1 PROCEEDINGS

2 Whereupon,

3 SENATOR JOHN McCain,

4 business address at 241 Russell Senate Office

5 Building, Washington, D.C., was called as a witness

6 by counsel for Plaintiffs, and having been duly sworn

7 by the Notary Public, was examined and testified as

8 follows:

9 CROSS EXAMINATION BY

10 COUNSEL FOR PLAINTIFF McCONNELL

11 BY MR. ABRAMS:

12 Q. Good afternoon, Senator McCain. We have

13 met before. I'm Floyd Abrams. I represent Senator

14 McConnell. This cross-examination this afternoon

15 will be quite a bit shorter than our last exchange of

16 a few weeks ago. I wanted to direct your attention

17 to the declaration that you signed dated October 4,

18 and ask you some questions about it.

19 A. Yes.

20 Q. Could you direct your attention, please,

21 first to, let me ask you first, this document is one

22 that was prepared by you or on your behalf and was

23 signed by you. correct?

24 A. Yes.

25 Q. Could you direct your attention to

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1 marked for identification.)

2 BY MR. ABRAMS:

3 Q. I'm going to direct your attention in

4 particular to the last two columns, but I do want you

5 to have a chance to have an idea what the whole

6 article is about, so just take your time, but let me

7 know when you finish the last two columns.

8 A. Okay. Thank you.

9 Q. Sure. This article is in good part about

10 the ongoing Missouri campaign for the Senate, is it

11 not?

12 A. Yes.

13 Q. And the article quotes in the last two

14 columns of Exhibit A from two particular

15 advertisements that I'd like to get your views on.

16 The first one, according to the article, was paid for

17 by the state's Democratic Party and according to the

18 article, it begins with a picture of men on the stock

19 exchange floor and a voice then says "an unstable

20 economy, falling financial markets, all that and Jim

21 Talent would invest Social Security money in the

22 stock market? It's true."

23 And then the article says that confronting

24 the charge, the state's Republican Party put out a

25 commercial in which the Republican candidate,

<p style="text-align: right;">Page 10</p> <p>1 Mr. Talent, looking squarely into the camera said 2 "there they go again, another lie. the liberal groups 3 of Washington can say what they want. I am not going 4 to vote to privatize Social Security. Tell Jean 5 Carnahan to start scaring seniors." 6 I want you to assume that the article is 7 accurate in saying that these two ads have appeared 8 on television in Missouri. Let me ask you first, 9 have you seen any of them yourself, by any chance? 10 A. No. I have not seen them. 11 Q. Assuming that they have appeared. 12 A. Sure. I assume that. 13 Q. I want to ask you whether in your view, 14 the issue of the privatization of Social Security or 15 put differently, permitting workers to invest part of 16 their allocated Social Security funds in the stock 17 market is one genuine issue in the 2002 senatorial 18 campaign? 19 A. Well, I would imagine that people would 20 view Social Security as an issue in any political 21 campaign, and I believe that anybody who wants to run 22 an ad identifying a candidate as both of those 23 candidates are identified in these ads should be able 24 to run those ads whenever they want to, only they 25 should pay for those ads the same way that a</p>	<p style="text-align: right;">Page 12</p> <p>1 significance? 2 A. They address a public issue and they are 3 intended to affect the outcome of a campaign, otherwise 4 they would not mention the candidate's names. 5 Q. And is it fair to say that they do both of 6 those things at once, that is to say, that they 7 address a public issue and they do so in your view 8 for a political purpose? 9 A. No one in their right mind would believe 10 that these ads would be running unless they were 11 primarily intended to address the outcome of a 12 campaign. I don't think any of these organizations 13 would fund a, an advertisement or a commercial that 14 says save Social Security. Period. None of them 15 would. 16 Q. And that in your view explains the reason 17 why they put the ad on? 18 A. The reason they put the ad on was to 19 influence the outcome of a campaign. I think it's 20 obvious. 21 Q. And now I'm asking you a related question. 22 Does the text of the ads as you read them reflect 23 commentary on the public issue of Social Security 24 privatization? 25 MR. WITTEN: I think we are close to asked</p>
<p style="text-align: right;">Page 11</p> <p>1 candidate does, and that's with hard money. 2 Q. The result of that, would it not, Senator 3 McCain, if they could not run the ad whenever they 4 wanted to? 5 A. As long as they got the money. I can't 6 run ads whenever I want to because I'm restrained on 7 the amount of money I can raise also. 8 Q. So neither you nor they can run the ad as 9 they want to? 10 A. Certainly not. Life isn't fair. 11 Q. My question to you now is this. Do you 12 view these two ads, taking them together now, as ads 13 which deal with an ongoing issue of public significance? 14 A. I view them as ads that are intended to 15 directly affect the outcome of an election, and 16 therefore in my view should be paid for by the same 17 way that the candidates pay for their ads. Not 18 restricted in running them, but by funding them the 19 same way. 20 Q. That really wasn't my question, though, 21 Senator. 22 A. But that's the only answer I can give you 23 because they are part of a campaign. 24 Q. Can you give me an answer as to whether 25 these ads to address a public issue of genuine</p>	<p style="text-align: right;">Page 13</p> <p>1 and answered here, and we only have a short period of 2 time. 3 MR. ABRAMS: I'll use the time as I 4 choose, really. 5 THE WITNESS: I guess my answer has to be 6 the same that certainly Social Security is a, is an 7 issue that needs to be addressed all over America, 8 including the halls of Congress. When used in this 9 context, it is clearly intended to affect the outcome 10 of an election in my view. 11 BY MR. ABRAMS: 12 Q. Could you direct your attention now to 13 paragraph four of your declaration. And I refer you 14 in particular to the sentence on top of page 3 which 15 says "I have heard opponents of reform argue that 16 this flood of soft money does not corrupt or even 17 appear to corrupt politicians or the political 18 process." 19 I wanted to ask you now in part as I did 20 last time about your use of the word "corrupt." In 21 this sentence. On Meet the Press on September 20, 22 you referred to the Federal Election Commission as an 23 unelected, corrupt Commission, correct? 24 A. Yes. 25 Q. And is it correct as well that just a few</p>

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1 days ago, you referred specifically to four members
 2 of the Federal Election Commission as corrupt?
 3 A. Yes.
 4 Q. I'm sorry. And did you say then that
 5 "anyone who knowingly and willfully violates their
 6 Constitutional duty is corrupt."
 7 A. That's one of the definitions. That's one
 8 of many.
 9 Q. And is that the definition that you had in
 10 mind when you said what you did about the Federal
 11 Election Commission?
 12 A. That applied to them, violating the
 13 Constitutional responsibilities, yes.
 14 Q. So you are saying that the Federal
 15 Election Commission knew that it was violating their
 16 Constitutional duty?
 17 A. Yes. By not, in writing regulations that
 18 enforce the law which is their Constitutional
 19 responsibility as Federal Election Commissioners.
 20 Q. And you are saying as well, Senator
 21 McCain, that the four particular members of the
 22 Commission to whom you were referring --
 23 A. Yes.
 24 Q. Knowingly violated their Constitutional
 25 duty, correct?

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1 A. Absolutely in my view. It's my opinion,
 2 and I'm entitled to it.
 3 MR. WITTEN: Pretty far beyond the scope,
 4 here.
 5 BY MR. ABRAMS:
 6 Q. And would it also be your view that any
 7 judge who sustains a finding of those four members of
 8 the Commission would also for the same reasons be
 9 corrupt?
 10 A. I'd have to --
 11 MR. WITTEN: Beyond the scope.
 12 THE WITNESS: I'd have to find out what
 13 the judge said before I could make that kind of
 14 judgment. I know what the Federal Election
 15 Commissioners are doing now. I don't know what a
 16 Federal Judge would do.
 17 BY MR. ABRAMS:
 18 Q. Refer now to paragraph nine of your
 19 declaration. You refer there to legislation in the
 20 telecommunications industry which you state
 21 purportedly deregulated that industry in order to
 22 encourage competition and lower costs to consumers,
 23 correct?
 24 A. Correct.
 25 Q. And you say a little lower down in that

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1 paragraph that the legislation as adopted was
 2 designed to appease the competing donors, rather than
 3 to serve the public interest, correct?
 4 A. Yes. That's my view.
 5 Q. And can you identify for us today any
 6 members of the Senate Commerce Committee who in your
 7 view proposed or supported provisions of the
 8 telecommunications bill because of soft money
 9 donations made to them?
 10 A. I was not a member of the conference so I
 11 don't know who they are. I can provide for the
 12 record published media reports of lobbyists writing
 13 specific pieces of legislation which at the end of
 14 the legislation being put together in some cases
 15 contradicted each other, and I will provide for the
 16 record media reports of that which were never
 17 challenged by anyone, and I will also provide again
 18 for the record Senator McConnell's statements
 19 concerning don't worry about voting against the
 20 tobacco bill because the tobacco companies will
 21 contribute money to you which is also in the media.
 22 That to me is the most egregious incident
 23 that I have seen about the appearance of corruption
 24 since I have been a member of the United States
 25 Senate, telling senators that they can vote in a way

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1 that would help the tobacco companies and the tobacco
 2 companies in return would pay for their campaigns,
 3 which is what was said in a luncheon at a Republican
 4 conference when I was present.
 5 That is the appearance of corruption in my
 6 view. I personally witnesses it, and if I had
 7 witnessed it again, I would have -- what I should
 8 have done is stand up and say this is an outrage for
 9 you to say this kind of thing, but I was so
 10 astonished that any member of the Senate would say
 11 such a thing, I was temporarily at a loss for words.
 12 Q. Do you believe that you just answered my
 13 question, Senator McCain?
 14 MR. WITTEN: Don't answer that question.
 15 Senator.
 16 MR. ABRAMS: I move to strike the entirety
 17 of Senator McCain's answer. I move to strike the
 18 entire commentary, beginning with the words I will
 19 also provide for the record.
 20 BY MR. ABRAMS:
 21 Q. Continuing for the moment on this
 22 paragraph nine. Putting aside members of the Senate
 23 Commerce Committee, do you have any personal
 24 knowledge that anyone on the conference committee
 25 that dealt with the telecommunications issue proposed

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1 or supported provisions of the telecommunications
 2 bill because of soft money contributions?
 3 A. I was not in the conference, as I say. I
 4 saw the results. I saw the reported media, and I
 5 have -- reports, and I have seen the results of the
 6 Telecommunications Act which is a critical factor
 7 here. The Telecommunications Act was going to lower
 8 costs to consumers. In reality, all costs to
 9 consumers have gone up. In fact, the profits to the
 10 cable companies have gone up dramatically 48 percent
 11 have been the cost of cable rates because of the
 12 influence of the cable companies, as opposed to the
 13 influence of the consumer.
 14 Again, I would refer you to Consumer
 15 Federation of America and other consumer
 16 organizations that chronicled this really sorry
 17 chapter in the history of the United States Congress,
 18 and I will also be glad to provide a Business Week
 19 article in the last few weeks chronicling the
 20 absolute failure of the Telecommunications Act of
 21 1996 and the influence of special interests in the
 22 formulation of that legislation.
 23 Q. I move to strike the entirety of Senator
 24 McCain's answer as unresponsive and irrelevant. My
 25 question, Senator McCain, is this. Can you, as you

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1 sit here today, out of your personal knowledge, name
 2 for us any member of the conference committee that
 3 you referred to a few minutes ago with respect to
 4 telecommunications legislation who proposed or
 5 supported provisions of that bill because of soft
 6 money contributions?
 7 A. I can only respond to say that I can
 8 provide for the record clear evidence of the
 9 appearance of corruption, and that's why I said in my
 10 deposition corruption, or the appearance of
 11 corruption.
 12 Q. I move to strike the entirety of the
 13 answer as unresponsive. My question, Senator McCain,
 14 I think I'm entitled to an answer to it --
 15 A. Sure.
 16 Q. -- is can you identify for us or not the
 17 name of any member of the conference committee who
 18 because of soft money contributions proposed or
 19 supported certain provisions of the
 20 telecommunications bill?
 21 MR. WITTEN: Objection. Asked and
 22 answered responsively twice.
 23 THE WITNESS: But I'll be glad to answer
 24 it again. I cannot give you a complete answer
 25 because of my advocacy of, for campaign finance

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1 reform, because I'm worried about the appearance of
 2 corruption, as well as corruption. In my view, I do
 3 not need to tell you the name of an individual
 4 because of course, I wasn't there and so there is no
 5 way. The answer to your question is obviously I
 6 wasn't there and when you are not there, you can't
 7 name anybody.
 8 BY MR. ABRAMS:
 9 Q. You don't know the answer?
 10 A. I do know the result, which is the
 11 appearance of corruption.
 12 Q. And do you also know and can you tell us
 13 now under oath I do not know the answer to your
 14 question, Mr. Abrams?
 15 A. I know the answer to your question because
 16 I say that this appearance of corruption because of
 17 the action of --
 18 Q. I didn't ask you that?
 19 A. -- of a committee.
 20 MR. WITTEN: Let's not spend our time
 21 arguing.
 22 MR. ABRAMS: I am not stopping. I'm
 23 entitled to a response from Senator McCain.
 24 THE WITNESS: And I'm entitled to respond
 25 the best way I know how, which I'm doing.

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1 BY MR. ABRAMS:
 2 Q. My question is can you or can you not
 3 answer the question of whether there is an individual
 4 or individuals known to you on the conference
 5 committee who because of soft money contributions
 6 took certain positions with respect to the
 7 telecommunications bill?
 8 MR. WITTEN: Objection. Asked and
 9 answered and please don't argue with the witness.
 10 THE WITNESS: My answer is the same.
 11 BY MR. ABRAMS:
 12 Q. I want to proceed now to paragraph 10,
 13 which relates to stock options, and that paragraph
 14 you dealt with the Sarbanes-Oxley corporate
 15 governance bill, correct?
 16 A. Yes.
 17 Q. And you said they are, about seven or
 18 eight lines down "according to newspaper accounts,
 19 Silicon Valley venture capitalist John Door, who has
 20 given \$619,000 to the Democratic Party since 1999,
 21 spoke by phone to the Senate Democratic leadership
 22 and urged them to oppose my stock options proposal."
 23 My first question to you about that,
 24 Senator McCain, is this. Apart from newspaper
 25 accounts, do you have any personal knowledge that

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1 this telephone call occurred?
 2 A. No. I have no personal knowledge. I
 3 certainly trust what was reported in USA Today and
 4 every other media outlet.
 5 Q. Have you found media outlets always
 6 accurate in reporting about you, Senator McCain?
 7 A. I wouldn't deny that that phone call took
 8 place. I won't.
 9 Q. The next line --
 10 A. There were follow-up stories.
 11 Q. The next line in the paragraph said "the
 12 Senate Democratic leadership then used a
 13 parliamentary procedural device to block a vote on
 14 it."
 15 And my question to you is this. Do you
 16 have any personal knowledge, apart from what you read
 17 in the newspapers, that the reason that the Senate
 18 Democratic leadership blocked the vote was soft money
 19 contributions?
 20 A. That's not what I said. I stated that the
 21 Democratic leadership then used a parliamentary
 22 procedure device to block a vote on it. Period.
 23 Q. I understand. And my question is --
 24 A. I have nothing to add to that.
 25 Q. That may be the answer, but let me ask the

Page 23

1 question first. What knowledge, if any, do you have
 2 as to whether the reason that the Senate Democratic
 3 leadership used a parliamentary procedural device to
 4 block a vote was soft money contributions?
 5 A. Because it was or appeared to be, I
 6 emphasize it was or appeared to be adversely and
 7 unfairly influenced by soft money contributions. I
 8 have no knowledge that it was, that there certainly
 9 was the appearance. We go back time and time again.
 10 Mr. Abrams, in all due respect, to the issue of
 11 appearance because public officials not only have to
 12 adhere to the letter of the law, but the spirit of
 13 the law.
 14 That's why we have an Ethics Committee, to
 15 judge people's ethics. Not violation of law, but
 16 their conduct in office and because of this the way
 17 that this happened, there was the appearance that the
 18 legislative process was adversely and unfairly
 19 influenced by large soft money contributions. The
 20 appearance of it.
 21 Q. Were there any referrals to the Ethics
 22 Committee with respect to anything to do with this
 23 legislation?
 24 A. Not that I know of.
 25 Q. Not by you?

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1 A. No.
 2 Q. Could you refer now to paragraph --
 3 A. And I guess I ought to respond to that.
 4 Not by me because my job in campaign finance reform
 5 is not to identify specific individuals, which is the
 6 continuous theme of the questioning here. My job is
 7 to note that all of us are tainted by this process,
 8 including me which I have said on thousands of
 9 occasions, and I'm concerned about the appearance of
 10 corruption as much as I am corruption because in the
 11 mind of the voter, the two are indistinguishable.
 12 Q. Now, in your mind?
 13 A. In my mind and the mind of the voter that
 14 I talked to, that I have contact with every day.
 15 Q. I want to ask you a related question,
 16 focusing for the moment not on the voter but on you,
 17 on what you think about this particular issue. Are
 18 there some circumstances known to you in which the
 19 voters were wrong?
 20 A. I think the voters have been wrong at
 21 times, which is their right to be, but it's my
 22 responsibility as a public servant not to give them
 23 the appearance of corruption, and this system does
 24 give the appearance of corruption, and that can show
 25 you 1200 polls that show that the American people

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1 believe that we are unduly influenced by the
 2 influence of big money.
 3 Q. Paragraph 11, Senator McCain, deals with
 4 legislation recently passed by the Senate which you
 5 describe as legislation to get generic drugs to
 6 market faster. And you say that it is stalled in the
 7 House reportedly because of pressure exercised by the
 8 White House and the Republican House leadership.
 9 And my question will be similar to those I
 10 have asked you earlier, which focuses on your own
 11 knowledge. I understand that the word reportedly
 12 sometimes means it's been reported, it's been said or
 13 it's been written about. I simply want to understand
 14 whether you have any personal knowledge of the
 15 pressure by the White House referred to in this
 16 sentence?
 17 A. No. It is well-known that the White House
 18 opposes this legislation.
 19 Q. And what is the basis of your testimony
 20 other than materials that you have read in the public
 21 press?
 22 A. All I say in my statement is a bill
 23 recently passed by the Senate to get drugs stalled in
 24 the House stalled because of pressure exercised by
 25 the House and the leadership. I can provide

<p style="text-align: right;">Page 26</p> <p>1 documents indicating the White House's opposition to 2 the bill. 3 Q. Do you have any personal knowledge that 4 the White House position on the bill came about 5 because of soft money contributions? 6 A. No, nor do I allege that. 7 Q. I understand that you don't allege it. 8 I'm asking you now. And you have answered it? 9 A. But I'm sure that the White House 10 oppositions and Republican House leadership in the 11 face of a recent poll that showed that 72 percent of 12 the American people want legislation that would ease 13 generic drugs into the marketplace, that I am sure 14 that there is the appearance of corruption here 15 because of the big money that was contributed at a 16 record-breaking fundraiser. 17 Q. With respect to the Republican House 18 leadership now, I want to ask you the same question. 19 Apart from any knowledge that you picked up in the 20 press and the like, do you have any personal 21 knowledge of pressure exerted by the Republican House 22 leadership to defeat the generic drug proposal? 23 A. Of course, it's public knowledge that the 24 White House leadership has -- 25 Q. The House leadership?</p>	<p style="text-align: right;">Page 28</p> <p>1 political campaigns. It was Theodore Roosevelt, who 2 said these people were corrupt. 3 BY MR. ABRAMS: 4 Q. Are you finished with that answer? 5 A. Yes, sir. 6 Q. Do you personally have a view with respect 7 to the very subject that you averted to a few 8 sentences ago, which is in terms of line drawing. 9 You had said maybe 1,000 wouldn't have the same 10 impact. I asked you about 5 or \$10,000. 11 A. I don't have a handle on that, Mr. Abrams. 12 I know that it's so far out of control and out of the 13 realm of any objective view that it could be just 14 contributions to good government. I did support the 15 \$2,000 contribution limit in the law, because I felt 16 that that was probably the right thing to do given 17 that \$1,000 in '74 is about \$2,000 today. Hard 18 money. 19 Q. And you did oppose the Hagle proposal, did 20 you not? 21 A. Which proposal was that? 22 Q. Which essentially would have capped soft 23 money contributions at the same level as hard money 24 contributions? 25 A. Yes. I believe so. To tell you the</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Excuse me. The House leadership has 2 blocked consideration of the bill to the point where 3 they blocked a discharge petition. It's very 4 well-known. I might add when you raise big money, 5 200,000, 250,000 comes from pharmaceutical companies 6 and the legislation it blocked, it creates the 7 appearance of corruption. 8 Q. By the way, would the appearance of 9 corruption be significantly lessened if the amounts 10 were significantly lower? 11 A. Of course. If they were \$1,000 12 contributions, I'm sure that people would not nearly 13 have the same suspicion that you have when \$250,000 14 is contributed towards money in pending legislation. 15 What you are asking me is where is the dividing line, 16 but I'm not exactly sure what that is. I do know 17 what this is, Mr. Abrams. This is the appearance of 18 corruption. 19 MR. WITTEN: Senator is pointing to the 20 top -- 21 THE WITNESS: \$250,000 from 22 Glaxo-SmithKlein Pharm, Ely Lilly, 50,000. It's 23 disgraceful. Teddy Roosevelt is turning over in his 24 grave. It was Teddy Roosevelt that got repealed the, 25 that got outlawed corporate contributions to American</p>	<p style="text-align: right;">Page 29</p> <p>1 truth, I don't remember too well. I know I opposed 2 Hagle's proposal, but I'm not -- I don't remember a 3 lot of the details of his proposal. 4 Q. Could you direct your attention now to 5 paragraph 16. You refer there to the spending of 6 what was reported to be \$35 million by the AFL-CIO on 7 an issue ad campaign. Correct? 8 A. Yes, sir. 9 Q. And you refer in the last line on page 8 10 to the national Republican Congressional Committee 11 filing a complaint with the Federal Election 12 Commission, which argued that "the AFL-CIO is using a 13 huge general treasury to unfairly influence the 14 outcome of elections." 15 Do you know what became of that complaint? 16 A. I believe the complaint was not acted on, 17 but I'm not sure. The reason why I bring this up is 18 because it was probably the party who filed the 19 complaint. You will find no defense of the actions 20 of the FEC from me, Mr. Abrams. They are the ones 21 that caused this problem. It wasn't passing laws 22 that repealed the corporate contribution, outgoing or 23 union contributions. It was the FEC. 24 Q. I just want to make sure I understand what 25 you know about this, Senator McCain. And my question</p>

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1 is this. This whole paragraph or a good part of it
 2 deals with a complaint and what it said. And I want
 3 to know if you are aware that the complaint was
 4 dismissed by the FEC?
 5 A. Yes. I'm aware, and my point was that the
 6 Republican Party felt that it was illegal, rather
 7 than any action of the FEC.
 8 Q. Similarly, in paragraph 17, you refer to a
 9 complaint filed by the Kentucky Republican Party
 10 which alleged that the Kentucky Democratic Party
 11 allegedly spent \$300,000 in what they referred to as
 12 "a last-minute soft money television advertising
 13 campaign in late 1990."
 14 My question to you is the same. Is it not
 15 true that that complaint was dismissed by the FEC?
 16 A. Yes. Again, reminding you that it was the
 17 FEC that opened the soft money loophole that has
 18 caused the corruption and appearance of corruption in
 19 American politics today, so the fact that the FEC may
 20 dismiss a complaint should mean little or nothing to
 21 anyone.
 22 Q. Do you think that in preparing a
 23 declaration of this sort for a case of this magnitude
 24 it might have been more candid on your part to
 25 describe to the courts what the ultimate resolution

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1 was with respect to the complaints that you referred
 2 to?
 3 A. My point was not how it was adjudicated by
 4 obviously a great source of the problem that we are
 5 trying to address in the legislation. My point was
 6 that even Republicans on certain occasion felt that
 7 activities with soft money -- that was the point of
 8 the deposition.
 9 I'll be glad to add an addendum to both of
 10 those saying that the FEC dismissed the complaint.
 11 Would you do that possibly?
 12 MR. WITTEN: Just did. Consider it done.
 13 BY MR. ABRAMS:
 14 Q. I want to refer now to paragraph eight.
 15 A. Eight?
 16 Q. Eight. On page 4. And I will request
 17 that this portion of the transcript be treated for
 18 counsel only. This refers to the same subject,
 19 Senator McCain, that you referred to earlier.
 20 MR. WITTEN: Before you ask the question,
 21 we object to this continuing effort to cover up
 22 allegations about misconduct by Mitch McConnell, your
 23 client, which have been reported in the press. There
 24 isn't anything about this subject that warrants the
 25 assertion of confidentiality that you have repeatedly

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1 made with respect to it.
 2 THE WITNESS: Out of curiosity, why would
 3 the ACLU want to have it for counsel only something
 4 that seems to me flies in the face of everything that
 5 your organization represents?
 6 BY MR. ABRAMS:
 7 Q. Senator McCain, I don't have the honor of
 8 representing the ACLU specifically in this case, so I
 9 can't speak --
 10 A. You have been associated with the
 11 organization all your adult life, Mr. Abrams. Why
 12 would you keep something confidential which is
 13 illegal and an impropriety?
 14 Q. Are you now saying it's an impropriety?
 15 Say it.
 16 A. I'm saying it was raised by Tobacco-Free
 17 Kids. Is it confidential or open, then I'll answer
 18 your questions.
 19 Q. I'm taking the position it's confidential.
 20 It may or may not be.
 21 A. I don't have an answer to your question if
 22 this is confidential.
 23 Q. Senator McCain, I'm afraid we don't play
 24 by your rules today.
 25 A. I'm sorry. I don't have an answer.

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1 Q. If you want to walk out, you can walk out.
 2 A. If it's not part of an open record --
 3 Q. You are a witness in a litigation, and you
 4 will answer.
 5 MR. WITTEN: I'm going to throw out a
 6 penalty flag here. Just ask questions, Floyd.
 7 BY MR. ABRAMS:
 8 Q. Paragraph eight refers to a complaint made
 9 by the Campaign for Tobacco-Free Kids before the
 10 Federal Election Commission. And you quote from
 11 that, do you not?
 12 A. Yes.
 13 Q. You quote from the complaint?
 14 A. Yes.
 15 Q. Of the Campaign for Tobacco-Free Kids.
 16 What became of that complaint, Senator McCain?
 17 A. Who was that made against?
 18 Q. That was made in part against Senator
 19 McConnell?
 20 A. That was dismissed by the FEC.
 21 Q. Last time I questioned you here, I asked
 22 also if you were aware that the Department of
 23 Justice, as well as the FEC had determined that there
 24 was no basis for any legal complaint with respect to
 25 that. At that point you said that you didn't know

<p style="text-align: right;">Page 34</p> <p>1 that. My question to you now is do you know it now? 2 A. I didn't check up on it. I'll take your 3 word for it, and I don't care because clearly what we 4 are talking about here is the appearance of 5 impropriety and I don't know enough about laws to 6 know how illegal it is, but I know it's the wrong 7 thing to do to tell senators not to worry about their 8 vote because a certain organization, especially 9 tobacco companies, will pay for their campaigns. 10 Q. Did they do that, Senator? 11 A. I was told that they did, but I didn't 12 check up on it. It doesn't matter to me. The fact 13 is that the Senator said it. The Senator assured 14 them of their vote. Maybe they reneged on their 15 commitment. I don't know. 16 Q. Have you looked into the question at all 17 of what, if anything, the tobacco manufacturers did 18 with respect to the campaigns of Republican senators 19 in that campaign? 20 A. Well first of all, Mr. Abrams, it would be 21 very difficult for me to track tobacco money, just as 22 it's difficult to track a whole lot of different 23 kinds of money that flow through American political 24 campaigns. So I didn't even try. What bothered me 25 was not whether the tobacco companies did it or not</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Good afternoon, Senator McCain. I'm Bobby 2 Burchfield, representing the Republican National 3 Committee, as last time. Let me ask the reporter to 4 mark as McCain Exhibit B an excerpt from the Senate 5 website concerning the vote on cloture in 1997 on the 6 campaign finance bill. 7 (McCain Exhibit B was 8 marked for identification.) 9 BY MR. BURCHFIELD: 10 Q. Senator, you have suggested in paragraph 11 seven of your declaration that, and I quote, 12 Congressional leaders also used soft money to enforce 13 party discipline and loyalty to their views. At 14 times when members seek to support legislation their 15 Congressional leaders oppose, they are threatened 16 with the prospect that their leaders will behold soft 17 money being spent on their behalf. Do you see that? 18 A. Yes. 19 Q. In connection with that, do you 20 distinguish between the use of soft money by party 21 leaders and the use of hard money by party leaders to 22 support or oppose, to support or withhold support by 23 Congressional members who do not toe the line that 24 their party leaders want them to toe? 25 A. Obviously, hard money is raised in small</p>
<p style="text-align: right;">Page 35</p> <p>1 and shouldn't bother anyone, to tell you the truth, 2 whether someone did it or not. It was the fact that 3 the statement was made to Republican senators just 4 prior to a vote. When I tell my constituents about 5 it, they are shocked. And angry. 6 MR. ABRAMS: I have no further questions 7 at this time, subject to the time limits that we have 8 agreed upon for today. I'll wait and see how long 9 Mr. Burchfield goes. 10 MR. WITTEN: Wait a second. 11 MR. ABRAMS: We are not going beyond the 12 time limits that we agreed. 13 MR. WITTEN: This is your chance. If 14 Bobby asks questions, you don't get to come back 15 unless I do some reviewing. This is your last 16 chance. 17 MR. ABRAMS: My position is that I have 18 the right to continue. That this is one 19 cross-examination and that counsel can ask questions 20 for the time period as they see fit. 21 MR. WITTEN: We will deal with it if it 22 arises. 23 CROSS EXAMINATION BY 24 COUNSEL FOR PLAINTIFF RNC 25 BY MR. BURCHFIELD:</p>	<p style="text-align: right;">Page 37</p> <p>1 amounts, according to the legal limits and soft money 2 is in an unlimited amounts of money, and very large 3 sums of money. So I may not like it if hard money 4 were used as some kind of motivation, but I don't 5 believe that it is anywhere, anywhere in the realm of 6 what's happened over the last 10 years or so in the 7 conduct of the House of Representatives as attested 8 by Mr. Greenwood, Charlie Bass has been very open, 9 and a number of members of Congress have been open on 10 it, so I guess I do differentiate between soft and 11 hard money. I wouldn't like it if someone used hard 12 money, but the ability to influence when you raise 13 huge amounts of hard money as opposed to soft money 14 is dramatically different. 15 Q. If the party committees supported senators 16 and congressmen who vote against legislation 17 supported by the party or for legislation opposed by 18 the party with coordinated expenditures and hard 19 money contributions, wouldn't that be inconsistent 20 with what you are saying here? 21 MR. WITTEN: Object to the form of the 22 question. 23 BY MR. BURCHFIELD: 24 Q. Let me withdraw that question and ask it a 25 different way. Senator, if you look on the second</p>

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1 page of McCain Exhibit B, you will see the list of
 2 senators who voted yea on the cloture petition, the
 3 closure resolution on your campaign finance bill
 4 during the 1997 session. Are you with me on that
 5 page?
 6 A. Yes.
 7 Q. And you see that there are, that there are
 8 seven, eight Republican senators there. The first of
 9 them is the late Senator Chafee?
 10 A. Yes.
 11 Q. Are you aware that the Republican National
 12 Committee prior to his, the National Republican
 13 Senatorial Committee prior to Senator Chafee's death
 14 gave him the maximum hard money contribution on June
 15 25, 1999?
 16 A. I was not aware of that.
 17 MR. BURCHFIELD: Let me ask the reporter
 18 to mark as McCain Exhibit C pages of report of
 19 receipts and disbursements from the National
 20 Republican Senatorial Committee.
 21 (McCain Exhibit C was
 22 marked for identification.)
 23 BY MR. BURCHFIELD:
 24 Q. Do you see there, Senator, on line six of
 25 the second page where it shows Chafee for Senate

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1 6-25-99, \$17,500 contribution by the senatorial
 2 committee?
 3 A. Yes. I see it.
 4 Q. And that's the maximum amount that the
 5 senatorial committee is allowed to contribute to a
 6 candidate, is that correct?
 7 A. That is correct, and surely you don't
 8 think it means anything. In any senatorial campaign,
 9 \$17,000. Come on. Multimillion dollar campaigns,
 10 that's, that has zero impact.
 11 Q. Would coordinated expenditures on behalf
 12 of the candidate have an impact?
 13 A. You know, I don't know, and I'm not sure
 14 what the point is, but I'm sure you will get to it.
 15 But I don't know what would matter. I know that when
 16 huge amounts of soft money come into a campaign and
 17 ensure issue ads and do all the things they are doing
 18 that they have an effect on campaigns.
 19 MR. BURCHFIELD: Exhibit D.
 20 (McCain Exhibit D was
 21 marked for identification.)
 22 BY MR. BURCHFIELD:
 23 Q. Senator, you will note that the next
 24 Republican Senator who voted for closure in 1997 was
 25 Senator Susan Collins of Maine, do you see that?

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1 A. Yes.
 2 Q. McCain Exhibit D is the report of the
 3 Republican National Committee indicating in the upper
 4 right-hand corner of the first page a \$5,000
 5 disbursement on behalf of Ms. Collins. Do you see
 6 that?
 7 A. Yes.
 8 Q. And do you see on the third page of this
 9 document, an excerpt from the National Republican
 10 Senatorial Committee's report showing a contribution
 11 to Senator Collins of \$17,500?
 12 A. Yes. And I'm sure that every incumbent
 13 that was up for re-election received \$17,500. Which
 14 is chicken feed, in all due respect. It's probably a
 15 couple days salary in years when were you working on
 16 a campaign.
 17 Q. When I was working on a campaign, Senator.
 18 I assure you, that was more than a couple day's
 19 salary.
 20 MR. WITTEN: He was referring to the value
 21 of your services.
 22 BY MR. BURCHFIELD:
 23 Q. Well, in that event, I agree with you.
 24 A. 1/100th of the media buy that Senator
 25 Collins had to make in order to win her election.

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1 Q. McCain Exhibit E concerns Senator
 2 Hutchinson, who is up for election this year.
 3 (McCain Exhibit E was
 4 marked for identification.)
 5 BY MR. BURCHFIELD:
 6 Q. Senator, by press reports, Senator
 7 Hutchinson is in a tough re-election race, is that
 8 correct?
 9 A. Yes.
 10 Q. McCain Exhibit E are the FEC reports
 11 filed, excerpts from the FEC reports filed by the
 12 senatorial committee and the RNC concerning their
 13 transfers for the Senate for Hutchinson campaign.
 14 Would you please look at the second page under item
 15 C. Do you see there where the senatorial committee
 16 transferred \$14,457.74 to Senator Hutchinson on
 17 December 17th, 2001?
 18 A. Yes.
 19 Q. Do you see on the fourth page down
 20 transfer from the, a coordinated expenditure on
 21 behalf of Senator Hutchinson by the Senatorial
 22 Committee of \$69,412.18?
 23 A. Yes.
 24 Q. And do you see on the last page of this
 25 document, a disbursement on behalf of Senator

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1 Hutchinson by the Senatorial Committee on April 24,
 2 2001 of \$3,042.26?
 3 A. Yes. I also noticed something from the
 4 Arizona Biltmore. 24th and Missouri, "purpose of
 5 disbursement, meeting expense for Arkansas, in kind
 6 contribution." I'd be curious what's that all about
 7 since it's only 24 blocks from where I live.
 8 Q. Maybe you can inquire when you return
 9 home. Senator, the next Senator that voted for
 10 cloture was Senator Jeffords of Vermont. Let me ask
 11 the reporter to mark as McCain Exhibit F.
 12 A. Will you be helping him in his next --
 13 Q. I think I will reserve comment on that.
 14 Will you?
 15 (McCain Exhibit F was
 16 marked for identification.)
 17 BY MR. ABRAMS:
 18 Q. This is no time to plead the Fifth,
 19 Senator. Do you see on McCain Exhibit F, this is
 20 Jeffords, do you see on the second page of McCain
 21 Exhibit F a \$17,500 maximum contribution from the
 22 Republican Senatorial Committee to Jeffords on June
 23 23, 1999?
 24 A. Yes.
 25 Q. And do you see on the next page

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1 coordinated expenditures by the Republican National
 2 Committee for Senator Jeffords, \$49,608.41 on October
 3 12th, 2000?
 4 A. Actually, I don't have that. But I see
 5 it.
 6 MR. WITTEN: It seems to be separated.
 7 BY MR. BURCHFIELD:
 8 Q. If the official copy doesn't have, it we
 9 should correct that?
 10 A. I see.
 11 Q. You see below that it adds up all the
 12 aggregate general election expenditures for that
 13 candidate and that amount is \$122,504?
 14 A. Yes. Yes. I see that.
 15 Q. That is not chicken feed in a state like
 16 Vermont, is it, Senator?
 17 A. I would think not.
 18 Q. The next Senator that voted for cloture in
 19 1997 was one Senator John McCain. Let me ask the
 20 reporter to mark as McCain Exhibit G the analogous
 21 records from the Federal Election Commission.
 22 (McCain Exhibit G was
 23 marked for identification.)
 24 BY MR. BURCHFIELD:
 25 Q. Senator, the last time we were here, I

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1 believe you confirmed that in your 1998 race, you
 2 prevailed with something on the order of 68 percent
 3 of the vote, is that right?
 4 A. Yes.
 5 Q. And so you would not have been considered
 6 a seriously challenged incumbent that year. is that
 7 right?
 8 A. I would think not.
 9 Q. And, but as I see here, it looks as though
 10 the Senatorial Committee provided to you \$5,000,
 11 \$6,000 of contributions.
 12 A. Yes. It looks to me like Matt Fong and
 13 Friends of Senator D'Amato and Missourians for Kit
 14 Bond.
 15 Q. These are listed in the order in which
 16 they are made so sometimes your name appears with
 17 others. Your name is at the top of the first page?
 18 A. Now I understand.
 19 Q. Top of the second page. Top of the third
 20 page.
 21 A. Now I understand. Okay.
 22 Q. Item E under the fourth page. Item C on
 23 the fifth page. And item I on the last page?
 24 A. Yes. 4 or \$5,000 approximately, right, I
 25 guess.

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1 Q. Who was the chair of the Senatorial
 2 Committee at that time?
 3 A. Damned if I know.
 4 Q. Wasn't it Mitch McConnell?
 5 A. Yes.
 6 Q. The next entry here, the next Senator who
 7 voted for cloture?
 8 A. I'm touched by his generosity. \$4,000. I
 9 hope it didn't cause him to shut the doors or
 10 anything and turn out the lights.
 11 Q. You'll have to inquire of him how much
 12 that hurt him. Senator, the next Senator who voted
 13 for cloture, the next Republican Senator is Senator
 14 Snowe. Let me ask the reporter to mark as McCain
 15 Exhibit H the analogous FEC reports for Senator
 16 Snowe.
 17 (McCain Exhibit H was
 18 marked for identification.)
 19 BY MR. BURCHFIELD:
 20 Q. Senator, my records show that Senator
 21 Snowe won 2000 with approximately 69 percent of the
 22 vote. Does that jibe with your general recollection,
 23 if you have one?
 24 A. I know you would also agree that Maine is
 25 viewed as a very mercurial state with the largest

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1 registration being independent voters, so she won
 2 with that vote, but it's a very difficult state to
 3 predict. I think that would be fair to add. It's
 4 not a major point.
 5 Q. But that would probably explain why the
 6 Republican Committees gave her almost \$70,000 despite
 7 the fact that she seemed to be walking away with the
 8 election?
 9 A. I would think it would be.
 10 Q. If you look at these records, you will see
 11 on the second page the \$17,500 maximum donation from
 12 the Senatorial Committee and then coordinated
 13 expenditures on the last two pages totaling
 14 approximately \$52,000. Do you see those?
 15 A. Yes.
 16 Q. The next Senator who voted for cloture and
 17 we are almost done was Senator Specter from
 18 Pennsylvania. And my records indicate that Senator
 19 Specter prevailed in 1998 when he ran for re-election
 20 with 61 percent of the vote. Does that again sound
 21 in line with your recollection if you have one?
 22 A. Yes.
 23 Q. Again, not a particularly close race?
 24 A. Again, not a predictable state.
 25 Q. Let me ask the reporter to mark as McCain

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1 Exhibit I the analogous FEC reports concerning
 2 Senator Specter.
 3 (McCain Exhibit I was
 4 marked for identification.)
 5 THE WITNESS: How much is this for
 6 Specter?
 7 BY MR. BURCHFIELD:
 8 Q. By my addition and you may feel free to
 9 add it yourself, I get \$3,000?
 10 A. Out of a campaign that probably cost them
 11 7 million.
 12 Q. Well, send for, if as you know, even if
 13 the party committees provide the maximum
 14 contributions and the maximum coordinated
 15 expenditures, that's going to be a very, very small
 16 fraction of the total spending by a senatorial
 17 campaign, wouldn't you agree with that?
 18 A. Yes.
 19 Q. So if they do all they can do, it's very
 20 little?
 21 A. Yes.
 22 Q. And would you also agree with me that
 23 political parties allocate their resources on the
 24 basis of competitiveness?
 25 A. Yes. But I also thought the job of

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1 political parties was not to raise money or it was
 2 part of it. I thought it was to organize volunteers,
 3 set up phone banks, get out the vote, et cetera,
 4 etcetera. As I mentioned in my deposition, the
 5 Republican voter registration in my state has
 6 actually declined over the last four years as the
 7 amount of money raised goes up.
 8 Q. And we will talk about that. But I want
 9 to finish this topic first. The last Senator who
 10 voted for cloture, the last Republican Senator who
 11 voted for cloture is Senator Thompson, who is
 12 retiring this year, right?
 13 A. Yes.
 14 Q. Senator, you talk in your affidavit about
 15 such things as barbecues?
 16 A. Yes.
 17 Q. Do you remember being invited to the King
 18 County, Washington barbecue in 1999?
 19 A. To appear as a presidential candidate, I
 20 believe that Elizabeth Dole was there as well.
 21 Q. Let me ask the reporter to mark as McCain
 22 Exhibit J a letter to Senator McCain from Dale
 23 Foreman, the Chairman of the Washington State
 24 Republican Party dated June 11, 1999.
 25 (McCain Exhibit J was

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1 marked for identification.)
 2 BY MR. BURCHFIELD:
 3 Q. Senator, take a moment if you would like
 4 to look at the letter and let me know when you are
 5 ready to answer questions about the letter and the
 6 event?
 7 A. Yes. I was there.
 8 Q. You did attend this event?
 9 A. Yes.
 10 Q. The third paragraph of this says the
 11 picnic is always the highlight of the summer for
 12 Republicans in Washington State. This annual event
 13 is free to the public and typically draws between
 14 5,000 to 10,000 grassroots Republicans who enjoy
 15 meeting their elected officials in a relaxed
 16 atmosphere. The picnic offers live music, family
 17 entertainment, vendor tables, informational booths
 18 and a huge barbecue followed by political speeches
 19 from nationally recognized Republican speakers.
 20 Is that generally in accord of your
 21 recollection of it?
 22 A. Except for the numbers, numbers which are
 23 dramatically smaller. Dramatically smaller. The
 24 numbers were in the hundreds rather than the
 25 thousands. Maybe it was because of the speakers.

<p style="text-align: right;">Page 50</p> <p>1 Q. Or the barbecue. You may take your 2 choice. You have attended other political barbecues 3 in your career, haven't you? 4 A. Yes. 5 Q. Picnics? 6 A. Yes. 7 Q. Grassroots gatherings, correct? 8 A. Yes. 9 Q. They still occur, don't they? 10 A. Much more rarely. 11 Q. Have you done, have you seen any sort of 12 methodical analysis, Senator, to determine whether 13 there are fewer, the same as, or more grassroots 14 gatherings of this sort now than there were when you 15 first came to Congress? 16 A. No. I have only seen them decline in 17 Republican registration and the increase in 18 independent registration, and being invited to state 19 party functions in my own state and other states 20 seemed to climb in attendance. 21 Q. Does your campaign host barbecues? 22 A. Sure. Yes. 23 MR. WITTEN: The invitations are marked 24 highly confidential by the Republican Party. 25 BY MR. BURCHFIELD:</p>	<p style="text-align: right;">Page 52</p> <p>1 process. Yes. 2 BY MR. BURCHFIELD: 3 Q. Such as noted here by Jessica Funkhouser, 4 she says one factor behind the no party surge is that 5 since 2000 independents have been allowed to vote in 6 party primaries, right? 7 A. Yes. 8 Q. And that's certainly an advantage of party 9 membership as opposed to registering as an 10 independent, right? 11 A. I don't think people, it's not my view 12 that people register as independent because they want 13 to vote in a primary on either side. I think they 14 vote as independents because they don't find a home 15 in either party. 16 Q. So you disagree with the state elections 17 director, Jessica funk Hauser that that's the one 18 reason for the increase in independent voting? 19 A. I disagree. 20 Q. It's also the Kate, isn't it, that the 21 motor voter legislation became effective in the mid 22 '90s and was passed? 23 A. Yes. When I think of these things, it's 24 not just Arizona. California Republican registration 25 is now 32 percent, 32 percent in the largest state in</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Are you aware of other candidates who host 2 barbecues? 3 A. Yes. 4 Q. You are aware of other state Republican 5 parties that host barbecues? 6 A. Yes. 7 Q. You have mentioned party voter 8 registration a couple of times, and as an attachment 9 to your declaration, I think you have attached an 10 article from the Arizona Republic? 11 A. Yes. 12 Q. And if you can find that. I don't recall 13 which exhibit it is. 14 A. H. 15 Q. Exhibit H. This is the article from which 16 you derived the figures about the decline in 17 Republican registration in Arizona since 1992, is 18 that right? 19 A. Yes. 20 Q. Senator, you would agree to me, wouldn't 21 you that there have been a large number of unusual 22 events that have occurred in the political process 23 since 1992? 24 MR. WITTEN: In the world? 25 THE WITNESS: No. In the political</p>	<p style="text-align: right;">Page 53</p> <p>1 America. That's down from in the '40s when Ronald 2 Reagan was president of the United States or Governor 3 of California. It's been a steady decline. 4 Q. I think you would agree with me that the 5 Republican Party was under stronger leadership when 6 President Reagan was Governor of California than it 7 has been now, than it has been for the last several 8 years? That's got to be a distant proposition for 9 you to disagree with, Senator? 10 A. Well, I don't disagree with it, but does 11 that mean that we would attribute a drop to 32 12 percent of the registered voters are Republicans 13 because Ronald Reagan is no longer Governor, when he 14 was Governor in the '70s. 15 Q. And president during the '80s. 16 A. Well, I mean, that, then that may be a 17 commentary on the presidency of President Bush. 18 Q. What statistical, what empirical -- 19 A. Both President Bushes. 20 Q. What empirical analysis have you seen that 21 linked decline of party voter registration to the 22 increase of political party soft money? 23 A. What empirical evidence do I have? 24 Q. Yes. 25 A. I have seen the registration go down and</p>

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1 the money go up.
 2 Q. But that could be caused by sunspots.
 3 A. Sure it could.
 4 Q. What I'm interested in is some statistical
 5 analysis that considers all of the factors going on,
 6 Motor Voter, the allowance of independents to vote in
 7 primaries, the Perot candidacy, the Nader candidacy
 8 in 2000, the Buchanan candidacy in 2000, determines
 9 the reason voter registration is -- political party
 10 or not political party has declined is political
 11 party soft money? Can you point me to anything?
 12 A. I can point to you some of the things you
 13 have just said. We have done everything in our power
 14 in Arizona, Oregon and other states to increase voter
 15 registration. Motor Voter makes it easier. Vote by
 16 mail. Last week voters in Arizona could start to
 17 vote in the general election, either by mail or
 18 driving by someplace.
 19 We are trying to increase, I mean, we are
 20 making it so much easier for people to vote and yet
 21 the number of registered Republicans continues down,
 22 so I think, I enjoy this debate and I hope that
 23 someplace we can do this publicly, on C-SPAN or
 24 something. But I think we have done everything in
 25 our power to make it easier to vote, and yet the

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1 registration has gone in the opposite direction.
 2 Q. Well Senator, isn't it the case that
 3 before Motor Voter that the political parties really
 4 carried the lion's share of voter registration?
 5 A. I think that political parties today have
 6 the same obligation. I mean, we try to get people to
 7 register Motor Voter the same way that we try in
 8 other ways. I mean, when -- so --
 9 Q. But today?
 10 A. I say yes. Yes, I see your point.
 11 Q. The point is people can walk up to get
 12 their driver's license and register to vote there?
 13 A. Yes.
 14 Q. Whereas they used to have to be visited by
 15 a political party person who would either take them
 16 to register or otherwise encourage them to register?
 17 A. When they physically went down themselves.
 18 Yes.
 19 Q. That's different.
 20 A. I understand.
 21 Q. Do you know what Ross Perot's percentage
 22 of the vote was in 1992 in Arizona?
 23 A. It was high. It was in the 20s, I
 24 believe.
 25 Q. 24 percent?

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1 A. I believe so.
 2 Q. Versus a national average of about 18?
 3 A. I believe so.
 4 Q. Senator, you referred a few times to the
 5 telecommunications bill?
 6 A. Could I just mention one other thing. Why
 7 was Ross Perot possible? Why was the phenomenon of
 8 Ross Perot possible? If the parties had been strong
 9 and the parties had appealed to our constituencies,
 10 Ross Perot would never have appeared on the national
 11 scene.
 12 Q. Now that, sir, is the subject of a much,
 13 much longer discussion.
 14 A. I agree. But I don't know how if you had
 15 had two strong, solid parties I don't see where Ross
 16 Perot would have had an opening. I'm taking up way
 17 too much of your time.
 18 Q. I'm happy to do, it but you are aware that
 19 Ross Perot spent more money out of his own pocket
 20 than the two major party candidates were able to
 21 spend in public funding during 1992?
 22 A. Yes.
 23 Q. Senator, you mentioned a number of times
 24 the telecom bill. And I'm not quite clear the point
 25 you are trying to make from that bill but let me just

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1 ask you this one question. What was the final Senate
 2 vote on the telecom bill?
 3 A. I think it was three votes against it.
 4 Q. 91-5?
 5 A. Something, something along those lines.
 6 Q. Let me ask the reporter to mark as McCain
 7 Exhibit K excerpts from the Congressional Record of
 8 February 1, 1996 reporting the outcome of the vote on
 9 the telecom bill.
 10 (McCain Exhibit K was
 11 marked for identification.)
 12 BY MR. BURCHFIELD:
 13 Q. Senator, on McCain Exhibit K on the next
 14 to last page is the recordation of the vote on the
 15 telecom bill which shows that you were joined by your
 16 colleagues Feingold, Leahy, Simon and Wellstone in
 17 voting against that bill. Do you see that?
 18 A. Yes.
 19 Q. It isn't your position, Senator, is it,
 20 that the 91 senators who voted for that bill did so
 21 as a result of soft money?
 22 A. No. I believe that most Senators did not
 23 understand the bill, understandably because it's a
 24 very complex piece of legislation. And the bill was
 25 written in conference and it's published media

<p style="text-align: right;">Page 58</p> <p>1 reports that lobbyists wrote parts of those bills. 2 and I think it's also important to note, in fact, 3 it's even on this sheet, the promises that were made 4 that would, what would happen if this bill, when this 5 bill was passed. Lower rates, more competition, 6 Americans would be better off, lower cable rates, 7 ta-da-da-da-da. 8 Cable rates have gone up 40 percent, long 9 distance rates have gone up, there is no competition, 10 everything has been tied up in the courts and 11 continues to be, so most senators did not understand 12 the Telecommunications Act and I wouldn't expect them 13 to because it's a very complex piece of legislation. 14 That's why we rely on committees to come forward with 15 legislation. 16 The promise of the legislation was 17 probably the wildest exaggeration as far as reality 18 is concerned of any bill that anybody around here has 19 seen passed. 20 Q. You mentioned that lobbyists had a hand in 21 drafting this legislation. Am I correct that the 22 Brennan Center or Common Cause and other groups had a 23 hand in crafting the bipartisan campaign Reform Act 24 of 2002? 25 MR. WITTEN: I object.</p>	<p style="text-align: right;">Page 60</p> <p>1 before, he just said it. The privilege is not to be 2 asked under the speech and debate clause. But I'm 3 not stopping you from answering. 4 BY MR. BURCHFIELD: 5 Q. I think you were about to say were you 6 grateful for the help? 7 A. These are groups of people that have been 8 involved in this issue for many, many years. It's 9 one thing to have a special interest group write a 10 piece of legislation that directly financially 11 benefits them, as opposed to an organization such as 12 the Brennan Center or Common Cause who have been 13 involved in this issue for many, many, many years to 14 provide us with expertise on certain issues. In my 15 view, it's dramatically different. 16 Q. Well, you would agree with me that whether 17 they are being compensated or not, the lobbyists on 18 behalf of the telecom industry do have a better than 19 average understanding of that complex industry? 20 A. Yes. 21 Q. And presumably, some of your colleagues, 22 maybe even you, thought that the knowledge that those 23 telecommunications lobbyists brought to the table was 24 valuable to the United States Senate? 25 A. I thought that the information brought by</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. BURCHFIELD: He can't have it both 2 ways, Roger. 3 MR. WITTEN: You can answer. 4 THE WITNESS: The -- I received constant 5 advice from experts all over this country that 6 supported this effort, whether they be the Brennan 7 Center or Common Cause or a myriad of people. Fred 8 Wertheimer, people expert in this area. I'm pleased 9 to receive their advice and counsel. They received 10 no compensation that I know of. They received no 11 lobbying fees that I know of and they didn't write 12 the specific legislation that was passed. We used 13 our staff to screen the legislation as it was 14 proposed and composed. 15 BY MR. BURCHFIELD: 16 Q. Well, it may be urban legend, Senator, but 17 it's my understanding that some groups such as the 18 Brennan Center and Common Cause actually had a 19 relatively heavy hand in drafting portions of this 20 legislation? 21 MR. WITTEN: Same objection. And -- 22 THE WITNESS: Same objection. Just let me 23 see, we were grateful for their help. 24 MR. WITTEN: The difference is these two, 25 this question and the one before, you asked, the one</p>	<p style="text-align: right;">Page 61</p> <p>1 their CEOs in open hearings was very valuable. I 2 thought that the information brought by Common Cause 3 and the Brennan Center and others in open meetings 4 that we had was valuable. I didn't think that it was 5 valuable to have a lobbyist write a piece of 6 legislation and that corporation then turn around and 7 give huge amounts of soft money to the political 8 campaigns. Last time I heard, Common Cause and 9 Brennan Center, none of them contributed to a 10 political campaign. 11 Q. So it's the donations, not the involvement 12 in the drafting process? 13 A. It's the involvement and the drafting 14 process. It's the donation that buys access. 15 Everybody wants it in this town. 16 Q. If Common Cause and the Brennan Center are 17 not making donations, how did they get access? 18 A. They get access the same way any other 19 public interest group gets access to the Congress of 20 the United States in that they represent certain 21 interests, but they do not represent a big soft money 22 donor. I believe every citizen should be heard 23 equally, and what's wrong with this system is that 24 the big donors get the access, which means the 25 influence. The small donors do not.</p>

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1 Q. The American Association of Retired
 2 Persons voted consistently as the number one or
 3 number two most influential organization in this
 4 town, do they make political contributions?
 5 A. I don't think that they do. But they
 6 represent to me what's right. They don't give
 7 contribution. They represent millions of Americans.
 8 Look, I don't mind the phone companies come and make
 9 recommendations. I'll be glad to meet with them at
 10 any time, but if they give \$500,000 or \$1 million to
 11 a fundraiser for incumbent, that creates the
 12 appearance in my view that is not right.
 13 Q. You refer to the generic drug bill in
 14 paragraph 11 of your affidavit. Mr. Abrams asked you
 15 some questions about that. I had only a couple. You
 16 were aware, aren't you, that the Annenberg time
 17 reports for both 1996 and 2000, I believe, certainly
 18 '98 and 2000 indicate that the -- that the
 19 pharmaceutical industry was responsible for tens of
 20 millions of dollars of issue advocacy during those
 21 perspective campaigns, right?
 22 MR. WITTEN: Object to the form of the
 23 question. You can answer it.
 24 THE WITNESS: Yes.
 25 BY MR. BURCHFIELD:

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1 Q. And did you also know that the amount that
 2 the pharmaceutical industry spent on issue advocacy
 3 far exceeded the amount that it made in soft money
 4 donations?
 5 MR. WITTEN: Object to the form of the
 6 question. You keep using the phrase issue advocacy
 7 which is your argument, not a fact.
 8 THE WITNESS: First of all, I don't know
 9 what the contents of the ads do because of your
 10 definition of issue ads and mine.
 11 BY MR. BURCHFIELD:
 12 Q. Let me rephrase the question. You are
 13 also aware that the Annenberg study which used the
 14 term issue advocacy reported that the pharmaceutical
 15 industry had made tens of millions of dollars in
 16 expenditures or it is disbursements to buy political
 17 advertising during the '98 and 2000 seasons?
 18 A. Yes.
 19 Q. And you are aware that the amounts
 20 reported by the Annenberg study for those
 21 disbursements by the pharmaceutical were far higher
 22 by a factor of 10 in some instances and maybe five or
 23 10 than the pharmaceutical industry donated in soft
 24 money to political parties?
 25 A. See, I don't know about the basis of that

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1 study. I do know that there is all kinds of ways to
 2 get money for political campaigns. I don't know if
 3 theirs is accurate. I know number one that Glaxo and
 4 Pharma gave \$250,000 at one fundraiser, at one whack.
 5 That certainly means to me they are very generous. I
 6 can't equate the Annenberg study comparisons because
 7 I know that there is all kinds of ways to get money
 8 into political campaigns. I can't trust the numbers.
 9 Q. You would agree with me that what your bill
 10 refers to as electioneering communications is one way
 11 to get political money into the election system?
 12 A. Yes.
 13 Q. And my basic point is, are you aware that
 14 the pharmaceutical industry put more money into what
 15 you refer to as electioneering communications than it
 16 put into direct soft money donations to the political
 17 parties in 2000?
 18 MR. WITTEN: The question is are you aware
 19 of it.
 20 THE WITNESS: No. I'm not aware of it.
 21 BY MR. BURCHFIELD:
 22 Q. Senator, do you have any reason --
 23 A. I see what you are honestly trying to get
 24 at here, and I have no problem with them running ads
 25 like I see all the time where they say this young

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1 lady's life was saved because Pfizer developed such
 2 and such a drug. They are a wonderful company. I
 3 have no problem with that. And some people think
 4 they spend too much money on that and not enough on
 5 R&D, etc. But if your point is that they spent a lot
 6 of money on advertising their product as opposed to
 7 how much they spent on political campaigns, then I
 8 will accept your point.
 9 Q. No. My point is a little bit different
 10 than that, Senator. My point is they spend more on
 11 electioneering communications than they do on soft
 12 money donations. You don't know whether that's true
 13 or not?
 14 A. No. I'm sorry.
 15 Q. Do you have any reason to believe that you
 16 can share with us if barred from donating soft money
 17 to the political parties they will not simply use
 18 that money to increase the amount they spend on, on
 19 political advertising outside the 60-day window?
 20 A. I would imagine if they had extra money,
 21 they would spend it outside the 60-day window and
 22 that's okay with me, because most voters don't make
 23 up their minds until, as we all know, the last few
 24 days and the last few hours of an election campaign.
 25 That's why we put in Jeffords.

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<p>1 Q. During the 1996 campaign, the reports are 2 that Bill Clinton, as advised by Dick Morris, began 3 running the so-called issue ads a year or more before 4 the 1996 election. Have you heard those reports? 5 A. Yes, I have. 6 Q. I happened to have been in a four-month 7 trial in Detroit and saw them from October through 8 February on the air all the time. That's consistent 9 with what you have heard, right? 10 A. Yes. 11 Q. Millions of dollars on issue ads more than 12 a year out from the election? 13 A. Yes. 14 Q. And have you also heard that the strategy 15 for doing that was to create a positive image and set 16 the agenda for the upcoming '96 campaign? 17 A. Yes. And I also know that President 18 Clinton wrote many of those ads within the White 19 House and incredibly the FEC said that that wasn't 20 coordinated. One of the most bizarre things in 21 American political history. 22 Q. Well, if the spending of millions of 23 dollars on issue ads by President Clinton and Dick 24 Morris was successful, as many say it was, in setting 25 the issue debate, the issue parameters for the '96</p>	<p>1 Q. And that's all they are entitled to spend? 2 A. Yes. 3 Q. Putting aside the issue that I know you 4 disagree with about the political parties spending 5 soft money on their behalf? 6 A. What's that about 2-1/2 months before the 7 election. 8 Q. It's by my calculation, it's about 75 9 days. That's right. There is a window there in 10 which issue interest groups could spend 100 percent 11 soft money on electioneering communications that are 12 totally unregulated by the statute, is that right? 13 A. I believe so. 14 Q. And that could, you would agree, have a 15 significant effect in dictating the issue agenda for 16 the fall campaign? 17 A. I don't think so. I think that people 18 again make up their minds, most of them, in the last 19 period, stages of the campaign. That's why we 20 conduct campaigns like we do. We don't spend all 21 our money 75 days out. We spend the bulk of our 22 money five or six days out in recognition of the fact 23 that there are so many voters that are still making 24 up their minds. 25 Q. Senator McCain, when we were here before,</p>
<p>Page 67</p>	<p>Page 69</p>
<p>1 campaign, why are you so confident that the 60-day 2 window is going to keep them from setting the issue 3 agenda after a bill becomes effective? 4 A. Because our bill is less than perfect. 5 Our bill is a product of legislation, debate, 6 discussion. This provision that you are referring to 7 at this time was not mine. It was by Senator Snowe 8 and Senator Jeffords. It's not a perfect, it's not a 9 perfect piece of legislation. 10 Q. Have you seen any empirical work that 11 attempts to discern the point in time at which the 12 so-called electioneering communications begin to 13 become effective, as opposed to the point in time 14 where they are less effective? 15 A. Well, I have seen study after study that 16 most voters don't make up their minds until they 17 start focusing on campaigns, which is near the end of 18 campaigns. 19 Q. Senator, you know that under the public 20 financing system that's applicable to presidential 21 candidates, the party, the political candidates get, 22 presidential candidates get I think it's about \$70 23 some million now as they are nominated at the 24 convention? 25 A. Yes.</p>	<p>1 I asked you some questions about activities of 2 interest groups that would go unregulated by the 3 statute, and without reploting that ground, I think 4 we agreed that interest groups could within the 5 60-day window continue to be involved with get out 6 the vote activities such as phone banks, print 7 advertisements, door to door canvassing, distribution 8 of leaflets and so forth, correct? 9 A. Correct. The so-called Snowe-Jeffords is 10 broadcast regulation. 11 Q. So anything that is not broadcast, the 12 interest groups can and presumably will continue to 13 do, correct? 14 A. Yes. 15 Q. Let me ask the reporter to mark as McCain 16 Exhibit L a document from the NAACP National Voter 17 Fund website. 18 (McCain Exhibit L was 19 marked for identification.) 20 MR. WITTEN: Can you tell me the scope of 21 what this relates to? 22 MR. BURCHFIELD: It relates generally to 23 paragraph 16 concerning issue ads, and it concerns 24 11, which concerns soft money donations. And it 25 concerns his general allegations which I can't put my</p>

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1 finger on, Roger, that suggests that parties will be
 2 stronger once the statute goes into effect. I'm
 3 absolutely confident I'm within the scope.
 4 MR. WITTEN: Let's see what happens.
 5 BY MR. BURCHFIELD:
 6 Q. Senator, do you have in front of you
 7 McCain Exhibit L?
 8 A. I have read it.
 9 Q. We don't need to go through this in great
 10 detail but you know from looking at this that the
 11 NAACP National Voter Fund is stating all of the
 12 things that it did in advance, in connection with the
 13 2000 campaign to, as it puts it in the middle of the
 14 first page there, elect a pro-civil rights president,
 15 Senate, and Congress. Do you see that?
 16 A. Yes.
 17 Q. And it's generally consistent with your
 18 understanding, isn't it, that the NAACP took an
 19 historically active role in the 2000 election
 20 campaign?
 21 A. Good.
 22 Q. Now, some of the things that they have
 23 done as it reports here and tell me if this is
 24 inconsistent with your recollection, they put 80
 25 staff in the field and a number of, and over 13

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1 states, you see the first bullet point at the bottom
 2 of the page?
 3 A. Yes.
 4 Q. They registered over 200,000 people?
 5 A. Yes.
 6 Q. They had a get out the vote message
 7 investing over \$2 million in that alone?
 8 A. Yes.
 9 Q. 50,000 volunteers involved in the effort?
 10 A. Yes.
 11 Q. Contacted 40,000 people and pulling over
 12 one million people to the polls on election day?
 13 A. Yes. This was 2000. What they did in
 14 2000.
 15 Q. Promoting a hotline, 1-866-yes-vote?
 16 A. Yes.
 17 Q. And that's not covered by the statute,
 18 right?
 19 A. No.
 20 Q. It talks about four radio spots, two
 21 television ads. They could conceivably be covered by
 22 the statute, right?
 23 A. Yes.
 24 Q. But the three newspaper print ads on
 25 issues would not be, right?

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1 A. Yes.
 2 Q. Paid media budget, \$2 million. It talks
 3 about direct mail, seven pieces of mail at a cost of
 4 about \$2 million not covered by the statute, right?
 5 A. Yes.
 6 Q. Seven phone calls, two that are
 7 nonpartisan GOTV calls, one from Tom Joyner and one
 8 from Bill Clinton at a cost of \$2 million not covered
 9 by the statute, right?
 10 A. Right.
 11 Q. Providing grants to about \$2 million.
 12 A. Right.
 13 Q. Bus tours? Do you see that?
 14 A. Yes.
 15 Q. And then it says at the beginning of the
 16 election cycle, most pundits were predicting the
 17 lowest turnout of African-American voters in history.
 18 The efforts of the NAACP National Voter Fund, NAACP
 19 and others helped increase the African-American
 20 turnout by over one million votes in the areas in
 21 which we were organizing. The turnout in New York
 22 increased by 22 percent in 1996 figures, in Florida
 23 by 50 percent and in Missouri by 140 percent. Do you
 24 see that?
 25 A. Yes.

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1 Q. Those were close states electorally,
 2 weren't they?
 3 A. Yes.
 4 Q. Florida was especially pivotal in that
 5 election, wasn't it?
 6 A. Yes.
 7 MR. WITTEN: Some of those votes were
 8 counted.
 9 MR. BURCHFIELD: All of them. I counted
 10 them all.
 11 (McCain Exhibit M was
 12 marked for identification.)
 13 BY MR. BURCHFIELD:
 14 Q. We have had marked as McCain Exhibit M a
 15 ad from The Washington Times dated February 6th,
 16 2001. Feel free to peruse it. I'm going to ask you
 17 some questions about the statement on the page with
 18 the number 34 in the upper right-hand corner and the
 19 statement I'm going to ask you about is together the
 20 two political arms of the NAACP made a formidable
 21 force. NAACP officials said that \$7 million in seed
 22 money came mostly from an unnamed single donor. Do
 23 you see that?
 24 A. Yes.
 25 Q. Is that a yes?

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1 A. I see that.
 2 Q. Is that consistent of your understanding
 3 of how the NAACP funded its efforts through anonymous
 4 large donations?
 5 A. Yes.
 6 Q. And then skip a paragraph and the next one
 7 says several groups have tried to identify NAACP
 8 donors. Except for corporations that make their
 9 contributions public, the list of benefactors has
 10 been kept from the public view. Consistent with your
 11 understanding?
 12 A. Yes. But look, I believe that some of
 13 this is, has to be done under 527 and so I don't know
 14 enough of a background on this, but I believe that
 15 there has to be that any organization has to perform
 16 a 527. So they may be in violation of existing law.
 17 Q. Are you aware of any proceedings to hold
 18 the NAACP in violation of existing law?
 19 A. No. I don't know of any proceedings of
 20 the Wiley Brothers, who got together several million
 21 dollars and ran ads entitled Republicans For a Clean
 22 Environment against me. I don't know any proceedings
 23 have been brought against them because the FEC on a
 24 3-3 tie vote not to investigate it.
 25 Q. You would agree with me if one of the

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1 different entity. yes.
 2 Q. And if these, if these entities that, if
 3 the NAACP entity, however organized, avoided
 4 broadcast advertisements within 60 days of the
 5 election, that mentioned a candidate or referred to a
 6 candidate, all of their activities?
 7 MR. WITTEN: And was run in the
 8 candidate's district.
 9 BY MR. BURCHFIELD:
 10 Q. Well, if it avoided all of that, well, let
 11 me put it this way. The NAACP and its related
 12 organizations could do every single thing that we
 13 have looked at here in these articles under your,
 14 under the statute you have sponsored, except run
 15 broadcast electioneering ads within 60 days of the
 16 election, referring to a candidate in that
 17 candidate's district, correct?
 18 A. In all candor, I have to give you an
 19 answer in writing on that because I'm not, I haven't
 20 looked at the statute since we passed it and I don't
 21 disagree with your assertion, but I can't give you an
 22 informed answer on it. It's a little too complex for
 23 me not having reviewed the statute in some time. But
 24 I would be glad to try to give you a written
 25 response, if that's something that's --

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1 Wiley Brothers ran those very same ads against you.
 2 it would not be covered by your statute, would it?
 3 A. Yes. Because they would have to perform a
 4 527. Now, when they did it, it was legal. Now they
 5 have to perform a 527.
 6 Q. I may be wrong about this. It's my
 7 understanding that an individual acting with his own
 8 money is not required to so organize under your
 9 statute or under current law and that the Supreme
 10 Court has indicated an individual can spend as much
 11 of his own money as he wants without registering and
 12 reporting. Is that contrary to your understanding?
 13 A. I don't know. I don't know the answer to
 14 that.
 15 Q. Let me ask you to look at the last page of
 16 McCain Exhibit M under the date entry 2000. It says
 17 2000: NAACP announces the formation of the
 18 Americans for Equality and the National Voters Fund.
 19 The voter fund, a lobbying arm of the NAACP, spends
 20 \$10.5 million on getting black voters to the polls.
 21 Do you see that?
 22 A. All right.
 23 Q. Senator, a lobbying organization would
 24 typically be a 501(c)(4), not a 527, is that right?
 25 A. Yes. 527 would be a, yes, it would be a

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1 MR. WITTEN: I think the statute speaks
 2 for itself and they will probably conclude that.
 3 BY MR. BURCHFIELD:
 4 Q. Senator, are you aware of a project
 5 undertaken by the Republican National Committee after
 6 the 2000 election called the 72-hour task force?
 7 A. They left me off their mailing list again.
 8 Q. I will get your name added to all the
 9 mailing lists that I'm on.
 10 A. Thank you.
 11 Q. You will be cursing me soon. Were you
 12 generally aware, Senator, whether you knew of it by
 13 that name or not, that the Republican National
 14 Committee had undertaken a large-scale effort to
 15 evaluate its get out the vote activities in relation
 16 to the activities of opposing groups, including but
 17 not limited to the Democratic Party?
 18 A. No.
 19 Q. Let me read you, Senator, let me read you
 20 from a declaration submitted by a Mr. John Peschong,
 21 who was the western field director for the Republican
 22 National Committee. Have you ever met Mr. Peschong?
 23 A. No. Not that I can recall.
 24 Q. He used to be the executive director of
 25 former vice president Quayle's committee which was

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1 located in Phoenix, in your fair state, I believe?
 2 A. I may have met him.
 3 Q. Mr. Peschong states in recent election
 4 cycles, I have observed that some of the major
 5 interest groups such as the AFL-CIO, NEA, National
 6 Education Association, CTA, the California Teacher's
 7 Association and NAACP, have reduced their reliance on
 8 broadcast issue advocacy, and shifted reliance to
 9 grassroots voter mobilization activities. Based on
 10 my observation, the activities of these groups follow
 11 a typical pattern. A. these groups begin telephone
 12 bank activity to identify supporters four to eight
 13 weeks before the election.
 14 B, for the next few weeks, these groups
 15 proceed toward direct mail issue advocacy program
 16 targeted to their identified supporters and prior
 17 donors. Also during this period, these groups begin
 18 distribution of absentee ballot applications.
 19 C, two weeks before the election, I have
 20 observed these groups begin intensive get out the
 21 vote and voter mobilization activities. In
 22 particular, they begin transporting supporters to
 23 early voting locations, resume operating banks with
 24 strong get out the vote messages, and employ persons
 25 to walk door to door in sympathetic neighborhoods to

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1 distribute literature and absentee ballots.
 2 D, on election day, poll watchers for
 3 certain of these interest groups monitor turnout in
 4 heavily Democratic precincts, and if turnout is low
 5 they direct their telephone banks to focus calls on
 6 households within those precincts.
 7 Let me stop there and ask you so far if
 8 you have any basis to disagree with anything that I
 9 have read you from Mr. Peschong's declaration?
 10 A. No, except Mr. Peschong should also check
 11 as to how much money was spent on these ads and
 12 you'll find that they went up. I don't know what
 13 they are focusing their activities on but I know what
 14 they are focusing their money on, broadcast
 15 advertising.
 16 Q. Are you referring to these particular
 17 groups, or other groups that might have been
 18 spending --
 19 A. All groups. You look down the list of
 20 every group, money spent on broadcast advertising is
 21 going up. AFL-CIO, NAACP you just referred to the ad
 22 that they ran, the president of the United States is
 23 still offended by that ad. He still has, gets angry
 24 when he, someone mentions that ad that was run by the
 25 NAACP. I don't think he minded their get out the

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1 vote efforts. He did mind the ad that was run which
 2 was really a nasty ad. But there were a lot of nasty
 3 ads, mostly by us, I will agree.
 4 Q. You have also heard taped telephone
 5 messages that did the same thing?
 6 A. I certainly have.
 7 Q. And that's not prohibited or regulated by
 8 the statute, is that correct?
 9 A. That is correct.
 10 Q. And then in paragraph 15 of his affidavit
 11 Mr. Peschong says "the net effect of these enhanced
 12 grassroots voter mobilization efforts has been
 13 impressive. In the 1996 and 2000 presidential
 14 elections, as well as the 1998 gubernatorial
 15 election, the Democratic ticket significantly
 16 outperformed the Republican ticket in relation to the
 17 final pre-election day polls. Looking at the 2000
 18 presidential election as an example, in the days
 19 leading up to the election, it was reported that a
 20 Zogby poll had Vice President Gore's lead over then
 21 Governor Bush pegged at 43 percent to 40 percent. A
 22 Rasmussen poll also predicted the margin to be three
 23 points, and a Research 2000 poll showed the vice
 24 president leading by 7 percentage points. The actual
 25 margin of victory in California was 12 points.

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1 Let me stop there and ask if your general
 2 recollection is that in the days leading up to the
 3 2000 presidential election, the final post-election
 4 polls showed Governor Bush to be, if not comfortably
 5 ahead, at least ahead more than it turned out to be
 6 the case?
 7 A. Well, a number of political pundits and
 8 experts which of course I count myself as one said
 9 that the revelation of the drunken driving incident
 10 contributed to that sharp reduction over that 72
 11 hours or however many hours was since its revelation.
 12 That was also factored.
 13 Q. You are not saying these get out the vote
 14 activities or interest groups had no effect, are you?
 15 A. I'm sure they did and I wish we had a lot
 16 more of it than Republican and Democrat.
 17 Q. I have a couple more questions. Senator,
 18 do you have any reason to believe that in an era when
 19 national political parties have only hard money
 20 resources, only federally regulated money, that they
 21 are going to be more inclined to spend those dollars
 22 on get out the vote and other grassroots activity
 23 than they are now?
 24 A. I don't think so because get out the vote
 25 activity and grass route activity is very

1 inexpensive. It's composed mainly of volunteers.
2 It's composed mainly of people who are donating their
3 time and efforts and in many cases their phone line
4 or their cell phone.

5 Q. If it's so inexpensive, why are they not
6 doing it now?

7 A. They can't get anybody to do it because
8 they are spending all their time raising soft money
9 back and forth between national and state parties.

10 MR. BURCHFIELD: That's all I have.

11 MR. ABRAMS: Thank you, Senator McCain.

12 MR. WITTEN: I have no redirect. This
13 examination is over.

14 (Whereupon, at 5:00 p.m., the taking of
15 the instant deposition ceased.)

16

17

18 _____
Signature of the Witness

19

20 SUBSCRIBED AND SWORN to before me this _____ day
21 of _____, 2002.

22

23

24 _____
NOTARY PUBLIC

25 My Commission expires: _____

A		
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