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MCCONNELL vs. FEDERAL ELECTION COMMISSION

DANIEL SELTZ - 9/13/02

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CONCORDANCE AND CONDENSED TRANSCRIPT

PREPARED BY:

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Page 1

(1)  
(2) UNITED STATES DISTRICT COURT  
(3) DISTRICT OF COLUMBIA  
-----x  
(4) SENATOR MITCH MCCONNELL, et al.,  
(5) Plaintiffs,  
(6) -against-  
(7) FEDERAL ELECTION COMMISSION, et al.,  
(8) Defendants.  
-----x  
(9) REPUBLICAN NATIONAL COMMITTEE, et al.,  
(10) Plaintiffs,  
(11) -against-  
(12) FEDERAL ELECTION COMMISSION, et al.,  
(13) Defendants.  
-----x  
(14) 80 Pine Street  
(15) New York, New York  
(16) September 13, 2002  
(17) 10:15 a.m.  
(18)  
(19) Deposition of non-party witness,  
(20) DANIEL SELTZ, pursuant to Notice, before Shari  
(21) Cohen, a Notary Public of the State of New  
(22) York.  
(23) ELLEN GRAUER COURT REPORTING CO.  
133 East 58th Street, Suite 1201  
(24) New York, New York 10022  
212-750-6434  
(25) REF: 45887

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(1)  
(2) IT IS HEREBY STIPULATED AND AGREED by  
(3) and between the attorneys for the respective  
(4) parties herein, that the filing, and sealing of  
(5) the within deposition be waived.  
(6) IT IS FURTHER STIPULATED AND AGREED  
(7) that all objections, except as to the form of  
(8) the question, shall be reserved to the time of  
(9) the trial.  
(10) IT IS FURTHER STIPULATED AND AGREED  
(11) that the within deposition may be sworn to and  
(12) signed before any officer authorized to  
(13) administer an oath with the same force and  
(14) effect as if signed and sworn to before the  
(15) Court.  
(16)  
(17) - ooo -  
(18)  
(19)  
(20)  
(21)  
(22)  
(23)  
(24)  
(25)

Page 2

(1)  
(2) A P P E A R A N C E S :  
(3) CAHILL GORDON & REINDEL, ESQS.  
(4) Attorneys for Plaintiff McConnell  
(5) 80 Pine Street  
(6) New York, New York 10005  
(7) BY: SUSAN BUCKLEY, ESQ.  
(8) -and-  
(9) ERIC LIPMAN, ESQ.  
(10)  
(11) CRAVATH SWAINE & MOORE, ESQS.  
(12) Attorneys for Witness  
(13) 825 Eighth Avenue  
(14) New York, New York 10019  
(15) BY: CHRISTOPHER J. PAOLELLA, ESQ.  
(16)  
(17) US DEPARTMENT OF JUSTICE  
(18) 901 E Street, NW  
(19) Washington, DC 20044  
(20) BY: RUPA BHATTACHARYYA, ESQ.  
(21)  
(22)  
(23)  
(24)  
(25)

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(1)  
(2) DANIEL SELTZ, called as a  
(3) Witness, having been duly sworn by a  
(4) Notary Public, was examined and  
(5) testified as follows:  
(6) EXAMINATION BY  
(7) MS. BUCKLEY:  
(8) Q. Would you state your name and  
(9) address for the record, please?  
(10) A. Daniel Seltz. 330 West 101st  
(11) Street, Apartment 5A, New York, New York 10025.  
(12) Q. Mr. Seltz, were you ever employed  
(13) by the Brennan Center for Justice?  
(14) A. Yes, I was.  
(15) Q. What was your job there?  
(16) A. For the first -- from October  
(17) 1998 to September 1999 I was a research  
(18) associate in the democracy program.  
(19) Q. October 1998 to September '99?  
(20) A. Yes, and from September '99 to  
(21) July of 2000 I was project coordinator.  
(22) Q. Was there a particular project  
(23) that you were coordinating?  
(24) A. Yes, I was coordinating the CMAG  
(25) research project on political ads.

Page 5

(1) **Seltz**

(2) **Q.** Did that result in a report being

(3) issued by the Brennan Center?

(4) **A.** Yes.

(5) **Q.** What was the name of that report?

(6) **A.** It was called **Buying Time**

(7) **Television Advertising in the 1998**

(8) **Congressional Elections.**

(9) **Q.** You were a co-author of that

(10) report, were you not?

(11) **A.** Yes, I was.

(12) **Q.** We will be referring to that

(13) report over the course of the deposition today

(14) and I am going to refer to it as **Buying Time**

(15) **1998**, is that all right with you?

(16) **A.** That's fine.

(17) **Q.** Have you ever had your deposition

(18) taken before Mr. Seltz?

(19) **A.** No, I haven't.

(20) **Q.** If at any time during the course

(21) of the day you don't understand a question that

(22) I ask, just please let me know and I will try

(23) to rephrase it as best as I can. If you don't

(24) hear me, let me know and I will try to speak

(25) up. Also try if you will to give verbal

Page 6

(1) responses. A lot of people have a tendency to

(2) nod and shake their head and the court reporter

(3) cannot take that down, do you understand that?

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

(5) **Q.** Great.

(6) **MS. BUCKLEY:** We are going to mark

(7) as Seltz Exhibit 1 a copy of **Buying Time**

(8) **1998** as printed off the Brennan Center

(9) website. I noticed when we were trying

(10) to print it off the Brennan Center

(11) website that I didn't print the cover so

(12) I didn't want to alter the document so

(13) here it is without it's pretty cover.

(14) **(Plaintiff's Exhibit Seltz 1,**

(15) **Buying Time 1998, marked for**

(16) **Identification.)**

(17) **MS. BUCKLEY:** The exhibit we just

(18) had the court reporter mark has the

(19) charts and many of the headings in color

(20) because they are so difficult to read on

(21) a black and white Xerox set. For

(22) convenience of counsel, I have given you

(23) all copies of Seltz Exhibit 1 **Buying**

(24) **Time 1998**, yours are not in color to

(25)

Page 7

(1)

(2) save some expense.

(3) **A.** This is -- actually this first

(4) page is not part of the report.

(5) **Q.** It isn't?

(6) **A.** No, not the printed, the

(7) equivalent of this that's on the table. You

(8) would not find this page in the actual book.

(9) **Q.** Okay, so you're talking about the

(10) very first page that we marked which says

(11) download PDF overview, that's what you are

(12) saying is not part of the actual report?

(13) **A.** No, it's part of the web page.

(14) **Q.** Okay so in this exhibit the

(15) report starts on what is the second page?

(16) **A.** Yes, there might have been more

(17) -- that's right.

(18) **MS. BUCKLEY:** So if we disregard

(19) page one, we have **Buying Time 1998**

(20) marked as Seltz Exhibit 1. Shall we

(21) remove the sticker and mark it properly

(22) then?

(23) We will remove the sticker and

(24) put the sticker on the first page of

(25) what you said was Seltz Exhibit 1.

Page 8

(1)

(2) **MR. PAOLELLA:** Off the record.

(3) **(Discussion off the record.)**

(4) **Q.** Mr. Seltz, could you tell me a

(5) little bit about your educational background?

(6) **A.** Sure, I graduated from **Brown**

(7) **University in December of 1996 with a BA in**

(8) **history and East Asian studies.**

(9) **Q.** What did you do after your

(10) graduation from **Brown**?

(11) **A.** I spent six months as a research

(12) assistant at the **Annanburg Institute for School**

(13) **Reform and then I spent one year as a**

(14) **non-degree research student as a fulbright**

(15) **fellow at the Hiroshima University in Japan.**

(16) **Q.** Where is the **Annanburg Center for**

(17) **School Reform**?

(18) **A.** The **Annanburg Institute** is in

(19) **Providence, Rhode Island. It's part of Brown**

(20) **University.**

(21) **Q.** Does it have any affiliation with

(22) the **Annanburg Public Policy Center**?

(23) **A.** No. It's the same **Annanburg**, but

(24) they don't have any relationship beyond the

(25) initial funding for it.

## Page 9

- (1)
- (2) **Q.** What was your focus at the
- (3) Annanburg Institute?
- (4) **A.** I was hired to conduct a series
- (5) of interviews and site visits for a project
- (6) that was researching something called public
- (7) engagement in public education so the project
- (8) was looking at new and deeper forms of
- (9) relationships that parent and community groups
- (10) and business groups had begun to form with
- (11) individual schools and individual school
- (12) districts.
- (13) **Q.** Did it have any focus on
- (14) campaigns or elections or politics, anything
- (15) like that?
- (16) **A.** It didn't have any focus on
- (17) campaigns or elections. There was -- I would
- (18) not call it not political, but it wasn't
- (19) explicitly campaign focus.
- (20) **Q.** Can you tell me about the focus
- (21) of your studies at Hiroshima University?
- (22) **A.** Sure, I was studying the politics
- (23) of memory around the end of World War II and
- (24) the atomic bombs in Japan and Japanese history
- (25) and museum's role as mediators and political

## Page 10

- (1)
- (2) actors in the shaping of collective memory of
- (3) the end of the war.
- (4) **Q.** Did you publish anything as a
- (5) result of your study?
- (6) **A.** Yes, I published an article that
- (7) was published in a history journal in 1999 and
- (8) it's being included as part of an anthology on
- (9) similar subjects published by Duke University
- (10) Press later probably next fall.
- (11) **Q.** Have you published any other
- (12) articles besides the one you just referred to?
- (13) **A.** I published a slightly different
- (14) version of a slightly altered of that article
- (15) that a professor I worked with in Japan
- (16) translated into Japanese that was in a journal.
- (17) I also was a co-author of a piece co-written
- (18) with Jon Krasno, Ken Goldstein and Lee Bradford
- (19) about negative advertising in the 1998
- (20) elections that was published in a book of
- (21) essays edited by Paul Herrmson and I also
- (22) co-wrote a piece with Jon Krasno published by
- (23) the Urban Institute as part of a collection of
- (24) seminar proceedings on issue advocacy.
- (25) **Q.** You just previously referred to

## Page 11

- (1)
- (2) an article that was published in a book edited
- (3) by Professor Herrmson, did I get that right, do
- (4) you know what the title of the book is?
- (5) **A.** It's called **Hard Ball. Published**
- (6) **by Prentice Hall.**
- (7) **Q.** Did you contribute a chapter to
- (8) that book together with your co-authors?
- (9) **A.** Yes.
- (10) **Q.** What was the title of the
- (11) chapter?
- (12) **A.** I believe it was called **Going**
- (13) **Negative.**
- (14) **Q.** Your co-authors I believe you
- (15) said were Professor Goldstein and Jonathan
- (16) Krasno?
- (17) **A.** And Lee Bradford.
- (18) **Q.** Did you work on this article
- (19) while employed by the Brennan Center?
- (20) **A.** Yes, a little bit. I didn't do
- (21) much of the actual writing of the article. It
- (22) was based on some of the work that -- of the
- (23) **CMAG** research.
- (24) **Q.** By **CMAG** research you are
- (25) referring to the -- what are you referring to?

## Page 12

- (1)
- (2) **A.** The project that led to the
- (3) writing of **Buying Time 1998.**
- (4) **Q.** Let's see if we can make it a
- (5) little clearer for the record. What is **CMAG**,
- (6) Mr. Seltz?
- (7) **A.** **CMAG** is a company based in
- (8) Alexander, Virginia that for the Brennan Center
- (9) purposes for the project that I worked on has
- (10) technology that allows them to track political
- (11) advertising in 75 different media markets and
- (12) they are able to provide information on the
- (13) time network, length of the ad and some other
- (14) contextual information as well as they are
- (15) able to print out what's called a storyboard
- (16) where about every four seconds of the video and
- (17) all of the audio is captured on a piece of
- (18) paper.
- (19) **Q.** Are you finished?
- (20) **A.** Yes, that's **CMAG.**
- (21) **Q.** Did **CMAG** supply the Brennan
- (22) Center with certain data which went into the
- (23) analysis reflected in **Buying Time 1998**?
- (24) **A.** Yes.
- (25) **Q.** How did they do that?

(1)

(2) **A. How did they supply us with the**

(3) **-**

(4) **Q. That's right.**

(5) **A. I believe that Ken Goldstein who**

(6) **was then at Arizona State was - I don't**

(7) **remember exactly how CMAG transmitted the data**

(8) **that they captured from the 1998 elections to**

(9) **the Brennan Center, but they were able to**

(10) **supply us with the information that I just**

(11) **described.**

(12) **Q. You mentioned Professor**

(13) **Goldstein. What was his role in Buying Time**

(14) **1998?**

(15) **A. He compiled the data set that we**

(16) **ended up using to base - what we based the**

(17) **Buying Time 1998 report on. He supervised a**

(18) **team of students who provided content codes to**

(19) **the - for the advertisements. They had a**

(20) **coding instrument where they would answer**

(21) **different questions about the ads and he**

(22) **supervised that process. He then worked with**

(23) **the Brennan Center to provide us with the**

(24) **finished data set that included both the**

(25) **content codes and the information that CMAG**

(1)

(2) **Q. Do you know how many times the**

(3) **storyboards for 1998 were coded by**

(4) **undergraduate students at 1998?**

(5) **A. When we received the data set,**

(6) **they had one set of codes for each ad. That's**

(7) **the extent of what I know about how many times**

(8) **they were coded.**

(9) **Q. How did you receive this data set**

(10) **to which you just referred?**

(11) **A. I'm not sure I understand what**

(12) **you mean.**

(13) **Q. In what form was the data set**

(14) **that you just referred to that you received**

(15) **from Professor Goldstein?**

(16) **A. It was in an SPSS file.**

(17) **Q. That's a computer program**

(18) **software?**

(19) **A. It's software that enables you to**

(20) **do statistical analysis.**

(21) **Q. You received the data set on a**

(22) **computer disk?**

(23) **A. On a zip disk.**

(24) **Q. I think I forgot to ask you about**

(25) **the second article that you mentioned after the**

(1)

(2) **provides.**

(3) **Q. Did CMAG provide its storyboards**

(4) **to the Brennan Center as well as Professor**

(5) **Goldstein or not?**

(6) **A. I think that they provided the**

(7) **storyboards directly to Ken Goldstein and then**

(8) **Ken Goldstein copied - made at least a couple**

(9) **of copies of the storyboards, sent them to us.**

(10) **CMAG knew that we had the storyboards.**

(11) **Q. Did the Brennan Center play any**

(12) **role in supervising the student coders?**

(13) **A. I believe that Jon Krasno who was**

(14) **then the senior policy analyst may have spent**

(15) **sometime out in Arizona State while the coding**

(16) **was going on. Ken was the primary supervisor.**

(17) **Q. Was the coding done by graduate**

(18) **students or undergraduate students?**

(19) **A. I believe it was done by**

(20) **undergraduate students.**

(21) **Q. Do you know how they were**

(22) **selected?**

(23) **A. I don't.**

(24) **Q. Do you know how many there were?**

(25) **A. I don't.**

(1)

(2) **chapter called Going Negative that was**

(3) **published in Hard Ball. You mentioned another**

(4) **piece about campaign finance issues I believe.**

(5) **Can you tell me a little bit about that?**

(6) **A. While I was at the Brennan Center**

(7) **still around March of 2000, no, actually it was**

(8) **later, it was after we released the report so**

(9) **it must have been in about late May, early June**

(10) **someone from the Urban Institute in Washington,**

(11) **DC contacted me and said they are holding a**

(12) **series of seminars on interest group political**

(13) **activity and they were interested in Jon Krasno**

(14) **and I coming down and giving a talk about the**

(15) **work we had done so basically what we did was**

(16) **to distill some of the main findings from 1998**

(17) **into a general summary chapter for that. We**

(18) **then presented in September to a very small**

(19) **conference at their institute. They then**

(20) **published the proceedings of their seminar.**

(21) **Q. Where were the proceedings**

(22) **published if you know?**

(23) **A. In a book in sort of something**

(24) **similar to the look and feel of Buying Time '98**

(25) **and 2000 the same published by the Urban**

Page 17

- (1)
- (2) **Institute, but it included basically the papers**
- (3) **that were given at those seminars.**
- (4) **Q.** The papers that you and Mr.
- (5) Krasno gave –
- (6) **A.** It was just one paper.
- (7) **Q.** The paper that you and Professor
- (8) Krasno gave was on the subject of issue
- (9) advocacy I believe you said?
- (10) **A.** Yes.
- (11) **Q.** What was the premise of the paper
- (12) if you will?
- (13) **A.** The premise?
- (14) **Q.** Yes, if you would like another
- (15) word, I would be happy to give it to you?
- (16) **A.** Sure.
- (17) **Q.** What was the thrust of the
- (18) article?
- (19) **A.** The thrust of the article was
- (20) that I believe – I haven't read – we
- (21) published it over two years ago. We gave the
- (22) paper over two years ago now.
- (23) **Q.** That's September 2000 when you
- (24) are referring to September?
- (25) **A.** Right and I have not read it

Page 18

- (1)
- (2) since then. My general recollection is that it
- (3) was discussing the phenomenon of issue advocacy
- (4) as a relatively new phenomenon in American
- (5) elections and discussing some of the ways in
- (6) which television advertising by interest groups
- (7) was changing the complexion and cost of
- (8) campaigns and how it was affecting the way that
- (9) candidates approached their own campaigns.
- (10) **Q.** Was the article based on the data
- (11) that you were familiar with in connection with
- (12) Buying Time 1998?
- (13) **A.** Yes.
- (14) **MS. BUCKLEY:** I would like to mark
- (15) – off the record.
- (16) **(Discussion off the record.)**
- (17) **Q.** I would like to hand you a copy,
- (18) Mr. Seltz, of what's been previously marked as
- (19) Holman Exhibit 4 and ask you if you can
- (20) identify that for me?
- (21) **A.** Yes, I recognize this.
- (22) **Q.** What is this?
- (23) **A.** It's the grant proposal to Pew
- (24) Charitable Trusts that the Brennan Center
- (25) submitted to get funding for this.

Page 19

- (1)
- (2) **Q.** I see it's dated February 19,
- (3) 1999; you were at the Brennan Center then?
- (4) **A.** Yes.
- (5) **Q.** Did you have any role in
- (6) preparing this grant proposal?
- (7) **A.** I saw it before it went out. I
- (8) did some very minor proofreading of it.
- (9) **Q.** Did you know at the time that if
- (10) the funding was granted that you would be the
- (11) project coordinator for CMAG 1998?
- (12) **A.** At that time I was having
- (13) conversations about that possibility with Jon
- (14) Krasno and Nancy Northup. It wasn't yet
- (15) decided that I was going to devote my time 100
- (16) percent to it at this time, but yes, I knew it
- (17) was a possibility.
- (18) **Q.** As of February 1999 was Jonathan
- (19) Krasno employed by the Brennan Center?
- (20) **A.** Yes.
- (21) **Q.** What was his role?
- (22) **A.** He was the senior policy analyst.
- (23) **Q.** How long was he at the Brennan
- (24) Center, do you know?
- (25) **A.** I don't know specifically.

Page 20

- (1)
- (2) **Q.** Do you know when he left?
- (3) **A.** He left in spring of 2000 right
- (4) about the time that we released our report.
- (5) **Q.** When was the report Buying Time
- (6) 1998 released to the public?
- (7) **A.** May of 2000.
- (8) **Q.** Why did it take so long?
- (9) **A.** Why did it take so long?
- (10) **MR. PAOLELLA:** Objection.
- (11) **Q.** Yes.
- (12) **A.** I don't understand what you
- (13) mean.
- (14) **Q.** I take it that Buying Time 1998
- (15) is a report about political advertising in the
- (16) 1998 November elections and my question is why
- (17) was the report issued in the spring of 2000
- (18) when the election occurred in November of 1998?
- (19) **A.** We received the data set – we
- (20) got the grant in the summer or fall of 1999 and
- (21) received the actual data set beginning in about
- (22) September, October of 1999 and then worked
- (23) throughout the winter to put out the report.
- (24) **Q.** So you actually got the data from
- (25) CMAG a year – approximately a year after the

Page 21

- (1)
- (2) election took place?
- (3) **A. A little less than a year after**
- (4) **the election, yes.**
- (5) **Q. What was Ms. Northup's role at**
- (6) **the Brennan Center, do you know?**
- (7) **A. When I was there she was deputy**
- (8) **– she was director of the democracy program or**
- (9) **her title might have shifted from deputy**
- (10) **director of the Brennan Center to director of**
- (11) **democracy program or the other direction, I**
- (12) **can't remember.**
- (13) **Q. I wonder if you would turn to the**
- (14) **third sheet of Holman Exhibit 4 which is marked**
- (15) **page two and I will direct your attention, you**
- (16) **can of course look at the entire thing or any**
- (17) **part of it if you would like to, Mr. Seltz,**
- (18) **direct your attention to the second full**
- (19) **paragraph begins "While the data will be**
- (20) **enormously valuable to political scientists -**
- (21) **it will undoubtedly keep them busy for years -**
- (22) **the purpose of our acquiring the data set is**
- (23) **not simply to advance knowledge for its own**
- (24) **sake, but to fuel a continuous and**
- (25) **multi-faceted campaign to propel reform**

Page 22

- (1)
- (2) forward." You see that, Mr. Seltz?
- (3) **A. Yes, I do.**
- (4) **Q. Is it an accurate statement to**
- (5) **say that the purpose of acquiring the data set**
- (6) **was to fuel a continuous and multi-faceted**
- (7) **campaign to propel reform forward if you know?**
- (8) **A. There were many purposes in**
- (9) **acquiring the data set. One of them was to --**
- (10) **the primary purpose was to contribute to the**
- (11) **body of knowledge about campaign finance reform**
- (12) **and specifically issue advocacy as well as to**
- (13) **– and to fill what we viewed to be an**
- (14) **empirical void in the literature about issue**
- (15) **advocacy. A lot of the literature that had**
- (16) **been produced was not based on the same kind of**
- (17) **comprehensive and extremely large data set. An**
- (18) **independent but related purpose which was**
- (19) **separate but related was indeed to provide**
- (20) **information to people – to proponents of**
- (21) **campaign finance reform to help them fashion**
- (22) **new and better arguments for reform, but**
- (23) **arguments that would be based on research that**
- (24) **was verifiable, checkable, transparent,**
- (25) **reproducible.**

Page 23

- (1)
- (2) **Q. There is no doubt that the goal**
- (3) **was to help the reform effort; is that right?**
- (4) **A. The goal – one of the goals was**
- (5) **to help the reform effort.**
- (6) **Q. Do you disagree with this**
- (7) **sentence that I just read to you, Mr. Seltz?**
- (8) **A. I don't disagree with it.**
- (9) **Q. At the time the grant proposal**
- (10) **was dated which is February 19, 1999, had the**
- (11) **Brennan Center seen any of the data that CMAG**
- (12) **had already collected for the '98 election?**
- (13) **A. In February of 1999?**
- (14) **Q. Yes.**
- (15) **A. I don't know.**
- (16) **Q. As you will see and we will get**
- (17) **to in a minute there is a description of CMAG**
- (18) **in this proposal and I'm trying to understand**
- (19) **what the Brennan Center knew about the CMAG**
- (20) **data before it embarked on the study. Can you**
- (21) **– do you know what if anything they did know**
- (22) **about the data before they embarked on the**
- (23) **study?**
- (24) **A. They knew – I'm fairly certain**
- (25) **they knew the scope of the information that**

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- (1)
- (2) **CMAG had through both conversations directly**
- (3) **with Ken Goldstein and also through Jon Krasno**
- (4) **who had had extensive conversations with**
- (5) **Professor Goldstein and CMAG so they knew that**
- (6) **there was an incredible wealth of information**
- (7) **available from CMAG.**
- (8) **Q. Do you know whether Professor**
- (9) **Goldstein had studied the data before February**
- (10) **of 1999?**
- (11) **A. I don't know if he had.**
- (12) **Q. How about Mr. Krasno?**
- (13) **A. Just the CMAG data?**
- (14) **Q. Correct.**
- (15) **A. I don't know.**
- (16) **Q. What other data did Mr. Krasno**
- (17) **have available to him in February of '99 about**
- (18) **the '98 elections if you know?**
- (19) **A. I think that Jon had the same**
- (20) **kind of data that everyone did about the**
- (21) **elections which was a whole host of sources**
- (22) **about spending and, you know, news reports,**
- (23) **secondary sources that come out after every**
- (24) **congressional election. There were some other**
- (25) **reports that were being written about the '98**

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- (1)
- (2) **elections that I'm sure he had that he had read**
- (3) **or had access to the drafts.**
- (4) **Q.** Do you know whether either
- (5) Professors Goldstein or Krasno had written
- (6) about the '98 election before February of 1999?
- (7) **A.** I don't know.
- (8) **Q.** There is a description on page
- (9) two of Holman Exhibit 4 which you have in front
- (10) of you entitled CMAG data and the first
- (11) paragraph opens with the heading what it is.
- (12) The first sentence reads "CMAG, the owner of
- (13) 'Polaris Ad Detector' technology, has set
- (14) computer traps to monitor advertising by
- (15) national broadcast television networks and the
- (16) 25 leading cable networks (e.g. CNN, TNT, etc.)
- (17) in each of the countries top 75 media markets,
- (18) which collectively encompass more than 85
- (19) percent of the population." Mr. Seltz, do you
- (20) know if we can put it in sort of real terms,
- (21) for example, what stations, television stations
- (22) CMAG captures say in New York?
- (23) **A.** I cannot tell you offhand. It's
- (24) **easily -- you could easily find that out.**
- (25) **Q.** I'm trying to get an

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- (1)
- (2) characterization, but you go ahead and
- (3) answer.
- (4) **A.** It's not a limiting -- it's not
- (5) **limited to broadcast stations. It also covers**
- (6) **-- it gets local news which is obviously local**
- (7) **programming. It gets whatever is being shown on**
- (8) **-- I guess it would be the affiliates of the**
- (9) **national broadcast networks at all times of the**
- (10) **day.**
- (11) **Q.** Are you a New Yorker, Mr. Seltz,
- (12) have you lived here for a few years?
- (13) **A.** A few years.
- (14) **Q.** Do you know whether CMAG, for
- (15) example, would capture signals from channel 9
- (16) in New York?
- (17) **A.** If they are a national broadcast
- (18) **network, then they would capture those ads.**
- (19) **Q.** You believe that the national
- (20) broadcast networks being referred to are ABC,
- (21) CBS, NBC and Fox?
- (22) **A.** I'm sure there are more. I would
- (23) **not be comfortable naming the ones.**
- (24) **Q.** So you don't know?
- (25) **A.** I don't know what.

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- (1)
- (2) understanding of what the phrase broadcast
- (3) television networks means?
- (4) **A.** That refers to NBC, CBS, ABC,
- (5) **Fox, and there may be other national broadcast**
- (6) **television networks that I don't know off the**
- (7) **top of my head. I'm sure that they captured**
- (8) **advertisements on those.**
- (9) **Q.** Do you know if they captured
- (10) advertisement, only advertisements on those
- (11) networks or advertisements on stations
- (12) affiliated with those networks?
- (13) **A.** I don't know what those would be.
- (14) **Q.** Take, for example, ABC has a
- (15) station in New York City. It also has stations
- (16) all across the country. ABC has network
- (17) programming at certain times of the day and
- (18) those stations carry that network programming if
- (19) they choose. They also carry local programming
- (20) in other parts of the day and my question is by
- (21) referring to television networks is that some
- (22) limiting description of the broadcasters that
- (23) are monitored by CMAG or is it just sloppy
- (24) writing?
- (25) **MR. PAOLELLA:** I object to that

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- (1)
- (2) **Q.** You don't know which of the
- (3) stations -- which of the so-called broadcast
- (4) networks other than ABC, CBS, NBC and Fox are
- (5) captured by CMAG, CMAGs system?
- (6) **A.** Right, you could go into the
- (7) **database and find out in a second, but I can't**
- (8) **remember the names of broadcast networks.**
- (9) **Q.** Fair enough.
- (10) **MS. BUCKLEY:** Off the record.
- (11) **(Discussion off the record.)**
- (12) **Q.** Mr. Seltz, we are handing you two
- (13) big boxes and in them are file folders which
- (14) are labeled Seltz computer files 1 and I
- (15) believe all the way through Seltz computer
- (16) files 11. These documents were produced to us
- (17) by the Brennan Center in response to a Subpoena
- (18) to the Brennan Center and I wonder if you could
- (19) generally tell me what these are and how they
- (20) are used if you know?
- (21) **MR. PAOLELLA:** Were these marked
- (22) Seltz computer files 1 through 11 when
- (23) they were produced to you by the Brennan
- (24) Center?
- (25) **MS. BUCKLEY:** Yes, they were



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- (1)
- (2) **MS. BHATTACHARYYA:** Were they
- (3) marked with Bates numbers?
- (4) **MS. BUCKLEY:** Yes, they were.
- (5) **MS. BHATTACHARYYA:** Can you put
- (6) that on the record?
- (7) **MS. BUCKLEY:** Yes. I will
- (8) identify the first page which says Seltz
- (9) computer files 1. It bears the Bates
- (10) stamp numbers BRE 009979.
- (11) **MS. BHATTACHARYYA:** If we could
- (12) just at some point do that.
- (13) **MS. BUCKLEY:** On a break we will
- (14) put on the beginning and end Bates of
- (15) every one of these computer files, but I
- (16) can tell you each separate file has its
- (17) own cover, Seltz computer files 2, 3, 4
- (18) 5, whatever and then there is all this
- (19) data.
- (20) **Q.** Mr. Seltz, can you tell us what
- (21) these documents are?
- (22) **MR. PAOLELLA:** Why don't you take
- (23) one of the files out and look through
- (24) it.
- (25) **A.** Seltz computer files 1 appears to

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- (1)
- (2) **summary to Buying Time '98 and then there are**
- (3) **printouts of programing which would be called**
- (4) **syntax files in the SPSS program, that's the**
- (5) **remainder.**
- (6) **Q.** That's the remainder of the
- (7) packet that's Seltz computer files 1?
- (8) **A.** Right.
- (9) **Q.** Did you print out these
- (10) documents, Mr. Seltz, or did someone else do
- (11) that?
- (12) **A.** I don't remember printing out --
- (13) **I don't remember printing out the syntax files.**
- (14) **The media market information I think was sent**
- (15) **to me either as a computer file or hard copy.**
- (16) **Q.** Do you know how Seltz computer
- (17) files 1 through 11 were compiled if you will?
- (18) **A.** I cannot tell you only having
- (19) gone through the first one.
- (20) **Q.** Good point.
- (21) **A.** Do you want me to continue?
- (22) **Q.** I'm trying to find out if this is
- (23) the data that you were working with or any part
- (24) of it is the data that you were working with in
- (25) compiling Buying Time 1998?

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- (1)
- (2) **be three different types of material. The**
- (3) **first is output produced by SPSS when we would**
- (4) **do a run which meant we would ask SPSS to give**
- (5) **us a certain kind of information, certain piece**
- (6) **of information and it would print it.**
- (7) **Q.** SPSS is the computer --
- (8) **A.** Wait, that's not right. I take
- (9) all that back. The first bit of material is --
- (10) I can't remember who I got it from, possibly
- (11) CMAG, but it lists the media markets that each
- (12) of these races includes so that are captured by
- (13) CMAG.
- (14) **Q.** Just for the record, you are
- (15) identifying that bit of documents -- if you
- (16) will permit me, I would like to lean over and
- (17) read the Bates numbers into the record. Is
- (18) this the portion of the documents you are
- (19) referring to?
- (20) **A.** Yes.
- (21) **MS. BUCKLEY:** The Bates numbers
- (22) here are BRE 009980 through BRE 010047.
- (23) **Q.** What else is contained in Seltz
- (24) computer files 1?
- (25) **A.** There is a draft of the executive

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- (1)
- (2) **A.** When I refer to the data or the
- (3) **data set, I'm usually referring not to paper.**
- (4) **We were usually -- when we are asking the SPSS**
- (5) **program, when we are getting inquiries or**
- (6) **getting information from the data set. Working**
- (7) **with the data means working with the very large**
- (8) **file.**
- (9) **Q.** The electronic data?
- (10) **A.** Yes.
- (11) **Q.** You said a few moments ago that
- (12) if we access the data you could tell us what
- (13) television stations in New York City CMAG
- (14) captures images for on Election Day, did I
- (15) articulate that correctly?
- (16) **A.** Can you say that again?
- (17) **Q.** I think you testified a few
- (18) minutes ago that if you had access to the
- (19) electronic data you could tell us, for example,
- (20) which television stations CMAG captures
- (21) information from on Election Day in the nature
- (22) of the storyboards you described; is that
- (23) correct?
- (24) **A.** Yes, you could get that
- (25) information.

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(1)  
 (2) **Q.** How would you go about doing it?  
 (3) **A.** You would – to be honest, what I  
 (4) would do is – what I would have done had I  
 (5) needed that information while I was working on  
 (6) this project all of my questions about SPSS  
 (7) programing I would first pose to Jon Krasno who  
 (8) was an expert in this and he would help me  
 (9) write the programing to produce that output  
 (10) that would list all of the stations. My  
 (11) recollection is that kind of inquiry would be  
 (12) relatively simple, could be done in about five  
 (13) minutes, but you just write a few lines of  
 (14) code.  
 (15) **Q.** Would the data set also tell us  
 (16) what the top 75 media markets that CMAG covered  
 (17) were?  
 (18) **A.** Yes, it could do that.  
 (19) **Q.** I wonder if you would turn to  
 (20) page three of what we marked as Holman Exhibit  
 (21) 4 and we will come back to your computer files  
 (22) in a moment, Mr. Seltz. I direct your  
 (23) attention to the heading questions CMAG can  
 (24) answer. Then there's a list of bullet points I  
 (25) assume questions CMAG can answer. Under bullet

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(1)  
 (2) point one the question posed is does issue  
 (3) advocacy approach the magnitude of advertising  
 (4) by candidates, do you see that?  
 (5) **A.** Yes.  
 (6) **Q.** Was that a focus of the Buying  
 (7) Time 1998?  
 (8) **A.** You mean the book or the project?  
 (9) **Q.** The project. Let me strike that  
 (10) and start over again. In analyzing the data  
 (11) for Buying Time 1998, did you consider that  
 (12) question?  
 (13) **A.** Yes.  
 (14) **Q.** What was the results? What was  
 (15) the result?  
 (16) **A.** The result depended on the  
 (17) context that we were talking about so that in  
 (18) certain competitive races the so-called issue  
 (19) advocacy would approach, and I can't remember  
 (20) specifically, but would sometimes surpass the  
 (21) level of advertising by candidates.  
 (22) **Q.** I thought you were not finished.  
 (23) **A.** I'm not. It also depends on  
 (24) the – if you were talking about issue advocacy  
 (25) by parties or by groups and then one of the

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(1)  
 (2) questions we also answered was on a national  
 (3) scale we were comparing the amount of activity  
 (4) by candidates, parties and groups and found  
 (5) that if you looked at the magnitude of  
 (6) advertising nationally candidates were still  
 (7) dominant on a national scale in individual  
 (8) races and different regions it was a very  
 (9) different story.  
 (10) **Q.** Let's focus on issue advocacy by  
 (11) groups and by that I mean to exclude campaigns  
 (12) or political parties?  
 (13) **A.** Candidates or political parties?  
 (14) **Q.** Correct. Are you saying that  
 (15) there were certain races that were impacted by  
 (16) group issue advocacy in different regions? I'm  
 (17) trying to understand the distinction you were  
 (18) drawing?  
 (19) **A.** Impact just so I'm clear is a  
 (20) different question that we were not answering.  
 (21) When people usually say impact, they are  
 (22) referring to the affect that advertising had on  
 (23) the outcome of the election which was a very  
 (24) complicated political question that we were not  
 (25) answering with this study. Descriptively it

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(1)  
 (2) was the case that in certain races groups  
 (3) played a much more active role than in others.  
 (4) **Q.** Do you recall what any of those  
 (5) races were?  
 (6) **A.** I couldn't tell you off the top  
 (7) of my head three years later.  
 (8) **Q.** I wonder if we could go back to  
 (9) your computer files, Mr. Seltz, and take a look  
 (10) at the box next to your right hand and give me  
 (11) an indication of what if anything might be  
 (12) included in Seltz computer files 2?  
 (13) **MS. BUCKLEY:** For the record,  
 (14) Seltz computer files 2 starts with Bates  
 (15) number BRE 010464 and ends with Bates  
 (16) number BRE 010886.  
 (17) **A.** Seltz computer files 2 appears to  
 (18) be additional or additional to the file number  
 (19) 1 coding and syntax files.  
 (20) **Q.** By coding and syntax files can  
 (21) you tell us what you mean by that, what's a  
 (22) coding file?  
 (23) **A.** What's a coding file?  
 (24) **Q.** Yes.  
 (25) **A.** It would be – I think we would

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- (1)
- (2) have called it a syntax file, but coding was --
- (3) this is a way of putting basically the answers
- (4) to the questions that we had about the ads in
- (5) to the database through the syntax files.
- (6) Q. Can you tell looking at the
- (7) documents that we identified as Seltz computer
- (8) files 2 how a particular ad was coded vis-a-vis
- (9) a particular question that was asked about it?
- (10) A. Yes, but I can't -- but what's
- (11) interesting about this, I don't remember doing
- (12) this. This might have been, you know, these
- (13) might have been documents that we got from Ken
- (14) Goldstein who supervised the coding. You can
- (15) tell by looking at this what ad is in question
- (16) and then usually if it says compute Q 14 equals
- (17) 20, Q 14 refers to question 14 of the coding
- (18) instrument in the back of Buying Time 1998 and
- (19) 20 is the number that matches up with the
- (20) answer to that question.
- (21) Q. Let's take a look at Buying Time
- (22) 1998 which you also have in front of you. I
- (23) will direct your attention to page 193 of the
- (24) study which bears the Bates number BRE 024242.
- (25) A. This doesn't have Bates numbers.

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- (1)
- (2) MR. PAOLELLA: We don't have Bates
- (3) numbers on the computer printout.
- (4) MS. BUCKLEY: Strike the Bates
- (5) number because I wanted you to have it
- (6) in color so it's page 193 of what we
- (7) marked as Seltz Exhibit 1.
- (8) Q. Are you with me, Mr. Seltz?
- (9) A. Yes, I am.
- (10) Q. That's Appendix A entitled Coding
- (11) the Commercials, is that right?
- (12) A. Yes.
- (13) Q. You were just describing how the
- (14) documents in front of you can be used to
- (15) discern how certain advertisements were coded,
- (16) is that right?
- (17) A. Right.
- (18) Q. Can you give me an example using
- (19) the Seltz Exhibit 2 pile of what you mean just
- (20) so we are all clear?
- (21) MR. PAOLELLA: Seltz computer
- (22) files 2?
- (23) MS. BUCKLEY: Correct.
- (24) Q. Whatever page you pick, we will
- (25) take that out and separately mark it.

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- (1)
- (2) A. Great, I will just go to the --
- (3) I'm on 10479, 010479 and if you look at the
- (4) second full set of programing that starts do if
- (5) (custitle equals 'CA/Fong Educatio'). That's
- (6) where I'm starting.
- (7) Q. Okay.
- (8) A. If you look at compute Q 17
- (9) equals one, you would turn to question 17 --
- (10) that refers to 17 and that means that the coder
- (11) answered the question does the ad mention party
- (12) label i.e. Democrat or Republican of the
- (13) favorite candidate or the opponents and the
- (14) coder answered number one no.
- (15) MS. BUCKLEY: If you wouldn't
- (16) mind handing me the page that you were
- (17) just reading from in Seltz computer
- (18) files 2 and I will have copies made of
- (19) this and just for identification
- (20) purposes the first page of these
- (21) documents so that we all know what they
- (22) are.
- (23) Let's take a two minute break.
- (24) (Recess taken.)
- (25) MS. BUCKLEY: We will mark as

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- (1)
- (2) Seltz Exhibit 2 what I just referred to,
- (3) the first page entitled Seltz computer
- (4) files 2, BRE 010464 and the page Mr.
- (5) Seltz just testified about bearing the
- (6) Bates numbers BRE 010479.
- (7) (Plaintiff's Exhibit Seltz 2,
- (8) Documents, Bates labeled BRE 010464 and
- (9) BRE 010479, marked for Identification.)
- (10) Q. Mr. Seltz, you were telling us
- (11) how to read this entry and the entry you were
- (12) referring to is the second clump of data on
- (13) this page?
- (14) A. Yes.
- (15) Q. Beginning --
- (16) MR. PAOLELLA: The second full
- (17) clump of data.
- (18) Q. Why don't you circle on the
- (19) exhibit what data you are referring to?
- (20) A. (Marking.)
- (21) Q. You now circled the data you
- (22) talked about earlier?
- (23) A. Right.
- (24) Q. Let me see if I understand you,
- (25) Mr. Seltz. First of all, does this little

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- (1)
- (2) clump of data tell us what an individual coder
- (3) coded a specific ad on questions 14 through 19?
- (4) **A. It doesn't necessarily tell you**
- (5) **what an individual coder coded. I don't know**
- (6) **what -- I wasn't involved in the initial coding**
- (7) **and I was really only peripherally involved in**
- (8) **a lot of this kind of technical programing so I**
- (9) **can't tell you, for example, why this only**
- (10) **shows you 14 to 19. I don't know if it's -- I**
- (11) **don't know whose work it reflects.**
- (12) **Q. So you don't know if this is the**
- (13) **coder's answers to questions 14 through 19 on**
- (14) **ad number 230?**
- (15) **A. I don't think that the coders,**
- (16) **you know, were writing compute Q 14 equals 99**
- (17) **or whatever. I think they were more likely to**
- (18) **be doing something much more intuitive and easy**
- (19) **to be marking answers and then my guess is that**
- (20) **one of Ken's graduate students would have done**
- (21) **the actual --**
- (22) **Q. Entering of the data?**
- (23) **A. Entering of the data in this**
- (24) **form. But again, I don't know when this was**
- (25) **done, I don't know who did it.**

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- (1)
- (2) **Q. By this you're referring to?**
- (3) **A. This set of materials that**
- (4) **includes the one we are talking about that**
- (5) **compute 14 through 19.**
- (6) **Q. So we can't know whether this was**
- (7) **the coder's original coding of the data or**
- (8) **something else?**
- (9) **A. My strong suspicion is that it's**
- (10) **the coder's original coding, that's what -- I**
- (11) **don't know what the something else would have**
- (12) **been so that would certainly be my sense, but**
- (13) **I'm just saying that I don't know for sure.**
- (14) **Q. In this portion of data we are**
- (15) **talking about it says custitle equals 'CA/Fong**
- (16) **Educatio'), is that a reference to the title of**
- (17) **an individual ad?**
- (18) **A. Yes.**
- (19) **Q. Under that it says 230 next to a**
- (20) **description saying compute ID number equals**
- (21) **230; is that the numerical number assigned to**
- (22) **the ad identified just above?**
- (23) **A. Assigned not by CMAG, but**
- (24) **probably by Ken and Jon for the purpose of the**
- (25) **data set. The way that we would get the ads**

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- (1)
- (2) **from CMAG we would have titles. We would then**
- (3) **-- then the -- I believe the next step was**
- (4) **adding these numerical signifiers.**
- (5) **Q. The numerical signifiers were**
- (6) **added by Professor Goldstein or the Brennan**
- (7) **Center?**
- (8) **A. I don't know.**
- (9) **Q. If I go track down a copy of ad**
- (10) **230 entitled something about California Fong**
- (11) **Education and I look at it and I use this piece**
- (12) **of paper that we marked as Seltz Exhibit 2,**
- (13) **will this tell me how that particular ad was**
- (14) **coded at least as to questions 14 through 19 at**
- (15) **some particular point in time?**
- (16) **A. At some particular point in time**
- (17) **it was coded as that. I don't know if this was**
- (18) **the final -- I don't know -- everything got**
- (19) **checked so I don't know if this reflects the**
- (20) **final data that went into the data set. At**
- (21) **some point that's how the ad that you would**
- (22) **find would be coded.**
- (23) **Q. When you referred to this in your**
- (24) **last answer, you were talking about the**
- (25) **information that's contained in Seltz computer**

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- (1)
- (2) **files 2, that bundle of documents?**
- (3) **A. Yes. The top couple of pages**
- (4) **that I looked at. I don't know about this**
- (5) **whole entire stack.**
- (6) **Q. Okay. Let's just finish up on**
- (7) **Seltz computer files 2. Have you given us --**
- (8) **have you been able to describe everything**
- (9) **that's there to the best of your ability? I**
- (10) **don't want to close it if you think you have**
- (11) **only seen the first few pages?**
- (12) **A. Do you want me to look through**
- (13) **all of it?**
- (14) **Q. I thought you flipped through the**
- (15) **entire package myself, but maybe I'm wrong and**
- (16) **identified it as all the same kind of data.**
- (17) **A. If you think flipping through it**
- (18) **is okay, I will flip through it. If you want**
- (19) **me to look at every sheet, it will take**
- (20) **sometime.**
- (21) **Q. You don't have to look at every**
- (22) **sheet, but I'm just trying to find out if it's**
- (23) **the same kind of data you described. To me it**
- (24) **certainly looks like it.**
- (25) **A. The actual codes change later on,**

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- (1)
- (2) **but it's also coding.**
- (3) **Q.** What do you –
- (4) **A.** It's not 14 to 19 later on, but
- (5) other pieces of information that went into the
- (6) data set.
- (7) **Q.** Is there a place that I can look,
- (8) Mr. Seltz, to see how the undergraduate
- (9) students originally coded the political
- (10) advertisements for 1998 if they were asked to
- (11) do it on computer?
- (12) **A.** Ken Goldstein would know that. I
- (13) don't know that.
- (14) **Q.** Did the Brennan Center receive
- (15) the undergraduate students coding data, the
- (16) original source data from the students?
- (17) **A.** I don't know.
- (18) **Q.** You don't know?
- (19) **A.** No.
- (20) **Q.** Have you had a chance to look at
- (21) Seltz computer files 3, 4, and 5?
- (22) **A.** Very briefly during the break I
- (23) was looking at them.
- (24) **MR. LIPMAN:** Seltz computer files
- (25) 3 begins at BRE 010887 and ends at

## Page 47

- (1)
- (2) start on box two or do you have
- (3) questions?
- (4) **MS. BUCKLEY:** I have questions as
- (5) to the coding data documents which we
- (6) now talked about which are contained in
- (7) computer files 2, 3, 4 and 5.
- (8) **Q.** I think you told us earlier that
- (9) you don't know the point in time at which this
- (10) data was printed or memorialized in the form
- (11) that we have seen in computer files 2, 3, 4 and
- (12) 5; is that right?
- (13) **A.** That's right.
- (14) **Q.** My question is did the coding
- (15) change over time? I'm trying to get an
- (16) understanding why the timing is important?
- (17) **A.** I'm not entirely sure what you
- (18) mean, but I will do the best that I can to
- (19) answer. We got – I'm sorry, I don't know what
- (20) you mean did the coding change.
- (21) **Q.** I take it the way the coding of
- (22) the information for Buying Time 1998 started
- (23) was by presenting storyboards captured by CMAG
- (24) on the 1998 election in a form similar to what
- (25) is attached to the end of Buying Time 2000,

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- (1)
- (2) 011232. Seltz computer files 4 begins
- (3) at 011234 and ends at 011608. Seltz
- (4) computer files 5 begins at BRE 009691
- (5) and ends at 009978.
- (6) **A.** Seltz computer files 3 is more of
- (7) – it's very similar to number 2 in that it's
- (8) coding for the commercials.
- (9) **Q.** Coding data?
- (10) **A.** Yes.
- (11) **Q.** Again, we don't know at what
- (12) particular point in time; is that correct?
- (13) **A.** That's right, I don't know what
- (14) particular point in time.
- (15) **Q.** Did the codes change over time,
- (16) Mr. Seltz?
- (17) **A.** Can you give me a chance to go
- (18) through 4 and 5 so I don't try to answer while
- (19) I'm doing this?
- (20) **Q.** Sure.
- (21) **A.** Number 4 is also like number 3.
- (22) **Q.** That could be coding data?
- (23) **A.** Yes. Number 5 is also coding
- (24) data.
- (25) **MR. PAOLELLA:** Do you want to

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- (1)
- (2) that the storyboards were presented to the
- (3) students at the Arizona State and that they
- (4) answered questions which are set forth in
- (5) Appendix A of Buying Time 1998 on pages 193 and
- (6) 194?
- (7) **A.** Yes.
- (8) **Q.** Is that right?
- (9) **A.** Yes.
- (10) **Q.** So the students sat down and
- (11) coded each ad they were given answering the
- (12) questions contained in Appendix A of Buying
- (13) Time 1998, correct?
- (14) **A.** Correct.
- (15) **Q.** Presumably at the point the
- (16) students completed their coding that
- (17) information was compiled in one place; is that
- (18) right?
- (19) **A.** As far as I know.
- (20) **Q.** That was compiled by Professor
- (21) Goldstein?
- (22) **A.** Yes.
- (23) **Q.** You don't know because you told
- (24) me before whether that information was
- (25) transmitted to the Brennan Center, do you?

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- (1)
- (2) **A. We did get the data – Ken**
- (3) **compiled the data set which he then sent to us.**
- (4) **Q. Do you know whether you ever got**
- (5) **the data from what I will call the raw source**
- (6) **material from the undergraduates coding?**
- (7) **A. That I don't know. I don't know**
- (8) **if they are entered in our computer. If they**
- (9) **were by hand. I don't know what that raw**
- (10) **source data would look like.**
- (11) **Q. At some point in time the Brennan**
- (12) **Center received data from Professor Goldstein**
- (13) **that included how the ads had been coded, is**
- (14) **that right?**
- (15) **A. The data included the coding for**
- (16) **the ads.**
- (17) **Q. Right?**
- (18) **A. Right.**
- (19) **Q. Where would one go to look to see**
- (20) **what it was that Professor Goldstein first sent**
- (21) **you about the coding of the ads if you know?**
- (22) **A. You keep saying about the coding**
- (23) **of the ads as if there was an explanation on**
- (24) **the disk on the zip disk we got. That's –**
- (25) **there wasn't an explanation in the data set, do**

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- (1)
- (2) **you see what I –**
- (3) **Q. No.**
- (4) **A. What Ken Goldstein sent to us is**
- (5) **not – didn't have information about how the**
- (6) **ads were coded. It had the codes. It was a**
- (7) **data set that already had the -- that already**
- (8) **had the codes entered.**
- (9) **Q. I see so Professor Goldstein sent**
- (10) **you this zip disk with certain data on it; is**
- (11) **that right?**
- (12) **A. That's right.**
- (13) **Q. When you looked at the data on**
- (14) **the disk, you could discern how each political**
- (15) **ad was coded, could you not?**
- (16) **A. Yes, you could.**
- (17) **Q. The disk that you were provided**
- (18) **with, did it reflect the raw data from the**
- (19) **undergraduate coders or something else?**
- (20) **A. I don't know. It was in SPSS**
- (21) **form when we got it.**
- (22) **Q. Do you know whether any of the**
- (23) **coding of the advertisements was ever changed?**
- (24) **A. The coding done by the under**
- (25) **graduates?**

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- (1)
- (2) **Q. Correct.**
- (3) **A. One of the first things that we**
- (4) **would do my understanding from Jon that sort of**
- (5) **standard practice with a data set that large is**
- (6) **that you first – there are going to be**
- (7) **anomalies so you would look – you would first**
- (8) **look to see if there was missing data, you**
- (9) **would look to see whether there was data that**
- (10) **didn't make sense. You would look to see if**
- (11) **there was – if things were duplicative or**
- (12) **repetitive and then there was a process of we**
- (13) **talked about sort of, you know, cleaning it up**
- (14) **to get it into a form that we could start**
- (15) **producing answers to our queries.**
- (16) **Q. What I'm trying to understand,**
- (17) **Mr. Seltz, is when that clean up process**
- (18) **occurred, was the data set on the computer**
- (19) **changed, was a new one created? Is there a way**
- (20) **I can look at the data to see how it changed**
- (21) **over time is what I'm trying to find out?**
- (22) **A. Probably not because the data set**
- (23) **was just enormous. It took up – we had to get**
- (24) **– Jon and I had to get new computers at the**
- (25) **Brennan Center to handle the data set. Every**

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- (1)
- (2) **time we made any kind of correction or realized**
- (3) **that an ad had been partially coded and fill in**
- (4) **some of the objective data we were not going to**
- (5) **do the equivalent of a save as and create a**
- (6) **whole number because we would have had 20 or 30**
- (7) **versions of a data set that was already just**
- (8) **enormous. It was 307,000 cases long and 40**
- (9) **variables wide. We weren't going to do that**
- (10) **and my understanding is that nobody would do**
- (11) **that.**
- (12) **It would also be incredibly**
- (13) **confusing because Jon and I needed to make sure**
- (14) **that when we did runs of data we were working**
- (15) **off the same data set so when we ended up**
- (16) **working with a data set to which we had made**
- (17) **corrections we would tell each other and I**
- (18) **would bring a copy of the new data set on a zip**
- (19) **disk to his computer or vice-versa, but to**
- (20) **answer your question whether you could track**
- (21) **the evolution of all the changes we made, no.**
- (22) **We might have saved a couple of versions, but**
- (23) **we were not going to save new ones every time.**
- (24) **I don't know if you could find the original**
- (25) **version that Ken sent to us. Ken would know**

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- (1)
- (2) **that, Jon might know that.**
- (3) **Q.** Let me see if I can put this in a
- (4) way that I understand it. Let's pick a
- (5) question. I'm looking at Appendix A to Buying
- (6) Time 1998, page 193 which is the questions that
- (7) the coders were asked to answer. Question
- (8) number 3 asked the coder to identify if the ad
- (9) – it says what is that action referring to ad
- (10) action that a viewer is being asked to take and
- (11) then it lists certain alternatives to vote for
- (12) someone, to elect or re-elect someone, to
- (13) support someone, whatever. You would agree
- (14) that you can identify by looking at the ad
- (15) whether it asks someone to vote for someone,
- (16) for example, that's number one?
- (17) **A. Yes.**
- (18) **Q.** If a coder looked at the ad and
- (19) said that the ad encouraged the viewer to vote
- (20) for someone and it was looked at later and it
- (21) turns out that that word wasn't there, that's
- (22) the kind of change that you would alter on the
- (23) data set? I'm trying to pick an objective
- (24) question so we can get the process down.
- (25) **A. Sure. I think that's possible.**

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- (1)
- (2) **I think that more likely we would have been**
- (3) **looking for an anomaly like take questions two**
- (4) **and three. If the coder answered the question**
- (5) **does the ad direct the viewer to take any**
- (6) **action as opposed to merely providing**
- (7) **information and the coder had answered number**
- (8) **one no, then had gone on to number three and**
- (9) **picked an action, that would have shown up to**
- (10) **us as clearly wrong and we would go back and**
- (11) **check to see what was the problem. That's the**
- (12) **kind of anomaly we looked for and then if we**
- (13) **saw they made an error, we would be able to**
- (14) **correct it in the data set.**
- (15) **Q.** Let's assume that they had made
- (16) an error in answering questions two and three
- (17) as you just referred to, would you or Mr.
- (18) Krasno then physically go in and change the
- (19) data set to correct it?
- (20) **A. Yes.**
- (21) **Q.** In the way you described before
- (22) so that he had the same version that you did
- (23) and it would be correct?
- (24) **A. Right.**
- (25) **Q.** That leads me to believe that the

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- (1)
- (2) most current copy of the data set would contain
- (3) or should contain all of the coding changes
- (4) that were made from the original student codes
- (5) up until the final publication of Buying Time
- (6) 1998?
- (7) **A. I'm sorry, I'm not sure I follow.**
- (8) **Q.** The Brennan Center has produced
- (9) to us a disk containing data for the 1998
- (10) Buying Time study?
- (11) **A. Yes.**
- (12) **Q.** I'm trying to understand if the
- (13) data on that disk reflects all the changes or
- (14) corrections that were made in the data?
- (15) **A. Prior to publication?**
- (16) **Q. Correct?**
- (17) **A. It should. I left there in July**
- (18) **of 2000 and I don't know if they – that was**
- (19) **after the publication of the book, but we –**
- (20) **once we published the book, I made an effort to**
- (21) **freeze in time the data set that we had used in**
- (22) **the publication of the book.**
- (23) **Q.** Did you have a particular file
- (24) that you froze the data in at the time you
- (25) left?

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- (1)
- (2) **A. Yeah, I wrote an exit memo to**
- (3) **Luke and I think I cc.'d Nancy directing them**
- (4) **to that file.**
- (5) **Q.** Do you know what it was called?
- (6) **A. It was called something like it**
- (7) **had a number like 307K.SPSS or something like**
- (8) **that.**
- (9) **Q.** How did you and Professor Krasno
- (10) and Professor Goldstein ensure that all three
- (11) of you were working from the same data set at
- (12) any particular point in time?
- (13) **A. Well, Ken wasn't – it was really**
- (14) **a matter of Jon and me, Jon and I making sure**
- (15) **that we were on the same – working from the**
- (16) **same data set. I don't know. We spent all day**
- (17) **together. I knew exactly what he was doing**
- (18) **usually and he knew exactly what I was doing so**
- (19) **if I – it was a basic sort of protocol this**
- (20) **project that either of us made a change say I**
- (21) **found something, fixed it, come put this on**
- (22) **your computer.**
- (23) **Q.** Nobody told Professor Goldstein
- (24) about these kinds of changes?
- (25) **A. Sure, Jon was in constant contact**

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(1)

(2) with Ken. I don't know -- I'm assuming they

(3) had the same kind of process to make sure they

(4) were on the same page as well.

(5) Q. The reason I'm asking all these

(6) questions is we had 1998 data produced by the

(7) Brennan Center and we had 1998 data produced by

(8) Professor Goldstein. I'm trying to figure out

(9) whether you know whether it should be the same

(10) or --

(11) A. It depends what you got from Ken

(12) Goldstein. I don't know if you were interested

(13) in getting that sort of very first cut that was

(14) produced by the coders before we had a chance

(15) to sort of clean it or if you were interested

(16) in getting from Ken the final disk before

(17) publication. I don't know. It depends. We

(18) were in contact with Ken. He knew of the

(19) errors we were finding and he was helping us

(20) also fix errors so he knew what was going on,

(21) but I don't know about the final production of

(22) these disks.

(23) Q. I want to go back to your boxes,

(24) Mr. Seltz. Maybe we can wrap this up quickly.

(25) We already identified Seltz computer files 1

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(1)

(2) through 5. I will take them away so they are

(3) not cluttering up your space. See if you can

(4) tell me whether computers files 6 is any

(5) different than 2 through 5?

(6) A. Okay.

(7) MS. BUCKLEY: Seltz computer files

(8) 6 is BRE 008133 through BRE 008562.

(9) A. Six is the same as the others.

(10) Q. The others being 2 through 5?

(11) A. Two through 5.

(12) MR. LIPMAN: Seltz computer file 7

(13) is BRE 008563 through 008991. Seltz

(14) computer file 8 is 008992 through

(15) 009342. Nine is 009343 through 009690

(16) and 10 is 013516 through 013860 and 11

(17) is 013207 through 013515.

(18) A. I can tell you that number 7,

(19) Seltz computer files 7 includes both coding

(20) similarly identical to the ones in 2 through 6.

(21) Towards the middle or towards the end there is

(22) coding for information that I know was added

(23) after the Arizona State students worked with it

(24) because it's information they would not have

(25) coded, it was additional contextual

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(1)

(2) information.

(3) Q. Can you describe what kind of

(4) information that is?

(5) A. Yeah, it would be things like --

(6) it says if -- do I need to be working off --

(7) Q. Tell me the page number if you

(8) would?

(9) A. It's BRE 008827. That, for

(10) example, includes information that we added on

(11) what type of advertisement it was so Jon

(12) created a variable called what I believe there

(13) were codes one through four and that was either

(14) a candidate electioneering ad, I'm not going to

(15) be able to remember, but it's things like

(16) either a candidate ad, a party ad, a group

(17) issue ad or independent expenditure and we

(18) would -- something like that. I don't remember

(19) exactly how the terms were used, but that was

(20) not information we were asking the Arizona

(21) State students to get so I know that was added

(22) after that so that these include things like

(23) that and then towards the end are more -- it's

(24) more coding that -- programing that Jon did

(25) because it looks sort of complicated so I can't

Page 60

(1)

(2) really tell you what's going on.

(3) Q. Does the fact that you have now

(4) identified that some of this data was obviously

(5) added by the Brennan Center help place in time

(6) when this data was memorialized?

(7) A. Slightly. It just means that

(8) it's after we got the data set from Ken, but

(9) before the book went to the printer which is

(10) still a period of a few months while we were

(11) working on it. I can't tell you exactly when

(12) during the winter that these were produced.

(13) Number 8 is additional coding and programing

(14) through from 008992 to 009077. After that it's

(15) in a separate rubberband and they look like

(16) printouts of Excel files that reflect out put

(17) that the answers to these questions that we

(18) were asking to put in the book and I -- or I

(19) think occasionally we got some help in doing.

(20) The data entry would create these Excel files

(21) and then send them to our graphics person to

(22) then turn them into the graphs and tables of

(23) some kind.

(24) Q. Can I see what you are referring

(25) to and then we will mark a sample of it for the



## Page 61

- (1)
- (2) record so we are all on the same page?
- (3) Mr. Seltz, if you could hand me
- (4) the first page of Seltz computer files 8 and
- (5) you selected randomly a page?
- (6) **A. That's the first page.**
- (7) **Q.** The first page is not random,
- (8) that's Seltz computer files BRE 008992. You
- (9) pulled out from the middle of this set of
- (10) documents the first page of what you just
- (11) described as these Excel files and that has
- (12) 009078 on it and we will go ahead and make
- (13) copies of that so we can mark it as Seltz
- (14) Exhibit number 3.
- (15) **A. That appears to be what the rest**
- (16) **of this pile is all the way to the end of Seltz**
- (17) **computer files 8.**
- (18) **Q.** Could I see the whole pile?
- (19) **A. Seltz computer files 9 is also**
- (20) **Excel files reflecting data entry of additional**
- (21) **tables and graphs in the book to be used to**
- (22) **create tables and graphs.**
- (23) **Q.** I think you said earlier that
- (24) these Excel files were provided to the printer
- (25) to help create the tables and graphs that

## Page 62

- (1)
- (2) appeared in Buying Time 1998?
- (3) **A. To the graphic designer, not to**
- (4) **the printer.**
- (5) **Q.** I see and do we know that these
- (6) Excel files which you have identified in Seltz
- (7) computer files 7 and 8 were in fact the ones
- (8) that were sent to the graphic designer?
- (9) **A. There is no way for me to know**
- (10) **that these were the actual ones that were sent.**
- (11) **They were sent as electronic attachments**
- (12) **because they are much easier to work with that**
- (13) **way.**
- (14) **Q.** Than paper?
- (15) **A. Yes.**
- (16) **MS. BUCKLEY:** We will mark as
- (17) Seltz Exhibit 3 the two documents I
- (18) already described from Seltz computer
- (19) files 8.
- (20) **(Plaintiff's Exhibit Seltz 3,**
- (21) **Documents, Bates labeled BRE 008992 and**
- (22) **BRE 009078, marked for Identification.)**
- (23) **A. It's also more printout of Excel**
- (24) **printout files in Seltz computer files 10.**
- (25) **Q.** Finally the last one which is

## Page 63

- (1)
- (2) Seltz computer files 11?
- (3) **A. Printouts of Excel files and then**
- (4) **appears to be some text of the book. It looks**
- (5) **like the appendices starting with Appendix two.**
- (6) **Then there's also Appendix 3. What's called**
- (7) **Appendix 3 and then there's something called**
- (8) **appendix A. There is a copy of the coding**
- (9) **protocol. Then there is a draft dated 2/3/2000**
- (10) **of what looks like the report. It's a lot of**
- (11) **text.**
- (12) **Q.** Are those more drafts, Mr. Seltz?
- (13) **A. I think this is the draft that it**
- (14) **looks like the introduction the longest piece**
- (15) **of text in the book I think is what this is.**
- (16) **Finally there are some more printouts of Excel**
- (17) **files below that draft and that's the rest of**
- (18) **it.**
- (19) **Q.** All right so we now identified
- (20) that there are Excel files I believe in Seltz
- (21) computer files 7 through 10 and some at the end
- (22) of Seltz computer files 11, is that fair?
- (23) **A. Beginning and end.**
- (24) **MR. PAOLELLA:** Eight through 10.
- (25) **Q.** Eight through 10 and a little in

## Page 64

- (1)
- (2) the beginning and end of 11?
- (3) **A. Right.**
- (4) **Q.** You told us that these Excel
- (5) charts would not have been sent to the graphic
- (6) designer in paper form, they would have been
- (7) sent in electronic form; is that right?
- (8) **A. They are tables, not charts and**
- (9) **they would have been sent electronically.**
- (10) **Q.** But the graphic designer would
- (11) have received the same information that's
- (12) reflected on the paper Excel charts; is that
- (13) true?
- (14) **MR. PAOLELLA:** Objection.
- (15) **A. This particular paper?**
- (16) **Q.** I'm trying to find out if the
- (17) paper Excel charts which are contained in 8, 9,
- (18) 10 and portions of 11 contain the same
- (19) information that was transmitted to the graphic
- (20) designer for the preparation of Buying Time
- (21) 1998?
- (22) **A. That's the format that went to**
- (23) **the folks at Whitmeyer Baker and, you know,**
- (24) **that's the form they went in. It would have**
- (25) **been that information. I don't know if it's**

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(1)  
 (2) **the final draft of, you know, the final final**  
 (3) **document that was used by the graphic designer**  
 (4) **to create the charts in the book. I don't know**  
 (5) **if those are it, but this is the sort of**  
 (6) **system.**

(7) **Q. I see, okay.**

(8) **MR. PAOLELLA:** If we are through  
 (9) with the boxes at this point, do you  
 (10) mind taking a five minute break?

(11) **MS. BUCKLEY:** Absolutely.

(12) **(Recess taken.)**

(13) **Q. Now that we are done with the**  
 (14) **cartons of documents and thanks for your**  
 (15) **patience, Mr. Seltz, let's go back and if you**  
 (16) **could tell me what your role was between**  
 (17) **October '98 and September '99 at the Brennan**  
 (18) **Center?**

(19) **A. I was a research associate in the**  
 (20) **democracy program so I worked on a variety of**  
 (21) **projects for many of the lawyers in the**  
 (22) **democracy program as well as some research -- a**  
 (23) **lot of research for Jon Krasno. It was -- I**  
 (24) **did largely factual research for reports and**  
 (25) **conferences and sometimes some background**

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(1) **research on briefs. That was the extent of it.**

(2) **Q. How would you describe the work**  
 (3) **of the Brennan Center, generally what does it**  
 (4) **do?**

(5) **A. The Brennan Center is a legal**  
 (6) **non-profit that was established as a kind of**  
 (7) **living memorial to Justice Brennan and does a**  
 (8) **combination of litigation, scholarship and**  
 (9) **public education on issues of democracy and**  
 (10) **poverty and since I left they added a criminal**  
 (11) **justice program.**

(12) **Q. Would you describe it as a law**  
 (13) **firm?**

(14) **A. I don't know if that's a sort of**  
 (15) **term of art.**

(16) **Q. No, just in the ordinary sense of**  
 (17) **the word?**

(18) **A. I don't know. They tend not to**  
 (19) **have paying clients, I don't know if that makes**  
 (20) **them not a law firm. They litigate cases among**  
 (21) **other things. The professional employees are**  
 (22) **primarily lawyers.**

(23) **Q. In September of 1999 you became**  
 (24) **the project coordinator, you already told us,**  
 (25)

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(1)  
 (2) for the CMAG 1998 project I believe is what it  
 (3) was called in the beginning, is that right?

(4) **A. Yes.**

(5) **Q. How did you come to learn that**  
 (6) **you would be the project coordinator for CMAG**  
 (7) **1998?**

(8) **A. I had a series of meetings and**  
 (9) **conversations with Jon and Nancy and possibly**  
 (10) **Josh, I don't really remember, over the summer**  
 (11) **where we talked about making that change.**

(12) **Q. Did you have anybody reporting to**  
 (13) **you as project coordinator?**

(14) **A. No.**

(15) **Q. You reported, tell me if I'm**  
 (16) **right, did you report to Mr. Krasno?**

(17) **A. I don't know. I don't know what**  
 (18) **that means really. I considered him -- I**  
 (19) **considered that I was both working with him as**  
 (20) **a partner and, you know, as he was also my**  
 (21) **supervisor. I also -- I mean if you would ask**  
 (22) **me who my boss was during that year I would**  
 (23) **have said Nancy, but I worked with and for Jon**  
 (24) **and Nancy and Josh. It wasn't clear exactly**  
 (25) **what the, you know, direct lines were.**

Page 68

(1)  
 (2) **Q. By Josh you are referring to Josh**  
 (3) **Rosenkranz?**

(4) **A. Yes.**

(5) **Q. I'm trying to get a sense of who**  
 (6) **besides you and Mr. Krasno if anyone worked on**  
 (7) **what ultimately became Buying Time 1998, anyone**  
 (8) **else besides the two of you?**

(9) **A. And Ken Goldstein as a sort of**  
 (10) **consultant.**

(11) **Q. Fair enough, we will add him.**

(12) **A. We were constantly consulting**  
 (13) **with attorneys at the Brennan Center. We were**  
 (14) **working with Glenn Moramarco who would**  
 (15) **sometimes provide feedback on some of the text**  
 (16) **and he would be -- we would use him and**  
 (17) **possibly others as sounding boards for helping**  
 (18) **conceptualize the structure of the book. I at**  
 (19) **least part way through the project Nancy and I**  
 (20) **started to set up a set time that I would brief**  
 (21) **her on our progress. There was a**  
 (22) **communications firm in Washington DC that we**  
 (23) **were working with as well in both the**  
 (24) **production of the report and thinking about its**  
 (25) **release.**

Page 69

- (1)
- (2) **Q.** Who was that firm?
- (3) **A.** The Whitmeyer Baker firm.
- (4) **Towards the end of the project there were**
- (5) **several pairs of eyes that went over the report**
- (6) **and incorporated a lot of their changes so we**
- (7) **did the analysis and the initial writing and**
- (8) **the writing.**
- (9) **Q.** Who is the we in that sentence?
- (10) **A.** Jon and I, I'm sorry, but those
- (11) **are the people who were involved at one time or**
- (12) **another.**
- (13) **Q.** Did you write any part of the
- (14) **text of Buying Time 1998?**
- (15) **A.** Yes.
- (16) **Q.** Let's take a look at Buying Time
- (17) **1998 which has been marked as Seltz Exhibit 1.**
- (18) **If you turn to the seventh page which is**
- (19) **entitled about the authors?**
- (20) **A.** That's right before the table of
- (21) **contents?**
- (22) **Q.** It is and it refers to Daniel E.
- (23) **Seltz, is that you?**
- (24) **A.** That is.
- (25) **Q.** Is the description in the

Page 70

- (1)
- (2) **bibliography set forth of you accurate?**
- (3) **A.** Yes.
- (4) **Q.** What did you write for Radical
- (5) **History Review?**
- (6) **A.** That's the article I referred to
- (7) **earlier on Japanese history museums.**
- (8) **Q.** If you turn two pages later is a
- (9) **list of figures and tables. Who is principally**
- (10) **responsible for putting together the figures**
- (11) **and tables, Mr. Seltz?**
- (12) **A.** You mean writing this list?
- (13) **Q.** No, there are three pages here
- (14) **which is little ii, little iii and little iv**
- (15) **which is just a summary of all the lists and**
- (16) **tables which will follow. I'm just saying**
- (17) **since you have this neat summary in front of**
- (18) **you can you tell me who at the Brennan Center**
- (19) **was principally responsible for compiling the**
- (20) **figures and tables which this summary is**
- (21) **describing?**
- (22) **A.** Jon and myself.
- (23) **Q.** As between the two of you were
- (24) **one of you more or less involved in the figures**
- (25) **and tables or did you have equal**

Page 71

- (1)
- (2) **responsibility?**
- (3) **A.** I would say we had equal
- (4) **responsibility.**
- (5) **Q.** If you turn to page eight of the
- (6) **report, this is the section on I believe**
- (7) **methods; is that right, methods ends on page**
- (8) **eight and then you have major findings and I**
- (9) **would like you to look at page eight in the**
- (10) **second column, the one on the right, the first**
- (11) **full paragraph begins we point to the**
- (12) **following, do you see where I am?**
- (13) **A.** Yes.
- (14) **Q.** That paragraphs reads "We point
- (15) **to the following as among the most interesting**
- (16) **and important results. For ease of**
- (17) **communication we use 'ads' to refer to the**
- (18) **number of times a commercial or set of**
- (19) **commercials was aired." Then there's a**
- (20) **footnote 12 and footnote 12 is what footnote 12**
- (21) **is. Is that accurate, Mr. Seltz, that in the**
- (22) **course of Buying Time 1998 the term ads is used**
- (23) **to refer to the number of times a commercial or**
- (24) **set of commercials was aired?**
- (25) **A.** I think usually if we departed

Page 72

- (1)
- (2) **from that we would say. I think in this**
- (3) **context when it says we use ads to refer to the**
- (4) **number of times a commercial or set of**
- (5) **commercials was aired refers to the summary of**
- (6) **major findings that follows that specifically.**
- (7) **Q.** So that definition of ads only
- (8) **applies to the next two pages?**
- (9) **A.** I'm not sure.
- (10) **Q.** So when the term ads is used in
- (11) **other portions of the report, what is the**
- (12) **reader to understand that to mean?**
- (13) **A.** I think it usually, like I said
- (14) **first, I think it usually means airings and if**
- (15) **we departed from that we would point it out.**
- (16) **Q.** When you were referring to an
- (17) **individual ad, what terminology did you use if**
- (18) **you know?**
- (19) **A.** It depends what you mean by
- (20) **individual ad.**
- (21) **Q.** I'm trying to distinguish if you
- (22) **were trying to identify a particular ad as**
- (23) **opposed to the number of times it aired, how**
- (24) **would you describe -- what word would you use**
- (25) **to describe the particular ad?**

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- (1)
- (2) **A.** It depends if you are talking
- (3) about a distinct product like a commercial that
- (4) was produced by, you know, a Senate candidate
- (5) which included certain words and pictures, we
- (6) would call that a distinct advertisement. It
- (7) depended on the context. Usually if we meant
- (8) – if we said number of ads, it meant number of
- (9) airings, the number of times the commercial was
- (10) aired.
- (11) **Q.** For example, at some point in
- (12) this report you identify the number of unique
- (13) issue ads that ran over the course of 1998, do
- (14) you recall that?
- (15) **A.** I don't know what you are talking
- (16) about.
- (17) **Q.** My question really is what is
- (18) meant by the term unique issue ad, how is that
- (19) term used in your report if you know?
- (20) **A.** It depends on the context. You
- (21) have to show me the passage.
- (22) **Q.** I'm trying to set up a
- (23) vocabulary for you and I to talk about.
- (24) **A.** I think by my memory, you know,
- (25) again this is starting to be a long time ago, I

Page 74

- (1)
- (2) think when we talked about unique ads produced
- (3) over the course of the campaign we were
- (4) referring to distinct ads, not number of
- (5) airings. We were talking about the ad itself
- (6) and it being – like one being distinct from
- (7) another that had different content or visual
- (8) images.
- (9) **MS. BUCKLEY:** We are marking as
- (10) Seltz Exhibit 4 a multi-page document
- (11) bearing I believe the first Bates number
- (12) is BRE 001202 – I can't read the end of
- (13) it. The first page is a storyboard and
- (14) the description on the top is AFL-CIO
- (15) Union Plus and it has a number in
- (16) handwriting 12. Then from there on the
- (17) Bates numbers appear to be legible and
- (18) it's BRE 001223, BRE 001203 through –
- (19) **MR. PAOLELLA:** These are not all
- (20) consecutive.
- (21) **MS. BUCKLEY:** I know, through 205.
- (22) Then we have the next page Bates number
- (23) is slightly cut off, but it's identified
- (24) as ad number 11. It's followed by BRE
- (25) 001215 through BRE 001222. Then we pick

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- (1)
- (2) up with BRE 005449, BRE 001224 through
- (3) 225, BRE 005452, BRE 001226 through 229,
- (4) then we have BRE 005457 through 005460
- (5) and the last page is BRE 001230.
- (6) **(Plaintiff's Exhibit Seltz 4,**
- (7) **Documents, marked for Identification.)**
- (8) **Q.** Let's look at the first page of
- (9) what we marked as Seltz Exhibit 4. Can you
- (10) tell us what it is, what this first page is?
- (11) **A.** It's a storyboard from one of the
- (12) ones that CMAG would have provided to us.
- (13) **Q.** Can you tell whether it's a '98
- (14) storyboard by looking at this document?
- (15) **A.** I can because I remember this ad.
- (16) **Q.** This ad is entitled at least on
- (17) this document AFL/HMO Said No Tell Coats; is
- (18) that right?
- (19) **A.** Yes.
- (20) **Q.** Who entitled it if you will?
- (21) **A.** CMAG provides that.
- (22) **Q.** CMAG assigns the title to the
- (23) individual ad?
- (24) **A.** Yes.
- (25) **Q.** When we were talking before about

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- (1)
- (2) a unique ad, if we assume that this ad was
- (3) aired multiple times, the ad itself, the
- (4) content itself is what you all describe as a
- (5) unique ad, am I getting that straight?
- (6) **A.** Yes.
- (7) **Q.** Why is it that you recognize this
- (8) particular ad, Mr. Seltz?
- (9) **MR. PAOLELLA:** Let me just
- (10) instruct the witness that if his answer
- (11) would involve discussing any of the
- (12) communications he had with his attorney
- (13) in the course of this litigation I
- (14) believe that's privileged and I will
- (15) instruct him not to answer. If you can
- (16) answer the question without using any of
- (17) that information, you can do so.
- (18) **A.** I think that this was an unusual
- (19) ad in that we spent sometime talking about this
- (20) ad in the writing of the book and I got some
- (21) questions about it from Luke McLoughlin after I
- (22) left the Brennan Center. That's part of how I
- (23) remember.
- (24) **Q.** I would like you to turn to page
- (25) 109 of Seltz Exhibit 1 and we can put aside for

## Page 77

- (1)
- (2) the minute Seltz Exhibit 4. This is describing
- (3) figure 4.22 exploring the impact of the bright
- (4) line test. Are you with me?
- (5) **A. Yes, I am.**
- (6) **Q. Page 109 the last sentence reads,**
- (7) "The results show that while 41 percent of
- (8) issue ads that provide information or urge
- (9) action appeared within 60 days of the fall
- (10) election, just 7 percent of those ads
- (11) (consisting of just two spots) appeared within
- (12) 60 days and referred to a candidate", do you
- (13) see that?
- (14) **A. Um-hum, yes.**
- (15) **Q. Is that an accurate statement,**
- (16) Mr. Seltz?
- (17) **A. Yes, it is.**
- (18) **Q. Then we have behind it figure**
- (19) 4.22 exploring the impact of the bright line
- (20) test approach to issue advocacy. Are you
- (21) there?
- (22) **A. Yes, I am.**
- (23) **Q. I note on the second figure**
- (24) entitled proportion of issue ads affected by
- (25) different cut off dates and candidate mention

## Page 78

- (1)
- (2) that there is the figure 7 on the bottom part
- (3) of the chart right above 60 days from election,
- (4) do you see that?
- (5) **A. Yes.**
- (6) **Q. Does that represent the same 7**
- (7) percent that is discussed on page 109?
- (8) **A. Yes, it does.**
- (9) **Q. How was that percentage derived**
- (10) if you know?
- (11) **A. The percentage was derived by**
- (12) **finding out which issue ads that were coded as**
- (13) **genuine issue ads that is providing information**
- (14) **rather than advocating the election or defeat**
- (15) **of a candidate what percentage those ads both**
- (16) **mentioned a candidate for office and appeared**
- (17) **within 60 days of the election, what percent of**
- (18) **all the genuine issue ads aired that day in**
- (19) **terms of number of airings like met those two**
- (20) **criteria.**
- (21) **Q. So what's the numerator, how**
- (22) **would you describe what the numerator is?**
- (23) **A. The numerator, what we refer to**
- (24) **as two spots here which is sort of the unique**
- (25) **ads that we were talking about before was the**

## Page 79

- (1)
- (2) **number of airings of genuine ads that had been**
- (3) **coded as genuine issue ads that mentioned a**
- (4) **candidate and appeared within 60 days of the**
- (5) **election.**
- (6) **Q. And we know from page 109 that**
- (7) **the number of distinct ads is two; is that**
- (8) **right?**
- (9) **A. That's right.**
- (10) **Q. In the numerator that you just**
- (11) **described?**
- (12) **MR. PAOLELLA: Objection.**
- (13) **MS. BUCKLEY: I will strike that.**
- (14) **Q. Let me put it this way, Mr.**
- (15) **Seltz. Do you know how many unique ads were**
- (16) **considered genuine issue ads that mentioned a**
- (17) **candidate and ran within 60 days in the 1998**
- (18) **study?**
- (19) **A. That would be two.**
- (20) **Q. That would be two?**
- (21) **A. Right.**
- (22) **Q. Take a look again at Seltz**
- (23) **Exhibit 4. Can you tell us which two ads they**
- (24) **were?**
- (25) **A. One of them is Exhibit 4.**

## Page 80

- (1)
- (2) **Q. The first page?**
- (3) **A. The first page. The other is the**
- (4) **second page.**
- (5) **Q. Let's go back to Exhibit 4 and so**
- (6) **the first page is ad number 12; is that right?**
- (7) **A. Yes.**
- (8) **Q. That's entitled AFL/HMO Said No**
- (9) **Tell Coats and that's one of the two, correct?**
- (10) **A. Yes.**
- (11) **Q. Then the second page is ad number**
- (12) **318 and that title is CCS/No Matter Who Goes To**
- (13) **DC; is that right?**
- (14) **A. That's right.**
- (15) **Q. Let's go back to the 7 percent**
- (16) **figure. I take it what you're saying is that**
- (17) **you calculated the number of airings of ads 12**
- (18) **and 318 within 60 days of the election to come**
- (19) **up with the numerator that resulted in the 7**
- (20) **percent figure; is that right?**
- (21) **MR. PAOLELLA: Objection.**
- (22) **A. It's actually not entirely**
- (23) **accurate.**
- (24) **Q. Can you explain how I'm wrong?**
- (25) **A. Sure, we calculated -- ad number**

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(1)  
 (2) **12 this AFL ad is what we called in the book**  
 (3) **and what had become sort of common parlance**  
 (4) **among people who study political advertising as**  
 (5) **a cookie-cutter ad. The AFL would produce this**  
 (6) **commercial and would be identical until**  
 (7) **basically the last frame where it would say**  
 (8) **here it says call Senator Coats and tell him to**  
 (9) **vote no on S.2330. They would run this ad in a**  
 (10) **lot of different media markets around the**  
 (11) **country.**

(12) **Q. They being?**

(13) **A. AFL and they would change the**  
 (14) **final ad so that in North Carolina, for**  
 (15) **example, it would list the Senator from North**  
 (16) **Carolina. So that it meant that there were**  
 (17) **several different versions of this ad. Because**  
 (18) **all of them were so similar, CMAG was often not**  
 (19) **able to capture in storyboard form as unique**  
 (20) **ads each distinct spot that was aired in the 12**  
 (21) **or 13 or 14 whatever number of media markets**  
 (22) **that they aired these cookie-cutter spots. We**  
 (23) **would get -- I think we got two distinct**  
 (24) **airings of this ad. One of them depicted**  
 (25) **Senator Coats' name and I think the other one**

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(1)  
 (2) **depicted Senator Snowe in Maine.**  
 (3) **Basically for the two that we had**  
 (4) **storyboards for, it actually didn't meet the**  
 (5) **two criteria of the Snowe-Jeffords test the 60**  
 (6) **day mentions a candidate test so they would**  
 (7) **not have been included as part of the**  
 (8) **numerator. The airings of this ad -- what we**  
 (9) **did have from CMAG were -- it showed where this**  
 (10) **ad ran in different media markets around the**  
 (11) **country so what we did to get a portion of this**  
 (12) **numerator was to look at where the ad aired**  
 (13) **where an actual candidate was up for office,**  
 (14) **was up for election, Coats and Snowe weren't,**  
 (15) **but when we looked at the list there were a**  
 (16) **portion of those media markets where there**  
 (17) **would have been a candidate up for election.**

(18) **Q. I think you explained as part of**  
 (19) **that answer that this ad was run in many**  
 (20) **places, but you only had storyboards for the ad**  
 (21) **as it ran in Maine and Indiana?**

(22) **A. So what we would do is we would**  
 (23) **first call CMAG and make sure that they didn't**  
 (24) **have -- we would call both Ken Goldstein and**  
 (25) **CMAG to make sure that they didn't have a copy**

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(1)  
 (2) **of the storyboard that we were somehow missing**  
 (3) **that actually depicted which Senator was named**  
 (4) **in the ad. We also knew from the political**  
 (5) **contacts that the AFL was targeting Republican**  
 (6) **Senators through this ad campaign which is**  
 (7) **basically true in most of the ads that the AFL**  
 (8) **ran they were opposing -- they were urging**  
 (9) **action on a -- they were urging constituents of**  
 (10) **Republican Senators to contact that Senator so**  
 (11) **it was usually a Republican office holder named**  
 (12) **in that ad.**

(13) **Q. How did you know that?**

(14) **A. We knew that from other ads that**  
 (15) **we had of the AFL and we knew it from newspaper**  
 (16) **reports. What I would do like I was saying is**  
 (17) **call -- I would call CMAG. Then the other --**  
 (18) **we would take two other steps as well. Later**  
 (19) **on in the study when we tried to definitively**  
 (20) **link each of these airings in different media**  
 (21) **markets of these cookie-cutter ads to a**  
 (22) **particular election we also relied on**  
 (23) **congressional expert Paul Herrnson to help us**  
 (24) **link these ads to election. This is something**  
 (25) **Jon Krasno was in direct contact with Professor**

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(1)  
 (2) **Herrnson on that, but my understanding and it's**  
 (3) **listed on the last page I believe of Buying**  
 (4) **Time '98 was that they would use as much**  
 (5) **contextual information as possible to try to**  
 (6) **find out which Senator had been named in this**  
 (7) **ad in the particular media market airing of**  
 (8) **this cookie-cutter ad so, for example, they**  
 (9) **could have -- if we didn't have the storyboard**  
 (10) **that featured Senator Coats' name, but we knew**  
 (11) **that -- we saw the ad aired in Indianapolis,**  
 (12) **for example, if CMAG didn't have a copy of the**  
 (13) **storyboard, if Ken didn't have a copy of the**  
 (14) **storyboard and if in addition to talking to**  
 (15) **Paul who would do his own investigation we**  
 (16) **could also look at the Indianapolis papers**  
 (17) **because they would often report on if the AFL**  
 (18) **had purchased -- made a large ad buy, they**  
 (19) **would say there would be a story AFL-CIO**  
 (20) **launches ad campaign against or not against in**  
 (21) **this case probably not against Senator Coats,**  
 (22) **but, you know, launches ads about HMO proposal**  
 (23) **in the Senate. There is -- possibly there**  
 (24) **could have been that sort of thing. It also**  
 (25) **occurred to us to call the AFL-CIO, but my --**

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- (1)
- (2) in addition to this being a lot, you know,
- (3) almost a year at that point, more than a year
- (4) after the '98 election, they weren't going to
- (5) be particular forthcoming.
- (6) Q. Did you call them?
- (7) A. I had done a -- one of the first
- (8) research projects I did at the Brennan Center
- (9) was to try to get numbers on -- before we had
- (10) the CMAG data we were relying to some extent on
- (11) the self reporting of groups for how much they
- (12) had spent and for Jon Krasno, I was making some
- (13) calls to different interest groups we knew had
- (14) been active as issue advertisers. They were
- (15) not forthcoming with their numbers because
- (16) they, you know, they wanted to first -- they
- (17) kept saying, you know, we are not in the
- (18) business of influencing elections period so I
- (19) had some experience before. I don't remember
- (20) actually -- I don't remember specifically
- (21) calling the AFL about this ad, but that was one
- (22) of the tools that we had to find out as much
- (23) information as we could about these
- (24) cookie-cutter ads.
- (25) Q. If you called the AFL-CIO, you

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- (1)
- (2) had a whole -- if I was lucky enough to get
- (3) somebody on the phone, I would probably not
- (4) just ask them how much money they spent. I
- (5) think Jon had a list of things that he was
- (6) trying to find out beyond amount of money.
- (7) Q. You already told us that you know
- (8) where this ad was run. You just don't know
- (9) what Senator or other office holder was named
- (10) in it in each of the markets in which it ran;
- (11) is that right?
- (12) A. The final decision on which -- in
- (13) the end there were markets that -- let me
- (14) back-up. The decision in finding out if a
- (15) candidate for office had been mentioned, you
- (16) know, was at the end of that series of
- (17) investigations there was the involvement of
- (18) Paul Herrnson with Jon was not something that I
- (19) was -- I was not part of that final sort of
- (20) step of the process and that, you know, they
- (21) may have had -- I don't remember exactly how we
- (22) decided whether or not a candidate had been
- (23) named, but in reading back over certainly the
- (24) explanation and methodology of Buying Time '98
- (25) my sense was that that final step was very

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- (1)
- (2) could have gotten a definitive answer as to
- (3) what markets these ran in and what Senators
- (4) were named; isn't that right?
- (5) MR. PAOLELLA: Objection, calls
- (6) for speculation.
- (7) A. I have no idea. My suspicion is
- (8) that and I'm speculating is that they would
- (9) have said -- they would have known that -- we
- (10) knew which markets they aired in.
- (11) Q. How do you know that?
- (12) A. That's in the data set from CMAG.
- (13) My experience from before was that they were
- (14) not going to -- there was no reason for them to
- (15) help me as a researcher.
- (16) Q. I take it the experience you had
- (17) before was relating to asking them questions
- (18) about how much money was spent in the 1998
- (19) elections; is that right?
- (20) A. That was one of the questions.
- (21) Q. Did you have any other questions
- (22) for them before?
- (23) A. Beyond dollar figures?
- (24) Q. Correct.
- (25) A. I don't remember specifically. I

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- (1)
- (2) important, the consultation with Paul Herrnson
- (3) and sort of final mining of contextual clues
- (4) was very important.
- (5) Q. This was your best guess, wasn't
- (6) it?
- (7) A. What is?
- (8) Q. What markets they aired in and
- (9) what Senators -- what Senators were named in
- (10) the markets in which they aired?
- (11) A. I'm not saying that at all. I'm
- (12) saying that I don't remember exactly the final
- (13) decision. I can remember the process that we
- (14) went about deciding whether this ad fit the
- (15) criteria of the Snowe-Jeffords test. I can
- (16) remember this series of steps we took. The
- (17) final judgment about whether certain candidates
- (18) had been named, I don't remember being part of.
- (19) The fact that Paul Herrnson is specifically
- (20) thanked, I remember this period of time where
- (21) Paul Herrnson was doing a lot of work with Jon
- (22) that I wasn't involved in towards the end of
- (23) this project makes me think that, you know,
- (24) there was something beyond what I remember
- (25) about calling CMAG, searching newspaper

- (1)
- (2) **articles and talking to Ken. I'm not at all**
- (3) **saying we just took a guess in the end.**
- (4) **Q. Let's start with each one. CMAG**
- (5) **did not collect storyboards for every time this**
- (6) **ad ran across the country; isn't that right?**
- (7) **A. A storyboard? They didn't have**
- (8) **separate storyboards for each time it ran --**
- (9) **for different markets, right.**
- (10) **Q. As a matter of fact, when their**
- (11) **computer recognized an ad that had already**
- (12) **captured, it didn't capture again; isn't that**
- (13) **right?**
- (14) **A. It would not print out another**
- (15) **storyboard if it thought it was identical to**
- (16) **one that had already captured the broadcast**
- (17) **information for.**
- (18) **Q. In fact, CMAG only picked up two**
- (19) **ads with the content of number 12 across the**
- (20) **country, one identifying Senator Snowe and one**
- (21) **identifying Senator Coats; isn't that right?**
- (22) **A. That's what I remember the**
- (23) **Brennan Center having in terms of storyboards**
- (24) **for this ad were those two.**
- (25) **Q. If this ad had run multiple times**

- (1)
- (2) **in other states and CMAG had not captured it**
- (3) **because its computer recognized it as the same**
- (4) **ad, how would they know what Senator was named**
- (5) **at the end of the ad, how would CMAG know?**
- (6) **MR. PAOLELLA: Objection.**
- (7) **A. I don't know.**
- (8) **Q. You said you called CMAG to ask**
- (9) **them to help you with this information?**
- (10) **A. Right.**
- (11) **Q. What information did they have**
- (12) **available to help you discern this?**
- (13) **A. That was mostly a question of**
- (14) **finding out whether they had storyboards that**
- (15) **for some reason had not made it to us.**
- (16) **Q. CMAG could give you the**
- (17) **storyboards that they had?**
- (18) **A. That's what I would be**
- (19) **requesting.**
- (20) **Q. Do you have any reason to believe**
- (21) **that CMAG independently had data showing what**
- (22) **Senators were identified in ads aired in other**
- (23) **markets with the same content as ID number 12?**
- (24) **A. No.**
- (25) **Q. You mentioned Professor Herrnson**

- (1)
- (2) **was important in this process. What**
- (3) **information did Professor Herrnson have that**
- (4) **was of relevance to this issue that you were**
- (5) **aware of?**
- (6) **A. You would have to talk to**
- (7) **Professor Herrnson. Like I said, I wasn't**
- (8) **particularly involved in those conversations**
- (9) **between Jon Krasno and Professor Herrnson.**
- (10) **Q. Do you know whether he had any**
- (11) **factual data as to which markets the ads were**
- (12) **aired in and what Senators were named in it?**
- (13) **A. He would have had whatever Jon**
- (14) **Krasno shared with him from the database.**
- (15) **Q. You didn't know what Senators**
- (16) **were named in markets outside of Maine and**
- (17) **Indiana, did you?**
- (18) **A. We didn't have the storyboards**
- (19) **for them, right.**
- (20) **Q. Did you know independently of**
- (21) **whether you had the storyboards?**
- (22) **A. Not at first.**
- (23) **Q. You already described the process**
- (24) **of deduction to try to identify which Senators**
- (25) **might have been named, haven't you?**

- (1)
- (2) **A. It wasn't really deduction. I**
- (3) **mean if there was -- it wasn't just a matter of**
- (4) **it would have made sense politically for the**
- (5) **AFL to air an ad that named Senator X. My**
- (6) **sense was that we were trying to look for**
- (7) **something -- the process involved looking for**
- (8) **something more definitive than that.**
- (9) **Q. What would be definitive in your**
- (10) **opinion that would lead you to conclude that**
- (11) **one or more Senator should be included in the**
- (12) **data or not?**
- (13) **A. Say the last part of your**
- (14) **question.**
- (15) **(Record read.)**
- (16) **Q. You mentioned that you wanted**
- (17) **information more definitive. My question is**
- (18) **what was definitive in your view?**
- (19) **A. In my opinion speaking now three**
- (20) **years later and again, I wasn't -- I don't**
- (21) **remember being involved in the sort of final**
- (22) **decision about this, but it was something like**
- (23) **a newspaper account of an ad campaign where it**
- (24) **mentions that the AFL has urged people to call**
- (25) **Senator Faircloth. We would then be able to**



(1)

(2) **say in my opinion pretty definitively that**

(3) **Senator Faircloth was the one named in that**

(4) **version of this cookie-cutter ad.**

(5) **Q. Where is Senator Faircloth from?**

(6) **A. North Carolina.**

(7) **Q. How many other ads did you have**

(8) **to do this same process for, in other words,**

(9) **how many other ads that you analyzed in the**

(10) **context of Buying Time 1998 did you have to**

(11) **sort through and determine where they had been**

(12) **aired, whether a candidate for office had been**

(13) **named, the same process that you described in**

(14) **analyzing this AFL-CIO ad number 12 which is**

(15) **page one of Seltz 4?**

(16) **A. First of all, we always knew**

(17) **where it was aired so that wasn't something**

(18) **that we had to investigate.**

(19) **Q. You knew that from CMAG?**

(20) **A. Right. I don't remember how many**

(21) **- essentially asking how many cookie-cutter**

(22) **ads there were. I mean I don't remember how**

(23) **many ads we would have had to make certain -**

(24) **we would have had to do this kind of**

(25) **investigation or make this kind of judgment**

(1) -

(2) **call to link the ad to a particular race. I**

(3) **don't remember how many there were.**

(4) **Q. Do you remember it being more**

(5) **than this one?**

(6) **A. Probably more than this one. I**

(7) **don't remember. It was more than this one.**

(8) **Q. Why did you have to do that**

(9) **cookie-cutter analysis for ads other than this**

(10) **one?**

(11) **A. We wanted to make the information**

(12) **as comprehensive and informative as possible**

(13) **so, for example, if we wanted to - if we were**

(14) **doing a profile of a particularly highly**

(15) **contested race like we did for 50 different**

(16) **racess in Chapter 7, we would want to be able to**

(17) **link an ad to a particular election for, you**

(18) **know, just to make sure that we had all the**

(19) **information about that race as possible so we**

(20) **could link an ad. If we were doing a table**

(21) **about contested elections verses not contested**

(22) **elections, we wanted to make sure we were**

(23) **putting the issue ad activity in the right**

(24) **category.**

(25) **Q. Let's limit ourselves for a**

(1)

(2) **second to issue ads run by groups. Do you know**

(3) **whether there were any other cookie-cutter**

(4) **issue ads run by groups?**

(5) **A. Other than number 12?**

(6) **Q. Correct.**

(7) **A. I would imagine so. I don't**

(8) **remember which ads.**

(9) **Q. Do you know whether you analyzed**

(10) **any cookie-cutter ads by issue ads -**

(11) **cookie-cutter issue ads by groups to identify**

(12) **in the same way you analyzed the AFL-CIO ad**

(13) **namely to try to identify which markets which**

(14) **Senators were named or candidates were named in**

(15) **the individual market? I'm trying to find out**

(16) **if you did the same process for any other issue**

(17) **ads?**

(18) **MR. PAOLELLA: When you talk about**

(19) **issue ads, are you confining that to ads**

(20) **that were coded as genuine issue ads**

(21) **according to the coding protocol or**

(22) **using the term in a more general sense?**

(23) **Q. I was trying to identify as**

(24) **between what you all call sham issue ads and**

(25) **genuine issue ads run by groups whether you did**

(1)

(2) **the similar kind of analysis of markets that**

(3) **you did for ad 12 for the others?**

(4) **A. I'm sure we did, but I don't**

(5) **remember which.**

(6) **Q. Why?**

(7) **A. Why did we do that analysis?**

(8) **Q. I understand why you did the**

(9) **analysis for ad 12. I'm trying to figure out**

(10) **in what other context you would do that**

(11) **analysis for an issue ad?**

(12) **A. Both genuine and so-called sham**

(13) **issue ads?**

(14) **Q. Right.**

(15) **A. I just listed two examples in my**

(16) **previous answer.**

(17) **Q. I thought you were referring to**

(18) **candidate ads?**

(19) **A. No, I was referring to issue ads.**

(20) **If there was a candidate ad, it would usually**

(21) **list the candidate's name, the candidate might**

(22) **be depicted. It would be clear for the paid**

(23) **for line. CMAG would identify it - it would**

(24) **have been very easy to link it to an election.**

(25) **There was no speculation. There was no further**

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- (1)
- (2) investigation that we would have had to do so
- (3) the process that I had talked about for linking
- (4) issue ads to races was important for all the
- (5) others just because the book needed to be as
- (6) comprehensive as possible so there are other
- (7) figures beyond the one that we have been
- (8) talking about the 7 percent figure where it was
- (9) relevant.
- (10) Q. Why did you have trouble linking
- (11) issue ads to races in some instances?
- (12) A. Because we are talking about
- (13) cookie-cutter ads where we would have had
- (14) exactly the same issue as with ad number 12.
- (15) It's the same issue with another ad. Just what
- (16) we have been talking about.
- (17) Q. Why don't you explain for the
- (18) record what a cookie-cutter ad is in Brennan
- (19) Center terminology?
- (20) A. I'm not sure what you mean by
- (21) Brennan Center terminology.
- (22) Q. As used by you all at the Brennan
- (23) Center?
- (24) A. Well, there is an explanation on
- (25) page 198 of the Buying Time '98, but a

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- (1)
- (2) cookie-cutter ad is often -- It's an ad where a
- (3) group or a party would have run an ad with the
- (4) same images and text throughout all of the ads
- (5) except for possibly the final frame or
- (6) frame-and-a-half which is the final couple of
- (7) seconds and it would often explain -- it would
- (8) often -- it would talk about an issue that
- (9) could be applicable to any number of
- (10) congressional districts or Senate races and so
- (11) all the advertiser would need to do is change
- (12) the tag line which is often a call Senator X or
- (13) tell Congressman Y to do this or that and
- (14) possibly changing the phone number so that's a
- (15) cookie-cutter ad.
- (16) Q. In your opinion are cookie-cutter
- (17) ads more likely to be genuine issue ads as the
- (18) Brennan Center defines it or sham issue ad or
- (19) don't you know?
- (20) A. I don't know.
- (21) Q. Does the fact that a
- (22) cookie-cutter ad is run in states where there
- (23) is no election tend to suggest it's not a sham
- (24) ad or not?
- (25) A. If an ad was aired in a state

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- (1)
- (2) where there's no election, in a market where
- (3) there's no election, and was run by a group, my
- (4) guess is it would be more likely to be a
- (5) genuine issue ad.
- (6) Q. More likely to be the same ad, be
- (7) a genuine issue ad in a state where there was
- (8) an election?
- (9) A. It would depend on the ad. It's
- (10) hard to talk about it in the abstract.
- (11) Q. Let's take ad number 12. I think
- (12) you told us that it was run in Maine?
- (13) A. This was run in Indiana.
- (14) Q. Sorry, you told us that it was
- (15) run in Indiana and Senator Coats was not up for
- (16) election; is that right?
- (17) A. Yes.
- (18) Q. I think you also said that it was
- (19) run in states and identified as Senator where
- (20) there was an election, is that right, that's
- (21) the process you went through in sorting through
- (22) which times it was run in a state where there
- (23) was an election and which times it was run in a
- (24) state where there wasn't; is that right?
- (25) MR. PAOLELLA: Objection.

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- (1)
- (2) A. Yes, that's right.
- (3) Q. Is the fact that it was run and
- (4) I'm talking about ad 12 now in states where
- (5) there was not election and states where there
- (6) was an election suggest one way or another that
- (7) it's a genuine issue ad or a sham issue ad?
- (8) A. Sorry, can you read that back or
- (9) can you repeat it.
- (10) MS. BUCKLEY: I will strike it
- (11) because it was kind of convoluted.
- (12) Q. I think you already told us that
- (13) ad number 12 ran in Indiana is a genuine issue
- (14) ad?
- (15) A. It was coded as a genuine issue
- (16) ad in our data set.
- (17) Q. Assume it ran in Pennsylvania and
- (18) named Senator Specter and Senator Specter was
- (19) up for re-election in Pennsylvania. Is that ad
- (20) the Pennsylvania version of number 12 an issue
- (21) ad or a sham ad, a genuine issue ad or a sham
- (22) issue ad?
- (23) MR. PAOLELLA: You're asking the
- (24) witness' opinion of whether that would
- (25) be --

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- (1)
- (2) **MS. BUCKLEY:** Yes.
- (3) **A.** I think that remains a genuine
- (4) issue ad.
- (5) **Q.** Even though it identifies a
- (6) candidate for Federal office?
- (7) **A.** Right, that's what we were trying
- (8) to investigate through that figure 4.22.
- (9) **Q.** Ad number 12 doesn't change -- I
- (10) mean you're coding of ad number 12 doesn't
- (11) change depending on the state in which it
- (12) aired, correct, every airing is a genuine issue
- (13) ad?
- (14) **MR. PAOLELLA:** You're asking
- (15) whether the coding as reflected in the
- (16) database changed or whether Mr. Seltz'
- (17) opinion of how it should have been coded
- (18) changed?
- (19) **MS. BUCKLEY:** The former.
- (20) **A.** In the database it's only going
- (21) to get coded once per storyboard so once it's
- (22) coded as a genuine issue ad it's going to be a
- (23) genuine issue ad in all the markets it ran in.
- (24) **Q.** You already told us that there
- (25) are just two spots, is that the right word,

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- (1)
- (2) later, but let's not quibble.
- (3) **A.** No, I don't know what that is.
- (4) **Q.** How would you find that out?
- (5) **A.** Again, I would have to go into
- (6) the database.
- (7) **Q.** The numerator is not as limited
- (8) to ads that ran within the last 60 days of the
- (9) election or airings within the last 60 days of
- (10) the election; isn't that right?
- (11) **A.** Yes, that's true.
- (12) **Q.** Is the denominator so limited?
- (13) **A.** The denominator is not limited to
- (14) ads that ran in the last 60 days of the
- (15) election.
- (16) **Q.** Just so we are clear, the
- (17) numerator and denominator is the numerator and
- (18) denominator that resulted in the 7 percent
- (19) figure that's identified on pages 109 and 110,
- (20) right?
- (21) **A.** Yes.
- (22) **Q.** Describe in words what the
- (23) denominator for the 7 percent figure is made up
- (24) of?
- (25) **A.** The denominator for the 7 percent

Page 102

- (1)
- (2) that were determined to be genuine issue ads
- (3) that would be unfairly caught by
- (4) Snowe-Jeffords; is that right?
- (5) **A.** I don't think we used the words
- (6) unfairly caught, but they would meet the
- (7) criteria for coming under the regulations of
- (8) Snowe-Jeffords.
- (9) **Q.** Those ads were identified as
- (10) number 12 and number 318; is that right?
- (11) **A.** Right. It's a portion of the
- (12) airings of number 12 plus the second ad that
- (13) ran in Nevada made up the numerator.
- (14) **Q.** Do you know what the actual
- (15) number of the numerator is?
- (16) **A.** No, I don't.
- (17) **Q.** How would you find that out?
- (18) **A.** I would have to go back into the
- (19) database with Jon Krasno's assistance.
- (20) **Q.** Do you know what the denominator
- (21) is?
- (22) **A.** The actual number?
- (23) **Q.** Yes.
- (24) **A.** Right now three years later?
- (25) **Q.** I think it's about two years

Page 104

- (1)
- (2) figure is made up of the number of airings of
- (3) all ads that were coded as genuine issue ads
- (4) throughout the course of the study, the period
- (5) of time that the study covered.
- (6) **Q.** Is it all genuine issue ads
- (7) period or all genuine issue ads that mention a
- (8) Federal candidate?
- (9) **A.** It's all genuine issue ads.
- (10) **Q.** The reason I'm confused, Mr.
- (11) Seltz, is the heading on this chart says
- (12) proportion of issue ads affected by different
- (13) cut off dates and candidate mention which would
- (14) lead me to believe the figures in that chart
- (15) reflect data that includes a candidate
- (16) mentioned. You already told us that the 7
- (17) percent figure, the numerator of that figure is
- (18) for all genuine issue ads run within 60 days
- (19) which identified a Federal candidate minus
- (20) airings --
- (21) **A.** No.
- (22) **Q.** Stop, what am I saying --
- (23) **A.** That's it. You put it correctly.
- (24) You characterized the numerator.
- (25) **Q.** I'm trying to find out if the

Page 105

- (1)
- (2) denominator also looks at ads that identify a
- (3) Federal candidate just like the numerator does?
- (4) **A. You're trying to find out what?**
- (5) **Q. If in the denominator one of the**
- (6) **criteria is that the ad identify a Federal**
- (7) **candidate?**
- (8) **A. No, they don't. It's all ads**
- (9) **that were coded as genuine issue ads.**
- (10) **Q. Is the denominator the same for**
- (11) **all figures in the top chart on 4.22 and the**
- (12) **bottom chart on 4.22, are you measuring it**
- (13) **against the same group of ads namely genuine**
- (14) **issue ads over the course of the election?**
- (15) **A. The bottom figure is -- the**
- (16) **yellow line, the bottom line is the percentage**
- (17) **of genuine issue ads that met both the date and**
- (18) **the candidate mention the criteria at different**
- (19) **points depending on the date so that the top**
- (20) **line in the bottom figure is the proportion of**
- (21) **issue ads that would have been affected by both**
- (22) **criteria of the Snowe-Jeffords test depending**
- (23) **on and it shows the progression of the date.**
- (24) **Am I answering your question?**
- (25) **Q. You have kind of lost me. The**

Page 106

- (1)
- (2) top line measures ads --
- (3) **A. The top line refers to issue ads**
- (4) **that were coded as electioneering.**
- (5) **Q. Or in other words coded as sham**
- (6) **issue ads?**
- (7) **A. They were not coded as sham issue**
- (8) **ads. They were -- the word sham is not in the**
- (9) **coding protocol.**
- (10) **Q. I'm trying to make it clear here.**
- (11) **For my purposes an ad coded as an**
- (12) **electioneering ad I'm referring to as a sham**
- (13) **issue ad just for shorthand, not asking you to**
- (14) **sign on to that as you sit there, but it helps**
- (15) **make it a little easier. The top line measures**
- (16) **ads promoting candidates i.e. sham ads, the**
- (17) **bottom line measures genuine issue ads or ads**
- (18) **providing information to use the words of the**
- (19) **chart; is that right?**
- (20) **A. Yes, that's what they are**
- (21) **depicting.**
- (22) **Q. So does this tell us that 81**
- (23) **percent of ads coded as electioneering which**
- (24) **might be referred to as sham issue ads will be**
- (25) **prohibited by the Snowe-Jeffords test?**

Page 107

- (1)
- (2) **MR. PAOLELLA: I will object to**
- (3) **the word prohibited because I don't**
- (4) **think it correctly characterizes what**
- (5) **the Snowe-Jeffords Act does. I think**
- (6) **regulated is a more appropriate word.**
- (7) **MS. BUCKLEY: Either one.**
- (8) **Q. Affected by?**
- (9) **MR. PAOLELLA: That's fine too.**
- (10) **A. What was the question?**
- (11) **MS. BUCKLEY: Can you go back and**
- (12) **read the question, please.**
- (13) **(Record read.)**
- (14) **A. It tells us that 81 percent of**
- (15) **issue ads, you said ads in the question, that**
- (16) **were coded as electioneering ads making them in**
- (17) **your so-called sham issue ads would have come**
- (18) **under the regulatory, yes, regime of**
- (19) **Snowe-Jeffords.**
- (20) **Q. What are the characteristics of**
- (21) **the other 19 percent that makes them not**
- (22) **captured by Snowe-Jeffords?**
- (23) **A. Where do you get 19 percent?**
- (24) **Q. The difference between 81 and**
- (25) **100?**

Page 108

- (1)
- (2) **A. Seven percent -- that's not**
- (3) **really what's going on here. I mean what this**
- (4) **graph depicts is that 88 percent of issue ads**
- (5) **would have come under the Snowe-Jeffords test.**
- (6) **Of that 88 percent 81 percent were so-called**
- (7) **sham issue ads. Seven percent were coded as**
- (8) **genuine issue ads. The other 12 percent I'm**
- (9) **assuming and I don't know were probably coded**
- (10) **as unsure or unclear as to whether they were**
- (11) **electioneering or genuine issue ads in question**
- (12) **6 of the coding protocol.**
- (13) **Q. Can you tell me what the**
- (14) **numerator is made up of for the 81 percent**
- (15) **figure?**
- (16) **A. The numerator is ads that --**
- (17) **issue ads that were coded as promoting**
- (18) **candidates.**
- (19) **Q. They were coded as electioneering**
- (20) **ads?**
- (21) **A. Yeah, I mean the language is in**
- (22) **the coding protocol in question I believe it's**
- (23) **question 6. The language would have been**
- (24) **generate support/opposition for candidate.**
- (25) **They would not have said electioneering in**

(1)

(2) **there, but that's what they are referring to.**

(3) **Q. So the numerator is ads coded as**

(4) **electioneering?**

(5) **A. Issue ads coded as**

(6) **electioneering.**

(7) **Q. Okay, that ran within 60 days of**

(8) **an election?**

(9) **A. At that -- that 81 percent**

(10) **depicts 60 days from an election.**

(11) **Q. That identified a Federal**

(12) **candidate?**

(13) **A. Yes, the bottom graph also adds**

(14) **the -- has the criteria names a candidate.**

(15) **Q. That's where I am. I'm on the 81**

(16) **percent on the bottom graph right above 60 days**

(17) **from election and I'm trying to figure out what**

(18) **that tells me so we have issue ads coded as**

(19) **electioneering within 60 days of an election**

(20) **that identify a candidate for Federal office,**

(21) **that's the numerator for the 81 percent, right?**

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

(23) **Q. What's the denominator?**

(24) **A. The denominator is issue ads**

(25) **that -- the denominator at this point on the**

(1)

(2) **aired during the course of year. If I -- yes.**

(3) **Q. The year being 1998?**

(4) **A. Right.**

(5) **A. I might have misspoke earlier**

(6) **when we were talking about the denominator for**

(7) **that 7 percent.**

(8) **Q. So now we have established the**

(9) **denominator for the 7 percent is all issue ads**

(10) **run by groups in 1998 period, correct?**

(11) **A. The denominator -- I managed to**

(12) **confuse myself in the last 10 minutes.**

(13) **Q. Why don't we go through some**

(14) **documents which might help you along the way**

(15) **and we will come back to this.**

(16) **MS. BHATTACHARYYA: When do you**

(17) **plan on breaking for lunch?**

(18) **MS. BUCKLEY: We can do it now.**

(19) **(Luncheon recess taken at 1:20**

(20) **p.m.)**

(21)

(22)

(23)

(24)

(25)

(1)

(2) **graph above 60 days from the election refers to**

(3) **the proportion of issue ads that were coded as**

(4) **providing information that ran within 60 days**

(5) **of an election and featured a candidate.**

(6) **Q. That's the denominator?**

(7) **A. No, I thought you were asking**

(8) **about the numerator for the 7 percent.**

(9) **Q. No. We have gone that road. I'm**

(10) **trying to figure out what is the denominator.**

(11) **You told me what the numerator is that leads me**

(12) **to the 81 percent figure we are talking about**

(13) **and I'm trying to figure out what the**

(14) **denominator is?**

(15) **A. For the 81 percent?**

(16) **Q. Correct.**

(17) **A. The denominator is all issue ads**

(18) **aired during the course of the year.**

(19) **Q. It's not the same denominator as**

(20) **the 7 percent, is it?**

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

(22) **Q. What's the denominator for the 7**

(23) **percent, all issue ads aired over the course of**

(24) **a year?**

(25) **A. Yes, it is, it is all issue ads**

(1)

(2) **AFTERNOON SESSION**

(3) **(Time Noted: 2:10 p.m.)**

(4)

(5) **DANIEL SELTZ, resumed and testified**

(6) **as follows:**

(7)

(8) **CONTINUED EXAMINATION**

(9) **BY MS. BUCKLEY:**

(10) **MS. BUCKLEY: Let's mark as Seltz**

(11) **Exhibit 5 a document with a cover sheet**

(12) **Seltz computer files 10, Bates number**

(13) **BRE 013516 followed by two sheets BRE**

(14) **013785 and BRE 013803.**

(15) **(Plaintiff's Exhibit Seltz 5,**

(16) **Documents, Bates labeled BRE 013516, BRE**

(17) **013785 and BRE 013803, marked for**

(18) **Identification.)**

(19) **Q. Before the break, Mr. Seltz, we**

(20) **were discussing the numerator and denominators**

(21) **of the seven percent and 81 percent figures**

(22) **reflected in the bottom chart on figure 4.22 of**

(23) **Buying Time 1998, do you remember that?**

(24) **A. Yes.**

(25) **Q. We have gone to your computer**

Page 113

- (1)
- (2) files, packet number 10 which you previously
- (3) identified as containing Excel spreadsheets
- (4) provided to the graphic designers in electronic
- (5) form and we have excerpted two pages which seem
- (6) to deal with figure 4.22, do you see that?
- (7) **A. Yes.**
- (8) **Q. I'm dealing with the first page**
- (9) **which is BRE 013785 and I'm looking at 4.22 B,**
- (10) **the second half of that chart?**
- (11) **A. Yes.**
- (12) **Q. If we looked at the line 60 days**
- (13) **from election, the next figure is 12,532, what**
- (14) **does that represent if you know?**
- (15) **A. If you look back at the textural**
- (16) **explanation to 422 what I initially said --**
- (17) **Q. Where would that be?**
- (18) **A. That's page 109 of Exhibit 1,**
- (19) **Buying Time '98, what I said at first when we**
- (20) **first started discussing this figure was**
- (21) **actually correct which was that figures 422 A**
- (22) **and 422 B display the results of our**
- (23) **examination issue ads were divided to two**
- (24) **groups so in fact in that bottom graph of 422**
- (25) **in that sort of -- in the point where we are**

Page 114

- (1)
- (2) **talking about 60 days from the election they**
- (3) **are in fact different denominators.**
- (4) **Q. Okay, so we are back on page 110**
- (5) **of Buying Time '98?**
- (6) **A. That's right.**
- (7) **Q. We are looking at the two graphs?**
- (8) **A. Right.**
- (9) **Q. Under 4.22?**
- (10) **A. Yes.**
- (11) **Q. We are at the bottom of the table**
- (12) **and focusing back on the 7 percent and 81**
- (13) **percent figures which appear above the entry 60**
- (14) **days from the election; is that right?**
- (15) **A. That's right.**
- (16) **Q. You're about to tell me that**
- (17) **their denominators are different, is that it?**
- (18) **A. That's right.**
- (19) **Q. What's the difference?**
- (20) **A. As I said earlier, the 7 percent**
- (21) **refers to genuine -- ads coded as genuine issue**
- (22) **ads as providing information. The 81 percent**
- (23) **refers to electioneering issue ads, ads that**
- (24) **were coded as advocating or providing**
- (25) **opposition or support for a particular**

Page 115

- (1)
- (2) **candidate.**
- (3) **Q. Let me say it back to you. The**
- (4) **denominator for the 7 percent figure is all**
- (5) **issue ads coded as genuine in 1998?**
- (6) **A. Yes, the airings, the number of**
- (7) **airings throughout the year.**
- (8) **Q. Is it only those that identify a**
- (9) **Federal candidate or all of them?**
- (10) **A. Is what?**
- (11) **Q. The denominator?**
- (12) **A. It's all genuine issue ads.**
- (13) **Q. Whether or not they identify a**
- (14) **Federal candidate?**
- (15) **A. Right, because we found out --**
- (16) **yes, that's correct.**
- (17) **Q. In the year 1998?**
- (18) **A. Yes.**
- (19) **Q. The numerator we already talked**
- (20) **about at great length and that's genuine issue**
- (21) **ads that do identify a Federal candidate that**
- (22) **are aired within 60 days of the election minus**
- (23) **the AFL-CIO ads in states where there was no**
- (24) **election, correct?**
- (25) **A. Yeah, the last thing you said is**

Page 116

- (1)
- (2) **superfluous because it's not -- we would not**
- (3) **have counted them if they didn't have a**
- (4) **candidate up for election.**
- (5) **Q. Fair enough. So the description**
- (6) **of the numerator is genuine issue ads that**
- (7) **mention a Federal candidate within 60 days of**
- (8) **the election?**
- (9) **A. Yes.**
- (10) **Q. The denominator is all genuine**
- (11) **issue ads whether or not they mention a Federal**
- (12) **candidate aired over the course of the entire**
- (13) **year?**
- (14) **A. That's right.**
- (15) **MS. BHATTACHARYYA: To be clear in**
- (16) **both of those cases we are talking about**
- (17) **the number of airings?**
- (18) **Q. Is that correct, Mr. Seltz?**
- (19) **A. That's correct.**
- (20) **Q. Let's go back to what we marked**
- (21) **as Seltz 5. Can you tell me what the 12,532**
- (22) **figure reflects next to the entry 60 days from**
- (23) **the election under 4.22 B?**
- (24) **A. From looking at this I'm assuming**
- (25) **that this reflects -- that 12,532 is the number**

Page 117

- (1)
- (2) **of genuine issue ad airings throughout the**
- (3) **course of the year.**
- (4) **Q. That's the 12,000?**
- (5) **A. I think that's right. It's hard**
- (6) **to tell because the text is cut off and there**
- (7) **is no – there's not a lot of context beyond.**
- (8) **I know this is an Excel file that was sent to**
- (9) **the graphic designer, but that's what it looks**
- (10) **like.**
- (11) **Q. How about the 42,646 figure?**
- (12) **A. That would appear to be the**
- (13) **number of issue ads that were coded as**
- (14) **electioneering.**
- (15) **Q. Over 1998?**
- (16) **A. Yes.**
- (17) **Q. So when you were talking earlier**
- (18) **about the 81 percent figure in the bottom chart**
- (19) **on 4.22 and the 7 percent figure having some**
- (20) **relationship of adding up to 88, they have no**
- (21) **correlation – they have different**
- (22) **denominators and numerators, do they not?**
- (23) **A. That's correct.**
- (24) **Q. So that was just an error?**
- (25) **A. Yeah, I was confused at that**

Page 118

- (1)
- (2) **point.**
- (3) **Q. If I wanted to go and recreate**
- (4) **the 7 percent figure, Mr. Seltz, how would I go**
- (5) **about doing that today or how would you if you**
- (6) **had to go recreate the 7 percent figure**
- (7) **reflected in the second chart, how would you do**
- (8) **it today?**
- (9) **A. Just as I did throughout the**
- (10) **course of the project I would not have done it**
- (11) **alone because it would involve some writing of**
- (12) **some programing instructions in the data set**
- (13) **that you would have to know SPSS pretty well to**
- (14) **be able to do, but what I would do is try to**
- (15) **figure out – I would in consultation with**
- (16) **someone who knew what they were doing I would**
- (17) **find the set of program lines where that**
- (18) **selected out the appropriate variables and run**
- (19) **it and tell SPSS to give me these numbers. I**
- (20) **can't tell you the lines of programing off the**
- (21) **top of my head, but you would have to go in to**
- (22) **the database to do it.**
- (23) **Q. Would the database give me the**
- (24) **figures for the markets you excluded for the**
- (25) **AFL-CIO ad because it was a market in which a**

Page 119

- (1)
- (2) **Senator was not up for election?**
- (3) **A. Told it not to include the ads in**
- (4) **which there was no candidate up for election,**
- (5) **you could do that.**
- (6) **Q. The database in its form at least**
- (7) **when you left it included the information about**
- (8) **excluding those markets for the states in which**
- (9) **the Senators mentioned were not up for**
- (10) **re-election?**
- (11) **A. That's not accurate. The**
- (12) **database in its – when I talk about the**
- (13) **database, I'm talking about an SPSS file that**
- (14) **includes 307,000 cases, about 307,000 cases.**
- (15) **Q. Right.**
- (16) **A. That's 307,000 airings. It**
- (17) **includes all of the broadcast data from CMAG**
- (18) **plus all the content codes provided to us by**
- (19) **Arizona State. You could tell the database to**
- (20) **do a query to only calculate certain things and**
- (21) **to only give you the frequency of certain**
- (22) **variables in the database, but that involves**
- (23) **writing program code so you could do it, it's**
- (24) **not that the database as it is sitting there on**
- (25) **a zip disk or on a computer contains, you know,**

Page 120

- (1)
- (2) **the answer right away. You have to ask it to**
- (3) **do things.**
- (4) **Q. But after you compile – you told**
- (5) **us earlier that one of the processes that you**
- (6) **had to go through for ad 12 which is the**
- (7) **AFL-CIO ad which is identified as Exhibit 3 I**
- (8) **believe?**
- (9) **A. 4.**
- (10) **Q. Exhibit 4, I'm sorry, that you**
- (11) **had to go out and discern what markets it ran**
- (12) **in whether there was a candidate running for**
- (13) **office in that market?**
- (14) **A. No, didn't have go out and**
- (15) **discern where it ran.**
- (16) **Q. You did have to go out and**
- (17) **discern whether a candidate was running for**
- (18) **office in that market, correct?**
- (19) **A. Yes.**
- (20) **Q. You also had to discern whether**
- (21) **the candidate running for office in that market**
- (22) **had been named in the ad that ran in that**
- (23) **market, correct?**
- (24) **A. Yes.**
- (25) **Q. Is that information included in**

Page 121

- (1)
- (2) the database, the results of those efforts?
- (3) **A. Yes, they would be now because we**
- (4) **would have added -- had we been able to**
- (5) **determine if a candidate had been named in an**
- (6) **ad for which we only had market info and we**
- (7) **knew it was a cookie-cutter ad, we would then**
- (8) **be able to -- if we are able to link it to a**
- (9) **race, we would be able to add the information**
- (10) **that said it named a candidate, the candidate**
- (11) **was a Democrat or Republican, we would add the**
- (12) **margin, the percentage of votes that each**
- (13) **candidate in the election received, whether the**
- (14) **candidate named was an incumbent or not,**
- (15) **whether the race was an open seat or not so we**
- (16) **would have added so once we figured that out,**
- (17) **there would have been a series of additional**
- (18) **codes to add.**
- (19) **Q. You knew the markets in which the**
- (20) **AFL-CIO ad 12 ad ran. If you identified a**
- (21) **market where there was a pending election and**
- (22) **you could not find information as to which**
- (23) **Senator was identified in the ad, how did you**
- (24) **conclude whether to exclude that market or**
- (25) **include that market?**

Page 122

- (1)
- (2) **MR. PAOLELLA: Objection.**
- (3) **A. I don't know what you mean by**
- (4) **exclude that market.**
- (5) **Q. I thought in analyzing the total**
- (6) **number of airings of ad 12 that you had to**
- (7) **identify the markets in which candidates ran**
- (8) **and which candidates were mentioned in the ad;**
- (9) **isn't that right?**
- (10) **A. Yes.**
- (11) **Q. You knew where the markets were**
- (12) **from CMAG?**
- (13) **A. Right.**
- (14) **Q. You knew what markets had**
- (15) **elections because you could figure that out,**
- (16) **correct?**
- (17) **A. All markets had elections.**
- (18) **Q. In 1998?**
- (19) **A. Yes.**
- (20) **Q. But let's assume you could not**
- (21) **find out which candidate was identified in the**
- (22) **ad that ran in that market, how would you**
- (23) **decide whether it was a set of airings that**
- (24) **were in a contested election or not?**
- (25) **MR. PAOLELLA: Objection, lacks**

Page 123

- (1)
- (2) foundation.
- (3) **Q. I'm trying to figure out the**
- (4) **process.**
- (5) **A. Right. We went through all of**
- (6) **the -- you're assuming there's this process**
- (7) **that we talked about earlier in trying to get**
- (8) **things like newspaper reporting and whatever**
- (9) **information that Paul Herrnson might have had**
- (10) **access to, possibly, I don't remember calling**
- (11) **the group itself though they will not admit to,**
- (12) **you know, spending money on a campaign because**
- (13) **it's -- they are saying then that the purpose**
- (14) **of their ad is not saying what it is so it's**
- (15) **assuming I went through all those other steps.**
- (16) **Q. Right.**
- (17) **A. In a case of -- I don't remember**
- (18) **the final decision because that was a series of**
- (19) **conversations that I believe were really**
- (20) **between Jon Krasno, Paul Herrnson and Ken**
- (21) **Goldstein towards the end before we did this**
- (22) **final run so I don't know what the final**
- (23) **decision would have been. I think it's**
- (24) **possible that in a case of something like North**
- (25) **Carolina where the AFL-CIO could have been**

Page 124

- (1)
- (2) **naming either Senator Helms or Senator**
- (3) **Faircloth to be safely said I don't remember**
- (4) **actually doing this. This is one possibility**
- (5) **is that we assumed that because Senator**
- (6) **Faircloth was up for election they named him,**
- (7) **but I don't remember. We may have found out**
- (8) **definitively that Senator Faircloth the**
- (9) **candidate was named.**
- (10) **Q. Let me hand you what's previously**
- (11) **been marked as Holman Exhibit 31. This exhibit**
- (12) **purports to list the markets in which the**
- (13) **AFL-CIO ad ran in 1998, do you see that?**
- (14) **A. I do.**
- (15) **Q. It has Albuquerque, Cincinnati,**
- (16) **etc. First of all, this e-mail reports that**
- (17) **"According to Daniel's e-mail only the Raleigh**
- (18) **Durham and Pittsburgh markets were pertinent**
- (19) **markets since Arlan Specter and Lauch Faircroft**
- (20) **were the only Senators running for office in**
- (21) **1998." Is it accurate that in making your**
- (22) **calculations, Mr. Seltz, that the only markets**
- (23) **you deemed to be pertinent were Raleigh Durham**
- (24) **and Pittsburgh?**
- (25) **A. No.**



Page 125

- (1)
- (2) **Q.** Which markets did you deem to be
- (3) pertinent?
- (4) **A.** I don't remember. The reason
- (5) that – I don't remember which we deemed to be
- (6) pertinent. When Luke – Luke McLoughlin sent
- (7) me an e-mail asking about the – I believe this
- (8) ad and the meaning of ad number 12 and I was
- (9) responding to him saying that from my memory
- (10) sitting in a law library no where near the
- (11) database I was just writing from memory. A lot
- (12) later I was assuming they would do exactly what
- (13) they did here which was to do their own
- (14) investigation and figure out which markets it
- (15) aired in. I wasn't purporting to give him a
- (16) final answer as to which markets we deemed
- (17) pertinent. I was just saying it might be I
- (18) sort of remember North Carolina and
- (19) Pennsylvania.
- (20) **Q.** So you don't know which ones you
- (21) identified as having a candidate running for
- (22) Federal office in which that candidate was
- (23) picked in the ad, you can't tell us which
- (24) markets?
- (25) **A.** I don't remember that final

Page 126

- (1)
- (2) **decision. I remember doing some investigation**
- (3) **of these cookie-cutter ads to figure out to**
- (4) **link them to particular races. I don't**
- (5) **remember what we decided about this ad whether**
- (6) **it was one, two, three, four markets.**
- (7) **Q.** I take it from what you said
- (8) earlier you could find that information from
- (9) looking at the database?
- (10) **A.** Which information?
- (11) **Q.** Which markets you ultimately
- (12) decided upon?
- (13) **A.** Which markets we decided upon?
- (14) **Q.** You just said you don't remember
- (15) as you sit here whether it was one, two or
- (16) three markets you decided were pertinent and
- (17) I'm asking if I could find that information on
- (18) a database?
- (19) **A.** I would think so because if we
- (20) then decided that an ad was linked to a race
- (21) like I said we would add other contextual
- (22) information about that race so yeah, you should
- (23) be able to figure out which we decided were
- (24) pertinent.
- (25) **Q.** Do you know whether any – there

Page 127

- (1)
- (2) was a Senate race in Missouri?
- (3) **A.** There was a Senate race in
- (4) Missouri.
- (5) **Q.** Do you know who was racing?
- (6) **A.** I believe Kit Bond was up for
- (7) re-election. I think he was running against
- (8) Jay Nixon.
- (9) **Q.** Did you ever ascertain whether
- (10) Senator Bond had been picked in an AFL-CIO ad
- (11) with the content shown in number 12 in
- (12) Missouri?
- (13) **A.** I don't remember.
- (14) **Q.** Again, I would likely be able to
- (15) find out that information by looking at the
- (16) database as it exists today?
- (17) **A.** It's possible.
- (18) **Q.** But you're not sure?
- (19) **A.** Not positive.
- (20) **Q.** I'm going to hand you now what's
- (21) been previously marked as Holman Exhibit 32,
- (22) Mr. Seltz. See if you can identify that for
- (23) us?
- (24) **A.** This is an e-mail exchange
- (25) between myself and Luke McLoughlin.

Page 128

- (1)
- (2) **Q.** On January 16, 2001, correct?
- (3) **A.** Yes.
- (4) **Q.** I see Mr. McLoughlin is asking
- (5) you, first of all, he says he could only find
- (6) boards for ad number 12 which featured Coats
- (7) and Snowe. Is that consistent with your
- (8) recollection that the only boards you ever saw
- (9) for ad number 12 were those featuring Coats and
- (10) Snowe?
- (11) **A.** Yes indeed.
- (12) **Q.** Then he asked you how were you
- (13) able to determine that the ads in the other
- (14) states weren't featuring a Senator who was up
- (15) for office. You respond in the e-mail that's
- (16) listed on the top of the page; isn't that
- (17) right?
- (18) **A.** Yes.
- (19) **Q.** You say I'm assuming we talked to
- (20) CMAG about which Senators appeared in which
- (21) markets for that ad, since as you wrote, the
- (22) center only has hard copies for Coats and
- (23) Snowe. You see that?
- (24) **A.** Yes.
- (25) **Q.** Did you have a better

Page 129

- (1)
- (2) recollection in January of 2001 how you went
- (3) about identifying the Senators who were picked
- (4) in the ads than you do now, Mr. Seltz?
- (5) **A. I don't know.**
- (6) **Q.** Here you say the only thing you
- (7) did was talk to CMAG or you assumed you talked
- (8) to CMAG?
- (9) **A. Right.**
- (10) **Q.** But you don't recall one -- do
- (11) you recall today whether you did or not?
- (12) **A. If I had a better recollection**
- (13) **now than then?**
- (14) **Q.** I'm asking if you recall today
- (15) whether you did actually talk to CMAG?
- (16) **A. Yeah, I actually do remember**
- (17) **sending Harley Ellenberger e-mails.**
- (18) **Q.** When you tell Mr. McLoughlin to
- (19) get in touch with -- I really don't remember
- (20) though. If it's crucial that you figure it
- (21) out, I'd get in touch with the folks at CMAG,
- (22) whom at CMAG other than Mr. Ellenberger if any
- (23) would be the likely contact for that
- (24) information?
- (25) **A. I don't know beyond Harley.**

Page 130

- (1)
- (2) **Q.** What was Mr. Ellenberger, what
- (3) was his job at CMAG?
- (4) **A. I don't know. He was the contact**
- (5) **person usually. I don't know what his title**
- (6) **was, what he did.**
- (7) **Q.** Can you tell me who is the third
- (8) e-mail in this sequence, do you know if it's
- (9) you writing to Mr. McLoughlin or him writing to
- (10) you?
- (11) **A. Where are you referring to?**
- (12) **Q.** It begins we've been doing some
- (13) queries on the data set?
- (14) **A. This looks like an exchange where**
- (15) **I would -- I used his e-mail to respond to**
- (16) **questions that he was asking within the text.**
- (17) **Q.** I see. So some of this language
- (18) is his and some of it is you responding to him?
- (19) **A. That's right.**
- (20) **Q.** Is it you speaking where it says
- (21) I think the answer is that we sorted out the
- (22) airings by media market?
- (23) **A. Yes, that's me talking, writing.**
- (24) **Q.** You write down but I think that's
- (25) right; is that correct?

Page 131

- (1)
- (2) **A. Yes.**
- (3) **Q.** You say in here the only two
- (4) media markets among the ones where it aired
- (5) that had Senators up for re-election were, I
- (6) think, Raleigh and Philly, Faircloth and
- (7) Specter, run it using only those numbers and I
- (8) think you get the 7 percent, I'm not 100
- (9) percent positive since I'm writing from memory,
- (10) but I think that's right. Is that the same
- (11) recollection you had today that the Senators up
- (12) for election, the only ones were Faircloth and
- (13) Specter?
- (14) **A. The only Senators up for election**
- (15) **where?**
- (16) **Q.** In markets where the AFL-CIO ad
- (17) ran?
- (18) **A. No, it appears -- I mean that was**
- (19) **my recollection at the time. I was literally**
- (20) **sitting there trying to remember, you know,**
- (21) **with nothing in front of me what we did on ad**
- (22) **12 out of 2,100 and I was actually -- I**
- (23) **remember being pretty impressed with myself I**
- (24) **could come up with these two media markets**
- (25) **among 12 -- among 2,100 ads so I just didn't --**

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- (1)
- (2) that was, you know, giving it 10 seconds of
- (3) thought as I rush between classes that's what I
- (4) wrote.
- (5) **Q.** Do you know now what the accurate
- (6) answer is?
- (7) **A. You pointed out to me that there**
- (8) **-- St. Louis is in Missouri, it includes**
- (9) **Missouri had a Senate election in which a**
- (10) **Republican Incumbent was up for re-election.**
- (11) **As with North Carolina and Pittsburgh, it's not**
- (12) **from -- just from that without all the other**
- (13) **investigation we did it doesn't tell us if**
- (14) **Senators Bond, Specter, Faircloth were actually**
- (15) **mentioned. It could have been Senator Grahams,**
- (16) **it could have been then Senator Ashcroft. It**
- (17) **could have been Senator Helms so we don't know,**
- (18) **but -- when I was writing this I didn't know.**
- (19) **The other thing about St. Louis**
- (20) **is that the St. Louis media market may stretch**
- (21) **into another state. The New York media market**
- (22) **covers pieces of New Jersey, New York and**
- (23) **Connecticut so I would have to look at what the**
- (24) **St. Louis media market covers, but it appears**
- (25) **when I was writing in the library I didn't**

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- (1)
- (2) **remember the St. Louis market.**
- (3) **Q.** You don't know even today one way
- (4) or the other whether you subtracted the St.
- (5) Louis market or kept it in?
- (6) **A.** I don't know. Someone else might
- (7) know, but I don't remember the final decision
- (8) about St. Louis.
- (9) **Q.** Same for Pittsburgh?
- (10) **A.** Yes.
- (11) **Q.** Same for Greensboro?
- (12) **A.** Yes.
- (13) **Q.** You just don't know one way or
- (14) the other, but you will agree that if there
- (15) were Senators running in each of those markets
- (16) and those Senators were identified in the
- (17) AFL-CIO ad number 12, that the number should
- (18) have been added to the numerator to come to the
- (19) 7 percent or subtracted from?
- (20) **A.** If Senator Bond had in fact been
- (21) mentioned?
- (22) **Q.** Right.
- (23) **A.** In the genuine issue ad that had
- (24) aired within 60 days of the election the number
- (25) of airings in St. Louis should have been added

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- (1)
- (2) -- should have been included in the numerator
- (3) in this figure.
- (4) **Q.** Right. If it wasn't, then the
- (5) figure is wrong, isn't it?
- (6) **A.** Yes.
- (7) **Q.** By figure I want to be clear I'm
- (8) meaning the 7 percent figure that you and I
- (9) have been talking about from 4.22, is that what
- (10) you were referring to as well?
- (11) **A.** Yes.
- (12) **MS. BUCKLEY:** Let's mark as Seltz
- (13) Exhibit 6 a document bearing Bates stamp
- (14) BRE 012960.
- (15) **(Plaintiff's Exhibit Seltz 6,**
- (16) **Document, Bates labeled BRE**
- (17) **012960, marked for Identification.)**
- (18) **Q.** Can you tell us what this is, Mr.
- (19) Seltz?
- (20) **A.** This is an e-mail from me to Jon
- (21) Krasno.
- (22) **Q.** Dated on or about January 3,
- (23) 2000?
- (24) **A.** Yes.
- (25) **Q.** You say in point one the attached

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- (1)
- (2) memo. More placation. No memo was produced to
- (3) us with this document, Mr. Seltz. Do you have
- (4) any idea what it was?
- (5) **A.** I have no idea.
- (6) **Q.** Do you know what the more
- (7) placation refers to?
- (8) **A.** I really don't.
- (9) **Q.** Were you placating some
- (10) particular person during the course of January
- (11) of 2000?
- (12) **A.** Probably. I'm always placating
- (13) someone. I don't know. Sorry, I don't know.
- (14) **Q.** Focusing on item 3 in the e-mail
- (15) Kevin and Pete had some questions about
- (16) chapters one and two the first sentence reads.
- (17) Who are Kevin and Pete?
- (18) **A.** Kevin and Pete are -- they were
- (19) at that time, I don't know if they are still
- (20) there employees of the Whitmeyer Baker group
- (21) which was the group we were working with on the
- (22) production of the report. Kevin is a principal
- (23) in it and Pete was my main contact.
- (24) **Q.** Was the report being --
- (25) **A.** Buying Time '98.

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- (1)
- (2) **Q.** Was Buying Time '98 being printed
- (3) at this point in time?
- (4) **A.** Not yet, not in January.
- (5) **Q.** You go on to say the changing N's
- (6) are confusing. Does the N's stand for numbers?
- (7) **A.** No, it would stand for
- (8) essentially a denominator. It's the number of
- (9) cases. It's a term where if we did -- in a
- (10) pole say of 1,500 Americans where we learned
- (11) that George Bush has a 60 percent approval
- (12) figure, the N is the number of people that they
- (13) polled.
- (14) **Q.** What did you mean here when you
- (15) said the changing N's are confusing?
- (16) **A.** Usually when we were producing
- (17) these graphs, we wanted to show a percentage of
- (18) whatever, it could be types of ads or numbers
- (19) of ads by different actors, candidates, parties
- (20) or groups, whatever, we showed that candidates
- (21) produced a certain percentage and parties a
- (22) certain percentage and groups a certain
- (23) percentage, we would list the N so in this
- (24) report it's usually the number of airings that
- (25) were referred to.

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- (1)
- (2) **Q.** Why did they keep changing?
- (3) **A.** I'm not sure exactly which figure
- (4) these are talking about in chapters one and
- (5) two, but sometimes there would be as -- this is
- (6) right in the middle of a lot of the actual
- (7) producing of these graphs and the writing so
- (8) there was a lot of -- just a lot of different
- (9) drafts. Sometimes there would be missing data
- (10) under a certain variable so that people would
- (11) expect that you would have the same N when you
- (12) are talking about the percentage of ads by
- (13) candidates that were attacking, contrasting and
- (14) promoting, you would expect, you know, it would
- (15) say N equals 1,000 whatever hypothetically.
- (16) Sometimes on the next figure if
- (17) we were showing the length of ads by candidates
- (18) the percentage that were 30 seconds, 60 seconds
- (19) or longer, the N might have -- it was never
- (20) very dramatic, but it might have changed so
- (21) that N equals 994 because 6 ads for some reason
- (22) were missing length coding because CMAG didn't
- (23) get it on there or something happened in the
- (24) process of getting the data to us that there
- (25) was a missing code so those kind of things

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- (1)
- (2) would change the N's.
- (3) **Q.** It goes on to say they referring
- (4) back to Kevin and Pete wondered if we should go
- (5) only with percentages if this is distracting.
- (6) You see that?
- (7) **A.** Yes.
- (8) **Q.** In the final report did you only
- (9) go with percentages, do you know?
- (10) **A.** We can look.
- (11) **Q.** Go ahead.
- (12) **A.** It varied by figure. Sometimes
- (13) the figures would depict the number of airings
- (14) graphically, sometimes it would be a
- (15) percentage. Usually I think if it was
- (16) percentage, we kept those N's in because people
- (17) wanted to know percentage of what, but I just
- (18) want to confirm in chapter one, seems like a
- (19) good place to look. No, when we listed
- (20) percentage, we kept the N in.
- (21) **Q.** Why don't you take a look at
- (22) figure 4.22 that we have been talking about
- (23) today. Is the N in there?
- (24) **A.** No, they are not.
- (25) **Q.** Was a decision made to eliminate

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- (1)
- (2) them from that figure?
- (3) **A.** I don't remember making a
- (4) conscious decision. I think that, you know,
- (5) all of these questions about how to display all
- (6) this quantitative information there were a lot
- (7) of questions about what would aide readers
- (8) understanding and what would sort of be
- (9) distracting because it's complex. We spent a
- (10) lot of time talking about it so I remember
- (11) discussions about how to -- what constituted
- (12) more clarity and less, but I don't remember a
- (13) discussion about keeping the N's in or not for
- (14) figure 4.22.
- (15) **Q.** But in any event they are not
- (16) there?
- (17) **A.** They are not there.
- (18) **MS. BUCKLEY:** Let's mark as Seltz
- (19) Exhibit 7 a one page document bearing
- (20) control number BRE 012954.
- (21) (Plaintiff's Exhibit Seltz 7,
- (22) Document, Bates labeled BRE
- (23) 012954, marked for Identification.)
- (24) **Q.** Take a minute to look at that.
- (25) I'm also going to hand you a document

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- (1)
- (2) previously marked as Holman Exhibit 23.
- (3) Turning to Seltz Exhibit 7, Mr. Seltz, this is
- (4) an e-mail I take it from you to Mr. Krasno.
- (5) No. Why don't you describe for me what it is?
- (6) **A.** It looks like I forwarded this
- (7) question that I had posed to Ken to Jon.
- (8) **Q.** So the bottom portion of the text
- (9) dated January 21, 2000 is an e-mail from you,
- (10) Goldstein and then with a question which we
- (11) will come to and then the above line suggests
- (12) that you forwarded that e-mail to Krasno, is
- (13) that what you're saying?
- (14) **A.** That's correct.
- (15) **Q.** This is in January of 2000?
- (16) **A.** Yes.
- (17) **Q.** It says "Ken, I got a storyboard
- (18) number wrong for Committee for Common Decency
- (19) when I talked to you yesterday so here are the
- (20) three that it would be great to see" and then
- (21) there's a list 2914: need to see if it's really
- (22) a true issue ad and then some other information
- (23) as reflected on the document. Why were you
- (24) asking Goldstein to see these three ads?
- (25) **A.** It looked like I needed some

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- (1)
- (2) **information about them.**
- (3) **Q.** Didn't the Brennan Center have
- (4) copies of storyboards?
- (5) **A.** We had most of them. We had some
- (6) that we didn't -- there were some that were
- (7) missing that we would sometimes get Ken or CMAG
- (8) to forward on to us.
- (9) **Q.** As to 2914 you needed it to see
- (10) if it's really a true issue ad?
- (11) **A.** That's what I wrote.
- (12) **Q.** What role did the Brennan Center
- (13) play in determining which ads were true issue
- (14) ads and which ads were not?
- (15) **A.** Usually that was already coded by
- (16) the undergraduates.
- (17) **Q.** Why did you need to see it?
- (18) **A.** I don't know why I needed to see
- (19) this particular one.
- (20) **Q.** Were any of the coder's decisions
- (21) about which ads were true issue ads and which
- (22) ads were not changed by anyone at the Brennan
- (23) Center?
- (24) **A.** I don't remember doing that.
- (25) **Q.** Do you remember any discussions

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- (1)
- (2) with Professor Goldstein where he told you that
- (3) he had changed some of the coder's decisions as
- (4) to what was not and was a true issue ad?
- (5) **A.** I don't remember talking to Ken
- (6) about that.
- (7) **Q.** Did you ever hear that the
- (8) coder's decisions had been altered by Professor
- (9) Goldstein?
- (10) **A.** Like I was explaining earlier, we
- (11) would notice they had made clear errors and
- (12) fixed those.
- (13) **Q.** I'm not talking about objective
- (14) errors, I'm talking about the determination of
- (15) what is and what is not a genuine issue ad
- (16) which is what your question is directed to?
- (17) **A.** Right.
- (18) **Q.** My question is did you ever hear
- (19) anyone discuss whether any of the coder's
- (20) decisions on that issue had been changed or
- (21) overruled by Professor Goldstein?
- (22) **A.** I don't remember hearing those
- (23) conversations.
- (24) **Q.** Do you remember having any
- (25) discussions of whether an ad should properly be

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- (1)
- (2) viewed as a genuine issue ad or not?
- (3) **A.** We had that conversation a lot
- (4) because it was something that's interesting to
- (5) talk about.
- (6) **Q.** Do you recall any situation where
- (7) you determined that an ad that had been coded
- (8) as electioneering really should have been coded
- (9) as a genuine issue ad in '98?
- (10) **A.** No, I don't remember having those
- (11) conversations.
- (12) **Q.** Do you remember having any
- (13) conversations where it discussed that an ad
- (14) that had been coded as genuine issue ad really
- (15) should have been coded as an electioneering ad
- (16) in '98?
- (17) **A.** No.
- (18) **Q.** You don't remember any of that?
- (19) **A.** I don't remember discussing
- (20) changing coder's answers to cusips.
- (21) **Q.** Do you have any idea whether they
- (22) were changed?
- (23) **A.** I don't know. It wouldn't have
- (24) been my decision to make.
- (25) **Q.** Do you know whose decision it

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- (1)
- (2) would have been to make?
- (3) **A.** No.
- (4) **Q.** What was marked and handed you
- (5) Holman 23, Mr. Seltz, this is an e-mail from
- (6) Mr. Holman to Professor Goldstein. He says in
- (7) part at our last conference call the staff
- (8) decided that we are on more solid ground not
- (9) substituting our own judgments of the ads for
- (10) the undergrad coder's judgments except in the
- (11) case of clearly factual errors so I'm
- (12) reconverting a couple of key variables back to
- (13) the original code. He's talking about the 2000
- (14) study I believe. My question is in preparing
- (15) the 1998 study, did personnel at the Brennan
- (16) Center take it upon themselves to recode
- (17) clearly factual errors?
- (18) **A.** Clearly factual errors?
- (19) **Q.** Yes.
- (20) **A.** In 1998?
- (21) **Q.** Yes.
- (22) **A.** We probably did.
- (23) **Q.** Next question in 1998 did
- (24) personnel at the Brennan Center recode
- (25) subjective questions such as the answers to

Page 145

- (1)
- (2) question 6?
- (3) **A. I don't remember discussions**
- (4) **about question 6.**
- (5) **Q. That's what I just asked you**
- (6) **about, isn't it?**
- (7) **A. Yes.**
- (8) **MS. BUCKLEY:** Let's mark as Seltz
- (9) Exhibit 8 a one page document bearing
- (10) control numbers BRE 012940.
- (11) **(Plaintiff's Exhibit Seltz 8,**
- (12) **Document, Bates labeled BRE**
- (13) **012940, marked for identification.)**
- (14) **Q. Have you had a chance to look at**
- (15) **that, Mr. Seltz?**
- (16) **A. Yes.**
- (17) **Q. Can you tell us what this**
- (18) **document is?**
- (19) **A. It's an e-mail exchange between**
- (20) **myself and Harley Ellenberger at CMAG.**
- (21) **Q. This is your effort to identify**
- (22) **what markets the AFL-CIO ad ran in, is it not?**
- (23) **A. No.**
- (24) **Q. It was your effort to identify**
- (25) **which Senators were mentioned in the ads, is**

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- (1)
- (2) that right?
- (3) **A. Yes.**
- (4) **Q. About a third of the way down the**
- (5) **page there is an e-mail beginning we have three**
- (6) **different versions of that ad, do you see that?**
- (7) **A. Yes.**
- (8) **Q. Is that Mr. Ellenberger's**
- (9) **response to your message which is at the bottom**
- (10) **of the page?**
- (11) **A. Yes, it is.**
- (12) **Q. So you write to him you know it**
- (13) **had mentioned Dan Coats and you're trying to**
- (14) **get the names of the other Senators mentioned**
- (15) **in the ad?**
- (16) **A. Right.**
- (17) **Q. And he writes back that he has**
- (18) **three versions Coats, Snowe and Newman; is that**
- (19) **right?**
- (20) **A. Right.**
- (21) **Q. Did you ever get a copy of the**
- (22) **storyboard for the ad that identified Newman?**
- (23) **A. I don't remember seeing that one.**
- (24) **Q. Do you know whether Newman was**
- (25) **running in 1998?**

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- (1)
- (2) **A. He was a member of the House of**
- (3) **Representatives who was challenging Senator**
- (4) **Feingold in Wisconsin.**
- (5) **Q. He was running for the Senate?**
- (6) **A. For Senate, yeah.**
- (7) **Q. We think he was running in 1998?**
- (8) **A. I know he was running in 1998.**
- (9) **Q. He was running for the United**
- (10) **States Senate?**
- (11) **A. Yes.**
- (12) **Q. In Wisconsin?**
- (13) **A. Yes.**
- (14) **Q. I want to go back to what I**
- (15) **handed you earlier which is Holman Exhibit 31,**
- (16) **Mr. Seltz. You still have that in your pile.**
- (17) **That's the list of all the markets. Back on**
- (18) **Holman Exhibit 31 and I see that this memo**
- (19) **reflecting that 9.3 percent of the airings of**
- (20) **the AFL-CIO ad number 12 were in Milwaukee, 271**
- (21) **spots; is that right?**
- (22) **A. I don't know the percentage that**
- (23) **were in Milwaukee, but I see that it's -- yes,**
- (24) **yes.**
- (25) **Q. Just reading from the document.**

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- (1)
- (2) **A. That's right.**
- (3) **Q. We know from Holman 31 at least**
- (4) **that it's reported here that 9.3 percent of the**
- (5) **airings were in Milwaukee representing 271**
- (6) **spots. We know that from Ellenberger's e-mail**
- (7) **to you that at least one of these versions**
- (8) **marked Newman was picked in the ad; is that**
- (9) **right?**
- (10) **A. Yeah.**
- (11) **Q. Does that tell us that which is**
- (12) **the 271 spots in Wisconsin should have been**
- (13) **added to the numerator of the figure which**
- (14) **resulted in your 7 percent figure as reflected**
- (15) **in 4.22?**
- (16) **A. No, not necessarily.**
- (17) **Q. Why is that?**
- (18) **A. This is interesting that they**
- (19) **would have -- that CMAG would have three**
- (20) **versions of this ad. Mainly what it suggests**
- (21) **is that the tag line for the Newman ad is**
- (22) **actually different than the tag lines for the**
- (23) **ads for Senator Coats mentioning Senator Coats**
- (24) **and Senator Snowe.**
- (25) **Q. How do you deduce that?**

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- (1)
- (2) **A. Well, Newman isn't and wasn't a**
- (3) **member of the Senate. It's the other ads, you**
- (4) **know, the Coats and Snowe ads are mentioning**
- (5) **Republican candidates for office and one of the**
- (6) **things that made it clear that this was a**
- (7) **genuine issue ad was that – certainly looking**
- (8) **at it now one of the things that makes it**
- (9) **appear to be and I still think it is a serious**
- (10) **effort to push office holders on a certain**
- (11) **issue was that they went after Republican**
- (12) **Senators. The fact that Newman was a**
- (13) **Congressman and actually running for Senate**
- (14) **makes me think this actually might have been a**
- (15) **more of – might have been different enough**
- (16) **that it would actually be an ad coded as**
- (17) **electioneering.**
- (18) **Q. Do you have any reason to doubt**
- (19) **Mr. Ellenberger's words when he says Mark**
- (20) **Newman was mentioned in the ad?**
- (21) **A. No.**
- (22) **Q. If Mark Newman was mentioned in**
- (23) **the ad, and he certainly was a candidate for**
- (24) **Federal office in the Wisconsin airings of 271**
- (25) **spots should it have been added to the**

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- (1)
- (2) **whether Mark Newman was named?**
- (3) **Q. Yes. You wrote to Ellenberger**
- (4) **asking him what Senators were identified in the**
- (5) **AFL-CIO number 12. He wrote back to you saying**
- (6) **Snowe Coats and Mark Newman. I'm asking what**
- (7) **if anything you did to find out further**
- (8) **information about the mention of Mark Newman?**
- (9) **A. I might have gotten on the phone**
- (10) **and asked for a copy of that storyboard. That**
- (11) **would have made sense.**
- (12) **Q. Do you recall doing that?**
- (13) **A. I don't recall doing that. I may**
- (14) **have, but I don't remember.**
- (15) **Q. Do you remember whether the**
- (16) **Wisconsin airings totalling 271 spots were in**
- (17) **fact included in the calculation of the**
- (18) **numerator for the figure that turned in to the**
- (19) **7 percent figure?**
- (20) **A. I don't remember if that was.**
- (21) **Q. You don't know if Wisconsin was**
- (22) **included?**
- (23) **A. No, I don't.**
- (24) **Q. We established, have we not, Mr.**
- (25) **Newman was the Republican candidate for Senate**

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- (1)
- (2) **numerator that resulted in your 7 percent**
- (3) **figure; isn't that right?**
- (4) **MR. PAOLELLA: Objection.**
- (5) **A. I don't know if it's a different**
- (6) **– if the ad is different. He says it's three**
- (7) **different versions of that ad. I don't know**
- (8) **what that means.**
- (9) **Q. You know what it means as to**
- (10) **Snowe and Coats, don't you?**
- (11) **A. I'm assuming it referred to**
- (12) **cookie-cutter ads, but I didn't – I don't know**
- (13) **and I didn't know then, you know, how much the**
- (14) **last section of the ad that makes the ads**
- (15) **distinct from each other are actually different**
- (16) **from each other. I don't know if they would**
- (17) **have chosen a very different ending for the**
- (18) **Newman ad given that he was not in the Senate**
- (19) **and the ad was directed at a Senate bill and**
- (20) **pressuring Senators on that bill.**
- (21) **Q. Did you make any investigation as**
- (22) **to whether the AFL-CIO had run an ad mentioning**
- (23) **Mr. Ellenberger's words Mark Newman in**
- (24) **Wisconsin?**
- (25) **A. Did I make an investigation of**

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- (1)
- (2) **in Wisconsin, correct?**
- (3) **A. Yes, he was.**
- (4) **MS. BUCKLEY: Let's mark as Seltz**
- (5) **Exhibit 9 a document beginning with the**
- (6) **Bates stamp numbers BRE 015187 through**
- (7) **BRE 015193.**
- (8) **(Plaintiff's Exhibit Seltz 9,**
- (9) **Document, Bates labeled BRE 015187**
- (10) **through BRE 015193, marked for**
- (11) **Identification.)**
- (12) **Q. See if you can identify that for**
- (13) **the record, Mr. Seltz?**
- (14) **A. This is a memo from Jon Krasno**
- (15) **and myself to the Brennan Center staff dated**
- (16) **January 31, 2000.**
- (17) **Q. Is this a memo reporting the**
- (18) **results of 1998 Buying Time to the staff?**
- (19) **A. The preliminary results.**
- (20) **Q. Turning your attention to the**
- (21) **page that has the Bates number 0151292 because**
- (22) **I don't see any page numbers otherwise on the**
- (23) **document, direct your attention to the heading**
- (24) **who was running issue ads.**
- (25) **A. Yes.**

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- (1)
- (2) **Q.** Reads "Political parties ran the
- (3) bulk of unreported 'issue' ads - 65 percent.
- (4) All of the party ads were seen as aimed at
- (5) generating support for or opposition to a
- (6) candidate. Among ads by groups, 30 percent
- (7) were seen as electioneering and 69 percent were
- (8) regarded as primarily providing information."
- (9) Is that an accurate statement of the findings
- (10) of the 1998 study?
- (11) **A.** I don't remember the final
- (12) figures for each of these statistics.
- (13) **Q.** Where would you go look for them?
- (14) **A.** I would look in the book in the
- (15) report.
- (16) **Q.** Why don't you go ahead.
- (17) **A.** Figure 23 in *Buying Time '98*
- (18) gives numbers for the issue ads as between
- (19) parties and groups which I don't know if 37,386
- (20) out of 57,817 is 65 percent, but that's where I
- (21) would look to find that percentage.
- (22) **Q.** What page were you on?
- (23) **A.** Page 34.
- (24) **Q.** Page 34 of what we marked as
- (25) Seltz Exhibit 1?

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- (1)
- (2) **A.** Yes.
- (3) **Q.** Which is *Buying Time 1998*?
- (4) **A.** Yes.
- (5) **Q.** Having looked at that page I ask
- (6) again, Mr. Seltz, is the statement in the memo
- (7) which we marked as Seltz Exhibit 9 accurate and
- (8) I read into the record, is it accurate?
- (9) **A.** If that number -- I can't do that
- (10) math in my head. It looks like it's about 65
- (11) percent.
- (12) **Q.** My colleague correctly points out
- (13) that I didn't finish. You told us where to
- (14) find the 65 percent figure in *Buying Time '98*.
- (15) Can you tell us about the 30 percent and 69
- (16) percent figures relating to ads run by groups?
- (17) **A.** Figure 213 on page 41 shows that
- (18) 30 percent of ads by groups were advocating or
- (19) generating support for candidate and 68 percent
- (20) were providing information.
- (21) **Q.** You're looking at the top figure
- (22) on page 41 of Exhibit 1?
- (23) **A.** Yes.
- (24) **Q.** I'm handing you what we
- (25) previously marked as Holman Exhibit 25, Mr.

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- (1)
- (2) Seltz. The first line of the cover page says
- (3) testimony of E. Joshua Rosenkranz dated April
- (4) 26, 2000. Did you have any role in preparing
- (5) the prepared testimony for Mr. Rosenkranz
- (6) that's reflected here?
- (7) **A.** I don't think so.
- (8) **Q.** At what stage in the process was
- (9) *Buying Time 1998* at this time?
- (10) **A.** This was late April. It was
- (11) getting close to being ready to go to the
- (12) printer.
- (13) **Q.** Were you a participant in any
- (14) discussions about Mr. Rosenkranz's testimony
- (15) before Congress in April of 2000?
- (16) **A.** I'm trying to remember. I don't
- (17) think so. I remember this is shortly after
- (18) Scott Schell came to the Brennan Center and he
- (19) was heavily involved in preparing Josh, but I
- (20) don't remember specific conversations about
- (21) this testimony.
- (22) **MS. BUCKLEY:** Let's mark as
- (23) Exhibit Seltz 10 a document bearing
- (24) control numbers BRE 011941 through BRE
- (25) 011946.

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- (1)
- (2) (Plaintiff's Exhibit Seltz 10,
- (3) Document, Bates labeled BRE 011941
- (4) through BRE 011946, marked for
- (5) Identification.)
- (6) **Q.** Have you ever seen this memo
- (7) before, Mr. Seltz?
- (8) **A.** No, I haven't.
- (9) **Q.** Do you know the circumstances
- (10) under which Mr. Krasno left the Brennan Center?
- (11) **A.** To some extent.
- (12) **Q.** Can you tell me what they are?
- (13) **A.** It was shortly before the project
- (14) -- it was shortly before we released the -- his
- (15) departure was shortly before we released the
- (16) report to the public.
- (17) **Q.** Was it after the report was
- (18) completed?
- (19) **A.** Yeah, it was basically at the
- (20) printer. There were no more substantive
- (21) changes. I don't think there were any changes
- (22) left to be made by the time he left.
- (23) **Q.** Mr. Rosenkranz writes here that
- (24) on page three of the memo, "I continue to
- (25) believe that we cannot be put in a position



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- (1)
- (2) where we Brennan Center staff are expected to
- (3) rely upon or collaborate with Jon" referring to
- (4) Jonathan Krasno "- whether on CMAG 1998 or on
- (5) CMAG 2000. It's a recipe for disaster." Why
- (6) was it a recipe for disaster if you know, Mr.
- (7) Seltz?
- (8) **A. I could not tell you why Josh**
- (9) **thought it would be a recipe for disaster. I**
- (10) **think it would have to do with their ability**
- (11) **to, meaning Josh and Jon's ability, to**
- (12) **communicate and work together which I stayed**
- (13) **out of as much as I could.**
- (14) **Q. He continues to say but we cannot**
- (15) **be put in a position where we have to rely on**
- (16) **data that Jon will have participated in**
- (17) **generating, do you see that?**
- (18) **A. Um-hum.**
- (19) **Q. What was the problem with the**
- (20) **data that Jon was generating if you know?**
- (21) **A. As far as I know there was no**
- (22) **problem with the data that Jon was generating.**
- (23) **Q. Then did you ever hear that Mr.**
- (24) **Rosenkranz or anyone else at the Brennan Center**
- (25) **was unhappy about the reliability of data that**

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- (1)
- (2) Jon participated in generating?
- (3) **A. No. In fact, what was striking**
- (4) **about -- no. No, I never heard of any**
- (5) **complaints or worries about the reliability of**
- (6) **the data.**
- (7) **Q. Do you have any idea what Mr.**
- (8) **Rosenkranz is referring to when he says we**
- (9) **can't be put in a position where we have to**
- (10) **rely on data where Jon would have participated**
- (11) **in generating?**
- (12) **A. I'm speculating as to -- I mean I**
- (13) **don't -- I didn't write this, but I think it**
- (14) **was not at all a question of the reliability of**
- (15) **Jon's professional work. That was never an**
- (16) **issue. I think that what he's probably**
- (17) **referring to is problems of joint sponsorship**
- (18) **of events or products where Jon no longer had**
- (19) **an official affiliation with the Brennan Center**
- (20) **so that probably presented a -- that was**
- (21) **probably very complicated.**
- (22) **Q. Did you ever hear that anybody at**
- (23) **the Brennan Center was unhappy with the manner**
- (24) **in which Mr. Krasno collected his data?**
- (25) **A. Not -- no.**

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- (1)
- (2) **Q. Or reported his data?**
- (3) **A. I don't know what you mean by**
- (4) **reported the data.**
- (5) **Q. Reported -- Buying Time 1998 is a**
- (6) **report on data, isn't it?**
- (7) **A. It's a report on television**
- (8) **advertisement. There's a lot of things that**
- (9) **reporting on data could mean.**
- (10) **Q. I just asked you before whether**
- (11) **you ever heard of the Brennan Center that**
- (12) **anyone had a problem with the way he collected**
- (13) **data and you said no, you don't think so?**
- (14) **A. I know what you mean by the way**
- (15) **he collected data and I know no one had a**
- (16) **problem with the way that he collected data.**
- (17) **Q. And I'm trying to distinguish**
- (18) **collecting data from disseminating data or**
- (19) **analyzing data and I ask the same question?**
- (20) **MR. PAOLELLA: Are you asking**
- (21) **about disseminating, analyzing? I think**
- (22) **I lost track.**
- (23) **Q. Did you ever hear that anyone at**
- (24) **the Brennan Center was critical of the way**
- (25) **Professor Krasno analyzed data?**

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- (1)
- (2) **A. Absolutely not.**
- (3) **Q. You have no idea why it was in**
- (4) **Mr. Rosenkranz's view that the Brennan Center**
- (5) **could not be put in a position where we have to**
- (6) **rely on data where Jon would have participated**
- (7) **in generating?**
- (8) **A. I told you I had some idea what**
- (9) **that means. I'm only speculating as to Josh's**
- (10) **meaning in this second to last paragraph. I**
- (11) **never heard a single complaint about Jon's**
- (12) **ability to collect, analyze, disseminate and**
- (13) **explain data. He was far and away the expert**
- (14) **in the office which everybody knew on this kind**
- (15) **of empirical work as well as on the Senate and**
- (16) **Congress as an institution. I never heard word**
- (17) **one about the reliability of the data and I**
- (18) **heard, you know, Josh vouch for it afterwards**
- (19) **which I know Josh wouldn't do if he didn't**
- (20) **believe in it so I think that what this refers**
- (21) **to is the fact that there may have been some**
- (22) **discussions, I only skimmed this memo, about**
- (23) **Jon receiving some funding along with the**
- (24) **Brennan Center to work on this project which**
- (25) **means that they would, you know, there would --**

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- (1)
- (2) so Jon no longer had an institutional
- (3) affiliation with NYU Law or with the Brennan
- (4) Center, but they might have to be, but it would
- (5) be – so it would be a tricky and difficult
- (6) thing to have to sort of tease out whose
- (7) intellectual product we would be talking about
- (8) for things beyond Buying Time 1998 that Jon
- (9) worked on because inevitably he would have to
- (10) rely to some extent on the Brennan Center who
- (11) held at that point all the – they had the
- (12) storyboards and the database.
- (13) Q. Would you turn to the page bears
- (14) 011944 discussing various stages of I think the
- (15) project. You see under stage one it refers to
- (16) data coding and merging originally expected to
- (17) be done by Krasno and Goldstein assisted by
- (18) research assistants and Seltz, do you see that?
- (19) A. Yes, I do.
- (20) Q. Is that the data coding and
- (21) merging in connection with Buying Time 1998?
- (22) A. Yes.
- (23) Q. Then under the column status it
- (24) says status on April 14, 2000 done. The next
- (25) column expectations prior to termination about

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- (1)
- (2) Krasno work in final 6 weeks, done. Final
- (3) column current Brennan Center plans it says
- (4) done. If any more data need to be extracted,
- (5) Seltz can do it. Any additional coding is
- (6) through Goldstein. Did you see that?
- (7) A. I see that.
- (8) Q. Do you know whether anymore data
- (9) had to be extracted by you after Mr. Krasno
- (10) terminated his relationship with the Brennan
- (11) Center?
- (12) A. I don't think I would have
- (13) extracted any data for this report. I think
- (14) there may have been questions after the release
- (15) about, you know, from outside people who wanted
- (16) to know specific questions that I probably
- (17) would have been able to figure out often in
- (18) consultation with Ken Goldstein.
- (19) Q. It says any additional coding is
- (20) through Goldstein. What additional coding
- (21) needed to be done at that time, Mr. Seltz?
- (22) A. I don't know.
- (23) Q. Do you know if any additional
- (24) coding was done by Professor Goldstein after
- (25) April 14, 2000?

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- (1)
- (2) A. I don't know.
- (3) Q. Moving on from this document do
- (4) you know the reason that Jonathan Krasno was
- (5) terminated?
- (6) A. No one ever sat down and told me
- (7) exactly why.
- (8) Q. What did you hear?
- (9) A. Well, I had conversations with
- (10) Jon and then, you know, other people – I only
- (11) had about three more months left at the Brennan
- (12) Center at that point so there was some – I
- (13) talked to a lot of people.
- (14) Q. What did you hear?
- (15) A. I know that there were – the
- (16) final precipitating event was over office space
- (17) and proposal to move Jon from his own office
- (18) with a window to share an office without a
- (19) window which turned into this huge conflict.
- (20) That was the final conflict between – as far
- (21) as I know, that was the last sort of conflict.
- (22) I know that I later found out
- (23) that they had concerns about the amount of time
- (24) he spent on site. I knew how much he was
- (25) working at home. I think they had concerns

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- (1)
- (2) that it wasn't enough to work till 10 p.m. at
- (3) home if you are not going to be in the office
- (4) for the exact amount of time or for roughly the
- (5) same amount of time as everyone else.
- (6) Q. Any other reasons besides working
- (7) at home and office space?
- (8) A. It was all very – clearly there
- (9) were personality conflicts. The striking thing
- (10) as I try to remember it now is that there was
- (11) never any talk about the quality of the work
- (12) that he produced.
- (13) Q. That you heard?
- (14) A. That I heard, yeah. I know once
- (15) he played squash with a summer intern and kept
- (16) him longer than the lunch hour. He found out
- (17) later that was a problem. These are the kinds
- (18) of things that I heard later.
- (19) Q. What did you do after you left
- (20) the Brennan Center?
- (21) A. I went to law school.
- (22) Q. That was in the fall of 2000?
- (23) A. Right.
- (24) Q. Are you presently at law school?
- (25) A. Yes.

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- (1)
- (2) **Q.** Are you in your third year?
- (3) **A.** Yes.
- (4) **Q.** What law school is that?
- (5) **A.** NYU.
- (6) **(Recess taken.)**
- (7) **MS. BUCKLEY:** Let's mark as Seltz
- (8) Exhibit 11 a memorandum dated May 1,
- (9) 2000 bearing control number BRE 015181
- (10) through 015182. Let's mark as Seltz
- (11) Exhibit 12 a memorandum dated May 1,
- (12) 2000 bearing control numbers BRE 015183
- (13) and 015184.
- (14) **(Plaintiff's Exhibit Seltz 11,**
- (15) **Memorandum dated May 1, 2000, Bates**
- (16) **labeled BRE 015181 through BRE 015182,**
- (17) **marked for identification.)**
- (18) **(Plaintiff's Exhibit Seltz 12,**
- (19) **Memorandum dated May 1, 2000, Bates**
- (20) **labeled BRE 015183 and BRE**
- (21) **015184, marked for identification.)**
- (22) **Q.** My question as to 11 as you are
- (23) taking a look at it, Mr. Seltz, is if you can
- (24) identify that for us?
- (25) **A.** This is a memo I wrote to Josh

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- (1)
- (2) **Rosenkranz, Nancy Northup and Scott Schell on**
- (3) **May 1, 2000.**
- (4) **Q.** You were the author of this memo
- (5) I take it?
- (6) **A.** Yes.
- (7) **Q.** I direct your attention to the
- (8) heading the passage of the memo which is headed
- (9) differences between parties and candidates.
- (10) The last sentence says -- I will read the last
- (11) bullet point Urging Action: Why so many party
- (12) ads urge action: Of the 44,493 party ads,
- (13) 10,472 did not urge action (23 percent). Of
- (14) the 77 percent that did urge an action, 22,879
- (15) were to call, and 10,043 (adding up to 97
- (16) percent) were to send a message or call, each
- (17) the trademark tag lines of sham issue ads."
- (18) You see that?
- (19) **A.** Yes.
- (20) **Q.** Why do you view a tag line to
- (21) send a message or call to be a trademark tag
- (22) line sham issue ad?
- (23) **A.** From our experience those two
- (24) phrases have been used most often by parties
- (25) and groups who wanted to avoid being covered by

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- (1)
- (2) **campaign finance laws and instead would produce**
- (3) **what we called sham issue ads.**
- (4) **Q.** Was it your view that any ad that
- (5) contained indication to send a message or call
- (6) was likely a sham issue ad?
- (7) **A.** No, I would not be able to
- (8) **categorize an ad just by that particular piece**
- (9) **of information.**
- (10) **Q.** Why did you call a trademark tag
- (11) line?
- (12) **A.** Because like I said the ads that
- (13) **had attracted people who were interested in**
- (14) **campaigns and campaign finances tended to end**
- (15) **in lines like send a message to Senator X, tell**
- (16) **him to stop being, tell him to stop spending**
- (17) **your social security check, something like**
- (18) **that. It was striking as we just -- it was in**
- (19) **the very beginning when we began the examples**
- (20) **of ads referred to as sham issue ads often**
- (21) **ended with send a message or call so trademark**
- (22) **would -- I'm not using trademark in any kind of**
- (23) **precise sense here.**
- (24) **Q.** Had you come to some conclusion
- (25) that ads with that tag line were more often

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- (1)
- (2) sham than not?
- (3) **A.** That's an empirical question that
- (4) **I don't remember testing, it's testable.**
- (5) **Q.** I'm just trying to get an
- (6) understanding why you called it trademark tag
- (7) line, that's all?
- (8) **A.** I don't know why. Only because I
- (9) **think it was a matter of moving from some of**
- (10) **the exemplary sham issue ads that we talked**
- (11) **about before this began. It turns out that**
- (12) **there's a reason they kept popping up which was**
- (13) **that 97 percent of party ads urging action were**
- (14) **those so it was a reason you were seeing it so**
- (15) **often in the beginning because those words were**
- (16) **used very often.**
- (17) **Q.** Let's take a look at Seltz
- (18) Exhibit 12, Mr. Seltz, first question is can
- (19) you tell us what it is?
- (20) **A.** This is another memorandum
- (21) **written on May 1, 2000 by me addressed to Josh**
- (22) **Rosenkranz, Scott Schell and Amanda Cooper.**
- (23) **Q.** Who is Amanda Cooper?
- (24) **A.** She was and I believe still is
- (25) **Scott Schell's main assistant in the public**

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- (1)
- (2) **affairs department at the Brennan Center.**
- (3) **Q.** This is a memo entitled
- (4) anticipated criticisms – regarding anticipated
- (5) criticisms, is it not?
- (6) **A. Yes.**
- (7) **Q.** This was anticipated criticisms
- (8) of the 1998 Buying Time study you are referring
- (9) to?
- (10) **A. Yes.**
- (11) **Q.** Then you list a number of
- (12) factors, I don't want to characterize, I will
- (13) ask you to characterize a number of issues
- (14) beginning where did these ads run, do you see
- (15) that?
- (16) **A. Yes.**
- (17) **Q.** What was your concern about
- (18) criticism as to where the ads ran?
- (19) **A. It was like I said in the first**
- (20) **paragraph, this was less – this first one was**
- (21) **really about answering a question that we would**
- (22) **anticipate getting particularly from reporters**
- (23) **which was how comprehensive is this tracking**
- (24) **tool and the answer is it's very comprehensive**
- (25) **so that was what I was getting at in that first**

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- (1)
- (2) **In the data set I believe there**
- (3) **were ads for more than 200 races. The database**
- (4) **itself would be able to capture ads from**
- (5) **significantly more races than that.**
- (6) **Q.** Let me direct your attention back
- (7) to Exhibit 1 on page 7 on the bottom left hand
- (8) column the final data set – "The final data
- (9) set includes ads from 194 House and Senate
- (10) races along with an array of public service
- (11) announcements and other non-partisan appeals",
- (12) do you see that?
- (13) **A. Yes.**
- (14) **Q.** Do you know how many races there
- (15) were in the 1998 Federal election?
- (16) **A. There would have been –**
- (17) **technically there would have been 435**
- (18) **Congressional House races and about 33 or 34**
- (19) **Senate races.**
- (20) **MS. BUCKLEY:** Off the record.
- (21) **(Discussion off the record.)**
- (22) **(Could you read back his answer.)**
- (23) **(Record read.)**
- (24) **Q.** If my math is correct, that's
- (25) about 468 races in the 1998 election?

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- (1)
- (2) **bold heading.**
- (3) **Q.** Why did you refer to it – why
- (4) did you include it in a list of anticipated
- (5) criticisms?
- (6) **A. I think it's sort of implicit**
- (7) **that in a question of what's the breath of the**
- (8) **CMAG tracking tool the anticipated criticism is**
- (9) **it's not 100 percent, it doesn't track 100**
- (10) **percent of all ads and, you know, on every**
- (11) **single possible broadcast medium so this is**
- (12) **just a way of clarifying peoples' questions**
- (13) **about breath.**
- (14) **Q.** In fact, CMAG only tracks the top
- (15) 75 media markets; isn't that right?
- (16) **A. Yes.**
- (17) **Q.** How many races would that
- (18) capture, do you know?
- (19) **A. I would have to go back and look.**
- (20) **My recollection is that it was over 200 Federal**
- (21) **races. That means it – that doesn't mean that**
- (22) **it didn't capture – it doesn't cover other**
- (23) **congressional districts. It just means that a**
- (24) **lot of – a whole lot of congressional**
- (25) **campaigns didn't have television advertising.**

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- (1)
- (2) **A. About.**
- (3) **Q.** If you look at the bottom of page
- (4) 7 there's a footnote off that next sentence
- (5) footnote 9 talking about the boundaries of
- (6) media markets not frequently matching the
- (7) boundaries of congressional districts. I will
- (8) read the entire footnote. One reason for this
- (9) referring back to the text is that the
- (10) boundaries of media markets frequently do not
- (11) match the boundaries of congressional
- (12) districts, forcing candidates to waste money
- (13) reaching viewers who are not their
- (14) constituents. See chapter five for more
- (15) information. In a small medium market would it
- (16) not be more efficient for a Federal candidate
- (17) to use television than it would in a large
- (18) media market, Mr. Seltz?
- (19) **MR. PAOLELLA:** Objection, lacks
- (20) foundation.
- (21) **Q.** If you know?
- (22) **A. I don't understand your question.**
- (23) **Q.** This text and footnote seems to
- (24) suggest that many house candidates, I'm reading
- (25) now, choose not to advertise on network

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- (1)
- (2) television because of the expense involved, do
- (3) you see that?
- (4) **A. Yes.**
- (5) **Q. Then from that drops off footnote**
- (6) **9 which I was just reading which says media**
- (7) **markets frequently don't match the boundaries**
- (8) **of congressional districts forcing candidates**
- (9) **to waste money reaching viewers who are not**
- (10) **their constituents and my question is whether**
- (11) **it would be more efficient for a Federal**
- (12) **candidate to advertise in a small media market**
- (13) **than it would to advertise in a large media**
- (14) **market given this issue identified in this**
- (15) **study?**
- (16) **MR. PAOLELLA: Objection.**
- (17) **A. It really depends.**
- (18) **Q. On what?**
- (19) **A. First of all, the word efficient**
- (20) **I think means something specific to political**
- (21) **scientists that I'm not qualified to talk**
- (22) **about.**
- (23) **Q. I was not using it in that sense,**
- (24) **trust me.**
- (25) **A. That's sort of how I would**

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- (1)
- (2) understand your question. What footnote nine
- (3) is referring to is something that I talked
- (4) about earlier which is that it's not really a
- (5) matter of efficiency, isn't really a matter of
- (6) the size of the media market which could, I
- (7) don't know if you meant geographic size or the
- (8) number of people that live within that market.
- (9) **Q. I use the term the way it's used**
- (10) **here meaning in Exhibit 1. Is Albany one of**
- (11) **the top 75 markets?**
- (12) **MS. BHATTACHARYYA: Small media**
- (13) **market is not used in this exhibit.**
- (14) **MS. BUCKLEY: I'm using the term**
- (15) **media market, that's all I meant, in the**
- (16) **same fashion it's being used here in**
- (17) **footnote nine.**
- (18) **A. I'm not clear if you mean the**
- (19) **geographic size or the number of people who**
- (20) **live within the covered area of the media**
- (21) **market.**
- (22) **Q. How did CMAG pick its 75 markets**
- (23) **that it covered, do you know?**
- (24) **A. I don't know if it's -- I would**
- (25) **assume it's by the number of people in each**

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- (1)
- (2) media market. The reason that -- so when you
- (3) talk about efficiency, you are talking about
- (4) cost more than anything because, you know, one
- (5) of the most expensive media markets is the New
- (6) York City media market which covers a huge
- (7) number of congressional districts because of
- (8) the density of the population. It's not
- (9) efficient for a candidate -- for the
- (10) congressman from upper Manhattan to buy
- (11) advertising on New York TV because it will
- (12) reach all of New York City, pieces of New
- (13) Jersey, pieces of Connecticut none of whom care
- (14) about advertisements from the congressman from
- (15) upper Manhattan so if the cost of air time is
- (16) relatively cheap in another market, but where
- (17) you would still be reaching a lot of people who
- (18) are not your constituents, a candidate may
- (19) still choose to buy air time because there is
- (20) some value in reaching at least a percentage of
- (21) your own constituents in that media market.
- (22) **Q. Let's assume we have a media**
- (23) **market, a small media market in which only one**
- (24) **congressional district is covered. I'm sure**
- (25) **there must be some of them around the country,**

Page 176

- (1)
- (2) do you know?
- (3) **A. I think you are talking about**
- (4) **where a media market putting aside its size is**
- (5) **congruent with a congressional district?**
- (6) **Q. Correct.**
- (7) **A. I don't know if there's one that**
- (8) **would be 100 percent the same.**
- (9) **Q. Let's assume that in Albany, the**
- (10) **city of Albany, only all citizens in the city**
- (11) **of Albany are in the same congressional**
- (12) **district. My question is a candidate for the**
- (13) **House of Representatives in the city of New**
- (14) **York a large media market by my definition if**
- (15) **he were to purchase air time on New York**
- (16) **television he would be reaching an enormous**
- (17) **amount of people not in his district, would you**
- (18) **agree with that?**
- (19) **A. A congressional district from New**
- (20) **York City would, yes.**
- (21) **Q. My hypothetical candidate in**
- (22) **Albany is reaching every one in his district?**
- (23) **A. Every one who has television.**
- (24) **Q. Correct.**
- (25) **A. Right.**

Page 177

- (1)
- (2) **Q.** My question is in the smaller
- (3) media market namely Albany, isn't it more
- (4) likely that a house candidate would buy
- (5) advertising time than it would be in a large
- (6) media market than New York?
- (7) **MR. PAOLELLA:** Objection.
- (8) **A.** It depends if the candidate is in
- (9) a safe seat and the candidate doesn't have the
- (10) opposition or isn't seriously contested they
- (11) are not going to spend money on TV. There are
- (12) other factors beyond the congruents between
- (13) media market and the shape of the congressional
- (14) district that are going to make the candidate
- (15) decide whether or not to buy air time.
- (16) **Q.** That's not what your report is
- (17) talking about, it says many house candidates
- (18) choose not to advertise on network television
- (19) because of the expense involved and I'm asking
- (20) in that framework whether it would be more
- (21) likely for our theoretical Albany candidate to
- (22) purchase television time than it would our
- (23) theoretical New York City congressional
- (24) candidate?
- (25) **MR. PAOLELLA:** Objection.

Page 178

- (1)
- (2) **A.** It would be more likely if – I
- (3) can only hypothesize on what would make – I'm
- (4) not a political strategist. This isn't what we
- (5) covered in this report. What would make a
- (6) candidate buy television advertising would more
- (7) likely be the intensity of the race rather than
- (8) shape of the district.
- (9) **Q.** I want you to assume in both
- (10) these theoretical candidates the race is
- (11) equally intense and I'm just saying would it be
- (12) more efficient the way you are talking about in
- (13) Buying Time '98 namely the impact of media
- (14) markets on congressional – the size of
- (15) congressional district force a candidate in a
- (16) small market to purchase television time than a
- (17) candidate for a large market, that's all?
- (18) **MR. PAOLELLA:** Objection.
- (19) **Q.** He wastes less money, doesn't he?
- (20) **A.** It depends if the candidate in
- (21) New York is reaching 100 percent of her
- (22) constituents but spending a whole lot of money
- (23) and reaching a lot of people who are not her
- (24) constituents they are going to view that –
- (25) they may view that as an important investment.

Page 179

- (1)
- (2) **I don't know. The candidate in Albany will**
- (3) **also reach 100 percent of his constituents. It**
- (4) **will cost – it will probably cost that**
- (5) **candidate less money.**
- (6) **Q.** Thank you. So getting back to
- (7) Seltz 12 you anticipated there would be
- (8) criticism of the scope of the CMAG monitoring,
- (9) did you not?
- (10) **A.** I think criticisms – I realize
- (11) it says regarding anticipated criticisms. I
- (12) think it's more accurate – my first sentence
- (13) is more of an accurate characterization of what
- (14) I meant in this memo which is that I was
- (15) anticipating we would get questions on the
- (16) scope of the data.
- (17) **Q.** The second anticipated criticism
- (18) is the tracking system reliable. What did you
- (19) anticipate to be raised about the reliability
- (20) of the tracking system?
- (21) **A.** What I was anticipating was some
- (22) degree of unfamiliarity with the technology and
- (23) with that unfamiliarity a question about how
- (24) well this technology could capture all of the
- (25) political ads in the markets that it covers.

Page 180

- (1)
- (2) **Q.** In fact, it doesn't, does it?
- (3) **MR. PAOLELLA:** Objection.
- (4) **A.** Doesn't what?
- (5) **Q.** CMAG doesn't capture every ad in
- (6) the market it covers?
- (7) **A.** It doesn't capture local cable.
- (8) **Q.** It also doesn't capture many of
- (9) the AFL-CIO airings of ad number 12, does it?
- (10) **MR. PAOLELLA:** Objection.
- (11) **A.** That's not really accurate. It
- (12) captures the fact that the AFL-CIO aired a
- (13) particular ad. From then it would list
- (14) everything from the length of the ad to the
- (15) station to the show that it was aired on. It
- (16) would give you a whole list of contextual
- (17) information so in that sense it's capturing the
- (18) ad.
- (19) **Q.** It doesn't capture the content of
- (20) every ad; isn't that right?
- (21) **A.** It doesn't capture a storyboard
- (22) for every ad.
- (23) **Q.** That's content, right?
- (24) **MR. PAOLELLA:** Objection.
- (25) **A.** As we talked about with

Page 181

- (1)
- (2) **cookie-cutter ads you get – the technology is**
- (3) **able to recognize that most of the content of**
- (4) **that ad will be identical otherwise it would**
- (5) **have recognized it as a different ad so in a**
- (6) **sense it's capturing the content of the ad. If**
- (7) **it captures it once and isn't able to recognize**
- (8) **that an airing in Raleigh verses Indianapolis**
- (9) **as a different ad we can safely assume it's the**
- (10) **same ad except for one difference in the end.**
- (11) **Q. Which it does not capture; isn't**
- (12) **that right, the difference at the end?**
- (13) **A. It doesn't always capture that**
- (14) **difference at the end.**
- (15) **Q. It doesn't ever capture, does it?**
- (16) **MR. PAOLELLA: Objection.**
- (17) **A. That's not true because we have**
- (18) **-- we had -- if I remember correctly, we had**
- (19) **separate storyboards for at least Coats and**
- (20) **Snowe so saying it doesn't ever capture that I**
- (21) **don't think is accurate.**
- (22) **Q. It didn't capture it for other**
- (23) **than Coats, Snowe and the Republican candidate**
- (24) **in Wisconsin; isn't that right?**
- (25) **A. I don't remember seeing the**

Page 183

- (1)
- (2) **A. Because people who would not be**
- (3) **familiar with the way of conducting this kind**
- (4) **of survey would make a criticism and our answer**
- (5) **would be this is common practice.**
- (6) **Q. As you sit here today do you**
- (7) **believe it is common practice to have**
- (8) **undergraduate students do the kind of work that**
- (9) **Professor Goldstein asked them to do?**
- (10) **A. That was my understanding when I**
- (11) **was at the Brennan Center and it's still my**
- (12) **understanding now.**
- (13) **Q. The next heading of anticipated**
- (14) **criticisms is discerning the primary purpose of**
- (15) **a spot and you can read that paragraph to**
- (16) **yourself, Mr. Seltz, if you would. I will read**
- (17) **it into the record. "One of the prime findings**
- (18) **is our test of the regulatory model found in**
- (19) **earlier versions of McCain-Feingold: that of**
- (20) **all issue ads judged to be primarily about**
- (21) **providing information that aired within 60 days**
- (22) **of the election only two or 78 percent of all**
- (23) **airings would have been subject to regulation**
- (24) **under this system. This test did rely on a**
- (25) **subjective screen - coders had to decide**

Page 182

- (1)
- (2) **storyboard for the candidate in Wisconsin.**
- (3) **Q. Do you have any reason to doubt**
- (4) **Mr. Ellenberger's statement?**
- (5) **A. That he had a storyboard for**
- (6) **Wisconsin?**
- (7) **Q. That's what he said?**
- (8) **A. I don't have reason to doubt that**
- (9) **he had one.**
- (10) **Q. Under codes, we are going on with**
- (11) **Seltz 12 which is the anticipated criticisms**
- (12) **memo, you have a heading called coding**
- (13) **decisions and bullet point headed ASU students:**
- (14) **using undergraduates for social science**
- (15) **research is standard. What was the anticipated**
- (16) **criticism you were addressing in that bullet**
- (17) **point, Mr. Seltz?**
- (18) **A. Again, it was an anticipated**
- (19) **question about the methodology which would be**
- (20) **that people would not be familiar with what I**
- (21) **learned to be the common practice of using**
- (22) **undergraduates for this kind of survey**
- (23) **research.**
- (24) **Q. Why is it listed here in a memo**
- (25) **entitled anticipated criticisms?**

Page 184

- (1)
- (2) **whether an ad was about electioneering or about**
- (3) **issues - but coders were able to judge the ads'**
- (4) **primary purpose with only one percent**
- (5) **uncertainty, even with a don't know/unclear**
- (6) **option."**
- (7) **If you would turn to the coding**
- (8) **of the commercials appendix to Buying Time 1998**
- (9) **page 193, I direct your attention to question**
- (10) **6, Mr. Seltz. Do you see that?**
- (11) **A. Yes, I do.**
- (12) **Q. Question 6 asks the coders in**
- (13) **their opinion whether the purpose of the ad is**
- (14) **primarily to provide information?**
- (15) **A. It doesn't say primarily.**
- (16) **Q. No, you say primarily though in**
- (17) **describing it, don't you?**
- (18) **A. I would have to look at the**
- (19) **tables or in this memorandum you mean?**
- (20) **Q. What I just read discerning the**
- (21) **primary purpose of the spot?**
- (22) **A. Okay.**
- (23) **Q. The heading and then the sentence**
- (24) **saying judged to be primarily about providing**
- (25) **information. That's not contained in what the**

Page 185

(1)

(2) coders were asked, is it?

(3) **A. The word primary is not in this**

(4) **question, no.**

(5) **Q. They were asked is the purpose to**

(6) **provide information about or urge action on a**

(7) **bill or issue or is it to generate support or**

(8) **opposition for a particular candidate with**

(9) **emphasis, that's what they were asked, correct?**

(10) **A. Correct.**

(11) **Q. Nobody asked them to judge the**

(12) **ads' primary purpose as you refer to at the end**

(13) **of this bullet point?**

(14) **A. No, the word primary and**

(15) **primarily isn't in question 6.**

(16) **Q. Did you ever have any discussions**

(17) **with Professor Goldstein or Jonathan Krasno as**

(18) **to whether question 6 should have been worded**

(19) **differently?**

(20) **A. I didn't personally have a lot to**

(21) **do with developing this instrument. It was --**

(22) **so I didn't have -- no, I don't remember having**

(23) **conversations about the wording of question 6.**

(24) **Q. Who did have a lot to do about**

(25) **creating this instrument that you refer to it**

Page 187

(1)

(2) you look?

(3) **A. I would ask Ken or Jon if they**

(4) **had it in their files.**

(5) **Q. Was there any consideration given**

(6) **to giving the coders the option to answer**

(7) **question 6 both?**

(8) **A. I don't remember conversations**

(9) **specific to number 6. I know that there was --**

(10) **one of the things I learned in doing this is**

(11) **there are times when you want to force the**

(12) **coder to make a decision and times where you**

(13) **want to be able to give the coder a third**

(14) **choice like the unsure unclear option here so**

(15) **my understanding was that this was -- I don't**

(16) **remember conversations about the work, the**

(17) **particular wording of this question, I wasn't**

(18) **part of it.**

(19) **Q. You will agree, won't you, you**

(20) **reviewed all the storyboards for the issue ads**

(21) **in 1998, haven't you, Mr. Seltz, have you?**

(22) **A. Every single one?**

(23) **Q. Yes.**

(24) **A. I looked at the vast majority.**

(25) **Q. You will agree there are many**

Page 186

(1)

(2) as?

(3) **A. There was a series of**

(4) **conversations between Jon Krasno and Ken**

(5) **Goldstein before this project got under way but**

(6) **where they knew they would likely have the data**

(7) **and be able to provide these content codes. My**

(8) **recollection is that Jon Krasno and Ken**

(9) **Goldstein wrote up a draft of a coding**

(10) **protocol, we then convened a group of -- a**

(11) **small group of political scientists as well as**

(12) **some staff from the Brennan Center in a meeting**

(13) **and showed them the drafts and they were able**

(14) **to provide feedback and additional ideas and**

(15) **enrich the process in that way.**

(16) **Q. Did the draft ever change?**

(17) **A. After that meeting?**

(18) **Q. Yes.**

(19) **A. I don't remember. I'm pretty**

(20) **sure we incorporated some of the ideas of those**

(21) **people.**

(22) **Q. Do you know where the original**

(23) **draft is located today?**

(24) **A. No.**

(25) **Q. If you had to look, where would**

Page 188

(1)

(2) which provide both information and generate

(3) support, wouldn't you?

(4) **A. I think that a lot of ads that**

(5) **are generating support or opposition to a**

(6) **candidate unless they are biographical or just**

(7) **depict a candidate with his or her family or**

(8) **something, you know, they are not -- they are**

(9) **going to be general -- what you are looking for**

(10) **is sort of an intensity or feeling about**

(11) **whether the purpose of this ad is to elect or**

(12) **defeat a candidate and through that there may**

(13) **be discussion of issues.**

(14) **Q. That was not exactly my question.**

(15) **My question is you told us that you reviewed**

(16) **the overwhelming majority of the storyboards,**

(17) **the issue ads in the 1998 Federal election and**

(18) **my question was isn't it fair to say that many**

(19) **of them do both provide information and**

(20) **encourage generate support or opposition for a**

(21) **particular candidate?**

(22) **A. Of course.**

(23) **Q. What was your concern about**

(24) **discerning the primary purpose of a spot which**

(25) **led you to include it in your memo of**



(1)

(2) anticipated criticisms which we marked as Seltz

(3) 12?

(4) **A.** It was the concern that reporters

(5) and other readers of the report would expect

(6) that every single question in the coding

(7) protocol would have been measuring something

(8) purely objective and I wanted to be able to

(9) alert the readers of this memo that part of the

(10) protocol is indeed asking for subject judgment

(11) and it's, you know, not something to avoid. It

(12) was an important part of the coding protocol.

(13) **Q.** You're specifically referring to

(14) question 6 though, aren't you?

(15) **A.** Yes.

(16) **Q.** Were you anticipating criticism

(17) that question 6 was simply too subjective?

(18) **A.** No, that wasn't -- that's not

(19) what I was anticipating. It was not a question

(20) of degree of subjectivity. It was a question

(21) of making sure that people understood that it

(22) was indeed a subjective question period, not

(23) too subjective, but just subjective.

(24) **Q.** It's fair to say you were

(25) anticipating criticism that question 6 was

(1)

(2) **Often those paid for lines would not be spoken**

(3) **aloud so they would not be -- they would not**

(4) **have appeared in the text of the storyboard so**

(5) **CMAG when they coded the ad as AFL-CIO, they**

(6) **would rely on the text of the disclaimer in the**

(7) **ad. I think we actually had someone -- we had**

(8) **one of Ken Goldstein's students go through each**

(9) **ad individually so it wasn't that they were**

(10) **looking at one of these fuzzy copies, I think**

(11) **he actually went to CMAG and looked at the very**

(12) **first -- he might have looked on a big TV**

(13) **screen or computer screen rather than a**

(14) **printout, but it was just to be as sure as**

(15) **possible we could read the paid for lines.**

(16) **Sometimes groups or candidates or**

(17) **parties would print them too small or they**

(18) **would not put them up -- there is regulation**

(19) **about how long you have to have them up and**

(20) **they would not have them up for as long as they**

(21) **were supposed to, it's longer than four**

(22) **seconds, so they would have had to appear in**

(23) **one of the frames captured by the storyboards.**

(24) **Q.** You're sure it's longer than four

(25) seconds?

(1)

(2) subjective?

(3) **A.** Yes.

(4) **Q.** On disclaimers under that there

(5) is a heading which says reading the disclaimers

(6) and it goes on to say "25 percent of the ads

(7) were missing disclaimers or their disclaimers

(8) were illegible which are what we used to

(9) determine ad sponsor and whether an ad was an

(10) independent expenditure or an issue ad. In

(11) these cases we relied on CMAGs original coding

(12) which was accurate 95 percent of the time or

(13) called the television stations." Why were 25

(14) percent of the ads missing disclaimers or their

(15) disclaimers were illegible if you know, Mr.

(16) Seltz?

(17) **A.** Some of the ads particularly

(18) those by groups who -- let me back-up. There

(19) could be several reasons why an ad was missing

(20) a disclaimer and by disclaimer we meant the

(21) paid for line.

(22) **Q.** That's like at the end of the ads

(23) where it says paid for by committee to re-elect

(24) President Bush or something?

(25) **A.** That's the kind of thing, yeah.

(1)

(2) **A.** What's longer than four seconds?

(3) **Q.** The amount of time they are

(4) required to keep them up?

(5) **A.** I'm not positive. I think it's

(6) an FCC regulation. I remember we did some

(7) research on it. They would either be very

(8) small or missing for some reason. That's the

(9) reason there was this number that was missing.

(10) **Q.** For a 30 second political

(11) advertisement captured by CMAG how many frames

(12) of picture would appear on a storyboard, do you

(13) know?

(14) **A.** I think it's about seven. It's

(15) usually every four seconds that they capture

(16) every four seconds of video.

(17) **Q.** So in essence they are taking a

(18) still picture every four seconds of the

(19) political advertisement as it airs on

(20) television, is that a fair way to look at it?

(21) **A.** Yes.

(22) **MS. BUCKLEY:** Let's mark as Seltz

(23) Exhibit 13 a two page document, the

(24) first page bears the control number BRE

(25) 007570, second has no Bates stamp.

Page 193

- (1)
- (2) **(Plaintiff's Exhibit Seltz 13,**
- (3) **Document, Bates labeled BRE**
- (4) **007570, marked for identification.)**
- (5) **Q. Can you tell us what the first**
- (6) **page of Seltz 13 is, Mr. Seltz?**
- (7) **A. Sure, it's an e-mail from Scott**
- (8) **Schell to Josh Rosenkranz, Nancy Northup,**
- (9) **myself and Amanda Cooper after the release of**
- (10) **the Buying Time report.**
- (11) **Q. Mr. Schell references a Wall**
- (12) **Street Journal story about the report which we**
- (13) **have annexed a copy of to this exhibit, do you**
- (14) **see that?**
- (15) **A. Yes, I do.**
- (16) **Q. In the memo Mr. Schell quotes**
- (17) **from the Journal article and the quote is, "Not**
- (18) **surprisingly the Wall Street Journal WSJ used**
- (19) **the report to reach a different conclusion:**
- (20) **that means just two percent of all 300,000 plus**
- (21) **spots studied were issue ads run by outside**
- (22) **groups that appeared aimed at supporting a**
- (23) **candidate. This Journal statement is factually**
- (24) **accurate (there is another inaccuracy in the**
- (25) **report that we should correct)." Do you agree**

Page 194

- (1)
- (2) **that the Wall Street Journal statement about**
- (3) **the two percent figure is factually accurate,**
- (4) **Mr. Seltz?**
- (5) **A. Yes, that's true.**
- (6) **Q. There is the reference to there's**
- (7) **another inaccuracy in the report that we should**
- (8) **correct, do you know what inaccuracy is being**
- (9) **referred to?**
- (10) **A. There is some inaccuracy in the**
- (11) **- he's referring to the Wall Street Journal**
- (12) **article, not the Buying Time report. I don't**
- (13) **remember which inaccuracy is in here.**
- (14) **Q. Turning to the Wall Street**
- (15) **Journal report itself, Mr. Seltz, there is a**
- (16) **quote purporting to be from you right after the**
- (17) **Wall Street Journal reports this two percent**
- (18) **figure there is a quote, "In most races you're**
- (19) **not going to see a whole flood of interest**
- (20) **groups coming in said Daniel Seltz one of the**
- (21) **authors. They play a huge role in a handful of**
- (22) **racers." Did you state this to the Wall Street**
- (23) **Journal, Mr. Seltz?**
- (24) **A. I think so.**
- (25) **Q. They quoted you accurately?**

Page 195

- (1)
- (2) **A. I think so.**
- (3) **Q. Do you know what handful of races**
- (4) **you had in mind when you said they played a**
- (5) **huge role in a handful of races?**
- (6) **A. I couldn't tell you now exactly**
- (7) **which races I was thinking of.**
- (8) **Q. Do you still agree today that in**
- (9) **most races you will not see a whole flood of**
- (10) **interest groups coming in?**
- (11) **A. In the sense of most meaning?**
- (12) **Q. However you used it there.**
- (13) **MR. PAOLELLA: Referring to the**
- (14) **1998 data or referring to today?**
- (15) **MS. BUCKLEY: Yes.**
- (16) **A. It's true in the 1998 data in**
- (17) **most races which means the majority you're not**
- (18) **going to see a whole flood of interest groups**
- (19) **coming in.**
- (20) **Q. More than majority because you**
- (21) **said, did you not, they play a huge role in**
- (22) **only a handful, right?**
- (23) **MR. PAOLELLA: Objection.**
- (24) **A. Yes, I did say handful.**
- (25) **Q. Did your view change if the**

Page 196

- (1)
- (2) **question is if we look at 2000 instead of 1998?**
- (3) **A. I don't know.**
- (4) **Q. You don't know one way or the**
- (5) **other?**
- (6) **A. I'm not familiar with the 2000**
- (7) **data.**
- (8) **Q. Have you ever read Buying Time**
- (9) **2000?**
- (10) **A. Not in full.**
- (11) **Q. My colleague reminds me to direct**
- (12) **your attention to paragraph three, the numbered**
- (13) **paragraph three in Mr. Schell's e-mail which**
- (14) **has been marked as Seltz 13, hot races are**
- (15) **influenced by group spending is the heading.**
- (16) **Then it goes on, "As Daniel said in his Journal**
- (17) **quote, groups play a huge role in a handful of**
- (18) **racers [Daniel, please select the top three**
- (19) **racers in the study that make this point and**
- (20) **circulate as a follow up to this e-mail]." Did**
- (21) **you do that?**
- (22) **A. I don't remember.**
- (23) **Q. How would you go about doing**
- (24) **that, how methodologically could you figure**
- (25) **that out?**

(1)

(2) **A. I would look at the magnitude of**

(3) **spending by groups in particular races and**

(4) **compare them to the amount that was spent by**

(5) **candidates.**

(6) **Q. Mr. Seltz, do you know who Rick**

(7) **Hasen is?**

(8) **A. I think he's a law professor.**

(9) **Q. Did you ever have any contact**

(10) **with Professor Hasen while you were at the**

(11) **Brennan Center?**

(12) **A. No.**

(13) **Q. Have you had any about Buying**

(14) **Time 1998 or anything else?**

(15) **A. No.**

(16) **Q. Do you know whether or not**

(17) **Professor Hasen has written on the data, the**

(18) **Brennan Center 1998 data, the Buying Time 1998**

(19) **data?**

(20) **A. I think he was working on a law**

(21) **review article that used the data.**

(22) **Q. We previously marked as Holman**

(23) **Exhibit 6 a document which I will hand to you,**

(24) **Mr. Seltz. Had you had a chance to look at**

(25) **Holman Exhibit 6, Mr. Seltz?**

(1)

(2) **it.**

(3) **MR. PAOLELLA: Let's do it that**

(4) **way.**

(5) **Q. Did you ever see this document**

(6) **before you prepared for your deposition in this**

(7) **case?**

(8) **A. No.**

(9) **Q. Did there come a time where you**

(10) **learned that Professor Holman and Professor**

(11) **Hasen had concluded that your 7 percent figure**

(12) **in Buying Time 1998 was wrong?**

(13) **A. No, I knew what they were working**

(14) **on -- that they were working with that set of**

(15) **questions. I never saw anything where they**

(16) **concluded that the 7 percent figure wasn't**

(17) **right.**

(18) **Q. When did you first learn that**

(19) **they had concluded that the 7 percent figure**

(20) **was wrong?**

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

(22) **MS. BUCKLEY: If at all.**

(23) **MR. PAOLELLA: Mischaracterizes**

(24) **the witness' testimony.**

(25) **Q. Did anyone ever tell you that**

(1)

(2) **A. Yes.**

(3) **Q. Have you ever seen that document**

(4) **before?**

(5) **MR. PAOLELLA: Instruct the**

(6) **witness to limit his answer to any time**

(7) **he may have seen the document outside of**

(8) **any consultation with his attorneys in**

(9) **the course of this litigation.**

(10) **A. No.**

(11) **MS. BUCKLEY: Are you asking him**

(12) **if he saw the document with you that**

(13) **he's supposed to answer the question**

(14) **no if I ask him if he's ever seen the**

(15) **document?**

(16) **MR. PAOLELLA: I think the answer**

(17) **to that question if it's a document he**

(18) **reviewed with me encroaches on attorney**

(19) **work product.**

(20) **MS. BUCKLEY: So you're suggesting**

(21) **he answer the question no even if he did**

(22) **see it? If you would like me to change**

(23) **the question did you ever see the**

(24) **document before you prepared for your**

(25) **deposition in this case, I'm happy to do**

(1)

(2) **they concluded it was wrong?**

(3) **A. No. It depends -- the only thing**

(4) **that -- I got a couple of e-mails from Luke**

(5) **saying that Rick Hasen was writing an article**

(6) **using the data and they were -- I forgot what**

(7) **his -- what the words were, but it was that**

(8) **they were trying to answer the question about**

(9) **the Snowe-Jeffords test and they were having**

(10) **questions about our 7 percent figure. Nothing**

(11) **about concluding that it was wrong.**

(12) **Q. This is back in early 2001 if you**

(13) **know? We will show you the e-mails.**

(14) **A. I think that sounds right.**

(15) **Q. Other than this exchange of**

(16) **e-mails back in early 2001 which we will come**

(17) **to and any conversations you may have had with**

(18) **counsel, have you had a discussion about the 7**

(19) **percent figure in the last year?**

(20) **A. I don't think so.**

(21) **Q. Mr. McLoughlin testified that he**

(22) **ran into you recently on the street in New York**

(23) **City. Did you talk to him about the 7 percent**

(24) **figure then?**

(25) **A. No.**

## Page 201

- (1)
- (2) **Q.** Do you know if there has been any
- (3) general discussion within the Brennan Center
- (4) about the 7 percent figure in the last month or
- (5) so?
- (6) **A.** No.
- (7) **Q.** Nobody consulted you from the
- (8) Brennan Center?
- (9) **A.** Beyond --
- (10) **Q.** In the last month or so?
- (11) **A.** No.
- (12) **Q.** We are looking at Holman Exhibit
- (13) 6 which is a letter from Luke McLoughlin to
- (14) Professor Richard Hasen. In this letter Mr.
- (15) McLoughlin identifies the two genuine issue ads
- (16) that ran within 60 days of the 1998 election, I
- (17) should say group issue ads as number 12 and
- (18) 318, the ones you identified earlier; is that
- (19) right?
- (20) **A.** Yes.
- (21) **Q.** Mr. Seltz, Mr. McLoughlin talks
- (22) about the fact that he's sending Professor
- (23) Hasen 20 boards of which 16 are clearly sham
- (24) issue ads and goes on to say we don't have the
- (25) other 12 boards to confirm I count 28 distinct

## Page 202

- (1)
- (2) sham issue ads. I'm trying to find out from
- (3) you and then he lists a number of ads that he
- (4) claims appear to be sham, I'm trying to figure
- (5) out from you whether you also -- I'm trying to
- (6) find out whether Buying Time 1998, the number
- (7) of sham issue ads aired during the last 60 days
- (8) was 28, is he right, that's all I'm trying to
- (9) find out?
- (10) **A.** I don't know.
- (11) **Q.** You don't know if the number was
- (12) -- okay, we know the genuine issue ads within
- (13) the last 60 days the number of spots was two;
- (14) isn't that right?
- (15) **A.** No, we know the genuine issue ads
- (16) there were two distinct spots that mentioned
- (17) candidates. Doesn't mean that there were --
- (18) **Q.** Okay. There were two distinct
- (19) spots that mentioned candidates?
- (20) **A.** And were coded as genuine issue
- (21) ads that aired within the last 60 days.
- (22) **Q.** Do you know the number of issue
- (23) ads that were coded as either electioneering or
- (24) issue ads within the last 60 days that
- (25) mentioned a Federal candidate, do you know what

## Page 203

- (1)
- (2) that number is?
- (3) **A.** Not offhand.
- (4) **Q.** Is 30 in the ballpark?
- (5) **A.** I don't remember.
- (6) **Q.** Don't know. How would you go
- (7) about finding that out if you had to?
- (8) **A.** I would consult the database.
- (9) **Q.** By running certain programs it
- (10) would tell you the answer to that question?
- (11) **A.** Running SPSS is the program. I
- (12) don't mean to be flip. I want to make sure we
- (13) are clear.
- (14) **Q.** I'm not suggesting you are. I'm
- (15) just trying to figure out numbers here.
- (16) **A.** You would query the -- you would
- (17) write syntax that would let you extract from
- (18) the database those numbers.
- (19) **Q.** I can't find that anywhere in the
- (20) report, can I?
- (21) **A.** I don't remember if there's such
- (22) a table or chart about distinct ads.
- (23) **Q.** We handed you what's been
- (24) previously marked as Holman 27 and Holman
- (25) Exhibit 28. Other than during the course of

## Page 204

- (1)
- (2) any communications with counsel, Mr. Seltz,
- (3) have you seen either of these documents before?
- (4) **A.** No, I haven't.
- (5) **Q.** Directing your attention to page
- (6) two of Exhibit 28, Mr. Holman writes, "While
- (7) only 7 percent of groups placing genuine issue
- (8) ads would be captured, those groups bought
- (9) about 40 percent of all issue ads within that
- (10) time period so in reality according to the 1998
- (11) database about 40 percent of genuine issue ads
- (12) would be deemed electioneering within a 60 day
- (13) regulatory period. Hopefully we will get more
- (14) positive results from the 2000 database." My
- (15) question to you, Mr. Seltz, is did you ever
- (16) learn that Professor Holman had concluded that
- (17) 40 percent of genuine issue ads would be deemed
- (18) electioneering within a 60 day regulatory
- (19) period according to the data in the 1998
- (20) database?
- (21) **A.** No, I didn't. Well, actually, I
- (22) think one of the e-mails from Luke might have
- (23) referred offhand to we don't get 7 percent, we
- (24) get something closer to 40 and that's when I
- (25) think I suggested that they look at media

Page 205

- (1)
- (2) **markets and the cookie-cutter ads. That's why**
- (3) **the 40 percent rings a bell, but I didn't –**
- (4) **but beyond that I haven't – I didn't know that**
- (5) **he had initially reached this conclusion.**
- (6) **MS. BUCKLEY:** Let's mark as
- (7) Exhibit Seltz 14 a one page document
- (8) bearing control numbers BRE 013111 and
- (9) also put back in front of yourself, Mr.
- (10) Seltz, what was previously marked as 32
- (11) which I think is the e-mail exchange we
- (12) are looking for.
- (13) **(Plaintiff's Exhibit Seltz 14,**
- (14) **Document, Bates labeled BRE**
- (15) **013111, marked for Identification.)**
- (16) **MR. PAOLELLA:** Holman 32?
- (17) **MS. BUCKLEY:** Yes.
- (18) **Q.** Seltz 14 appears to be an e-mail
- (19) from Luke McLoughlin to you on January 12th, I
- (20) suspect it's 2001, but we will come to that in
- (21) a minute. Is that an e-mail that you received
- (22) from Luke McLoughlin on or about January 12,
- (23) 2001?
- (24) **A. Yes.**
- (25) **Q.** Luke asked you a series of

Page 206

- (1)
- (2) questions about the '98 data and the
- (3) controversy about the 7 percent figure in his
- (4) e-mail marked Seltz 14. Then Holman 32 which
- (5) we looked at before appears to be a copy of Mr.
- (6) McLoughlin's e-mail reflected in Seltz 14
- (7) contains the answers within it that you and I
- (8) talked about earlier and then another e-mail
- (9) message on the top; is that right?
- (10) **A. Yes, that looks right.**
- (11) **Q.** So between Seltz 14 and Holman 32
- (12) we have the exchange of e-mails that you were
- (13) referring to earlier as the communications you
- (14) had on the 7 percent issue?
- (15) **A. Yes.**
- (16) **Q.** After January 16, 2001 where you
- (17) wrote your last e-mail which is referenced on
- (18) the top of Holman 32, did you have any further
- (19) discussion or communication with anybody at the
- (20) Brennan Center about this issue?
- (21) **A. Not that I can remember.**
- (22) **Q.** You don't know if the discussion
- (23) went on?
- (24) **A. If it did, it didn't include me.**
- (25) **Q.** Did you ever learn that Professor

Page 207

- (1)
- (2) Hasen had concluded that the 7 percent figure
- (3) was – had already concluded that the 7 percent
- (4) figure was wrong?
- (5) **A. No, I didn't.**
- (6) **Q.** You never heard that. Did you
- (7) ever spend any time out at Arizona State with
- (8) Professor Goldstein on this subject?
- (9) **A. No.**
- (10) **Q.** You never observed any of the
- (11) coding of the ads at Arizona State?
- (12) **A. No.**
- (13) **Q.** Or anywhere else for that matter?
- (14) **A. I didn't observe the**
- (15) **undergraduate coding.**
- (16) **Q.** I hand you what's been marked as
- (17) Holman Exhibit 29. You will see in paragraph
- (18) two that Mr. McLoughlin writing to Mr.
- (19) Rosenkranz is trying to figure out the number
- (20) of distinct issue ads that ran within 60 days
- (21) of a Federal election. He says, "I believe
- (22) that 30 ad result is correct, but again, I'm
- (23) going through the set of 70 and also would like
- (24) to get in touch with Daniel to see if this
- (25) matches his recollection." Did anyone ever get

Page 208

- (1)
- (2) in touch with you about that, Mr. Seltz?
- (3) **A. If they did, it would have been**
- (4) **through Luke and this exchange of e-mails.**
- (5) **Q.** You don't know as you sit here
- (6) today whether 30 is the ballpark figure or not?
- (7) **A. Just don't remember that kind of**
- (8) **question.**
- (9) **Q.** I want you to take a peak back if
- (10) you would, Mr. Seltz, at what we have marked or
- (11) what we have given you as Holman Exhibit 6
- (12) which is the letter from McLoughlin to Hasen
- (13) dated January 8, '01 where he purports to set
- (14) forth the number of unique issue ads within the
- (15) last 60 days of a Federal election as reflected
- (16) in the 1998 data. If you look at the top of
- (17) page two McLoughlin is writing, "Looking at the
- (18) ID numbers, it is clear that ad 7 is duplicated
- (19) in the results list as is ad 12 and 318", then
- (20) there's a parenthetical about them being the
- (21) issue ads. The two genuine ads. He goes on to
- (22) say, "In addition, it appears that ad 9 is
- (23) miscoded as the board shows that no candidate
- (24) is mentioned or pictured. Ad 2282 does not
- (25) mention or picture a candidate. One can see

Page 209

- (1)
- (2) that ad 17 is miscoded and it appears that ad
- (3) number 2860 is miscoded as well as a group ad
- (4) instead of a party ad." My question is as of
- (5) January 8, 2001, the 1998 study had been
- (6) published; had it not?
- (7) **A. Yes.**
- (8) **Q. I take it that Mr. McLoughlin is**
- (9) **finding all of these miscodes in the database**
- (10) **as it existed at that time? What I'm trying to**
- (11) **figure out is does the database that you froze**
- (12) **when you left correct the miscodes that you**
- (13) **found or are they still there? Why was Mr.**
- (14) **McLoughlin finding all these miscodes at this**
- (15) **time?**
- (16) **A. Which of those questions do you**
- (17) **want me to answer?**
- (18) **Q. Take the last one.**
- (19) **A. Why did he keep finding miscodes?**
- (20) **Q. Right.**
- (21) **A. There's no way for me to know**
- (22) **what he's talking about here. It could be, you**
- (23) **know, this -- I don't know if these are in fact**
- (24) **miscoded. I don't know why he's -- I don't**
- (25) **know what exactly he's finding. I mean this --**

Page 210

- (1)
- (2) **you know, it's a database of 307,000 separate**
- (3) **cases so I don't know what he means by number 7**
- (4) **is duplicated in the results list as is ad 12**
- (5) **and 318. You know, it's possible that he was**
- (6) **finding what he thought were errors, but in**
- (7) **fact weren't because at this point he was**
- (8) **getting to know this enormous database without**
- (9) **the benefit of the two of us at that time so I**
- (10) **don't know if this got -- if he figured out**
- (11) **exactly what was going on later, but I couldn't**
- (12) **tell you why he was finding these errors what**
- (13) **he thinks were errors.**
- (14) **Q. Do you know whether the 1998 data**
- (15) **continued to be recoded after this study was**
- (16) **published?**
- (17) **A. I don't know if it was.**
- (18) **Q. You don't know. Looking at that**
- (19) **same paragraph we were talking about ad 2860 he**
- (20) **says it was miscoded as well as a group ad**
- (21) **instead of a party ad. It appears that ad 2860**
- (22) **is miscoded as well as a group ad instead of a**
- (23) **party ad. Is there anyway you would know**
- (24) **whether ad number 2860 had been coded as a**
- (25) **group ad or a party ad at the time the study**

Page 211

- (1)
- (2) **was published?**
- (3) **A. Yeah, I could check.**
- (4) **Q. How would you go about checking**
- (5) **that?**
- (6) **A. I would go down to ID number 2860**
- (7) **and I would look under the variable of who paid**
- (8) **for the ad.**
- (9) **Q. Can you do that from the**
- (10) **documents you identified for us earlier today?**
- (11) **A. The paper?**
- (12) **Q. Yes.**
- (13) **A. No.**
- (14) **Q. Can you do it from the 1998 data**
- (15) **set on disk?**
- (16) **A. Yes, presumably.**
- (17) **MS. BUCKLEY: We have brought**
- (18) **with us a laptop which is loaded up**
- (19) **with the CD Rom that was produced by the**
- (20) **Brennan Center containing the 1998 data**
- (21) **in the event that you needed it to look**
- (22) **at something and Eric, can you turn it**
- (23) **on and we will see if it works.**
- (24) **MR. PAOLELLA: Does this laptop**
- (25) **have SPSS?**

Page 212

- (1)
- (2) **MS. BUCKLEY: It's all ready.**
- (3) **MR. PAOLELLA: Okay, take a look.**
- (4) **MR. LIPMAN: What's loaded up on**
- (5) **there is apparently the data that came**
- (6) **from Goldstein, the final data.**
- (7) **MS. BUCKLEY: And we have all the**
- (8) **ones the Brennan Center produced.**
- (9) **Whichever you would like to work with is**
- (10) **fine with us.**
- (11) **MR. PAOLELLA: Off the record.**
- (12) **(Discussion off the record.)**
- (13) **(Recess taken.)**
- (14) **MS. BUCKLEY: We have been off the**
- (15) **record discussing the database which we**
- (16) **have brought with us in computer form**
- (17) **and had hoped that Mr. Seltz could run**
- (18) **this simple inquiry that we talked about**
- (19) **concerning ad number 2860.**
- (20) **It's my understanding and I will**
- (21) **let his counsel speak for him that Mr.**
- (22) **Seltz is not comfortable trying to draw**
- (23) **that information out of the computer and**
- (24) **has not worked with this data for about**
- (25) **two years and therefore he would not**

Page 213

(1)

(2) be comfortable in doing this extraction

(3) of data.

(4) **MR. PAOLELLA:** If I could just add

(5) to that in a lit bit more detail a

(6) couple of points. First of all, Mr.

(7) Seltz has not just not worked this data,

(8) but has not worked with the SPSS program

(9) in over two years.

(10) Second, SPSS from what I

(11) understand is not a user friendly

(12) interface. Extracting a piece of data

(13) from it entails actually writing lines

(14) of code and inputting them into the

(15) program which is a relatively complex

(16) affair even for a relatively simple

(17) query.

(18) Third, it's my understanding that

(19) when Mr. Seltz performed analysis on

(20) SPSS during his time at the Brennan

(21) Center they were almost always under the

(22) supervision of Jon Krasno who was far

(23) more an expert in the software than he

(24) and finally, I would just note that Mr.

(25) Seltz doesn't have available in front of

Page 214

(1)

(2) him the coding sheets listing the

(3) numerical labels that would allow him to

(4) interpret any output he might get from

(5) the SPSS program should he manage to put

(6) together a working query so in light of

(7) all these facts, I don't have any

(8) confidence in Mr. Seltz's ability here

(9) today with approximately one hour, one

(10) hour-and-a-half of deposition time

(11) remaining to be able to code relevant

(12) queries and extract accurate data from

(13) the SPSS program which by the way we are

(14) not even sure is the same version which

(15) he used while he was at the Brennan

(16) Center.

(17) **MS. BUCKLEY:** We certainly believe

(18) it's the same version and we have taken

(19) the disks from the production and we

(20) have done everything we can to put it in

(21) a format that was comfortable for people

(22) who were used to working on it. We

(23) thought Mr. Seltz was one. I just want

(24) to stress all I asked was whether or not

(25) ad 2860 was coded as a group ad or a

Page 215

(1)

(2) party ad and I take it that the answer

(3) is you cannot go on to the computer and

(4) tell me that with any degree of

(5) confidence; is that right, Mr. Seltz?

(6) **THE WITNESS:** That's right.

(7) **Q.** If you can't do it by going into

(8) the database that we set up for you here today,

(9) how else could you find out how 2860 was coded

(10) in the study in terms of party verses group ad?

(11) **A.** You would ask someone who is

(12) familiar with this particular data set.

(13) **Q.** I meant other than going into the

(14) data set is there any other method by which I

(15) could find out how 2860 whether it was coded as

(16) a group ad or party ad at the time that Buying

(17) Time 1998 was published?

(18) **A.** Not other than going into the

(19) data set itself.

(20) **Q.** This is a box of CD Roms that was

(21) produced to us by the Brennan Center care of

(22) our friends at Kravath. I'm holding up disk

(23) four which was produced by them and this is

(24) just a question as to whether this is your

(25) file. It's labeled 1998 real.sav, 1998.sav,

Page 216

(1)

(2) 1998 new one.sav. You had earlier today talked

(3) about the fact that you had frozen, I think was

(4) the word you used, a version of the data set

(5) when you left. My question is does showing you

(6) this CD with those titles refresh your

(7) recollection as to what the name of that data

(8) set that you froze was? Is it any one of those

(9) three?

(10) **A.** It's not any one of those three.

(11) **Q.** Do you know what the difference

(12) between these three might be?

(13) **A.** No, I have never seen those

(14) before.

(15) **MR. PAOLELLA:** Do you have a Bates

(16) number on the CD?

(17) **MS. BUCKLEY:** I don't believe any

(18) Bates number was put on the CD.

(19) **MR. PAOLELLA:** I think that's

(20) okay. You read them into the record.

(21) **MS. BUCKLEY:** I can copy it if you

(22) would like.

(23) **MS. BHATTACHARYYA:** I do think the

(24) CDs had Bates numbers. I may be wrong.

(25) **MS. BUCKLEY:** Not that I know of,

Page 217

- (1)
- (2) but it was labeled as Brennan Center
- (3) production disk four.
- (4) **MR. PAOLELLA:** I think it will be
- (5) clear from the record if we need to
- (6) retrieve that CD again which one we are
- (7) talking about.
- (8) **Q.** Let's turn back to Exhibit 1, Mr.
- (9) Seltz. I would like you to explain to us if
- (10) you would the information that's contained on
- (11) page 196 and it's entitled recoding the
- (12) storyboards in chapters 1 through 7. It reads,
- (13) "Chapters 1 through 7 provide analysis of the
- (14) content of political advertising using the
- (15) coding system shown in Appendix A. This coding
- (16) in turn was used to determine the
- (17) characteristics of ads examined throughout the
- (18) volume. Note: MD refers to missing data,
- (19) usually the result of coding item being
- (20) inappropriate for a given storyboard." Then
- (21) there is items listed over on the left and
- (22) coding listed on the right. Can you tell me
- (23) what this is seeking to explain to the reader,
- (24) Mr. Seltz?
- (25) **A.** This is really something that was

Page 218

- (1)
- (2) almost exclusively Jon Krasno's doing because
- (3) it refers to the technical coding, technical
- (4) writing of the syntax files to produce output
- (5) from the data set so I really wasn't involved
- (6) in this page.
- (7) **Q.** Can you tell me what footnote one
- (8) means?
- (9) **A.** Only vaguely do I remember what
- (10) this is about. I think that in the coding
- (11) protocol at question 6 coders were asked to
- (12) skip to question 19 if they determined that the
- (13) purpose of the ad was to provide information or
- (14) urge action. In doing figure 422 we needed to
- (15) find out if candidates were mentioned even in
- (16) ads that were coded as being about providing
- (17) information or urging action. The question of
- (18) whether a candidate is mentioned is in -- are
- (19) in questions between question 6 and question 19
- (20) so what we needed to do was examine the ads
- (21) that had been coded as genuine issue ads as the
- (22) answer to question 6 being number one and find
- (23) out if candidates were in fact mentioned
- (24) because that's not something that the coders
- (25) would have done at Arizona State so that's my

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- (1)
- (2) -- that's sort of a vague recollection of what
- (3) this is about. Again, I didn't -- this was
- (4) something that was more conversation between
- (5) Jon and Ken so I'm just telling you what I can
- (6) remember.
- (7) **Q.** Someone other than the coders
- (8) examined the genuine issue ads to determine
- (9) whether a candidate for election was pictured;
- (10) is that right?
- (11) **A.** Someone other -- the universe of
- (12) ads that were going to be examined after they
- (13) were examined by the coders are ones that the
- (14) coders decided were genuine issue ads.
- (15) **Q.** Right, unless someone overruled
- (16) them, right?
- (17) **MR. PAOLELLA:** Objection.
- (18) **A.** I don't know if anybody overruled
- (19) them. We talked about that earlier. I forgot
- (20) what your initial question was.
- (21) **Q.** The question was someone other
- (22) than the coders determined whether a Federal
- (23) candidate was picked in an ad which had been
- (24) coded as a genuine issue ad?
- (25) **A.** Yes, that's true. I believe

Page 220

- (1)
- (2) that's what I remember. Again, I'm speaking
- (3) generally. I don't really remember the
- (4) sequence of events, but that's my recollection.
- (5) **Q.** Do you know as between Professor
- (6) Goldstein and Professor Krasno who did that
- (7) analysis if either of them did?
- (8) **A.** I don't remember who that would
- (9) have been. It could have been people beyond
- (10) those two people as well.
- (11) **Q.** Again, if I wanted to go find out
- (12) how many airings of genuine issue ads there
- (13) were in 1998 from the data, is that something I
- (14) would have to use the CMAG data base to
- (15) discover?
- (16) **A.** You could also consult a report.
- (17) I believe that particular piece of information
- (18) is in the report.
- (19) **Q.** The number of airings?
- (20) **A.** Of genuine issue ads, I believe
- (21) that's in the report.
- (22) **Q.** Could you point me to that?
- (23) **A.** I think what you do is look at
- (24) figure 1.10 on page 22.
- (25) **Q.** I'm there.



(1)

(2) **A. You would -- that tells you the**

(3) **proportion of issue ads that were coded as**

(4) **generating support verses those providing**

(5) **information so to get the number you have to**

(6) **figure out what 22 percent of 57,037 is, that**

(7) **would give you your number.**

(8) **Q. Let's show you what's previously**

(9) **been marked as Holman Exhibit 33. Have you**

(10) **taken a look at Holman 33, Mr. Seltz?**

(11) **A. I'm looking at it now.**

(12) **Q. Okay.**

(13) **A. Yes, I just looked at it.**

(14) **Q. Can you identify the total of**

(15) **genuine issue ads run in the year 1998?**

(16) **A. I can't tell from this.**

(17) **Q. Can't tell. About halfway down**

(18) **there's a figure 685 over 5097 equals 13.4**

(19) **percent are genuine issue ads that would be**

(20) **caught unfairly by a 60 day rule. Is that**

(21) **denominator supposed to be all airings of**

(22) **genuine issue ads in '98?**

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

(24) **Q. If you know?**

(25) **A. I don't know, supposed to be,**

(1)

(2) **in the last -- for number one would be 60 days,**

(3) **for number two it would be 30 days, but it**

(4) **doesn't say that explicitly.**

(5) **Q. Again, if I wanted to recreate**

(6) **that number 5,097, the place to do it would be**

(7) **to go to the CMAG data on the disk?**

(8) **A. It wouldn't be so simple. You**

(9) **could not move from this to producing the**

(10) **number 5,097. You would have to talk to Luke.**

(11) **There is, but yes, the source of this number**

(12) **would appear to be the 1998 data set.**

(13) **Q. In looking at Holman 33 does this**

(14) **refresh your recollection as to what markets**

(15) **you concluded that the AFL-CIO ad 12 had run in**

(16) **which featured a Federal candidate?**

(17) **A. No, that doesn't provide an**

(18) **answer.**

(19) **Q. It doesn't provide an answer?**

(20) **A. I'm guessing that Luke is going**

(21) **on what I said in my e-mail which I still don't**

(22) **know which we finally decided on.**

(23) **Q. You agree this memo talks about**

(24) **Greensboro, Pittsburgh and Raleigh Durham?**

(25) **A. Yes.**

(1)

(2) **depends what you are trying to measure.**

(3) **Q. This memo suggests they are**

(4) **trying to measure genuine issue ads that would**

(5) **be caught unfairly by the 60 day rule, do you**

(6) **see that?**

(7) **A. I see a reference to that would**

(8) **be caught unfairly by a 60 day rule, yes, I see**

(9) **that.**

(10) **Q. You can't tell from looking at**

(11) **these figures what is being compared in order**

(12) **to come up with that 13.4 percent?**

(13) **A. There's no explicit mention of**

(14) **what it is that that 5,097 is and it's too low**

(15) **to be the number of genuine issue ads -- that**

(16) **number of genuine issue ads over the course of**

(17) **a year. My suspicion is that it's -- they**

(18) **chose a different denominator to come up with**

(19) **that 13.4 percent.**

(20) **Q. You don't know what that**

(21) **denominator could be?**

(22) **A. I could guess.**

(23) **Q. Sure.**

(24) **A. My guess is that they are looking**

(25) **at the number of airings of genuine issue ads**

(1)

(2) **Q. It doesn't help you remember**

(3) **exactly which ones you counted in making your**

(4) **calculation?**

(5) **A. Right.**

(6) **MR. PAOLELLA: It also talks about**

(7) **Milwaukee on the bottom.**

(8) **MS. BUCKLEY: It does, but only on**

(9) **the bottom. Why don't we take a five**

(10) **minute break and I will see if I can**

(11) **wrap up.**

(12) **(Recess taken.)**

(13) **MS. BUCKLEY: Let's mark as the**

(14) **next exhibit a document bearing control**

(15) **number BRE 014433 as Seltz 15.**

(16) **(Plaintiff's Exhibit Seltz 15,**

(17) **Document, Bates labeled BRE**

(18) **014433, marked for Identification.)**

(19) **Q. Mr. Seltz, this appears to be an**

(20) **e-mail from Craig Holman to Rick Hasen, again,**

(21) **discussing this issue of the -- at least in**

(22) **part the AFL ad. It states at the end of the**

(23) **second full sentence, "The researchers of the**

(24) **original 1998 report - Daniel Seltz, Jon Krasno**

(25) **and Ken Goldstein - adjusted the AFL ads based**

## Page 225

- (1)
- (2) on direct discussions with CMAG that the
- (3) cookie-cutter ads (12 and 13) specifically
- (4) mentioned Faircloth and Specter that aired in
- (5) their respective jurisdictions of North
- (6) Carolina and Pennsylvania and that these were
- (7) the only set of the cookie-cutter ads that
- (8) mentioned an active candidate. The remainder
- (9) mentioned officeholders, but not candidates in
- (10) a serious effort to pressure officeholders on
- (11) the issue such as Snowe." Then it goes on to
- (12) talk more about this issue.
- (13) My question to you is can you
- (14) tell me what Jon Krasno and Ken Goldstein did
- (15) in working on this adjustment of the AFL ads as
- (16) it's phrased here?
- (17) **A. Not specifically, I can't.**
- (18) **MS. BHATTACHARYYA:** You mean
- (19) in addition to what he already testified
- (20) to?
- (21) **MS. BUCKLEY:** Sure, he told us
- (22) today I think what he did.
- (23) **Q.** I was just trying to make clear
- (24) that they were not off doing something
- (25) differently or that you knew of anything else

## Page 226

- (1)
- (2) they were doing?
- (3) **A. No, not that I know of.**
- (4) **Q.** Do you know if the Brennan Center
- (5) ever had a complete set of the storyboards for
- (6) 1998, Mr. Seltz?
- (7) **A. I don't think we had a complete**
- (8) **set when I was there meaning all Federal races.**
- (9) **Q.** Right.
- (10) **MR. PAOLELLA:** Just for the
- (11) record, I notice in the upper right hand
- (12) corner that's marked page one of three.
- (13) Is there anything else beyond this that
- (14) we are missing?
- (15) **MS. BUCKLEY:** It certainly -- we
- (16) will look because it looks like another
- (17) e-mail begins at the bottom so we will
- (18) check and see, but I'm only interested
- (19) in the top e-mail. If you want a copy
- (20) of the rest of the pages, that's fine.
- (21) **MR. PAOLELLA:** Understood.
- (22) **MS. BUCKLEY:** I didn't mean to
- (23) mark an incomplete document. E-mails
- (24) will drive us all to distraction.
- (25) **Q.** Let me show you Holman Exhibit

## Page 227

- (1)
- (2) 14. Have you had a chance to look at Holman
- (3) Exhibit 14, Mr. Seltz?
- (4) **A. Yes.**
- (5) **Q.** Do you know how ad number 1411
- (6) was coded for the 1998 Buying Time report?
- (7) **A. I don't remember how it was**
- (8) **coded.**
- (9) **Q.** Do you have an opinion as to
- (10) whether it's a genuine issue ad or an
- (11) electioneering ad?
- (12) **A. My opinion is that it's an**
- (13) **electioneering ad.**
- (14) **Q.** Why?
- (15) **A. Because it depicts a candidate in**
- (16) **a negative light.**
- (17) **Q.** Who is the candidate?
- (18) **A. Senator Feingold.**
- (19) **Q.** Was Kohl a candidate in 1998?
- (20) **A. I don't believe so.**
- (21) **Q.** You view it as an electioneering
- (22) ad because it mentions Senator Feingold in a
- (23) negative light in your view?
- (24) **A. Yes.**
- (25) **Q.** You don't know one way or another

## Page 228

- (1)
- (2) how it was actually coded for the 1998 studies?
- (3) **A. I can infer from Luke's e-mail**
- (4) **that it was coded as -- looking back on this**
- (5) **e-mail now I can infer that it was coded as my**
- (6) **instincts would have been which is as an**
- (7) **electioneering ad.**
- (8) **Q.** Is it your view that the
- (9) reference to Senator Kohl is just a gratuitous
- (10) ad?
- (11) **A. I think the ad serves a number of**
- (12) **purposes and the reference to Senator Kohl is**
- (13) **not necessarily gratuitous.**
- (14) **Q.** What are the number of purposes
- (15) you are referring to?
- (16) **A. I think it's trying to not just**
- (17) **trying to cast Senator Feingold in a negative**
- (18) **light. It's trying to cast Senator Kohl in a**
- (19) **negative light. It's also -- it's linking the**
- (20) **two Senators one of whom is a candidate to what**
- (21) **they describe as a grizzly procedure and**
- (22) **implying that they are allowing people who are**
- (23) **committing murder and manslaughter to get away**
- (24) **with their acts.**
- (25) **Q.** If the reference to Senator

(1)

(2) Feingold had been dropped from this ad, would

(3) you agree that it's a genuine issue ad?

(4) **A. It would depend on when it aired**

(5) **to some extent. I think that if it had been**

(6) **aired when Senator Kohl was up for election I**

(7) **think people realize they were in an election**

(8) **season from basically about Labor Day on and**

(9) **that it's --**

(10) **Q. Senator Kohl did not run for**

(11) **election until the year 2000 and I understand**

(12) **that this ad was run in 1998. I think you just**

(13) **said when Senator Feingold was up for election**

(14) **so my question is if Senator Feingold was**

(15) **dropped from the ad and it was run in 1998,**

(16) **would it then be a genuine issue ad in your**

(17) **view?**

(18) **A. I would be more likely to say it**

(19) **was. I think this is, yes, I would think I**

(20) **would be more likely to say it was a genuine**

(21) **issue ad.**

(22) **Q. Why?**

(23) **A. Because although it's still**

(24) **casting Senator Kohl in a negative light, it's**

(25) **not in the context of an election so that the**

(1)

(2) issue ads aired in the election and I'm trying

(3) to figure out why the 61 there is not the same

(4) as the 134 at the top. Is there a definitional

(5) problem or -- can you explain what could

(6) account for the difference in those two

(7) numbers?

(8) **A. I could only speculate. You**

(9) **would have to ask Craig.**

(10) **Q. Okay. What's your best guess?**

(11) **MR. PAOLELLA: I'm going to object**

(12) **as to foundation. Go ahead and answer.**

(13) **A. My best guess is that the**

(14) **independent groups airing 134 distinct issue**

(15) **ads refers to both issue ads coded as genuine**

(16) **and those coded as electioneering. That the**

(17) **two ads referred to as having been aired within**

(18) **60 days did not use express advocacy and**

(19) **feature a candidate for office meaning -- would**

(20) **refer to genuine ads. I don't know. I'm just**

(21) **guessing.**

(22) **Q. You told me about the two and you**

(23) **told me about the 134. I'm trying to figure**

(24) **out if there's some obvious reason the 134 and**

(25) **61 are different since they seem to be**

(1)

(2) **reference to phone numbers and colloquial name**

(3) **of legislation indicates that it could**

(4) **plausibly be an effort to pressure Senator Kohl**

(5) **to vote a particular way on the partial birth**

(6) **abortion ban. I think that's not -- I think**

(7) **the National Pro Life Alliance knows that**

(8) **Senator Kohl would not -- I think it's unlikely**

(9) **that they would show this ad without reference**

(10) **to a candidate.**

(11) **Q. We are going to show you what's**

(12) **been previously marked as Holman Exhibit 16 and**

(13) **17. I'm just trying to see if you can help me**

(14) **understand if I am not understanding a term.**

(15) **In Holman Exhibit 16 which purports to be about**

(16) **the 1998 election it says that in the 1998**

(17) **Federal election cycle more than 2000 distinct**

(18) **television advertisements aired more than**

(19) **300,000 times. Of these ads independent groups**

(20) **aired 134 distinct issue ads a total of 21,645**

(21) **times. Then it goes down to this chart. Go**

(22) **ahead and read in between, Mr. Seltz. The**

(23) **chart is introduced by the phrase to put this**

(24) **in perspective and then it goes on to say two**

(25) **ads are 3.2 percent of the 61 total distinct**

(1)

(2) describing the same thing namely total distinct

(3) issue ads aired in the election.

(4) **MR. PAOLELLA: Same objection.**

(5) **A. The 134 distinct issue ads is I**

(6) **believe because it adds up to 21,645 I think is**

(7) **both genuine issue ads and electioneering ads,**

(8) **that's my guess.**

(9) **Q. You think the 61 is something**

(10) **else?**

(11) **A. I think the 61 total distinct**

(12) **issue ads refers to genuine issue ads I think.**

(13) **I don't know. I really don't know.**

(14) **Q. I thought it might be a**

(15) **definitional issue I wasn't getting. If you**

(16) **don't know, you don't know.**

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

(18) **Q. You will see in Holman Exhibit**

(19) **17, Mr. Seltz, that same analysis is done for**

(20) **the 2000 study and the second sentence reads of**

(21) **these ads independent groups aired 29 distinct**

(22) **issue ads a total of 16,522 times and that**

(23) **directly corresponds with the figure below in**

(24) **describing the total distinct issue ads aired**

(25) **in the election, that's why I asked. I wanted**

Page 233

(1)

(2) to know if there was something special about

(3) '98 that I'm missing?

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

(5) **Q.** I'm going to hand you what's

(6) previously been marked as Holman Exhibit 36.

(7) Directing your attention to what's the second

(8) page of this exhibit, this appears to be a

(9) letter or memo or e-mail. Let's call it a

(10) communication from Craig Holman to Rick. On

(11) page two Professor Holman writes, "I would like

(12) to have reverified the recoding of ads 12 and

(13) 13 through the storyboards. However, neither

(14) the University of Wisconsin researchers nor

(15) CMAG have possession of the different

(16) cookie-cutter ads modified for each regional

(17) market. The University of Wisconsin

(18) researchers relied on personal discussions with

(19) CMAG researchers for identifying the ads that

(20) mentioned active candidates verses those that

(21) simply mentioned a candidate and made the

(22) adjustments in their analysis based on those

(23) discussions." Is that consistent with your

(24) recollection as to how that information was

(25) gathered, Mr. Seltz?

Page 234

(1)

(2) **A. If he's referring to University**

(3) **of Wisconsin researchers that would be after my**

(4) **time at the Brennan Center so this would refer**

(5) **to -- because Ken Goldstein moved onto the**

(6) **University of Wisconsin the summer of 2000 I**

(7) **think when I was in the process of leaving. I**

(8) **think he started teaching there or started as a**

(9) **faculty member there in 2000 in the fall of**

(10) **2000 so this seems to refer to further**

(11) **investigation of ads 12 and 13 after I was**

(12) **gone.**

(13) **Q.** So this isn't suggesting that

(14) anybody at the University of Wisconsin made

(15) these inquiries before the publication of

(16) *Buying Time* 1998, is it?

(17) **A. He may have been mistaken in**

(18) **referring to -- he might have meant the Arizona**

(19) **State University researchers because Ken**

(20) **Goldstein was at ASU before Craig got there and**

(21) **Craig may have been mixing them up. I don't**

(22) **know.**

(23) **Q.** Do you know whether anybody at

(24) Arizona State ever made efforts to determine

(25) the answers to the airings of the AFL-CIO ad

Page 235

(1)

(2) 12?

(3) **A. By that you mean which candidate**

(4) **appeared in the different markets?**

(5) **Q.** Correct.

(6) **A. I don't know if Arizona State**

(7) **University -- might have been graduate students**

(8) **or undergraduates made those phone calls.**

(9) **Q.** I had the impression from your

(10) testimony this morning and correct me if I'm

(11) wrong that those inquiries were made by you and

(12) people at the Brennan Center; is that

(13) incorrect?

(14) **A. When we first came across the**

(15) **cookie-cutter phenomenon, yes, those inquiries**

(16) **were made by Jon and me and Paul Herrmon later**

(17) **and to some extent Ken. What I said before**

(18) **about the steps we took is what I remember.**

(19) **Q.** You don't know what if anything

(20) the researchers at Arizona State may or may not

(21) have done?

(22) **MR. PAOLELLA:** Are you including

(23) Ken Goldstein in that question?

(24) **MS. BUCKLEY:** I don't consider him

(25) a researcher. I'm not. You can exclude

Page 236

(1)

(2) Professor Goldstein.

(3) **A. I don't know what the role of Ken**

(4) **Goldstein's students at Arizona State would**

(5) **have done in tracking down these particular**

(6) **questions.**

(7) **Q.** Right. Earlier on in that

(8) paragraph the first paragraph talks about the 7

(9) percent figure and a 41 percent figure, etc.

(10) etc.

(11) **A. Where are you?**

(12) **Q.** The first paragraph of 36?

(13) **A. I'm with you.**

(14) **Q.** The second full paragraph talks

(15) about sending a reassessed figure to Daniel

(16) Seltz. Goes on to say "Daniel has explained

(17) that while the 7 percent figure referred to in

(18) some sections of the report e.g. page 109 may

(19) have referred to the two unique ads of 30

(20) unique ads, some discussions in other sections

(21) of the report i.e. chart 4.22 refer to all ads

(22) aired but broken down by market segment." Do

(23) you remember having a discussion with Craig

(24) Holman in which you relayed that information to

(25) Mr. Holman?

Page 237

- (1)
- (2) **A. No, I think I relayed my**
- (3) **recollection of the cookie-cutter market**
- (4) **phenomenon to Luke through the e-mails that we**
- (5) **have gone over.**
- (6) **Q. We didn't see anything in the**
- (7) **e-mails about page 109 as far as I can**
- (8) **remember. Do you remember having a**
- (9) **conversation about how you used the 7 percent**
- (10) **figure at page 109 and then it was different in**
- (11) **the way you used it on chart 4.22?**
- (12) **A. Luke's e-mail didn't say page**
- (13) **109. I knew what he was talking about. He**
- (14) **referred to the question they were asking about**
- (15) **the 60 day test.**
- (16) **Q. Let's go to page 109 and maybe we**
- (17) **can clear it up. Page 109 is the text that**
- (18) **precedes chart 4.22; is that right?**
- (19) **A. Yes, it is.**
- (20) **Q. There's a reference to a 7**
- (21) **percent figure in the last sentence of the**
- (22) **page, isn't there?**
- (23) **A. Yes, there is.**
- (24) **Q. Does that 7 percent figure**
- (25) **measure spots or airings, do you know?**

Page 238

- (1)
- (2) **A. Airings.**
- (3) **Q. So Mr. Holman's description in**
- (4) **Exhibit 36 as to what the 7 percent figure was**
- (5) **on 109 which he claims to have learned from you**
- (6) **is not correct?**
- (7) **MR. PAOLELLA: Objection. The**
- (8) **whole e-mail says it may have referred**
- (9) **to the two unique ads of 30 unique ads.**
- (10) **Go ahead and answer.**
- (11) **A. It appears that Craig thinks that**
- (12) **the 7 percent refers to distinct spots at this**
- (13) **point in time. The figure 4.22 is airings.**
- (14) **Q. What about the sentence on 109?**
- (15) **A. The 7 percent on page 109 refers**
- (16) **to airings.**
- (17) **Q. Mr. Holman's articulation of what**
- (18) **you had explained to him is not true, is not**
- (19) **accurate; is that correct?**
- (20) **A. I didn't explain this to him. I**
- (21) **think that -- it doesn't say that I talked to**
- (22) **him. This is all in a passive voice.**
- (23) **Q. It says Daniel has explained?**
- (24) **A. Reassessed figure was sent to**
- (25) **Daniel Seltz. This was all through Luke. I**

Page 239

- (1)
- (2) **did not communicate directly with Craig about**
- (3) **this.**
- (4) **Q. Did you have any discussions with**
- (5) **Luke about whether the 7 percent figures that**
- (6) **appear throughout the report were referring to**
- (7) **spots or airings that you can recall?**
- (8) **A. By conversation there would have**
- (9) **been e-mails and I don't remember if we talked**
- (10) **about -- if I had a chance to explain about**
- (11) **ads, distinct ads verses airings.**
- (12) **Q. This doesn't refresh your**
- (13) **recollection about any such discussion taking a**
- (14) **look at Holman 36?**
- (15) **A. Daniel has explained that the 7**
- (16) **percent figure referred to in some sections of**
- (17) **the report may have referred to the two unique**
- (18) **ads of 30 unique ads, I don't know what he's**
- (19) **referring to. I don't remember the particular**
- (20) **conversation.**
- (21) **Q. You will see a reference to ad**
- (22) **1374 in this memo. Can we discern from going**
- (23) **through your computer document files whether ad**
- (24) **1374 was coded as express advocacy or issue**
- (25) **advocacy at the time of the '98 report?**

Page 240

- (1)
- (2) **A. You could not find out whether it**
- (3) **was express advocacy or issue advocacy. You**
- (4) **could look at the question of magic words. If**
- (5) **you are asking if it's -- so that's --**
- (6) **Q. Let me ask it a clear way. How**
- (7) **would I go about determining whether ad 1374**
- (8) **was coded as express advocacy or issue advocacy**
- (9) **in the Buying Time 1998?**
- (10) **A. I'm confused because you changed**
- (11) **your terminology. Are you talking about by**
- (12) **express advocacy verses issue advocacy, are you**
- (13) **talking about whether the ad was coded in**
- (14) **question 6 as electioneering or genuine issue**
- (15) **advocacy?**
- (16) **Q. I'm not. I'm picking up on the**
- (17) **document which says adjusted percentages after**
- (18) **recoding ad 1374 as express advocacy not issue**
- (19) **advocacy. That's all I'm referencing and all**
- (20) **I'm trying to find out is how I can discern how**
- (21) **ad 1374 was coded in the data at the time of**
- (22) **the publication of Buying Time 1998?**
- (23) **A. My problem is that I don't know**
- (24) **what issue advocacy verses express advocacy**
- (25) **precisely refers to in this message. It could**

Page 241

- (1)
- (2) refer to as it often is the use of the
- (3) so-called magic words. It could refer to its
- (4) status as electioneering verses genuine
- (5) advocacy. I don't know. You could find out
- (6) either one of those things as to how 1374 was
- (7) coded by looking in the data set.
- (8) Q. By looking in the data set on the
- (9) computer disks?
- (10) MR. PAOLELLA: I will object. We
- (11) have not established the timing of that
- (12) data set yet.
- (13) Q. My question was and maybe we lost
- (14) it in all this was whether I could find the
- (15) answer in the documents that we talked about
- (16) earlier today which are Seltz computer files 1
- (17) through 11?
- (18) A. The paper?
- (19) Q. Correct.
- (20) A. I don't think you could find out
- (21) that answer by looking through the paper.
- (22) Q. You believe the answer could be
- (23) found out only by analysis of the electronic
- (24) data?
- (25) A. Yes.

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- (1)
- (2) Q. Did you have any communication
- (3) with Senate staffers about Buying Time 1998,
- (4) Mr. Seltz?
- (5) A. Yes.
- (6) Q. Who did you communicate with?
- (7) A. During -- me personally I was
- (8) part of a meeting in I believe it was March of
- (9) 2000 where Senator Feingold and his Chief of
- (10) Staff Bob Schiff came to the Brennan Center and
- (11) we gave him a briefing on the project itself,
- (12) but didn't share with him findings, but we let
- (13) him know that we would be releasing findings in
- (14) the spring.
- (15) Q. This was in March of 2000?
- (16) A. I think it was March of 2000.
- (17) Q. When was the report ultimately
- (18) released?
- (19) A. May of 2000. I think that was my
- (20) only contact with Senate staffers.
- (21) Q. You had no telephone
- (22) conversations with Senate staffers after that?
- (23) A. I wasn't -- usually conversations
- (24) with Senate and house staffers were conducted
- (25) by Scott Schell.

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- (1)
- (2) Q. Do you know what if anything
- (3) Professor Goldstein's affiliation is with CMAG?
- (4) A. I don't know if he has an
- (5) affiliation with CMAG.
- (6) Q. Did you ever see the instructions
- (7) to the undergraduate coders working for
- (8) Professor Goldstein on Buying Time 1998s data?
- (9) A. No.
- (10) MS. BHATTACHARYYA: Instructions
- (11) beyond the coding sheets itself?
- (12) MS. BUCKLEY: Yes.
- (13) Q. We talked a lot about this 7
- (14) percent figure and the numerator and
- (15) denominator and you explained to me that the
- (16) denominator was all genuine issue ads run
- (17) during 1998, do you recall that portion of your
- (18) testimony?
- (19) A. Yes, I do.
- (20) Q. Did you ever consider analyzing
- (21) the figure by having the denominator be all
- (22) issue ads aired within 60 days of the election?
- (23) A. I don't remember specifically
- (24) talking about choosing that as a denominator.
- (25) Q. The numerator has that factor in

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- (1)
- (2) it, it looks at ads within 60 days of the
- (3) election, doesn't it?
- (4) A. Looks at --
- (5) Q. Genuine issue ads identified a
- (6) Federal candidate within 60 days of an
- (7) election; isn't that right?
- (8) A. Yes.
- (9) Q. The numerator is all genuine
- (10) issue ads over the course of the entire year;
- (11) is that right?
- (12) A. No, that's the denominator.
- (13) Q. Sorry, denominator, you're
- (14) correct, is that right, the denominator is all
- (15) genuine issue ads airings over the course of
- (16) the year?
- (17) A. Yes.
- (18) Q. Why did you pick the year for the
- (19) denominator and 60 days for the numerator?
- (20) A. I don't remember those
- (21) conversations. This is the kind of more pure
- (22) political science question that at the time I
- (23) don't think I had a whole lot to add to that
- (24) conversation.
- (25) Q. Do you know there was a

(1)  
 (2) conversation about that?  
 (3) **A. I actually don't know if there**  
 (4) **was a conversation about that. I think you can**  
 (5) **do it either way, but I don't know if -- I**  
 (6) **don't remember talking about alternatives.**  
 (7) **Q. You don't remember running any**  
 (8) **figures based on any other denominators for**  
 (9) **example?**  
 (10) **A. I don't remember doing that.**  
 (11) **Q. Do you know, Mr. Seltz, how many**  
 (12) **coders looked at each individual ad at Arizona**  
 (13) **State?**  
 (14) **A. No, I don't.**  
 (15) **Q. Is that something that Jonathan**  
 (16) **Krasno would know?**  
 (17) **A. I don't know.**  
 (18) **Q. Did you have the opportunity to**  
 (19) **read Mr. Holman's deposition before your**  
 (20) **testimony today?**  
 (21) **A. I did read it.**  
 (22) **Q. Did you read Mr. McLoughlin's**  
 (23) **deposition?**  
 (24) **A. Yes.**  
 (25) **Q. You read both of them?**

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

(1)  
 (2) **A. Yes.**  
 (3) **Q. Did you disagree with anything in**  
 (4) **either?**  
 (5) **MR. PAOLELLA: I will object.**  
 (6) **A. I can't remember. I didn't read**  
 (7) **every word of them. It was just late last**  
 (8) **night. I don't remember disagreeing with -- I**  
 (9) **don't remember.**  
 (10) **Q. Is there anything that leapt out**  
 (11) **at you that you thought that's just wrong?**  
 (12) **A. Not that I remember.**  
 (13) **MS. BUCKLEY: Let's go off the**  
 (14) **record. I'm going to consult with my**  
 (15) **colleagues and I might be done.**  
 (16) **(Recess taken.)**  
 (17) **MS. BUCKLEY: I have no further**  
 (18) **questions.**  
 (19) **MR. PAOLELLA: We have nothing.**  
 (20) **MS. BHATTACHARYYA: No questions.**  
 (21) **(Time noted: 6:40 p.m.)**  
 (22)  
 (23)  
 (24)  
 (25)

(1)  
 (2)  
 (3) **INDEX**  
 (4) **WITNESS EXAMINATION BY PAGE**  
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 (11) **labeled BRE 010464 and**  
 (12) **BRE 010479**  
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- (1)
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- (23) BRE 014433
- (24)
- (25)

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- (1)
- (2) CERTIFICATE
- (3)
- (4) STATE OF NEW YORK )
- (5) ) ss.:
- (6) COUNTY OF NEW YORK )
- (7)
- (8) I, SHARI COHEN, a Notary Public
- (9) within and for the State of New York, do
- (10) hereby certify:
- (11) That DANIEL SELTZ, the witness
- (12) whose deposition is hereinbefore set forth, was
- (13) duly sworn by me and that such deposition is a
- (14) true record of the testimony given by such
- (15) witness.
- (16) I further certify that I am not
- (17) related to any of the parties to this action
- (18) by blood or marriage; and that I am in no way
- (19) interested in the outcome of this matter.
- (20) IN WITNESS WHEREOF, I have
- (21) hereunto set my hand this day of September,
- (22) 2002.
- (23)
- (24) \_\_\_\_\_
- (25) SHARI COHEN





DANIEL SELTZ - 9/13/02

<p><b>Concordance Report</b>                  Unique Words: <b>2,277</b>                  Total Occurrences: <b>14,075</b>                  Noise Words: <b>384</b>                  Total Words In File:  <b>39,448</b></p> <p>Single File Concordance                  Case Insensitive                  Noise Word List(s):  <b>NOISE.NOI</b>                  Cover Pages = <b>0</b>                  Includes <b>ALL</b> Text                  Occurrences                  Dates <b>ON</b>                  Includes Pure Numbers                  Possessive Forms <b>ON</b></p> <p><b>** DATES **</b></p> <p><b>2/3/2000</b> [1]                  63:9</p> <p><b>** 0 **</b></p> <p><b>001202</b> [1]                  74:12  <b>001203</b> [1]                  74:18  <b>001215</b> [1]                  74:25  <b>001222</b> [1]                  74:25  <b>001223</b> [1]                  74:18  <b>001224</b> [1]                  75:2  <b>001226</b> [1]                  75:3  <b>001230</b> [1]                  75:5  <b>005449</b> [1]                  75:2  <b>005452</b> [1]                  75:3  <b>005457</b> [1]                  75:4  <b>005460</b> [1]                  75:4  <b>007570</b> [3]                  192:25; 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