

DEPOSITION OF DENISE MITCHELL
CONDUCTED ON TUESDAY, SEPTEMBER 18, 2002

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2 P R O C E E D I N G S

3 Thereupon, DENISE MITCHELL, INDIVIDUALLY AND AS 30(b)(6)
4 witness, having been duly sworn, testified as
5 follows:

6 EXAMINATION BY COUNSEL FOR THE INTERVENORS

7 BY MR. SCHWARZ:

8 Q What is your name and what is your job?

9 A Denise Mitchell. And I'm assistant to the
10 President for Public Affairs at the AFL-CIO.

11 MR. GOLD: Fritz, can I say before you
12 proceed, that as I understand it, we are
13 operating under the agreed protective order and
14 we will take the aperitive time to designate
15 confidentiality with counsel alone rather than
16 do it question by question.

17 And I take it in the interim, people are
18 treating these deposition transcripts, whenever
19 they are developed, as under the highest degree
20 of protection until otherwise --

21 MR. GILLIGAN: That is fine with the
22 Department of Justice.

23 MR. SCHWARZ: Yeah.

24 BY MR. SCHWARZ:

25 Q You are now assistant to the President for

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2 Public Affairs?

3 A Correct.

4 Q For how long have you had that job?

5 A Since November 1st, 1995, right after John
6 Sweeney was elected.

7 Q Did you come in before that or did you
8 come in with him?

9 A I worked with him. I worked with him at
10 the Service Employees Union.

11 Q What did you do when you were at the SEIU?

12 A My job title might have been exactly the
13 same. But I had been a partner in a private firm, a
14 public relations firm that --

15 Q Which one?

16 A Called Abernathy and Mitchell then, and
17 they worked for unions and nonprofits, and we had
18 worked with John Sweeney since 1980, '81.

19 And for the last two years before
20 1995, I had actually gone over to SEIU and had --
21 sort of held that job, although I was on loan from
22 my agency, but I was still an employee of the
23 agency, so I was never a direct employee of the
24 Service Employee.

25 Q What is your function as president to

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2 the -- assistant to the President of Public Affairs,
3 and if that has changed since '95, tell us?

4 A It really hasn't changed. I oversee a
5 department that includes all the communications
6 aspects of the AFL-CIO.

7 So I oversee publications, media
8 outreach, so dealings with the press, broadcast
9 media, in-house broadcast productions, speech
10 writing, so really, that whole portfolio of
11 communications that then interacts with other
12 departments at the AFL-CIO, so all the other
13 departments at the AFL-CIO.

14 So we develop communications, so
15 support organizing, the policy, legislation, you
16 know, the whole...

17 Q So in terms of your broadcast advertising,
18 focusing on how you decide what to cover, what to
19 say and when to say it, who contributes to that
20 decision at the AFL-CIO?

21 A That decision making would grow out of the
22 sort of overall goals and strategies of the AFL-CIO.
23 And, you know, in the broadest sense, there is a
24 whole staff management group who provides input to
25 the leadership body on what our strategies are.

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2 And when Sweeney was first elected,
3 we started talking about core missions and core
4 strategies, and one of the things that we, you know,
5 were very clear about is that we wanted to be a
6 stronger, more forceful advocate for working
7 families.

8 So a lot of people sort of contribute
9 to the sort of general sense of what we should be
10 doing, as we do sort of more specific things nobody
11 had done, a whole range of broadcast media.

12 We do repositioning ads. We do and
13 have done those sort of issue ads, so different
14 departments would advise in a more focused way
15 depending on what exactly the particular ad would
16 be.

17 Q Well, just take an ad in the year 2000
18 that is directed at candidate Bush and is critical
19 of candidate Bush, and you did run such ads, didn't
20 you?

21 MR. GOLD: When you say directed at --
22 BY MR. SCHWARZ:

23 Q Well, your own documents and other people
24 in the AFL-CIO talk about the targets of ads,
25 correct?

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2 A I actually -- I think we are more
3 targeting areas of the country. We never talk about
4 targets being, you know, like officials or
5 candidates.

6 Q Are you sure of that, because your
7 documents do that. Do you want to stand by that
8 testimony?

9 A That is not our intent.

10 MR. GOLD: Let me object. If there is a
11 document you have in mind, show the witness.

12 MR. SCHWARZ: I will in all good time.

13 MR. GOLD: If there is a specific ad you
14 have in mind, refer to the ad.

15 BY MR. SCHWARZ:

16 Q You ran ads in October of 2000 that were
17 highly critical of candidate Bush, correct?

18 A We ran ads that documented his record
19 on --

20 Q Were those ads highly critical of
21 candidate Bush?

22 A Those were ads that, you know, I think
23 documented what his record was to the extent --

24 Q The purpose was to be critical, correct?

25 A The purpose was to draw attention to what

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2 his actual record was. I can't remember what was
3 October, but we ran two different ads that named
4 George Bush, and one was an ad that focused on
5 retirement security and Social Security, and another
6 was an ad that focused on Patients' Bill of Rights.

7 Q We might deal with those ads specifically
8 later, but I want to understand who contributed to
9 the process at AFL-CIO on what those ads should say,
10 where they should run and when they should run.

11 A Who on staff or who --

12 Q Who at AFL-CIO?

13 A At the AFL-CIO?

14 Q Most broadly speaking.

15 A We have a whole government affairs group
16 that advises on those kind of decisions, so Gerry
17 Shae, the assistant to the President for Government
18 Affairs, and on things that are -- focus on policy
19 issues and such, he would always have a role in
20 that.

21 And then the rest of the government
22 affairs team.

23 Chris Owens is the policy director,
24 although she was not the policy director in 2000.
25 David Smith was the policy director then.

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2 So the legislative director, the
3 policy director, the political director would have
4 something to say about all of that.

5 And we would consult, you know, with
6 the officers and tell them what our thought was on
7 how to --

8 Q The officers, you mean Mr. Sweeney,
9 Mr. Rosenthal and other such officers?

10 A That is right, and on a more limited
11 basis, the members of the executive council. We
12 would say to them, you know, here is what we are
13 planning to do this year.

14 Q And does Mr. Rosenthal play any role in
15 deciding what to say in ads, when to say it and
16 where to run the ads?

17 MR. GOLD: Is the question directed at
18 those particular ads or generally speaking?

19 MR. SCHWARZ: We will do that and she will
20 tell me if those ads are different with respect
21 to Mr. Rosenthal's role.

22 MR. GOLD: Let me ask, what time period
23 are you referring to?

24 THE WITNESS: Yeah.

25 BY MR. SCHWARZ:

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2 Q Tell me what Mr. Rosenthal's role has been
3 with respect to ads that name federal candidates run
4 from the time you joined AFL-CIO until -- Larry, are
5 you guys raising any issues about ads run in the
6 2002 election?

7 MR. GOLD: No, we are not.

8 BY MR. SCHWARZ:

9 Q So I now want to say through 2000.

10 A Okay. So from the time I came to the
11 AFL-CIO.

12 Q The time you came.

13 A Through 2000?

14 Q Yeah, what was Rosenthal's role in
15 connection with ads that mentioned federal office
16 holders?

17 A It has actually changed over that period.
18 When I first came to the AFL-CIO in late 1995, as we
19 began to run issue ads around the budget quite soon
20 after my arrival there, he really didn't play a
21 role.

22 And throughout 1996, he really didn't
23 play a role, except in the broadest sense, you know,
24 as we talked about what we were going to do, he
25 played, you know, a role in talking about how we

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2 would, you know, what our overall strategy of
3 elevating issues would be.

4 As we did specific planning, he
5 didn't play any role in saying what the ads would
6 say or where they would run or when they will run.

7 We had made a decision and were
8 advised by our attorneys at the time that because
9 election law was a little unclear on a number of
10 points, that we had what we call a Chinese wall
11 between the role I played on the issue of
12 advertising and his role as political director,
13 because there was some sense that because the
14 political department of AFL-CIO which, by and large,
15 runs a field campaign that does deal with
16 candidates' campaigns, that there could be some
17 interpretation, some presentation that would suggest
18 that if he then played a role in a specific way,
19 because he does deal with campaigns, that it might
20 suggest some level of coordination, you know, just
21 on the face of it, even if there was no coordination
22 at all.

23 So he didn't play any role in that
24 during that period on specific ad development.

25 That changed to some degree I guess

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2 in early 2000 after the Christian Coalition case
3 resolved and our attorneys said to us that they
4 believed that the law was more clear now on those
5 questions and that, you know, we didn't have to sort
6 of observe these rules that said we couldn't even
7 consult with each other on this.

8 You know, even then though, he
9 literally never, that I can recall -- but I
10 shouldn't say never -- but I can't recall he said
11 let's say this in an ad.

12 Q Can you recall a time where he suggested
13 you should focus an ad on a certain candidate who
14 was trouble in a race?

15 A He would never -- we would talk about
16 where we are going to run ads subsequent, you know,
17 beginning in 2000, and we would sort of decide,
18 although, you know, still the primary conversations
19 would be with the Legislative Department that had
20 been patterned that -- that had been established.

21 We would talk about where we are
22 going to run things. One of the factors might be
23 where we thought we could have a big impact if there
24 were a marginal district.

25 Q What do you mean by a big impact if there

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2 were a marginal district?

3 A Well, one of our -- we had a lot of goals
4 in doing legislative issue ads, and one of the goals
5 was to -- well, why don't I just sort of lay out
6 some of the goals.

7 We were kind of looking at in the
8 broadest sense of how we could really improve the
9 lives of working families. That is our mission
10 statement and that is what we were trying to figure
11 out how to do.

12 So we would look at how we could
13 change laws, and we succeeded in sort of an
14 immediate direct way on some occasions. But more
15 often than not, it had to do with creating an
16 environment where positive changes would happen and
17 negative changes wouldn't happen, so elevating
18 working family issues like Medicare and Social
19 Security and minimum wage.

20 And we would aim to have -- provide
21 information to constituents, to television viewers.
22 We would aim to have an impact on the office holders
23 themselves by putting them on notice that somebody
24 is watching what they are doing, and we would aim to
25 sort of set the agenda for the legislative and

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2 political environment.

3 We were looking at sort of
4 positioning the AFL-CIO. I mean, one of the things
5 that happened when John Sweeney was elected was he
6 was in -- elected on part of a -- I worked really
7 closely with him on his campaign to become president
8 of the AFL-CIO, and slogan-wise, a new voice for
9 America's workers.

10 And there was sort of the belief the
11 labor movement had been pretty sleepy for a long
12 time and people hadn't seen this before with the
13 advocates.

14 So it was important to be very
15 visible and have people understand that we were a --
16 championing for working families while we were
17 trying to do real things, too, not just smoke and
18 mirrors.

19 But you asked the question about
20 having an impact, so to get back to that, as we are
21 putting lawmakers on notice that we are watching and
22 this is what we are doing, you know, clearly, it is
23 a different thing to say to somebody who has been
24 elected with 70 percent of the vote we are watching,
25 than to somebody who has been elected with 52 or

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2 55 percent of the vote.

3 So if you are really going to have an
4 impact, you can have an impact in those districts.

5 And so that would be, you know, how
6 we would look at some of those districts and, of
7 course, there were other issues as well in some
8 districts.

9 Q So one of the factors you would take into
10 account in selecting districts to target is the race
11 in that district is regarded as being close; is that
12 correct?

13 A That is one of the factors but we would be
14 looking at maybe, you know, does that person sit on
15 a key committee, would that person -- Peggy Taylor,
16 the elective director, was sort of the primary
17 person through '96 -- through '98 while I was there
18 working with me on figuring out where we are going
19 to run ads and, you know, we would sort of literally
20 kind of say, okay, what is our budget for this, how
21 much do we want to spend on this round this moment
22 and maybe start with a list of 25 people and winnow
23 it down.

24 She might say this guy is a thin skin
25 guy, a real squealer, and he will scream so much it

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2 will have an impact on a broader group of lawmakers,
3 so that, for example, would be another kind of
4 criteria.

5 Q Now, you talked about goals being set by a
6 certain group of people, including yourself, and
7 then communicating at least in the broad picture up
8 to the executives including Mr. Sweeney, correct;
9 you did testify to that?

10 A That is right.

11 Q Mr. Sweeney sometimes set for the AFL-CIO
12 their overarching goals with respect to ads that
13 they would broadcast, ads they would run; is that
14 correct?

15 A No, I mean, we did all of this through
16 part of a process, so I'm not quite sure what you
17 would be referring to when you say overarching
18 goals? Do you mean something different than what I
19 was just talking about?

20 Q Yes. Did Mr. Sweeney ever give you an
21 overarching political objective that he said he
22 wanted you to accomplish in either the 1996 or the
23 1998 or the 2000 elections?

24 MR. GOLD: You mean give Denise Mitchell?

25 MR. SCHWARZ: Yes.

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2 MR. GOLD: Directed to the election
3 itself?

4 MR. SCHWARZ: Yes.

5 THE WITNESS: I don't recall that ever
6 happening.

7 BY MR. SCHWARZ:

8 Q Have you ever testified before?

9 A No.

10 Q And what did you do to prepare for this
11 deposition?

12 A I met with these worthy lawyers.

13 Q The two worthy lawyers who are here?

14 A Indeed, yes.

15 Q And when and for how long did you meet
16 with them?

17 A I met with them for a few minutes on
18 Friday or a little while on Friday because I really
19 didn't want to wait for this week to find out what
20 the scene would be like, and I met with them for a
21 few hours yesterday.

22 Q For what?

23 A A few hours yesterday.

24 Q In 2000, did the AFL-CIO run some ads that
25 related to the status of China?

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2 A Yes.

3 Q Permanent normal trade regulations, PN --

4 A TR.

5 Q PNTR, okay. Did you direct an ad at
6 Senator John Kerry from Massachusetts?

7 MR. GOLD: When you say "direct an ad" --
8 BY MR. SCHWARZ:

9 Q Did you run an ad?

10 MR. GOLD: I want to make sure we both
11 know what you are saying.

12 BY MR. SCHWARZ:

13 Q Did you run an ad referring to China in
14 which Senator John Kerry was mentioned?

15 A No, I can't really remember. I remember
16 there was discussion of it. I can't remember.

17 Q Now, Senator Kerry is a Democrat, correct?

18 A Correct.

19 Q I will run today a series of ads to come
20 off the compilations that you gave us, and if we
21 could mark as Mitchell Exhibit 1 a tape, and this
22 comes off your 16705.

23 And there are several ads on here,
24 and I will refer to different ones at different
25 times but perhaps not all of them.

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2 So if you could mark that as
3 Mitchell 1.

4 MR. GOLD: Fritz, is that the copy of the
5 tape we gave you, or is that an excerpt?

6 MR. SCHWARZ: It is an excerpt from your
7 compilation.

8 MR. TRISTER: What was the number you
9 read?

10 MS. ISPAHANI: AFL 16705.

11 MR. GOLD: Okay.

12 (Off-the-record discussion.)

13 (Thereupon, Mitchell Exhibit No. 1 was marked
14 for identification and was attached to the transcript.)

15 MR. SCHWARZ: The court reporter keeps
16 that and you gave me my copy.

17 BY MR. SCHWARZ:

18 Q To refresh your recollection about running
19 an ad that refers to Mr. Kerry, we will put on the
20 first tape from the first band or whatever you call
21 it from that Exhibit 1.

22 Go back to the beginning and it has a
23 date on it.

24 MS. ISPAHANI: February 21, 2000.

25 MR. SCHWARZ: I will ask her a question

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2 when it shows the date.

3 BY MR. SCHWARZ:

4 Q You see there is a date of February 21,
5 2000 there?

6 A Sure.

7 Q And a reference to media strategies?

8 A Right.

9 Q So now just run the ad.

10 (The tape was played.)

11 "Behind this label is a shameful
12 story of political prisoners in forced labor camps
13 of wages as low as 13 cents an hour in a country
14 that routinely violates trade rules flooding our
15 markets, draining American jobs.

16 Yet now Congress has set to scrap its
17 annual review of China's record and reward China
18 with a permanent trade deal.

19 Tell Senator Kerry to vote no and
20 keep China on probation until this label stands for
21 fairness."

22 BY MR. SCHWARZ:

23 Q That reminded you you did run an ad that
24 was focused on Senator Kerry?

25 A Correct.

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2 Q And was Senator Kerry --

3 A I assume the ad ran, but occasionally we
4 produced ads that ended up never running.

5 Q I can represent it was from other data you
6 have supplied and that comes from the CMAG data,
7 also.

8 That ad you selected Senator Kerry in
9 part because -- let me ask you, why did you select
10 Senator Kerry to run that ad?

11 A You know, I think that he had indicated to
12 union members, leaders, lobbyists that he was not
13 planning to vote the way we were urging him to vote,
14 planning to vote for this.

15 When I said to you I remembered
16 discussing it, the discussion I remember having was
17 how furious the State Federation in Massachusetts
18 was.

19 Q Did you get a memorandum from Peggy Taylor
20 that told you that Senator Kerry was undecided on
21 the vote?

22 A I don't remember.

23 Q Well, let me just show you that.

24 A Okay.

25 MR. SCHWARZ: We will mark as Mitchell

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2 Exhibit 2.

3 (Thereupon, Mitchell Exhibit No. 2 was marked
4 for identification and was attached to the transcript.)

5 BY MR. SCHWARZ:

6 Q In the end, the court reporter needs to
7 keep the ones with blue stickers with her, but you
8 can look at it. It is the official document.

9 A It is the same one.

10 Q You see that Senator Kerry is referred to
11 as undecided?

12 A Yes.

13 Q And that would be a factor that you think
14 about when you decide who to mention in an ad that
15 is focusing on a matter that is soon to come up
16 before the Congress, correct?

17 A Sometimes. That wouldn't be the only
18 factor.

19 Q I'm not saying that, but it would be a
20 factor you would consider?

21 A We did consider it in this case,
22 apparently.

23 Q All right. When you are running ads of
24 the sort we just saw, the Kerry ad, you would talk
25 about a vote soon to come up in front of the

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2 Congress.

3 You have never limited that kind of
4 ad to focusing on Republicans, have you?

5 A I think we might have at some point. You
6 know, I remember various times where -- I mean, on
7 this particular issue, there were undecideds sort of
8 in both parties.

9 Oftentimes, the undecideds may be
10 primarily Republicans and we might focus primarily
11 on Republicans, and that is sometimes the case.

12 Q Am I correct that when you are running an
13 ad of that sort, which is urging a member of
14 Congress to vote a certain way on a matter that is
15 pending in front of the Congress, you don't start
16 out by saying we are going to limit these ads to
17 Republicans, correct?

18 A That wouldn't be the premise we would
19 start out with, but we might start out saying how
20 can we have the biggest impact on how Congress is
21 going to vote on this, and we might decide that the
22 answer would be to focus on Republicans.

23 I mean, I can remember instances
24 where that was the case, or primarily the case. I
25 can't remember specifically.

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2 Q Now, when you run ads of that sort, which
3 are urging a member of Congress to vote in a certain
4 way on something in the future, would you say that
5 is the characteristic of the ad we just saw, the
6 Kerry ad, you are urging a member of Congress to
7 vote in a certain way on something which is going to
8 end up in the Congress in the future, correct?

9 A That was the situation with this ad.

10 Q Now, when you run ads of that sort, do you
11 run them when Congress is in session?

12 MR. GOLD: Can I -- she can answer. I
13 want to clarify when you ask these -- when you
14 do these questions, you are referring to the
15 period of '95 through 2001 or 2000, I guess is
16 the way you framed it. We are not talking
17 about 2002. So she is clear as to what's in
18 your mind.

19 BY MR. SCHWARZ:

20 Q You said you will not rely on 2002, so
21 unless I tell you I'm focusing on a period after
22 2000, the questions run from when you got to the AFL
23 through the end of 2000.

24 A Okay.

25 MR. GOLD: That's fine.

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2 THE WITNESS: Okay. You know, I think
3 that generally Congress might be in session
4 when we are doing these things or, you know,
5 coming in session.

6 But I think the point here is that these
7 issues are always with us and, you know, on
8 many of the issues where we focused, Medicare,
9 Social Security, Patients' Bill of Right,
10 minimum wage, these are sort of issues that
11 come up in every Congress. And to impact on
12 them, you know, highlighting how somebody votes
13 or how we would urge them to vote I think would
14 not be limited to any particular season.

15 BY MR. SCHWARZ:

16 Q You run ads like the one we just saw in
17 years that aren't election years, too, don't you?

18 You run ads of the nature we just
19 saw, the Kerry ad in '99, the same sort of ad, not
20 saying about China, but about trying to urge a
21 particular person in Congress to vote a certain way,
22 you did that in '99, correct?

23 A We have done all kinds of ads every year.
24 We have been running ads every year that I have been
25 there and in '95 even before I got there.

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2 Q I want to ask a precise question. I
3 appreciate your general answer, but let's take '99
4 and '97. During those two years, you ran ads of the
5 type we just saw for Senator Kerry; that is, an ad
6 that refers to a matter that Congress is going to
7 vote on and urges a member of Congress to vote a
8 certain way, and you did that in '99, correct?

9 A I don't actually remember exactly the
10 formulation of the ads in a particular year.

11 Q You understand I'm not asking you a
12 question about China. I'm asking you a question
13 about --

14 A I understand. I understand.

15 Q Do you have any doubt you ran ads of that
16 sort in '99?

17 A I just don't remember exactly how the ads
18 were worded, you know.

19 Q I'm not asking you how the ads were
20 worded. I'm asking whether in 1999 you ran ads that
21 mentioned a member of Congress and mentioned a
22 matter that was soon to come before Congress and
23 urged that member to vote in a certain way?

24 A I think that description probably applies
25 to ads we ran. I would imagine that we also ran ads

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2 on issues we hoped would come up urging a member of
3 Congress to do something about it where maybe there
4 was no vote pending, per se.

5 Q You did both those things then in 1999,
6 correct?

7 A I don't remember specifically.

8 Q To the best of your recollection, you were
9 likely to do those, correct?

10 A I think so.

11 MR. GOLD: I think the witness is trying
12 to remember, and I'm not sure what you can
13 elicit.

14 BY MR. SCHWARZ:

15 Q And the same for 1997, it is likely that
16 you ran such ads urging a member of Congress to vote
17 in a certain way in something that was coming up in
18 '97 as well as in '99?

19 A I think that is likely, but I think it is
20 just as likely in other years.

21 Q I'm not saying it isn't. You did that in
22 2000 and you did that in '97 and you did that in '98
23 and you did that in 1999, correct?

24 A We did that every year.

25 Q Going back to the subject of China, in

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2 2000, do you remember that in the spring of 2000 you
3 ran ads about the subject of China, which didn't
4 refer to a particular member of Congress, but said
5 to the viewer call your member of Congress?

6 A We might have done that maybe on CNN or
7 something. I would be surprised if we did that in a
8 specific district, but maybe we did if you are
9 saying. I don't know.

10 Q You did, but whether I need to show you
11 that now, I don't know.

12 A In a specific district?

13 Q Yeah.

14 A As opposed to CNN?

15 Q Yeah.

16 A Huh.

17 Q Well, CNN appears in various districts.

18 A Well, I understand, but you obviously
19 can't name a specific member or if you are going to
20 place a buy on CNN.

21 Q And why is that, that you can't -- you
22 can't ask CNN to run a different ad on the west
23 coast as opposed to the east coast; is that the
24 case?

25 A Right, unless you buy cable locally, which

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2 you can do. If you were making a national buy, that
3 would be a national buy.

4 Q Okay. Still focusing on the year 2000,
5 and now I'm going to ask you some questions relating
6 to the 60 days prior to the election, which was
7 November 7th or something like that.

8 A Okay.

9 Q Did you run a number of ads that mentioned
10 candidates for federal office in the 60 days prior
11 to the election of 2000?

12 A You know, I don't remember specifically.
13 I think it is likely, and I wasn't watching the
14 calendar exactly like that, and we have already
15 talked about an ad that named George Bush, but I
16 don't remember specifically.

17 Q Have you heard of Spencer Abraham?

18 A I have.

19 Q Did you run ads that were critical of
20 Spencer Abraham in 2000?

21 A In 2000, we ran ads citing his record, I
22 think, on prescription drugs. Maybe other issues.

23 Q You have a hard time with my word
24 "critical of." Let's explore that for a moment.

25 A Okay.

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2 Q It is not a crime to be critical of
3 someone; you know that, don't you?

4 A Fine.

5 Q Okay, and when you run ads that say
6 someone is in a pocket of big business, would you
7 think it is fair to characterize that ad as being
8 critical?

9 MR. GOLD: I object to form. If the
10 AFL-CIO ran an ad that said somebody is in the
11 pocket of big business, using that terminology,
12 you should show it to the witness, unless she
13 independently remembers that, unless we are
14 doing a general characterization, Fritz.

15 MR. SCHWARZ: I was doing a general
16 characterization.

17 MR. GOLD: I object to that question,
18 then.

19 BY MR. SCHWARZ:

20 Q Tell us everything you remember about the
21 ads you ran that mentioned Mr. Abraham in 2000.

22 A You know, I'm not remembering very much
23 without being reminded. I'm remembering that we ran
24 ads on his record on prescription drugs. And -- but
25 I'm not remembering much beyond that, to be honest.

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2 We have run lots of ads and I just
3 don't remember the specifics on it.

4 Q Are you aware -- let's talk about -- do
5 you remember what state you ran the most ads in, in
6 the period leading up to the 2000 election?

7 A In 2000?

8 Q Yes.

9 A I don't remember. I have never organized
10 things by state.

11 Q If I said Michigan, would that help you at
12 all?

13 A I just -- I never organize what our plans
14 are that way and so it wouldn't -- I wouldn't have
15 known that without your saying it.

16 Q In the 60 days prior to the federal
17 election in 2000, did you run ads that mentioned a
18 candidate for the Senate other than the ads you ran
19 mentioning Spencer Abraham?

20 A I'm sorry. Do you want to clarify that?

21 MR. SCHWARZ: She can read it back.

22 (The Reporter read the pending question.)

23 THE WITNESS: I think we ran ads on
24 prescription drugs that named a number of
25 incumbent senators who may have been candidates

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2 in that same time period, because I don't
3 think --

4 BY MR. SCHWARZ:

5 Q I'm sorry, I didn't mean to interrupt you.

6 A I don't think we ran prescription drug ads
7 that named Spencer Abraham exclusively. I think
8 there were other folks who were named.

9 Q You think in the year 2000 you ran
10 prescription drug ads that mentioned a number of
11 senators, or do you think you did that in some year
12 other than 2000?

13 A I don't know. I don't remember, but I
14 think we did in 2000.

15 Q Are you sure you are not thinking of ads
16 you ran that mentioned House members?

17 A You know, I think we do similar issues
18 with respect to members of the House and members of
19 the Senate sometimes. Although, we focus more on
20 House members, but I don't think that Spencer
21 Abraham was the only senator.

22 MR. GOLD: If you have information that we
23 provided or that you have gotten that you can
24 represent to be accurate about multiple, you
25 know, feel free to refresh her.

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2 MR. SCHWARZ: I'm going to, and I can
3 assure you I'm not asking questions unless I
4 have a good faith basis for asking them, A.

5 B, it is always possible that among the
6 zillions of pieces of information that we have
7 received, there is some that I have not fully
8 digested, so with those two things, I think
9 that may be helpful to you.

10 BY MR. SCHWARZ:

11 Q Let me run an ad that I think is the
12 second band on Exhibit 1, and it refers to Spencer
13 Abraham and it was run -- maybe I can help you on
14 that a little bit, it was run between October 16 and
15 October 22, obviously, entirely, in Michigan.

16 We all -- the lawyers here all have
17 access to some data that is very precise and comes
18 off electronic things and so forth.

19 A That's good. I find this whole process a
20 little curious where you know more about what I knew
21 than I do but...

22 MR. TRISTER: Are those dates obtained
23 from CMAG?

24 MR. SCHWARZ: Yes, and they are consistent
25 with your invoice dates, too.

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2 We are going to run the second band from
3 Exhibit 1.

4 (The tape was played.)

5 MR. SCHWARZ: Just stop there. See, go
6 back.

7 Go back to the beginning.

8 Watch for the date here. You know,
9 October 16, 2000?

10 THE WITNESS: Correct.

11 BY MR. SCHWARZ:

12 Q Let's stop it there for a minute.

13 Does that signify to you what that
14 date -- that ad was filmed on October 16?

15 A Filmed? I think it means it was -- final
16 editing was done on it then because, if I'm not
17 mistaken -- and I could be mistaken -- I believe
18 that a version of this ad may have run earlier as
19 well because I also notice the title that said REV,
20 which means revised, and I suspect that -- I know
21 that we did prescription drugs ads earlier.

22 Q Well, do you think this ad will have
23 anything to do with prescription drugs?

24 A I don't know. That is -- my recollection
25 is that was the issue we were focusing on. It could

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2 be Patients' Bill of Rights. That could be the
3 issue.

4 Q I think when you see it you will agree
5 with me it does not deal with that subject, so go
6 ahead.

7 (The tape was played.)

8 "Who was Spence Abraham working for
9 when he voted no three times to increasing minimum
10 wage, when he voted to allow corporations to deny
11 workers overtime pay even if they work up to 80
12 hours a week, when he voted to block federal safety
13 standards aimed at protecting workers on the job?
14 Was Abraham working for us or his friends in big
15 business?

16 "Tell Abraham when he votes against
17 wages, against safety is not working for Michigan's
18 working families."

19 Q It doesn't mention a Patients' Bill of
20 Rights, does it?

21 A Right.

22 Q Would you characterize that ad as being
23 critical of Spencer Abraham?

24 A I think it points out his record, and I
25 think that some viewers may see it as being critical

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2 of Spencer Abraham, but I think we often do focus
3 group testing of various ads.

4 I don't think we did of this ad, but
5 one of the things we know is that people in the
6 focus group tell us that viewers want their -- the
7 information we present to be very well documented so
8 they want sources on everything. They want
9 information. They don't want biases to be
10 presented. They want information.

11 So we would try really hard to
12 present things in a way that would be factual.

13 Q And you indeed, in the video portion, you
14 had sources for various statements that are made,
15 correct?

16 A Right. Correct.

17 Q So that is saying you documented what you
18 said, correct?

19 A That is correct.

20 Q And you agree that the effect on viewers
21 who see that ad is not going to make them
22 particularly -- think particularly favorably about
23 Spencer Abraham, is it?

24 MR. GOLD: I object unless there is a
25 foundation and how this witness knows what the

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2 effect of this ad was.

3 MR. SCHWARZ: She testified a minute ago
4 about what she thought the effect was, so I'm
5 following up.

6 MR. GOLD: What she said was that some
7 viewers might take that, paraphrasing.

8 MR. SCHWARZ: Anyway, my question stands.
9 Maybe you should reread the question.

10 MR. GOLD: Well, I have forgotten what the
11 question was.

12 (The Reporter read the record as follows:)

13 Question: "And you agree that the effect on
14 viewers who see that ad is not going to make
15 them particularly -- think particularly favorably about
16 Spencer Abraham, is it?"

17 THE WITNESS: I think the effect on
18 viewers might be a range of things, and there
19 may be some viewers who would think quite
20 favorably of Spencer Abraham as a result of
21 seeing that ad.

22 There are people that believe one
23 shouldn't raise the minimum raise and there
24 were people who think that, you know, we
25 shouldn't have so many workplace safety

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2 regulations.

3 We basically present them facts.

4 What -- I mean, you know, the other effect
5 that we would hope it would have is that it
6 would sort of remind viewers that they
7 shouldn't just sort of turn off on Washington
8 and on sort of the things that happen here in
9 legislation, in politics, and that they should
10 in fact be engaged around what happens because
11 things happen that affect their lives every
12 day.

13 BY MR. SCHWARZ:

14 Q You said that some viewers might think
15 quite favorably of Spencer Abraham after seeing this
16 ad, correct?

17 A I'm speculating.

18 Q If you believed that the impact of an ad
19 you were running a few days before the November
20 election would cause people to -- would cause the
21 majority of viewers to think favorably of
22 Mr. Abraham, would you have run the ad?

23 MR. GOLD: I will object. It is a
24 hypothetical.

25 MR. SCHWARZ: That is not hypothetical.

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2 MR. GOLD: You said if you ran an ad.

3 BY MR. SCHWARZ:

4 Q If she thought -- let me just say the
5 question again to you, Ms. Mitchell.

6 If you thought that an ad that had
7 been proposed to you to run that talks about Spencer
8 Abraham and is running just a few days before the
9 election in November 2000 would cause most viewers
10 to think favorably of Senator Abraham, you would not
11 run that ad, would you?

12 A I wouldn't think about it.

13 MR. GOLD: Don't answer. You are asking
14 her about something that is, as far as I know,
15 has never happened. And so what relevance does
16 it have?

17 MR. SCHWARZ: You mean, as far as you know
18 there has never been an ad which would cause
19 somebody to think favorably of the person they
20 are criticizing, I agree with you.

21 MR. GOLD: Don't distort what I'm saying.

22 MR. SCHWARZ: That was quite fair.

23 MR. GOLD: No, it really wasn't. You
24 posited a situation of running an ad a few days
25 before an election about Spencer Abraham is

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2 what you asked.

3 That is not this ad. That is not any ad
4 that I'm aware of. If there is such an ad, you
5 may certainly ask about that, but what is the
6 value of asking her to speculate about
7 something that the AFL-CIO has never done?

8 MR. SCHWARZ: The AFL-CIO has never run an
9 ad that has never done what?

10 MR. GOLD: Has never run an ad with
11 respect to Spencer Abraham a few days before an
12 election. That was your formulation.

13 MR. SCHWARZ: Oh, really?

14 BY MR. SCHWARZ:

15 Q Did you think October 22 of 2000 --
16 directing this to you, Ms. Mitchell, do you think
17 October 22, 2000 is not a few days before the 2000
18 election?

19 A Well, it seems like a few weeks.

20 Q Okay. If you thought that an ad you were
21 planning to run about Spencer Abraham between
22 October 16 and October 22 would cause most viewers
23 to think favorably of Spencer Abraham, would you
24 have run that ad?

25 A You know, I just didn't think about it

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2 that way. It is just not -- it is just not the way,
3 you know -- we ran a lot of ads, you know, year end,
4 you know, over many months and I just didn't --
5 wouldn't have thought about it that way.

6 Q Why did you run this ad?

7 MR. GOLD: When you say "she," you are
8 talking about Denise Mitchell?

9 BY MR. SCHWARZ:

10 Q Why did the AFL-CIO run this ad, the
11 Abraham ad we have just looked at?

12 A This was part of, you know, what had been
13 a year-long effort and, in fact, a multi-year effort
14 of raising working family issues.

15 One of the things we were trying to
16 do was set the agenda and the framework for
17 legislation and politics by raising working family
18 issues.

19 If you remember, prior to these
20 efforts, you know, people were talking about a lot
21 of things, choice, guns, almost nobody was talking
22 about working family issues.

23 So we set forth an effort to talk
24 about working family issues and to try to sort of
25 engage people in what was happening at the federal

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2 level and, in a related fashion, at the state level,
3 local level because they would see that decisions
4 people were making really affect their lives every
5 day and it would have an impact on viewers but
6 provided information to them that they didn't have.

7 And it would have an impact on
8 elected officials and candidates, and it would force
9 them to understand that when they take actions on an
10 issue, people are watching and they are not going to
11 just cast votes in secret, that people are there
12 watching what they do and that, you know, it sent a
13 message to them and to other office holders that,
14 you know, we are going to spotlight what you do.

15 And, you know, one would hope that
16 would have an impact on minimum wage and workplace
17 safety standards in the coming Congress and have a
18 profound impact on what the public debate was.

19 Q Mr. Abraham was running for re-election in
20 2000; is that correct?

21 A That is correct.

22 Q And you refer to his votes in '96, '97,
23 '99, '95 and 2000 on certain Congressional matters,
24 correct?

25 A On worker-related issues, correct.

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2 Q And Mr. Abraham wasn't the only person who
3 voted in a way that you thought was harmful to
4 workers on those matters, was he?

5 A He was not the only person who voted.

6 Q Did you run this ad on the subject of
7 minimum wages, overtime pay, for example, with
8 respect to any other federal official ever?

9 A I don't really remember.

10 Q You don't remember doing so?

11 A I don't remember whether we did or did
12 not. You know, we would often -- and we were
13 running ads on those issues with respect to various
14 officials. I don't remember if this specific ad run
15 anywhere else.

16 Q Why did you choose to run this ad with
17 respect to -- strike that. Let me ask you a
18 different question.

19 Did you know that Spencer Abraham and
20 Ms. Stabenow were involved in a close race for
21 Senate seats in 2000?

22 A I did know that.

23 Q How did you know that?

24 A It would be hard not to know that, but I
25 knew it from reading Rothenberg, from, you know,

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2 reading Hotline, and I knew it from reports our
3 political department gave.

4 Q Rothenberg is a report that comes out
5 periodically and says what races are close and what
6 races are --

7 A Correct. Correct.

8 MR. GOLD: Let me ask the witness,
9 Ms. Mitchell, to wait until he finishes asking
10 the question before you start answering it even
11 if it seems obvious where he is going.

12 BY MR. SCHWARZ:

13 Q Rothenberg writes what issues are close or
14 a toss-up?

15 MR. GILLIGAN: Races?

16 BY MR. SCHWARZ:

17 Q What races are close and what are a
18 toss-up?

19 A That is correct.

20 Q What is a hotline?

21 A Hotline is a daily publication that comes
22 out that actually reports on -- it summarizes sort
23 of the top stories in the daily papers and reports
24 on, you know, policy matters as well as --

25 Q As well as political matters?

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2 A Yes, correct.

3 Q Did you also have access to the so-called
4 Cook Report?

5 A I don't think I particularly looked at the
6 Cook Report.

7 Q Did you look at the Rothenberg -- is it
8 called the Rothenberg Report or the Rothenberg --
9 what do you call it?

10 A I believe it is called the Rothenberg
11 Report.

12 Q Did you look at the Rothenberg Report?

13 A I do look at that.

14 Q You have done that through the time, since
15 1995 when you came to the AFL-CIO?

16 A Yes.

17 Q And Hotline also, have you looked at that?

18 A Not so much.

19 Q But you looked at that in 2000?

20 A From time to time. I don't get it every
21 day.

22 Q And you said you also got information from
23 your political department on races that were
24 regarded to be close, correct?

25 A In general, I might have done so. I don't

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2 really remember that specifically in this instance.

3 Q How would they communicate that
4 information to you?

5 A I mean, we might have a meeting of our
6 Government Affairs group where they would talk about
7 what their activities were. They might be reporting
8 to our executive council on what their activities
9 were.

10 Q Did they periodically have meetings with
11 you or otherwise communicate with you about what is
12 going on in terms of political races?

13 MR. GOLD: For 2000 we are starting with?

14 MR. SCHWARZ: We will start with 2000.

15 THE WITNESS: From time to time. It is
16 not like we have regular meetings.

17 BY MR. SCHWARZ:

18 Q Water?

19 A Sure. Thanks.

20 Q Again, without being overly specific, how
21 often did the political department give you
22 information about political races, starting in 2000,
23 roughly how often?

24 A I only laugh because our political
25 department is notorious for being pretty insular.

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2 Q Pretty what?

3 A Insular.

4 You know, maybe once a month.

5 Q In the period starting in August, would
6 they do it more often than once a month?

7 A Not necessarily.

8 Q Do you remember whether they did or
9 didn't?

10 A I don't really remember.

11 Q Okay. And did they also give you such
12 information in 1998?

13 A No. In 1998, we were still in the period
14 where we were not communicating with each other.

15 Q Now, the Abraham ad, you are not willing
16 to accept my characterization of it as being
17 critical of Mr. Abraham?

18 A I would say that it points out his record
19 on issues.

20 Q Points out his record in ways that you
21 believe are negatives about his record, correct?

22 A Well, I think that, me personally?

23 Q Yes.

24 A I personally believe that people should
25 vote for worker issues, yes.

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2 Q Is that a fancy way of saying yes to my
3 question, that you believe what is pointed out about
4 Mr. Abraham in the ad we looked at was negative?

5 A I don't think that was a fancy answer. I
6 believe that to somebody who believes what I do it
7 would be seen as negative.

8 Q And the way you believe is consistent with
9 the way AFL-CIO as an organization thinks; isn't
10 that correct?

11 A I don't know what AFL-CIO as an
12 organization thinks, but we have positions on issues
13 and we score votes on issues, and so those, you
14 know, those voting record issues would say that we
15 believe -- that we as an organization believe that
16 this is the right position on this vote and this is
17 the wrong position on this vote.

18 Q And the positions that Mr. Abraham was
19 said to undertake were believed to be the wrong --

20 A They were positions, right.

21 Q Positioned in the wrong way?

22 A That were considered the wrong votes on
23 those issues.

24 Q So can I use, then, based on your
25 testimony, the words negative, that the Abraham ad

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2 was one that from the AFL-CIO's position described
3 negative actions taken by Spencer Abraham?

4 A I mean, I would use -- I would use the
5 words we use in our voting records, and I would say
6 he cast votes that were the wrong votes based on the
7 AFL-CIO position and evaluation.

8 Q I will use the word "wrong."

9 A Okay.

10 Q During 2000, did any broadcast ad that the
11 AFL-CIO caused to be broadcast in the 60 days prior
12 to the election in 2000 say that any Democrat had
13 taken, quote, wrong positions?

14 A I don't really remember.

15 Q You can't remember any ad that said a
16 Democrat had taken a wrong position, can you?

17 A I really just can't remember but, you
18 know, if you asked me who else was named in an ad, I
19 couldn't remember the list today.

20 Q That wasn't my question. My question was
21 whether any Democrat was named as having taken a
22 wrong position in the year 2000?

23 A I just can't remember that.

24 MR. GOLD: The answer to your question was
25 in the last 60 days?

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2 MR. SCHWARZ: Yes, that's fair.

3 THE WITNESS: Oh, okay. I can't really
4 remember.

5 BY MR. SCHWARZ:

6 Q Can you remember any ad in 1998 in the 60
7 days before the federal election that said any
8 Democrat had taken, quotes, the wrong position?

9 A I can't remember whether there were any
10 ads in the 60 days prior to the election in 1998. I
11 believe that was the year we were working on
12 Patients' Bill of Rights in that 60-day period, and
13 I can't remember whether they mentioned Democrats or
14 not.

15 Q You will testify as a witness in this case
16 and I will be examining you again sometime during
17 the month of October. And by then, I will ask you
18 these precise same questions about whether there was
19 any Democrat who was targeted as having taken wrong
20 positions in the 60 days before the 2000 election
21 and the 60 days before the 1998 election and in the
22 60 days before the 1996 election.

23 A Okay.

24 Q I'm just telling you that.

25 A Okay.

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2 MR. GOLD: I assume that if it comes
3 within the scope of cross-examination or
4 whatever, if she is a witness, whatever she --

5 MR. SCHWARZ: You designated her as a
6 witness.

7 MR. GOLD: I know, but I believe in this
8 case -- and I'm not suggesting otherwise with
9 Denise -- my understanding of designated
10 witness, if you don't designate, you are hard
11 pressed to put forward with one after the
12 deadlines. But if you designate someone, one
13 can decide not to have the person as a witness.

14 MR. SCHWARZ: I think if you did that, an
15 inference would be drawn based on your doing
16 it, but I think you are free to say that Denise
17 Mitchell can be spared having to sit through
18 another --

19 MR. GOLD: The question was with respect
20 to the structure of this case, but we don't
21 need to take time here doing that. Go ahead.

22 BY MR. SCHWARZ:

23 Q I need to specifically ask you about 1996.

24 A Okay.

25 Q Now, you were in charge of the AFL-CIO's

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2 ad program in 1996, correct?

3 A That is correct.

4 Q Can you remember any ad in the 60 days
5 prior to the 1996 election that -- any broadcast ad
6 that said a Democrat had taken a wrong position?

7 A I can't remember.

8 Q And I used the word "said," but I will
9 also use the word "indicated" a Democrat had taken a
10 wrong position.

11 Would you give the same answer?

12 A I mean, I can't remember such an ad.

13 Q Again, you were in charge in 2000 of the
14 ads that were run by the AFL-CIO, correct?

15 A That is correct.

16 Q And in the 60 days prior to the 2000
17 election, can you remember any ad that praised a
18 Republican member of Congress?

19 A I don't remember such an ad.

20 Q Same question for 1998?

21 A You know, it gets a little more dim then.
22 I don't really remember.

23 Q The same question for 1996?

24 A I don't remember.

25 MR. SCHWARZ: I would like to mark now as

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2 Mitchell Exhibit 3 two pages. They are your
3 Bates stamps 6164 and 6165, and they are text
4 of an ad relating to Spencer Abraham.

5 This would be Mitchell 3.

6 (Thereupon, Mitchell Exhibit No. 3 was marked
7 for identification and was attached to the transcript.)

8 BY MR. SCHWARZ:

9 Q Do you have Exhibit 3 in front of you?

10 A I do.

11 Q What is Exhibit 3?

12 A Exhibit 3 is a script for a television ad.
13 I believe it is the script for the ad that we saw.

14 Q And would you see scripts in draft form
15 before an add was run?

16 A Yes.

17 Q Would you sometimes make changes in the
18 draft?

19 A Or discuss changes.

20 Q Or discuss changes?

21 A I probably wouldn't make unilateral
22 changes.

23 Q Can you recognize the handwriting on the
24 second page?

25 A This feels so much like court.

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2 That is my handwriting.

3 Q Okay. Actually, the second page is dated
4 earlier than the first page, correct?

5 A Correct. Uh-huh.

6 Q And the change you proposed -- you
7 proposed two sort of changes to the second paragraph
8 of the script, correct?

9 A It looks like I was playing with wording
10 as I was writing.

11 Q And a change was made which is consistent
12 with your wording, correct?

13 A Correct. Although, I believe that the
14 draft also reflected a change I had suggested that
15 other people thought was cumbersome.

16 Q You are saying the second page which has a
17 fax date of October 13 at the top, do you see that?

18 A Yes.

19 Q That wasn't the first draft of this ad,
20 but there had been something in front of it?

21 A Possibly, right. I don't know if it was
22 ever in writing before.

23 Q Well, just describe what you can best
24 remember about how this ad was put together from
25 start to the time it was run on the television.

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2 A You know, I should say that I don't have a
3 specific recollection of this ad except for the -- I
4 mean, of the development of it, except for the
5 prompting information I'm being given.

6 I can describe for you the general
7 process.

8 Q That's fine. That's fine.

9 A Which might be -- I mean, we might have
10 sort of general plans that we had developed, saying
11 we want to run ads on minimum wage and Medicare and
12 Patients' Bill of Rights this year, this season, we
13 believe.

14 And we might then say, okay, what
15 should we do here, you know, what have we done, what
16 do we want to do now.

17 I might have this conversation with
18 David Axelrod who is the agency that developed the
19 ads. We might talk through how to do an ad, you
20 know, how we might approach it.

21 One of the things we often did and we
22 sort of consider it our signature, if you will, is
23 have sort of regular working people featured as part
24 of an ad so that we, you know, are really clear that
25 these are issues that affect peoples' lives and it

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2 makes the ads distinctively us.

3 So he might say, you know, let me
4 work up a script and send it to you, and he might
5 send me a script by e-mail or fax.

6 And I might react to it and say, no,
7 I don't like that or I don't think that language
8 works or, you know, I don't think that's clear. So
9 we might go back and forth for a few days.

10 And then he would do a sort of rough
11 cut of an ad and send that for approval and I would
12 respond to that, have him change shots, scrap it
13 altogether, you know.

14 Q And National Media was shown when we
15 looked at the video as a -- are they the people who
16 do the filming for you?

17 A I don't believe you mean National Media.
18 Do you mean Media Strategies & Research?

19 Q That could be it.

20 MR. GOLD: It can get confusing.

21 MR. GILLIGAN: You are not doing a lot of
22 work with National Media.

23 MR. GOLD: Please don't confuse us with
24 the Chamber of Commerce.

25 MR. GILLIGAN: You aren't like this with

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2 Alex Castellanos.

3 MR. TRISTER: Apology accepted.

4 MR. GOLD: On most policy issues, no.

5 THE WITNESS: Media Strategies & Research
6 is the media buyer.

7 BY MR. SCHWARZ:

8 Q Now we are talking about not this
9 particular ad but in general. Sometimes in
10 connection with ads, do you get the Peter Hart, or
11 what is the name of his organization?

12 A There are various people, but Geoff Garin
13 is probably the person who is the lead person.

14 Q You get someone at Peter Hart's
15 organization to look at ads?

16 A Sometimes. Actually, somewhat rarely.

17 Q When they do look at them, do they provide
18 you information that -- well, what do they do for
19 you?

20 A Well, sometimes, you know, they are just
21 another point of view at saying I think you are
22 making the right point about this, I think you are
23 not making the right point about this issue. I
24 think you are clear or not clear.

25 You know, I mean, they have done

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2 research for us from late 1995, since I was first
3 with the AFL-CIO, and they do everything from --
4 they have done research around what issues are most
5 important to working people to if we are going to
6 try to persuade people on an issue, China permanent
7 normal trade regulations, how can we best -- you
8 know, what are the most persuasive arguments and
9 then what presentation is the most credible.

10 One of the projects they did for us
11 in, I believe, early 1996 was a project where
12 they -- where we didn't have any ads that I will
13 recall, but we had people doing little
14 presentations, little speeches in a way on video
15 that we showed to dial groups and said to them, what
16 do you like about this, what do you not like about
17 this, what do you not find believable.

18 And out of that they developed for us
19 sort of ten rules for communications and that had
20 more to do with the field campaign and workplace
21 leaflets.

22 But, you know, I consider them people
23 that sometimes bring something to the table on
24 understanding how to best communicate about working
25 family issues because they have been involved.

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2 Q And did the Peter Hart organization or
3 Geoff Garin in that organization, had they worked
4 for the AFL before you came?

5 A I believe the answer is yes. Yes.

6 Q But you wanted to continue with them?

7 A I did continue.

8 Q And you have continued with them from late
9 1995 to date, correct?

10 A That is correct.

11 Q And you --

12 A We work with other pollsters as well.

13 Q Which other pollsters do you work with?

14 A We have done some work with Mark Mellman.
15 We have done work with Celinda Lake. I'm probably
16 forgetting some.

17 We're currently doing some work with
18 Hamilton Beattie.

19 MR. GOLD: If it is current and post 2000.

20 MR. SCHWARZ: I intentionally did ask if
21 they continued with Peter Hart from now.

22 MR. GOLD: Fine.

23 MR. SCHWARZ: I had a reason. I think
24 that's relevant.

25 BY MR. SCHWARZ:

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2 Q Mr. Garin, was he selected for you, or did
3 you select him or how did you start working with
4 Mr. Garin, which started in either '95 or '96?

5 A Well, he had been doing work for the
6 AFL-CIO in 1995. He had done a project in
7 particular, I recall, on Social Security and
8 Medicare, which was one of the issues that was under
9 attack by the --

10 Q Gingrich Congress?

11 A The Gingrich Congress.

12 So he had done that project for the
13 AFL-CIO.

14 You know, I can't really remember if
15 I already knew him. Oh, sure, I did because he had
16 done work for the Service Employees Union.

17 Q For the SEIU?

18 A For the SEIU, right. So I knew him from
19 that.

20 Q Okay. And have you been satisfied with
21 the work of the Hart group in general and Mr. Garin
22 in particular?

23 A You know, they do very good work. I don't
24 always agree with every conclusion they draw or bit
25 of analysis they provide, but I believe they are

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2 smart.

3 Q I want to go back. We were talking
4 generally then.

5 I now want to go back to the Spencer
6 Abraham ad that we have viewed and looked at a
7 script for.

8 Who decided to go back and run an ad
9 that showed Spencer Abraham taking, quotes, wrong
10 positions? I'm using the word "wrong" because you
11 and I finally agreed on that word.

12 A You mean on this particular formulation?

13 Q Yes. Who decided to run an ad in
14 October 2000 that would show Spencer Abraham taking
15 certain, quote, wrong positions?

16 A At the end of the day, I did. We had run
17 previous ads on his record. This wasn't the first
18 ad we ran, right.

19 Q Right. And did you consult with anybody
20 else at the AFL-CIO about the decision to run an ad
21 showing Spencer Abraham taking, quote, wrong
22 positions?

23 A I don't have the specifics in this case.
24 I likely did, but I --

25 Q You likely did?

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2 A I mean, I likely did because I try to be
3 collaborative, but I don't remember.

4 Q Would you have talked with Mr. Sweeney
5 about the decision to run an ad on Abraham?

6 MR. GOLD: Are you asking her if she did,
7 does she recall it? When you say "would you
8 have," I'm really troubled by the formulation.

9 MR. SCHWARZ: That's fair.

10 BY MR. SCHWARZ:

11 Q Given your practice, is it likely you did
12 tell Mr. Sweeney that you were going to run an ad
13 that showed Mr. Abraham taking a, quotes, wrong
14 position?

15 A It is not very likely.

16 Q You have agreed previously that you did
17 run some ads suggesting that Mr. Bush -- candidate
18 Bush took certain wrong positions, correct -- any
19 time you want a break--

20 MR. TRISTER: That is what I'm asking.

21 MR. SCHWARZ: You want a break, Mike?

22 MR. TRISTER: I always want a break, but
23 if you are switching directions, maybe now is a
24 good point.

25 MR. GOLD: Five minutes, that would be

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2 good.

3 THE WITNESS: That's fine.

4 (Brief recess.)

5 BY MR. SCHWARZ:

6 Q Now, you, Ms. Mitchell, are now not -- am
7 I correct, that you are not responsible for any ads
8 that the AFL-CIO might run that end up by saying
9 vote for a candidate?

10 A That is right.

11 Q For that, you are not responsible?

12 A I'm not. I mean, I don't -- I don't
13 recall any such ads.

14 Q And if those ads are run by the AFL-CIO,
15 would another department run them or would your
16 department run them?

17 A You know, we --

18 MR. GOLD: You can answer, but -- go
19 ahead. Answer.

20 MR. SCHWARZ: Your confusion is fair.

21 MR. GOLD: Right. Let me say it. It is a
22 hypothetical question because during this
23 period of time the AFL-CIO has never run such
24 an ad. The AFL-CIO hasn't, nor has --

25 MR. TRISTER: If you know of one --

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2 MR. SCHWARZ: I don't.

3 MR. GOLD: Please tell us.

4 BY MR. SCHWARZ:

5 Q I still want to ask you a general
6 question.

7 You know that still people run ads --
8 some organizations run ads that end up by saying
9 vote for somebody?

10 A Correct.

11 Q Where do you live? I don't care exactly.

12 A In D.C.

13 Q So do you ever see ads that end up saying
14 vote for?

15 A Just a little bit. Not a lot. I don't
16 actually watch much television, but I do.

17 Q Television spot ads are usually either 30
18 seconds or 60 seconds, correct?

19 A Correct.

20 Q You have never seen and an that spends all
21 30-seconds saying vote for Jones or an ad that says
22 vote for Smith 120 times, have you?

23 A I don't think so, but I don't remember.

24 Q Such an ad wouldn't be very effective?

25 A You are asking me?

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2 Q You, as a citizen, would you find it very
3 effective?

4 A I wouldn't find it very effective.

5 Q And the reason the people that run "vote
6 for" ads that have a message in front of the vote
7 for is they want to use the message to persuade the
8 viewer that the "vote for" message makes sense,
9 correct?

10 A No, I mean, I believe they -- those ads
11 that would be on behalf of a candidate might be
12 trying to build name recognition for that candidate,
13 you know. I would imagine they would have -- but
14 they would essentially be aimed at influence.

15 Q And when groups -- have you ever seen an
16 ad run by the PAC of a group shortly before an
17 election that ends up saying "vote for"?

18 A I can't say that I can recall a specific
19 one.

20 Q Then I don't have to exhaust your thinking
21 on that subject.

22 So you did agree very early that the
23 AFL-CIO ran certain ads during the 60 days before
24 the 2000 election that pointed out, to use your
25 terminology, wrong positions taken by George Bush,

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2 correct?

3 MR. GOLD: I don't think -- certainly with
4 Abraham, but I think with Bush you never talked
5 in those terms in your question. That was
6 early on in the deposition.

7 MR. SCHWARZ: That is fair, but I would
8 have thought she would use the same expression.

9 BY MR. SCHWARZ:

10 Q Let me ask you the direct question. Did
11 the AFL-CIO run ads in the 60 days prior to the 2000
12 election that pointed out certain, quote, wrong
13 positions, taken by candidate Bush?

14 A I wouldn't use the exact same term because
15 when we were talking about a specific vote and I was
16 referring to a voting record where we literally say
17 this is the right vote, this is the wrong vote,
18 because being for something or being against
19 something is not so clear, but what we did do in the
20 case of George Bush is point out his record on a
21 couple of the issues that we had been very active
22 on.

23 Q And did you use words like "false" about a
24 position taken by Mr. Bush, didn't you?

25 A I'm not remembering the specific. I do

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2 remember on the Patient Bill of Rights he had made a
3 statement in the debate that misrepresented his
4 record on an issue.

5 Q And if I say to you that your ad said that
6 position was, quotes, absolutely false, would that
7 ring a bell with you?

8 MR. GOLD: What position are you referring
9 to?

10 MR. SCHWARZ: The position she referred to
11 about the Patients' Bill of Rights.

12 THE WITNESS: I don't remember
13 specifically. But would that have been -- that
14 sounds more like maybe something someone would
15 have said as opposed to announcer copy, but --

16 BY MR. SCHWARZ:

17 Q Does that make a difference for you? When
18 you run an ad, what is the difference in your mind
19 between whether it is, quote, announcer copy, and
20 words that someone says?

21 A Well, I think as we are pointing out
22 somebody's record on an issue, it goes back to the
23 question of documenting and being -- providing
24 credible information which we think people expect of
25 us, that it matters if somebody who was involved in

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2 a particular debate in Texas, for instance, said
3 that as opposed to our just sort of making, you
4 know, what might seem like a value judgment.

5 Our goal was to point out the
6 discrepancy in what he had said in the record and to
7 raise attention to the issue in a way that would
8 provide information to viewers and also impact the
9 candidates who were then going to be elected
10 officials, at least one of them, and have them
11 understand that when you say you are for something,
12 you better be prepared to be for it and make a
13 change and positively influence peoples' lives.

14 Patients' Bill of Rights specifically
15 had been debated for a period of years and votes in
16 the House and Senate, gone to conference. It had
17 gone back to another vote, I believe, by then.

18 And we thought it was really -- would
19 be really useful to send a message to lawmakers that
20 if you equivocate about your record, you don't just
21 get a pass, that you need to be for a real Patients'
22 Bill of Rights because there will be public
23 attention to how in fact you act.

24 Q Let's just test that in the following way:
25 Had Mr. Gore said things in his political life that

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2 the AFL-CIO disagreed with?

3 A I'm sure.

4 Q You didn't run any ads during the 60 days
5 before the 2000 election that pointed out that
6 Mr. Gore had taken certain positions that you
7 disagreed with, did you?

8 A We didn't. I don't remember any issues
9 being really prominent that we disagreed with during
10 that period of time.

11 Q What states did you run ads that dealt
12 with Mr. Bush in?

13 A We ran them in states that would be
14 competitive for the presidential election, so under
15 the same premise that I mentioned before, which is,
16 you know, if you are going to impact the behavior of
17 somebody, you are not going to do it someplace where
18 it doesn't matter to them.

19 And there is hardly a better time to
20 raise the focus on an issue than during an election
21 period.

22 And, you know, if you follow that
23 through, then it has to be a place where there is in
24 fact a real contest.

25 Q And how did you determine which were the

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2 races in which you thought Bush and Gore were
3 engaged in close -- what states where they were
4 engaged in close races?

5 A You know, I don't remember the specifics,
6 but I think it was fairly common knowledge, and I
7 would have relied on the same sources that I
8 mentioned before.

9 Q Did you make the decisions on which states
10 to run the Bush ads in?

11 A I did.

12 Q Did you have any expectation as to the
13 impact on viewers of the ads that you ran with
14 respect to Mr. Bush in the 60 days before the 2000
15 election?

16 A You know, I believed it would give them
17 information. I -- you know, which was always one of
18 our goals, because in focus groups and work we had
19 done, they said they were really hungry for
20 information.

21 I believe that it would make them
22 think that sort of civic participation is important
23 because, in fact, issues are debated that affect
24 their lives every day and it is a healthy way, not
25 only in the immediate, but in the months to follow,

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2 in the future, and I believed it would impact the
3 candidates themselves.

4 Q Are you telling us that you didn't care at
5 all whether the ads you ran with respect to Mr. Bush
6 would impact the way people voted in the election in
7 November 2000?

8 That is a yes or no question.

9 A I think that --

10 Q It is a yes or no question.

11 MR. GOLD: It is a yes or no question if
12 she can answer it yes or no.

13 BY MR. SCHWARZ:

14 Q If you can't answer that question yes or
15 no, tell me you can't answer it yes or no.
16 Otherwise, answer it yes or no.

17 A Do you want to repeat it?

18 (The Reporter read the record as follows:)

19 Question: "Are you telling us that you didn't
20 care at all whether the ads you ran with respect to Mr.
21 Bush would impact the way people voted in the election in
22 November 2000?"

23 BY MR. SCHWARZ:

24 Q Just say yes, no or not able to answer it
25 yes or no.

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2 A I can say that is one of the reasons that
3 I would care that people would look at the
4 information and make a judgment based on that.

5 Q And you were hoping they would make a
6 judgment to vote against candidate Bush, correct?

7 A Those ads had multiple purposes.

8 Q I'm not questioning your testimony right
9 now that it had multiple purposes.

10 But my question is, were you hoping
11 among other things that those ads would cause people
12 to vote against candidate Bush?

13 A I'm not sure I thought about it in that
14 sort of way, but I think that would logically have
15 been one of the things I would have --

16 Q Hoped for?

17 A Hoped for.

18 Q By the time of the campaign for the 2000
19 election, the AFL-CIO had acquired an ability to do
20 tracking, correct?

21 A I believe. I believe the AFL-CIO had done
22 tracking as long as I have been at the AFL-CIO.

23 Q Well, tell me what kind of tracking the
24 AFL-CIO has done.

25 A You know, I don't actually oversee that.

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2 That is done out of the political department.

3 Q Which department?

4 A Done out of the political department.

5 Q Okay.

6 A So I only have the slightest knowledge of
7 it, and I know in 1996 through 1998, I specifically
8 didn't see that tracking polling.

9 Q Did you see it in 2000?

10 A I didn't. I didn't. I did not. You
11 know, maybe by then we had established our patterns,
12 but I didn't.

13 Q Did anybody from the political department
14 tell you about any of the tracking they were doing
15 in 2000?

16 A No, and I don't even know -- I mean, I
17 don't recall that they did. I don't even know
18 that -- I don't know for sure what we did.

19 I mean, a lot of our research is done
20 by our political department is done tracking union
21 members, and I don't actually know if it went beyond
22 that in 2000.

23 Q Okay.

24 MR. SCHWARZ: Let's play the two ads if we
25 can. I would like to start with the one that

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2 ran earlier, maybe you can't, but I would like
3 to start with that track.

4 And why don't you say what track it is, if
5 you are able to do that. If you are not, just
6 do the two Bush ads whether or not they are in
7 the order they were run.

8 MR. GOLD: Is that still on that first
9 tape?

10 MR. SCHWARZ: Yes. Have you designated
11 all your tapes as trial exhibits?

12 MR. GOLD: Yes, including -- right, even
13 in odd numbered years. We designated all of
14 them.

15 MR. SCHWARZ: So the Court can spend --
16 well.

17 MR. GOLD: This is exit one, track three.

18 MR. SCHWARZ: It is not track three.

19 MS. ISPAHANI: It is track five.

20 (The tape was played.)

21 "George Bush promised us a retirement fund
22 and then he went and raided it because of other
23 things. Now George W. Bush says he will
24 protect Social Security by pushing a massive
25 tax cut, but studies show Bush's plan would

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2 lead to benefit cuts and increase in the
3 retirement age or both being reduced or
4 abolished. George Bush broke his promise to
5 the people of Texas."

6 MR. SCHWARZ: Let's stop there.

7 BY MR. SCHWARZ:

8 Q Do you recognize that ad as one that you
9 ran?

10 A Yes.

11 Q And the transcript won't show it, but all
12 of the audio comes from someone who is identified on
13 the video as Mr. Jennings, a history teacher in
14 Texas?

15 A Correct.

16 Q Except for the announcer who states the
17 words, "Now George Bush says he will protect Social
18 Security while pushing a massive tax cut, but
19 studies show Bush's plan would lead to benefit cuts
20 and increase in the retirement age or both, close
21 quotes, just to have that clear.

22 Now, how was Mr. Jennings selected?

23 MR. GOLD: Wait a second. You did an
24 excerpt of the ad and you read the text of it.
25 Do we have the text of it?

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2 MR. SCHWARZ: I was reading from the CMAG
3 text.

4 MR. GOLD: Why can't we see the whole ad?

5 MR. SCHWARZ: We did. We saw absolutely
6 the whole ad. I was just -- because the
7 transcript would not show that there are two
8 different people speaking. I was just
9 clarifying that.

10 MR. GOLD: Okay. It was a little
11 confusing because we weren't dealing with the
12 transcript but dealing with the ad, but go
13 ahead.

14 MR. SCHWARZ: I meant the transcript she
15 is typing.

16 MR. GOLD: I see. I see.

17 MR. SCHWARZ: Okay.

18 BY MR. SCHWARZ:

19 Q Now, if I told you that was run in
20 September, would you have any reason to doubt that?

21 A No.

22 Q Now I will show you an ad that was run
23 between October 25 and November 6, in other words,
24 the day of or the day before the election.

25 And if you could run that, Laleh, and

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2 say what track it is on to help our colleagues.

3 MS. ISPAHANI: It is seven.

4 BY MR. SCHWARZ:

5 Q You see the date, October 24, and that
6 would convey, you said before, but that is the day
7 it was filmed or what?

8 A The day the final editing was done in all
9 likelihood.

10 MR. SCHWARZ: Go ahead, Laleh.

11 (The tape was played.)

12 "When Governor Bush said during the
13 debate that he brought people together to pass the
14 Patients' Bill of Rights, he knew in his heart that
15 that was absolutely false.

16 Nurses worked long and hard to pass
17 this legislation and hold the HMOs accountable for
18 denying medical care to people.

19 He fought it every step of the way.
20 His constituency is the insurance industry. That is
21 why he voted that way."

22 BY MR. SCHWARZ:

23 Q Okay. Who found Mr. Jennings and the
24 woman who I think is identified as Ms. Ingles,
25 I-N-G-L-E-S in Texas? Who found those two people?

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2 A Ms. Jennings was found through our Texas
3 State Federation and then his union, which is the
4 Texas teachers.

5 The nurse, I believe, was found
6 through the American Nurses' Association and some
7 inquiries through that.

8 Q Did you pick --

9 MR. GOLD: I barely caught the end of what
10 you said. I didn't hear it.

11 BY MR. SCHWARZ:

12 Q Go back again. The nurse was found
13 through the American Nurses Association?

14 A Nurse's association.

15 MR. SCHWARZ: Was that the end?

16 MR. GOLD: I thought you said something
17 after that.

18 THE WITNESS: I probably --

19 THE REPORTER: I have "some inquiries
20 through that."

21 MR. GOLD: Fine, I didn't hear that. Some
22 inquiries through that.

23 BY MR. SCHWARZ:

24 Q So who communicated between the AFL-CIO
25 and the American Nurses' Association?

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2 A I called an arm of the American Nurses
3 Association, the United American Nurses, and they
4 called their Texas chapter, and I believe they
5 identified a few people who had been active in that
6 Patients' Bill of Right debate in Texas.

7 Q And then did you see the nurse before she
8 was on the ad?

9 A I didn't.

10 Q Did anybody see her?

11 A The day they went --

12 MR. SCHWARZ: That is a stupid question.

13 BY MR. SCHWARZ:

14 Q As far as you know, did anybody in
15 connection with the AFL-CIO or your ad agency see
16 her?

17 A I believe they just saw her -- I believe
18 we talked to her on the phone but had not seen her
19 in person before we went to interview her on film.

20 Q Did they interview people other than
21 Jennings and the nurse?

22 A I believe they interviewed a doctor.
23 Although, I'm not sure. I know we were identifying
24 people who were actively involved, doctors and
25 nurses. I can't remember if we actually interviewed

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2 anyone else.

3 Q And --

4 A We might have.

5 Q And in those interviews, was film taken of
6 the interview before the final film on the screen?

7 A Well, you would tape an interview, right,
8 and then use parts of it.

9 Q And did you look at the interviews, the
10 Jennings one and the nurse and the doctor and make
11 the choice as to, A, what people to feature and, B,
12 what words of theirs to choose?

13 A I relied primarily on the guidance of the
14 agency that had --

15 Q The Axelrod?

16 A Axelrod, uh-huh.

17 Q Now, when you made your first telephone
18 call, I think you said it was a telephone call to
19 the American Nurses Association?

20 A Uh-huh.

21 Q What did you say to them?

22 A I said to them that in the debates the
23 patients talked about the Patients' Bill of Rights
24 and the record in Texas, and we think it would be
25 appropriate, valuable to have someone who was

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2 actually involved in that be interviewed and be part
3 of a television ad.

4 Q Okay. Now, let's talk about another
5 subject relating to locations.

6 You told us how you picked the states
7 in which these ads involving Mr. Bush were run?

8 A Uh-huh.

9 Q Correct?

10 A Correct.

11 Q Did you run ads in every single television
12 market in each of those states, or did you select
13 certain markets within the states?

14 A I don't remember the specific instance.
15 But we often select primarily based on budget.

16 So -- you know, the -- our media
17 buyer -- I will say we want to run ads in
18 Pennsylvania, you know, and Michigan or something
19 and, you know, so I need a budget for that.

20 And he might send me a budget back
21 that includes rates by market as well as what
22 percentage of this budget is reached by date and I
23 make decisions based on a budget basis.

24 Q Do you take any factors into account other
25 than deciding what to use or to put your ads on in

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2 particular states?

3 A The reach of the market which, you know,
4 showing what is cost effective.

5 Q If I told you that in the Michigan ads you
6 ran them in Detroit, Flint and Lansing, would you
7 accept that for the purpose of my questioning?

8 A If you said that. Yeah, I mean --

9 Q It is what the data shows.

10 MR. GOLD: Which data is that?

11 MR. SCHWARZ: Both CMAG and your invoices.
12 BY MR. SCHWARZ:

13 Q Sort of taking as a given you ran them in
14 those three media markets, why did you pick Detroit
15 and why did you pick Flint and why did you pick
16 Lansing?

17 A I can't say that I remember really
18 specifically.

19 I will say that Detroit is the
20 biggest media market in the state. To say that you
21 are going to air ads in Michigan and not be in
22 Detroit would be to make a decision not to do
23 Detroit. The decision wouldn't be to do Detroit.

24 Similarly with Lansing, it has a big
25 reach. There are actually not a lot of television

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2 markets in Michigan, and Flint, as I recall -- so
3 each is a segment of the state that isn't reached by
4 those and a segment where there are a lot of union
5 members and working people.

6 Q There are some stations in Michigan that
7 reach primarily rural voters, aren't there?

8 A Not many.

9 Q But there are some?

10 A There could very well be.

11 Q And you didn't run on those?

12 A They don't reach very many voters.

13 MR. SCHWARZ: Could I hear back that last
14 answer. Can I just hear back that last answer.

15 (The Reporter read the last answer.)

16 BY MR. SCHWARZ:

17 Q Am I correct that the number of voters
18 your ads would reach is a criteria you took into
19 account in deciding where to run your ads? Isn't
20 that what you just said?

21 MR. GOLD: The Bush ads, you are talking
22 about the Bush ads?

23 MR. SCHWARZ: Take the Bush ads.

24 MR. GOLD: Well, I want to be clear that
25 she understands the question you are asking

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2 her.

3 You are talking about the three media
4 markets, and I want to make sure you are trying
5 to generalize from the question.

6 THE WITNESS: So the Bush ads. Yeah, I
7 did use the word "voters." I could use the
8 word "viewers." The numbers I get back from
9 our media buyers are viewers.

10 BY MR. SCHWARZ:

11 Q Okay. Picking up on your counsel's
12 observations, when you were deciding which media
13 markets to cover for Spencer Abraham, you followed
14 the same -- you made the same choices, didn't you?

15 A I don't recall.

16 Q Now let's talk for a minute about ads that
17 you ran in the 60 days prior to the 2000 election
18 that mentioned House candidates. Okay?

19 A Okay.

20 Q I want that to be the universe.

21 A Okay.

22 Q Who do you remember focusing on who was
23 running for the House in 2000?

24 A You know, I don't actually remember the
25 list. That was a group of incumbent lawmakers. I

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2 don't remember the list.

3 Q They were all Republican incumbents,
4 correct?

5 A I don't really remember.

6 Q Do you have anything in your mind that
7 would suggest to you that you ran any ad in 2000
8 that was focused on a Democratic incumbent?

9 MR. GOLD: House for the whole year?

10 MR. SCHWARZ: During the 60 days.

11 THE WITNESS: I don't remember that.

12 BY MR. SCHWARZ:

13 Q If I gave you certain names and asked
14 you -- why don't I do that.

15 A Okay.

16 Q Do you remember that you ran ads that were
17 focused on a Mr. Dickey who was a House member in
18 Arkansas?

19 MR. GOLD: Object to the form. When you
20 say "focused on," you mean referred to him by
21 name?

22 MR. SCHWARZ: I don't care.

23 MR. GOLD: Let's use refer.

24 MR. SCHWARZ: Refer is fine.

25 MR. GOLD: Okay.

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2 THE WITNESS: That sounds familiar, but I
3 have just -- you know, we have run ads that
4 mentioned Mr. Dickey other years. And I don't
5 remember specifically that he was --

6 BY MR. SCHWARZ:

7 Q Picking another name, a woman from
8 Kentucky whose last name is Northup, you ran ads in
9 2000 that referred to her, correct?

10 A We might very well have. I don't remember
11 the specifics.

12 Q You had also run ads that referred to her
13 in earlier years, correct?

14 A Probably in almost every year.

15 Q Yeah, and she had been re-elected in '96,
16 correct?

17 A I don't know when she first was elected.

18 Q If I tell you she was elected and
19 re-elected in '96, would you have any reason to
20 doubt that?

21 A No. Oh, no.

22 MR. GOLD: Which is it? You mean elected
23 or re-elected in '96?

24 MR. SCHWARZ: I think she was re-elected
25 in '96.

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2 BY MR. SCHWARZ:

3 Q And in '98, you have no reason to doubt it
4 if I told you that?

5 A No.

6 Q You had run ads focused on her in both
7 those years, correct?

8 A Ads that referred to her.

9 MR. GOLD: Again, object to the form.

10 Thank you.

11 BY MR. SCHWARZ:

12 Q And those ads had no impact whatsoever in
13 changing any of their positions on issues you cared
14 about, had they?

15 A I believe there had been some instances
16 where she tempered her votes.

17 Q And you were still going after her in 2000
18 despite that, correct?

19 MR. GOLD: Object to the form. "Going
20 after" is your characterization.

21 MR. SCHWARZ: It is my question.

22 MR. GOLD: Fine. You can answer, if you
23 know.

24 THE WITNESS: We ran ads that referred to
25 her record on an issue.

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2 BY MR. SCHWARZ:

3 Q Okay. Did you run ads in 2000 that
4 referred to a Mr. Shaw in Florida?

5 A I just saw one scoot by on the screen, but
6 I wouldn't have remembered otherwise.

7 Q Would you say the best way to determine
8 whether you had run ads referring to these people
9 earlier would be to look at your records as opposed
10 to extracting it from your memory?

11 A Yes.

12 Q Let me ask you a general question about
13 the ads that referred to House members in the last
14 60 days before the election in 2000.

15 Were you aware, did you know that all
16 of those ads were run in close races? Just yes or
17 no.

18 A I don't remember. As I have said, that
19 would have been one of the criterion, but it might
20 not have been the only criterion, and I wouldn't be
21 able to say that all of them were such.

22 Q As you sit here today, can you think of
23 any ad that you ran, that the AFL-CIO ran in the 60
24 days before the 2000 election or the 60 days before
25 the 1998 election or the 60 days before the 1996

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2 Q And he took office in the fall of 1995?

3 A He took office immediately upon election,
4 October 25th.

5 Q And in 1996 the AFL-CIO ran the biggest
6 broadcast ad program they have ever run in their
7 history; is that correct?

8 A It was bigger, but in other ways did not
9 depart from what had happened in 1995.

10 Q But was it the biggest you have ever run
11 in your history, the ads that the AFL-CIO ran in
12 1996?

13 MR. GOLD: When you say --

14 BY MR. SCHWARZ:

15 Q When I say "history," I mean history to
16 date.

17 MR. GOLD: When you say "biggest," in what
18 sense.

19 MR. SCHWARZ: Let's say in terms of
20 dollars.

21 THE WITNESS: I think that is fair. There
22 were some previous ad initiatives that were
23 large dollars for their time period, but I
24 don't believe they were equal to this amount of
25 dollars.

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2 BY MR. SCHWARZ:

3 Q And in '98 and 2000, the dollars you spent
4 were less than the dollars you spent in '96,
5 correct?

6 A Correct.

7 Q And again, talking in broad generalities
8 first, was it your understanding in 1996 that
9 political commentators believed that the Democrats
10 had a better chance of recapturing the House than
11 they did at recapturing the Senate.

12 A I believe that is the case.

13 Q And indeed, Mr. Sweeney said that in
14 communications with your executive council, didn't
15 he?

16 A I can't say that I specifically recall,
17 but I am aware that, you know, in general, you know,
18 he talked about the elections and the possibility of
19 retaking the House.

20 Q I lost your voice. Maybe she has it. If
21 she does, that's good enough.

22 (The Reporter read the last answer.)

23 BY MR. SCHWARZ:

24 Q And in 1996, in terms of dollars, I'm now
25 focused on the 60 days in front of the election, in

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2 terms of dollars spent by the AFL-CIO on broadcast
3 advertising, the substantial majority of that money
4 was spent on ads that mentioned members of the
5 House; is that correct?

6 A In the 60 days?

7 Q Yes.

8 A Prior to the election?

9 Q Yes.

10 A Yes.

11 Q And again, I'm doing general things about
12 '96, and then I will come back more specifically.

13 And in the 1996 election -- did the
14 AFL-CIO mention -- let me ask you, approximately how
15 many House members were mentioned in AFL-CIO ads in
16 the 60 days prior to the election of 1996,
17 approximately?

18 A I don't remember.

19 Q And if I asked you that question and did
20 not limit it to the 60 days but just asked about
21 1996, would you have a number --

22 A I wouldn't have a firm number.

23 Q Would you have any number in your mind?

24 A Not really. I mean, I think that we -- we
25 ran a lot of different types of ads on a lot of

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2 different issues and we would -- we might normally
3 sort of budget for having 20 to 25 members of
4 Congress referred to in ads, but we would add people
5 and drop people, depending on the issue.

6 So I suspect that in the course of
7 the year, the number was, you know, more than that.

8 Q Would a number like 70 sound right to you?

9 A That sounds high to me.

10 Q Sounds high to you?

11 A (Nods head.)

12 Q And do you remember what polling was done
13 in 1996 to help you formulate your messages?

14 A I remember that we did focus groups that I
15 referred to earlier on sort of effective
16 presentation of messages.

17 I believe we did some research on
18 what issues were most important to working families
19 as, you know, as we were formulating our plans for
20 the year, but I actually can't say that
21 specifically.

22 Q And again, referring to 1996 and more
23 generally, were you aware that the Republican party
24 counter attacked with respect to the ads that the
25 AFL-CIO was running?

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2 A No. I actually -- I know there were some
3 counter attacks on some of our messages on Medicare,
4 I remember specifically. I don't remember the
5 Republican party being the sponsor of that.

6 Q Let me come back to the Republican party,
7 but you do remember counter attacks from what source
8 of those messages?

9 A I remember a few different organizational
10 names. I remember at the time I didn't know who
11 they were.

12 Q Which ones do you remember?

13 A Well, I remember maybe Americans For Job
14 Security or something like that or something
15 about -- I don't know. And I remember The
16 Coalition.

17 Q The Coalition, what was its full name?
18 Would you know the full name of The Coalition?

19 A I don't know.

20 Q If I said The Coalition: Americans
21 Working For Real Change, would that be the coalition
22 you are talking about?

23 A That sounds like it might be. I don't
24 remember.

25 Q And while the name does not reveal

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2 anything whatsoever, did you come to have an
3 understanding of who was behind The Coalition:
4 Americans Working For Real Change?

5 A I thought that it was -- that it raised
6 money from business groups.

7 Q From business corporations, is that what
8 you said?

9 A Yeah, correct.

10 Q And also from business associations like
11 the Chamber of Commerce, did you understand that?

12 A I don't remember whether I understood
13 that.

14 Q Okay. And what, if anything, did you know
15 about Americans For Job Security?

16 A I believe I learned that it had some sort
17 of right wing better known groups behind it and
18 money from those sources.

19 Q Do you think as a citizen that the use of
20 names like Americans For Job Security or The
21 Coalition: Americans Working For Real Change is
22 fair to the American viewing public?

23 A As a citizen? I could see instances it
24 could be misleading. As a person that -- seeing
25 advertising efforts for the AFL-CIO, I think it is

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2 important for people to know who we are when we are
3 delivering broadcast messages, and I think that is
4 an important part of our credibility, but I
5 wouldn't -- you know, I think there are times where
6 things are a real coalition effort and it is not
7 practical to have the names of dozens of
8 organizations on the screen.

9 Q But you think that -- now, do you think
10 the voting public is entitled to know who is backing
11 a group that is running millions of dollars of ads
12 in connection with a federal election?

13 MR. GOLD: Is this in connection -- when
14 you say "in connection with federal
15 elections" --

16 MR. SCHWARZ: I will make it more precise.
17 How did I start my prior question?

18 (The Reporter read the pending question.)

19 BY MR. SCHWARZ:

20 Q Do you think the voting public is entitled
21 to know with respect to broadcast ads that are run
22 in the 60 days prior to a federal election that
23 mention a federal candidate and are spending
24 millions of dollars on those ads, do you think that
25 the voting public is entitled to know who is behind

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2 those ads?

3 MR. GOLD: Again, you are asking her as a
4 citizen?

5 THE WITNESS: As a citizen, I will have a
6 hard time remembering the entire question.

7 MR. SCHWARZ: Hear it again. Hear it
8 again.

9 (The Reporter read the pending question.)

10 THE WITNESS: Here is what I think as a
11 citizen: I think it is a good public policy to
12 say who is running. I think the messages have
13 more credibility.

14 I think the public can make their own
15 decisions about what they find credible or not
16 credible, and I think they will -- I believe --
17 and to some extent, based on some of our own
18 focus groups and testing, but not on this
19 specific testing, that they will find more
20 credible messages when they know where they are
21 coming from and when they come from a respected
22 source.

23 As somebody who produces 30-second ads, I
24 can say that sometimes you might have to
25 balance that against what is practical.

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2 BY MR. SCHWARZ:

3 Q Now, as we have seen of yours, all
4 conclude with either "paid for by the AFL-CIO" or
5 "paid for by the working men and women of the
6 AFL-CIO," correct?

7 A The ones we have seen do, correct.

8 Q To your knowledge, has the AFL-CIO ever
9 run an ad in the 60 days prior to the federal
10 election that refers to a candidate that doesn't
11 reveal that the ad is paid for by the AFL-CIO?

12 A I don't remember an instance of that.

13 Q Would you ever approve of running an ad
14 that is in fact paid for by the AFL-CIO but does not
15 reveal that it is paid for by the AFL-CIO?

16 MR. GOLD: Under any circumstances?

17 MR. SCHWARZ: Under any circumstances.

18 MR. GOLD: I mean, you have asked her --
19 why don't you ask her if she has ever done,
20 which is a broader question than what you asked
21 before.

22 You are asking a hypothetical question
23 about something she might do in the future
24 without establishing whether or not she has
25 ever done it in the past.

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2 MR. SCHWARZ: I thought I had.

3 MR. GOLD: You limited it to 60 days and a
4 candidate.

5 MR. SCHWARZ: Fair enough.

6 BY MR. SCHWARZ:

7 Q When you have been responsible, do you
8 remember the AFL-CIO ever paying for a broadcast ad
9 but not revealing that they were the entity that had
10 paid for it?

11 A I believe we have been part of coalitions
12 where we paid for the substantial cost of an ad as
13 the coalition partner with more budget where we --
14 where the ads were run in the name of the coalition.

15 Q What coalition names can you think of?

16 A Well, I just -- I remember a Patients'
17 Bill of Rights coalition that had lobby -- you know,
18 exchanged information and lobbied together on the
19 Patient Bill of Rights.

20 And there was a time they wanted to
21 run an ad that involved a number of groups, I mean a
22 number of groups that were health care groups,
23 women's groups, consumer groups, you know, and such.

24 And they kind of looked to us as the
25 coalition member with the most experience and the

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2 most expertise at doing these things, so we
3 shepherded the production and put in a substantial
4 amount of the money, but it would not have been
5 appropriate for us to say those are AFL-CIO ads.

6 Q Yes, but apart from coalition ads --

7 A Right.

8 Q -- you don't know of any instance where
9 the ad was in fact paid for by the AFL-CIO and did
10 not reveal it had been paid for by the AFL-CIO?

11 A I can't recall such an instance.

12 Q Do you remember at all the name of the one
13 that concerned the Patients' Bill of Rights?

14 A I don't remember. I think it might have
15 been called the Patients' Bill of Rights Coalition.

16 Q Can you remember any other coalitions of
17 which the AFL-CIO was a part that ran broadcast ads
18 since you came to the --

19 A Any kind of broadcast ads?

20 Q I will start that way and then go
21 narrower.

22 A Okay. I remember a coalition that we were
23 part of that did nonpartisan G-O-V-T radio ads. I
24 believe that was 1998.

25 I mean, we are part of a -- well --

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2 we are part of a coalition on the health care now,
3 although we don't put money into it, and I believe
4 you said where the AFL-CIO put money, but maybe you
5 didn't in your broad question.

6 So I mean, from time to time, we are
7 a part of coalitions that do lobbying together on
8 issues.

9 Q Do you recall any instance where -- other
10 than the "get out the vote" ad, which would have
11 been done in the few days before the election,
12 correct?

13 A Correct.

14 Q Other than that, were any of the other
15 coalitions that you remember and that you have
16 talked about running broadcast ads in the 60 days
17 prior to a federal election?

18 A Not that I recall.

19 Q So these were running ads during this sort
20 of regular legislative calendar or what?

21 A Well, the legislative calendar often
22 extends into the 60-day period. And so -- so I
23 remember we were doing Patient Bill of Rights ads in
24 1998 in the 60-day period in September, so it would
25 have been in the 60-day period.

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2 Q Those were AFL-CIO ads or they were
3 coalition ads?

4 A I don't remember which. I remember some
5 of the Patient Bill of Rights ads were coalition and
6 some were AFL-CIO.

7 Q Okay. We went off on a little bit of a
8 tangent. I was asking you some broad general facts
9 about 1996, and in formulating -- in any respect,
10 during 1996, did you or as far as you know, anyone
11 else from the AFL-CIO, have conversations with any
12 political party officials about your broadcast ads?

13 A I'm not aware of any.

14 Q And did you have any conversations during
15 1996 with -- did you or as far as you know, anyone
16 else from AFL-CIO, have any conversations with
17 candidates about broadcast ads?

18 A I would say no.

19 Q I want to make sure I don't have the name
20 wrong. Is Media Strategies & Research the group
21 that we saw on the 2000 ads?

22 A Yes.

23 Q And did you start working with them in
24 1966?

25 MR. GOLD: '96, you mean?

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2 MR. SCHWARZ: 1996.

3 THE WITNESS: I started working with them,
4 right, mid year of 1996.

5 BY MR. SCHWARZ:

6 Q And what caused you to start working with
7 them?

8 A Prior to my coming to the AFL-CIO, the
9 AFL-CIO had been working with an agency that did the
10 production and also did the media buying and in
11 thinking about how to manage the process in 1996, I
12 wanted to -- I felt like we could do the work more
13 efficiently and better and for less money.

14 And I wanted to have an independent
15 media buyer, and Media Strategies & Research had
16 been recommended to me by an acquaintance as people
17 who were sort of thoughtful and sort of not big,
18 sort of horn tooters like a lot of the Washington
19 folks.

20 Q Where are they located?

21 A They are located in Denver, Colorado.

22 So once when they were in town --
23 they actually have a D.C. office, but I don't know
24 who is there. I have never dealt with anybody
25 there. It may be an address, for all I know.

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2 So once when they came into town they
3 stopped by and told me who they were and I talked to
4 them about doing buying for us.

5 Q Whenever that occasion happened when they
6 met with you, did you have sort of a general
7 discussion with them about what your goals were and
8 what their -- what their -- what their ideas were
9 and what their competence was?

10 A No, I don't -- we didn't have a long
11 discussion. I think they just sort of stopped by
12 and sort of introduced themselves to me and dropped
13 off some information on their company, kind of told
14 me what they did, which is media buying. And maybe
15 that's how they went about it.

16 But I remember I was sort of first at
17 the AFL-CIO. I was in this tiny office and I think
18 it was kind of a quick meeting.

19 Q And what --

20 A And I discussed rates. I wanted to be
21 clear that they were competent and that they
22 would -- I had done some research into what rates
23 major corporations that were buying advertising were
24 paying, and I was convinced that the AFL-CIO was
25 paying too much, and so I wanted to be sure that we

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2 could get a better deal.

3 Q And do you have in your mind any names of
4 people from Media Strategies?

5 A In my mind?

6 Q Yes.

7 A The people I deal with are John Hutchens,
8 and Kyle Osterhout.

9 Q And they have been the people you dealt
10 with from the beginning and are still dealing with?

11 A That is --

12 Q And in that question, I'm talking right up
13 to today.

14 MR. SCHWARZ: You can see why I'm doing
15 that. It is not getting into the substance.

16 MR. GOLD: It is fine.

17 BY MR. SCHWARZ:

18 Q Okay. Since you have stayed with them
19 since 1996, I take it you found they were thoughtful
20 and useful people?

21 A The job they do for is a largely
22 ministerial job. We say to them, we want to run an
23 ad in a few weeks about Medicare or whatever and we
24 want to run it in the following places, and they
25 will give me rates and accomplish what needs to be

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2 done, sometimes on very short notice, and do it very
3 efficiently, so I -- and they are pleasant.

4 Q Who was the acquaintance that suggested
5 Media Strategies to you?

6 A Joe Cowart.

7 Q Who?

8 A Cowart.

9 Q Who is Joe Cowart?

10 A He was a consultant who has done
11 independent consulting, sometimes with firms and
12 sometimes not, but also somebody I have known a long
13 time.

14 Q In what context have you known him for a
15 long time?

16 A Well, his wife is an old friend of my
17 husband's.

18 Q Is he a consultant that understands --
19 what does he consult in?

20 A You know, I mean, he has advised -- you
21 know, he has worked for incumbent governors. I
22 mean, it is basically in public policy.

23 He has worked in campaigns, be they
24 campaigns to stop something about sugar cane
25 something in Florida, in the Everglades. You know,

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2 just a range of sort of initiative efforts.

3 Q And he has worked in election campaigns,
4 also?

5 A He has worked in election campaigns as
6 well. I think I first met him, I believe, in
7 Georgia when he was working on a highway referendum.

8 Q And was it Joe C-O-W-A-R-T?

9 A That is right.

10 Q Coward?

11 A Coward.

12 Q Has he been a person you found sensible in
13 his thinking?

14 A He is not somebody I agree with all the
15 time, so I don't know what you mean by "sensible"
16 exactly.

17 Q How would you characterize him as a --

18 A Well, he was very helpful to me at a time
19 when I came to the AFL-CIO and had a whole lot of
20 things to do at once. You know, I have a broad
21 portfolio.

22 Q Go ahead. We can talk and chew gum at the
23 same time.

24 A And it was a really overwhelming time. I
25 mean, there was about a year or two there where it

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2 was pretty hard to function even.

3 When Sweeney was first elected, the
4 AFL-CIO didn't even have basic operating structures
5 that we needed, and it was hard to get things done
6 and we had a huge mandate we had given ourselves.

7 So I reached out to somebody I knew
8 who I thought could help me facilitate a process.

9 He was basically a facilitator, and
10 he actually hasn't done any work since then.

11 Q Whatever he did in '96, he was useful to
12 you?

13 A He was helpful. I didn't always agree
14 with him and I remember he made some recommendations
15 that I didn't agree with.

16 And I didn't -- he was not somebody
17 whose judgment in the end I particularly relied on,
18 but he was very helpful.

19 Q Okay.

20 MR. SCHWARZ: So can you mark as Exhibit 4
21 a document -- your Bates stamp 415 through 418
22 and it is dated January 24, 1996.

23 (Thereupon, Mitchell Exhibit No. 4 was marked
24 for identification and was attached to the transcript.)

25 BY MR. SCHWARZ:

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2 Q Have you seen Mitchell Exhibit 4?

3 A I vaguely remember getting something from
4 them. I haven't seen this in a long time.

5 MR. GOLD: In that case, why don't we --

6 MR. SCHWARZ: If you want to read it, you
7 can read the whole thing.

8 MR. GOLD: If you are going to ask
9 questions about this.

10 MR. SCHWARZ: I'm not sure how many I will
11 ask.

12 MR. GOLD: However many you ask --

13 MR. SCHWARZ: It is her right to read it.

14 MR. GOLD: If you want to ask her
15 questions on the basis of her not reading it --

16 MR. SCHWARZ: That would be hard for me to
17 defend.

18 Let's go off the record and take a
19 five-minute break.

20 (Brief recess.)

21 BY MR. SCHWARZ:

22 Q So did you get this memorandum, Mitchell
23 4?

24 A I remember it.

25 Q Does it refresh your recollection you had

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2 met with them as early as January?

3 A Right, that this was in follow up to their
4 stopping by apparently.

5 Q Okay. Did you send any response or reply
6 to Mr. Osterhout or Mr. Hutchens after this memo?

7 A I don't think so.

8 MR. SCHWARZ: I want to now mark as
9 Mitchell Exhibit 5 an article from The
10 Washington Post dated January 25th, 1996.

11 (Off-the-record discussion.)

12 MR. TRISTER: This is not Bates --

13 MR. SCHWARZ: Not produced by you.

14 MR. TRISTER: Okay.

15 (Thereupon, Mitchell Exhibit No. 5 was marked
16 for identification and was attached to the transcript.)

17 BY MR. SCHWARZ:

18 Q Tell me when you are ready. Did you
19 see --

20 A Okay.

21 Q Did you see this article when it came out?

22 A I did.

23 Q Do you know Mr. Swoboda?

24 A I do.

25 Q Did you speak to Mr. Swoboda about this?

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2 A This article came the day after a meeting
3 the AFL-CIO had where there was a little press
4 briefing.

5 Q The meeting was the meeting of the
6 executive council?

7 A Right. Right. And Frank Swoboda was
8 there.

9 Q He was there?

10 A He was there as a reporter who was at the
11 press briefing.

12 Q Did you participate in the press briefing?

13 A I was there, yeah.

14 Q Did you say anything?

15 A I don't usually. I'm not usually the
16 spokesperson of those things.

17 Q Did you speak to Mr. Swoboda either before
18 or after the meeting and before this article came
19 out?

20 A I wouldn't really remember that. A
21 reporter that is working on an article might call
22 and ask some question, but unlikely.

23 Q Were you identified at the press event
24 that occurred?

25 A Identified in what way?

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2 Q Who you were and what your
3 responsibilities were?

4 A I might have very well introduced myself.
5 I might have introduced John Sweeney. I don't
6 really remember that.

7 I remember that we were introducing
8 our new organizing director and his deputy and lying
9 out a range of things showing that John Sweeney was
10 hitting ground running as the president of the
11 AFL-CIO.

12 Q Had you known Mr. Swoboda before this
13 article?

14 A He had been a labor reporter. He has
15 since retired, but he had been a labor reporter for
16 a number of years.

17 Q What was his reputation?

18 A His reputation was actually as sort of
19 being business oriented and sort of nice guy
20 personally but a bit lazy as a reporter.

21 Q "Lazy," you said?

22 A Lazy as a reporter. I shouldn't have said
23 that, right?

24 MR. GOLD: No.

25 THE WITNESS: We called him an armchair

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2 reporter. He would not work very hard to cover
3 something well.

4 BY MR. SCHWARZ:

5 Q He would come to a meeting and write down
6 what he heard and report it, doing the sort of
7 investigative reporting that some other people do?

8 A I wouldn't use the word "investigative."
9 That wasn't what I was referring to, but sort of
10 digging in to get facts, you know.

11 I felt like he always sort of put
12 things through a lens that was like, oh, this makes
13 a Washington story. And I mean, with any reporter,
14 you don't have the favor from them of having them
15 write what you think is important, right? They put
16 it through the lens of what they think is important
17 or what their editor thinks is important, so rarely
18 would they represent what you said to them. They
19 would put it through some lens of their own.

20 Q Did you ever tell Mr. Swoboda there was
21 anything in this article that you thought was
22 inaccurate?

23 A You know, I probably called him the next
24 day because I remember seeing this story in The
25 Washington Post and going what? You know, this

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2 sounds like a bunch of chest-beating crazy people.

3 And I remember saying that to our
4 chief of staff, you know, being a little apologetic
5 that a story like this which just sounded a little
6 overdrawn in terms of, you know, we are going to
7 organize a million new members, we are going to --
8 and I remember the chief of staff laughing,
9 chuckling and saying, you know, at least they are
10 writing about us now.

11 So you don't get it both ways but,
12 you know, they look at what they think is the most
13 sensational news.

14 Q From what they heard at the briefing?

15 A Yeah, but I remember this particular
16 thing, and I remember, we had planned for the
17 briefing and talked about how John Sweeney would
18 come out of the council meeting and talk about the
19 various things we were doing and talking about Union
20 Summer, which was a fresh interesting new program,
21 and we would talk about organizing.

22 And it didn't occur to me the
23 political part would be anybody's lead. I didn't
24 think it was -- it was a bigger part than anything
25 else.

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2 So Frank Swoboda sort of asked a
3 couple of questions that I didn't expect. They
4 weren't even in what I recalled Sweeney said.

5 Oh, like, how many races, you know,
6 Congressional districts, you know, what are you
7 going to do and then suddenly, people are tossing,
8 you know, tossing out numbers and they sort of
9 become bigger than life.

10 Q So you would have written a different lead
11 if you had written the story?

12 A Uh-huh, I would have.

13 Q The press briefing that would have
14 occurred --

15 A I would have --

16 Q -- what would have you written?

17 A I would have written the AFL-CIO has an
18 exciting new president that will inject new life
19 into labor and revive the fortunes of working
20 families, but I think this is pretty --

21 Q He chose instead to write about the things
22 that had been said on the subject of more political
23 matters, and that is what he made his lead, correct?

24 A Correct, which were things that were not
25 even emphasized but were in response to questions he

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2 had asked.

3 Q Were there other reporters at the event,
4 or was he the only reporter?

5 A No, there were other reporters there.

6 Q Have you seen this Washington Post article
7 in the last two weeks?

8 A I have not.

9 Q You haven't seen it since 1996?

10 A Not that I recall.

11 Q So you earlier identified who Joe Cowart
12 was, he was a friend of yours -- let me see if I
13 have stated it fairly.

14 He was a personal friend of yours who
15 had experience in politics and who you obtained
16 counsel from in the early period of your tenure at
17 the AFL-CIO; is that all right?

18 A Yeah, I don't remember the exact dates and
19 I believe that you asked me -- I raised him in
20 connection with Media Strategies as somebody who had
21 referred them to me.

22 Q Uh-huh.

23 A But I don't think he was somebody I had
24 hired at that point in time. I think he said, oh,
25 hey, I know a great media buying firm.

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2 Q Did you ask him at some point to assess
3 people who could be consultants for the AFL-CIO in
4 devising ad campaigns?

5 A At a later point, I believe, I asked him
6 to sort of help facilitate a competitive selection
7 process. So I asked him to sort of draw up a list
8 of people that we might invite to make presentations
9 to us and then --

10 Q Give assessments of them?

11 A Well, he gave assessments of them. I'm
12 not sure I asked for assessments of them.

13 But in any event, you know, I believe
14 that a good number of people were invited to make
15 presentations. I don't remember whether all of them
16 were or not.

17 Q So he gave you a list --

18 MR. GOLD: Had you finished your answer?

19 THE WITNESS: Yes, I had.

20 MR. GOLD: Go ahead.

21 BY MR. SCHWARZ:

22 Q He gave you a list of consultants with
23 some comments on them, correct?

24 A I remember that, yes.

25 Q And how did he know what you were looking

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2 for?

3 A What I was looking for was a firm to
4 replace Greer Margolis, but a firm to do the same
5 type of legislative issue advertising that the
6 AFL-CIO had been doing in 1995, and we had done some
7 in late 1995 and early 1996 when I was first at the
8 AFL-CIO.

9 So I had already been working with
10 Greer some and was looking to fashion a more
11 countable process.

12 Q My question is a little narrower.

13 A Okay.

14 Q Did you tell him the criteria you were
15 interested in using to evaluate potential
16 consultants?

17 A I don't think so. I -- I obviously don't
18 remember specifically what I said to him and I don't
19 think I ever wrote it in a memo or something like
20 that. I can say what I would have said to him, I
21 would imagine.

22 Q I don't think we need to do what you would
23 have said to him, you would imagine.

24 A I know what my criticisms were of the
25 current process.

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2 Q You didn't write him a memo. Did he write
3 you memos?

4 A I remember him giving me a list
5 informally, I believe, maybe it was a memo, of some
6 firms we might invite.

7 Q Okay. Is Mr. Cowart an honest man?

8 A I don't know if he is -- he is opinionated
9 and would make judgments I may or may not agree
10 with.

11 Q That is not my question.

12 A Okay.

13 Q He is a friend of yours, right?

14 A Not a close friend, but he is a friend.

15 Q My question is a simple one. Is he an
16 honest man, in your judgment?

17 A I think he is a person of integrity.

18 Q That's a fair answer. That is better
19 words than I chose.

20 MR. SCHWARZ: Can we mark as Mitchell
21 Exhibit 6 a document dated March 27, 1996, and
22 it is your Bates stamps 1699 through 1701.

23 MR. GOLD: If you are going to ask
24 questions...

25 MR. SCHWARZ: I am letting her read it. I

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2 haven't started to ask questions.

3 MR. GOLD: Yeah. Okay.

4 (Thereupon, Mitchell Exhibit No. 6 was marked
5 for identification and was attached to the transcript.)

6 BY MR. SCHWARZ:

7 Q I think you finished reading it, didn't
8 you?

9 A Not every word.

10 MR. GOLD: Did you want to?

11 THE WITNESS: That's fine.

12 MR. GOLD: Did you finish it?

13 THE WITNESS: Yes.

14 BY MR. SCHWARZ:

15 Q Did you get Mitchell Exhibit 6?

16 A Yes.

17 Q Did you read Mitchell Exhibit 6 when you
18 got it?

19 A I did.

20 Q Does this refresh your recollection?

21 Well, let me read to you the first paragraph of the
22 letter, quotes, these firms meet the criteria you
23 have outlined to me. Each of them understand
24 Congressional politics, have beaten incumbents and
25 can make spots with an edge. However, some are

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2 better than others.

3 Did you read that when you got it?

4 A I assume I did.

5 Q Did you tell Mr. Cowart that he was
6 incorrect in his statement as to the criteria you
7 outlined to him? Just answer that yes or no.

8 MR. TRISTER: I will object to the
9 foundation. It doesn't say that.

10 MR. GOLD: Yes. She can answer yes or no,
11 if she can give a yes or no answer, but your
12 reading -- well, repeat the question.

13 (The Reporter read the pending question.)

14 THE WITNESS: It is pretty hard to answer
15 that.

16 MR. GOLD: Hold on a second.

17 BY MR. SCHWARZ:

18 Q Go ahead. It is pretty hard to answer it?

19 MR. GOLD: Well, I object because you are
20 building an assumption to the question that
21 these are the criteria she outlined. Maybe you
22 can ask that.

23 MR. SCHWARZ: I asked the question I asked
24 and the witness said it was hard to answer; is
25 that correct?

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2 THE WITNESS: Yes, because I don't know if
3 I read this in the way you asked the question.

4 It wouldn't have occurred to me he was
5 parroting to me what he thought my criteria
6 should be, and that was not the point of the
7 memo, so I didn't bother one way or the other
8 probably. I did not see that as a statement of
9 my criteria.

10 BY MR. SCHWARZ:

11 Q Okay. I would like to ask you another
12 question now about another document from Mr. Cowart.
13 You probably don't remember, but I will ask you.

14 Did you get another document from
15 Mr. Cowart on the same subject as the one you just
16 got?

17 A I don't remember.

18 MR. SCHWARZ: I would like to mark as
19 Mitchell 7 a document dated March 29, 1996 from
20 Mr. Cowart to Ms. Mitchell Bates stamped 1702
21 through 1704.

22 (Thereupon, Mitchell Exhibit No. 7 was marked
23 for identification and was attached to the transcript.)

24 BY MR. SCHWARZ:

25 Q Did you get this document from Mr. --

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2 A I need one more minute.

3 MR. GOLD: She is not finished.

4 Are you set?

5 THE WITNESS: Sure.

6 BY MR. SCHWARZ:

7 Q You got this document?

8 A Right. I don't have a specific
9 recollection of this one as the other one, but I
10 believe that I did.

11 Q Okay. Subsequently, did you have a
12 process in which you interviewed certain potential
13 consultants and ultimately made a decision on what
14 consultants to employ?

15 A That is right.

16 Q Okay. Did you end up selecting more than
17 one consultant in 1996?

18 A I did. We selected --

19 Q Which ones did you select in 1996?

20 A We selected Axelrod and Associates, one of
21 the officials he said does uniformly bad media. We
22 selected Sal Shorr, or Shorr and Associates.

23 Q S-H-O-R-R?

24 A That is right. And a Shrum Donlin and
25 Devine.

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2 Q But you were focusing on Bob Shrum in that
3 selection?

4 A Not really. We spoke to all three of
5 them, Tadd Devine and Tom Donlin. I believe that is
6 his name.

7 Q You had three consultants in 1996,
8 Axelrod, Shorr and Shrum. And Axelrod I know still
9 works with you. Does Shorr still work with you?

10 A From time to time on some projects.

11 Q And Shrum?

12 A Not recently.

13 Q What kind of projects did they work on
14 after the Shorr selection?

15 A They recently produced a video for our
16 convention, what was last year, 2001.

17 They pitched our repositioning
18 advertising campaign in 1997, but we didn't end up
19 working with them on that.

20 And they did the GOVT spots, the
21 nonpartisan GOVT. They may have done something else
22 I'm forgetting.

23 Q Let's go back to 1996. What did each of
24 them, Axelrod, Shorr and Shrum do in 1996?

25 A They didn't have entirely distinct draws.

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2 They all brought different strings, but they all
3 produced television spots that were about issues,
4 and we selected a team of consultants because after
5 all the interviewing, I liked them all and I thought
6 they all brought something to the process.

7 After they were selected, sort of we
8 decided, they and me together, that, you know, we
9 decided on a commission structure and we decided we
10 would split the commission for media -- aside from
11 the part we paid the media buyer -- three ways
12 evenly so there wouldn't be any sort of jockeying to
13 see who would get to do something bigger or smaller.

14 And we had some sort of ground rules
15 that they wouldn't have anything to say where a
16 sponsor ran.

17 Q Why was that?

18 A That was the way we set it up, but some of
19 them were involved in election campaigns, and we
20 wanted to be clear that there was no impact of that
21 on what we were doing.

22 And one of the reasons we had an
23 independent media buyer is -- we made very clear --
24 is we were making the decisions about what we were
25 doing.

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2 So we assigned out different issues
3 to each of them to do spots on. So I believe that
4 Shrum did some minimum wage spots. He also did some
5 overarch spots about sort of labor and how we stand
6 for working families that we ended up never running.

7 He -- David Axelrod I remember did
8 some Medicare spots, but so did Sal Shorr, so what
9 they did was not so dissimilar.

10 Another ground rule we had was that
11 nobody would produce a spot -- a spot in a district
12 where they might be involved in a campaign, so by
13 having three firms, we were able to substitute
14 somebody that if they said we are going to run an ad
15 in this spot, these places, then it would be
16 incumbent upon them to say to us, oh, then you will
17 have to get David to make the spot for you there.

18 Q In addition to those three organizations,
19 I think you previously testified you continued to
20 work with Peter Hart in connection with your work,
21 also?

22 A What the Hart firm did for us was pretty
23 general, but they did sort of some broad research on
24 working family issue and issue preferences, yeah,
25 and issues.

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2 They didn't do any work on candidates
3 or races or anything for us.

4 Q Did you run any ads in 1996 that -- let's
5 say in the last 60 days before the election that
6 mentioned either President Clinton or Senator Dole
7 who were the two competing candidates for the
8 presidency?

9 A No, not that I recall.

10 Q Let me show you this document and see if
11 it refreshes anything in your mind. It does not say
12 you ran such ads.

13 This would be Mitchell 8, and it is
14 your Bates stamp 5246, and it is a memo from Steve
15 Rosenthal to you.

16 (Thereupon, Mitchell Exhibit No. 8 was marked
17 for identification and was attached to the transcript.)

18 THE WITNESS: Okay.

19 BY MR. SCHWARZ:

20 Q You have had a chance to look at Mitchell
21 8?

22 A Yes.

23 Q It is from Rosenthal to you, right?

24 A Right.

25 Q Did you read it when you received it?

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2 A Yes.

3 Q And what is the reference to -- the
4 beginning says "Marta" -- beginning of
5 Mr. Rosenthal, Marta gave me a copy of your note on
6 contested presidential states, close quotes?

7 A Right.

8 Q What was your note on contested
9 presidential states?

10 A I asked the political department and a
11 woman that worked there then if they could give me a
12 list of contested presidential states, and the
13 reason was that I was aware that it might be
14 difficult to buy media in states -- in fact, as we
15 had done some of our selection process, people had
16 reminded me that we might not be able to buy media
17 in some states if they ran out of spots, basically,
18 and that contested presidential state would indicate
19 that.

20 Q That they were more likely to run out of
21 space for political ads?

22 A Well, for issue advertising. I believe
23 that -- I'm not absolutely certain, but I think that
24 stations are required to run spots for candidates,
25 but they are not required to run issue advertising

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2 if they don't have inventory to meet the need.

3 And so I was trying to find out sort
4 of ahead of time where we might run into trouble
5 being able to buy spots.

6 Q And did you see this memo within the last
7 two weeks?

8 A No.

9 Q Are you aware that -- your answer may have
10 implied that you are, but are you aware that the
11 price for broadcast advertising in the period
12 shortly before an election goes up?

13 A I am aware that the price goes up
14 sometimes as stations believe they can charge more.

15 Q And in either 1996 or 1998 or 2000, did
16 you buy any ads or cause to be bought any ads where
17 you had to pay for because the request for the ad
18 was made at the end of their cycle?

19 A You know, I don't remember that really
20 specifically. A lot has been written about how
21 television stations have really gained the system,
22 but I don't really remember that specifically.

23 Q And with respect to ads that you did run,
24 let's focus on 1996 here. With respect to ads that
25 you did run in the last 60 days before the federal

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2 election of 1996, had you arranged for any of those
3 purchases or had you had your media buyer arrange
4 for any of those purchases considerably before the
5 ad in fact was scheduled to run?

6 A You know, I don't really remember. I know
7 that when we made a decision to do voter guides that
8 we were going to be doing in that period of time,
9 there was some discussion about whether we should
10 try to make buys so that we can be ensured of being
11 able to do so.

12 In some ways, it was sort of a
13 follow-up to this discussion, but I don't remember
14 whether we in fact did that.

15 Q Well, how long prior to your running those
16 electronic voter guides had you decided that you
17 were going to run some electronic voter guides?

18 A I don't remember the exact time.

19 Q Roughly?

20 A The decision involved -- we had always --
21 we had talked about it as something we might do, but
22 I believe that it was late summer.

23 Q So when you say late summer, what does
24 that mean?

25 A You know, like August.

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2 Q So in August, and you ran those voter
3 guides in October, correct?

4 A I don't remember the exact time period.

5 Q Would that seem consistent with what you
6 remember?

7 A Sure. Might be. Maybe September and
8 October. I don't really remember specifically.

9 Q So what you do remember is that at least
10 people talked about the value in terms of saving
11 money, of reserving spots a fair while before you
12 were actually going to run them?

13 A I seem to remember -- I remember the
14 discussion more on the basis of availability of time
15 than on money.

16 Q Okay.

17 A Although maybe the money part came up as
18 well. I just don't really remember the exact
19 conversation.

20 Q We know from this memo you were thinking
21 about availability back in the middle of July?

22 A Right.

23 MR. SCHWARZ: So what time is it now?

24 MR. GILLIGAN: 1:00.

25 MR. SCHWARZ: Let's take a break now for

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2 lunch and take an hour. We can be off the
3 record.

4 (Luncheon recess.)

5 BY MR. SCHWARZ:

6 Q I think earlier today you mentioned --
7 MR. GOLD: Let me close this door.

8 BY MR. SCHWARZ:

9 Q -- Geoff Garin as someone who worked at
10 Peter Hart Research?

11 A Right.

12 Q And you also -- did you also work with
13 someone called Molyneux, M-O-L-Y-N-E-U-X?

14 A Yes, Guy Molyneux.

15 Q Okay. Did Peter Hart group, specifically
16 Geoff Garin and Guy Molyneux, do some work to help
17 you decide which electronic voter guide ads you were
18 going to run?

19 A They did some testing of electronic voter
20 guides, or they oversaw a process of doing testing
21 of electronic voter guides.

22 It was sort of much more to figure
23 out the format and what would work. We had never
24 done anything like an electronic voter guide.

25 And I'm not sure we had seen other

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2 examples of it particularly and weren't too
3 familiar, so we weren't sure how we were going to do
4 it originally.

5 It was sort of imagined -- I think I
6 sort of imagined we would show where candidates for
7 office stood on a range of working family issues and
8 then realized we couldn't deal with that much
9 information in a television spot and sort of would
10 do one of each.

11 And we went through a process of
12 figuring out how to do it, and we wanted to come up
13 with a format that people found clearer and credible
14 and fair, believable.

15 So they did some mall testing of it
16 of what I think were some rough cuts.

17 Q And mall testing means what?

18 A It is a form of opinion research where you
19 intercept people who are at malls so you get regular
20 people and you ask them if they will take a certain
21 amount of time, be paid a certain amount of money
22 and go, you know, to a room or facility, somewhere
23 in the mall and look at a spot and answer a series
24 of questions about it.

25 Q And did you --

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2 A You end up with a small sample. It is
3 qualitative research.

4 Q Did the Hart people talk with you or did
5 you talk with them about what you wanted them to do
6 before they did it?

7 A We had conversations about what we wanted
8 to do, and I laid out what I thought we wanted to
9 try to find out.

10 Q And did they produce a work product for
11 you?

12 A I think they probably gave me a report of
13 some sort. I'm sure they gave me feedback on it.

14 Q As far as you remembered, did they do what
15 you had wanted them to do?

16 A I don't remember the particulars of that.
17 You know, I know they gave useful feedback. I can't
18 say that it was precisely, you know, what I was
19 looking for or not.

20 Q So they gave you useful feedback, right?

21 A Yes.

22 Q And as far as you remember, they didn't do
23 anything that you didn't want them to do?

24 A I wouldn't remember that specifically.

25 Q You don't remember them doing something

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2 you didn't want them to do?

3 A I can't.

4 MR. GOLD: I think you just asked that
5 question. What is the difference between that
6 question?

7 MR. SCHWARZ: If you think it is the same
8 question, it is fine with me.

9 BY MR. SCHWARZ:

10 Q Witness, did you think it was the same
11 question?

12 A I did, that you just asked.

13 Q Let me show you -- this would be
14 Mitchell -- are we up to 9?

15 Mitchell 9 is a document with a fax
16 cover sheet to Ms. Mitchell from Geoff Garin and Guy
17 Molyneux of Peter Hart dated September 13th, 1996,
18 and Bates stamped 1582 and 1613.

19 (Thereupon, Mitchell Exhibit No. 9 was marked
20 for identification and was attached to the transcript.)

21 THE WITNESS: Shall I just take time and
22 read it?

23 BY MR. SCHWARZ:

24 Q I don't want you to read the whole thing
25 because I'm just going to ask you, is this the

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2 document you received from Mr. Garin and
3 Mr. Molyneux?

4 MR. GOLD: And I will ask Ms. Mitchell to
5 look at this as much as she needs to, to answer
6 to her satisfaction.

7 I note that there is a fax cover sheet and
8 then there is another what looks like a fax
9 cover sheet, handwritten fax cover sheet.

10 Are you representing this is the same
11 document?

12 MR. SCHWARZ: I'm representing they are
13 consecutive Bates stamps and they come to the
14 same person from the same person and they
15 clearly go together. They are about the same
16 subject.

17 MR. GOLD: I'm looking and seeing. Maybe.
18 I'm trying to read the fax date.

19 MR. SCHWARZ: This is the way they were
20 produced to us.

21 MS. ISPAHANI: They are both
22 September 13th.

23 MR. GOLD: We can find out, but it looks
24 to me like these are different documents. They
25 are faxed separately, appear to be faxed

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separately.

BY MR. SCHWARZ:

Q I will do this: First look at 1582 through 1586.

A Okay.

Q Did you get that fax from Garin and Molyneux?

A I believe I did.

Q Then look at 1587 which is from you to Mr. Molyneux, and that goes all the way from 1587 to 1693. Did you also get that fax?

A I remember this less well, but I believe I did.

Q So after you received -- I will focus on the part you remember more well, that is 1582 through 1586.

After you got those pages, did you have any discussion with either Mr. Garin or Mr. Molyneux about what they had sent you?

A I don't remember in the specific instance. I think it is likely that I would have had a telephone conversation to, you know, sort of review what they were sending me in writing.

Q And as you sit here today, do you remember

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2 anything about that conversation?

3 A I don't.

4 Q Did you ask them then provide you with
5 another memorandum which would make quotes,
6 targeting recommendations, close quotes?

7 A I don't remember asking that.

8 Q Let me show you Mitchell Exhibit 10, which
9 is dated September 18, 1996 and is Bates stamped
10 1614 through 1616.

11 (Thereupon, Mitchell Exhibit No. 10 was marked
12 for identification and was attached to the transcript.)

13 BY MR. SCHWARZ:

14 Q Did you receive this document from
15 Mr. Molyneux and someone called Molly O'Rourke
16 titled "ad targeting" and saying, "Following our
17 targeting recommendation for the five score card ads
18 based on the result of the mail intercept research"?

19 MR. GOLD: Mall.

20 MR. SCHWARZ: Mall, yes.

21 THE WITNESS: I actually don't have any
22 recollection of getting this.

23 BY MR. SCHWARZ:

24 Q Do you have any reason to doubt that you
25 got it?

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2 A No, not really.

3 Q Did Mr. Sweeney in October write certain
4 memoranda -- let me step back for a minute.

5 Sometime in the latter part of
6 September, did you, Ms. Mitchell, participate in a
7 conference call involving Mr. Sweeney and members of
8 the AFL-CIO executive council and AFL-CIO vice
9 presidents?

10 A I don't remember specifically. This is in
11 1996?

12 Q '96, yes.

13 A Yeah, I don't remember specifically.

14 Q Do you remember participating in any
15 conference calls during the 60 days before the 1996
16 election that involved Mr. Sweeney and the AFL-CIO
17 executive council?

18 A I can't say that I do. I just don't
19 recall.

20 Q Did you ever help Mr. Sweeney write
21 letters to the AFL-CIO executive council?

22 A Sometimes.

23 Q On what sorts of subjects?

24 A Could be on, you know, any issue that I
25 was working on. I mean, there were a number of us

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2 who write memos, draft memos sometimes. You know,
3 if there were a memo on a legislative subject, the
4 legislative department might draft it. Or, you
5 know, any one of us might be called on to draft it.

6 It is more like, you know, within a
7 government affairs coordinating group, one of us may
8 volunteer to draft a memo depending on who has the
9 most time or something.

10 Q Well, in 1996, I would like to talk about
11 general practice.

12 A Okay.

13 Q If Mr. Sweeney sent a letter to members of
14 the AFL-CIO executive council that discussed, among
15 other things, the ads you had been running and
16 planned to run, would it be general practice for you
17 to have seen that letter before it went out?

18 A I would think so. I would think so.

19 MR. SCHWARZ: Could you mark as Mitchell
20 11 a two-page letter dated October 1, 1996 from
21 Mr. Sweeney to AFL-CIO executive council, and
22 the designation called field one, field two,
23 field three and field four, which you may or
24 may not know what those mean.

25 THE WITNESS: You are right.

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2 (Thereupon, Mitchell Exhibit No. 11 was marked
3 for identification and was attached to the transcript.)

4 BY MR. SCHWARZ:

5 Q Now, just read the whole letter because
6 I'm going to ask you some questions about the
7 references, some questions about this letter.

8 A Uh-huh.

9 Q Mr. Mitchell advised me about computer's--
10 MR. GILLIGAN: Electronic things, as you
11 call them.

12 MR. SCHWARZ: Explain to me what you said
13 about field one, field two, field three, field
14 four.

15 MR. GILLIGAN: I have a theory this is a
16 document that was meant to be addressed to
17 various AFL-CIO vice presidents, and this field
18 represents in a computer database somewhere the
19 names and addresses of these various vice
20 presidents so you could generate exact copies
21 of this letter with each vice president's name
22 and address.

23 MR. SCHWARZ: It says also addressed to
24 AFL-CIO executive council at the top.

25 BY MR. SCHWARZ:

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2 Q Ms. Mitchell, let's get off the --

3 A I haven't finished.

4 MR. GOLD: You haven't asked --

5 MR. GILLIGAN: Yeah, I stated my theory on
6 the record and you should ask her if she agrees
7 with that.

8 MR. GOLD: Let her finish the letter
9 first.

10 MR. GILLIGAN: Understood and agreed.

11 THE WITNESS: Okay.

12 BY MR. SCHWARZ:

13 Q So first, did what Mr. Gilligan said about
14 the electronic stuff here make sense to you?

15 A That made sense to me.

16 Q Now, you see that in the second full
17 paragraph on the first page there is reference to,
18 quote, some information about our latest TV and
19 radio ads that began last week?

20 A Right.

21 Q Began last Thursday?

22 A Right.

23 Q "These ads are the first electronic voter
24 boards ever done. They cover the same issues of
25 importance to working families as our early

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2 education and lobbying ads. They will be running
3 for the next months in districts around the
4 country." Do you see that?

5 A I read it, yes.

6 Q That is a reference to the ads you were
7 personally in charge of deciding to construct and to
8 run, correct?

9 A That is right.

10 Q Now, going back to your testimony that the
11 general practice was that before a letter went from
12 Mr. Sweeney, for example, to the AFL-CIO executive
13 council or to a AFL-CIO vice president that touched
14 upon your work, you would have seen the letter?

15 A But, you know, this paragraph is sort of
16 an aside to the memo, which is essentially about the
17 ground, the field effort, so I'm not sure I would
18 have seen it.

19 Q Well, did you see this or did you not see
20 this?

21 A I don't recall. I don't recall seeing
22 this.

23 Q Have you looked at this document within
24 the last two weeks?

25 A No.

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2 Q Have you talked about documents like this
3 with anybody in the last two weeks?

4 MR. GOLD: When you say --

5 MR. TRISTER: Anybody?

6 BY MR. SCHWARZ:

7 Q Anybody other than your lawyers.

8 MR. GOLD: Okay. There were two points.
9 One, "documents like this," I don't know what
10 that means; and also, "anybody," I assume you
11 mean other than counsel.

12 She testified she hasn't seen it, but
13 parameters here --

14 MR. SCHWARZ: I was not trying to breach
15 your privilege.

16 MR. GOLD: I appreciate it, but "documents
17 like this" is a little too vague for me anyway.

18 BY MR. SCHWARZ:

19 Q I will read to you a paragraph on the
20 second page.

21 A Uh-huh.

22 Q "The goals we set for ourselves when we
23 began the labor '96 effort are within reach. But
24 everything depends on what we do on the ground over
25 the next five weeks. A strong union vote can kick

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2 Newt Gingrich out of the Speaker's chair but it has
3 to be a stronger vote than before."

4 Do you have any doubt that
5 Mr. Sweeney had as a goal kicking Newt Gingrich out
6 of the Speaker's chair?

7 A I'm certain Mr. Sweeney would have loved
8 to have seen Newt Gingrich replaced as Speaker. Our
9 Labor '96 was a broad program with lots of goals.

10 Q Yes, but it included that goal, correct?

11 A I would have not said that specifically,
12 but it was certainly, you know, seeing the attack of
13 Newt Gingrich changed was an important goal, and one
14 way of doing that may have been not having him in
15 the Speaker's chair.

16 MR. SCHWARZ: Can you read that answer
17 back?

18 (The Reporter read the testimony back as
19 follows: "I would have not said that
20 specifically, but it was certainly, you know,
21 seeing the attack of Newt Gingrich changed was
22 an important goal, and one way of doing that
23 may have been not having him in the Speaker's
24 chair."

25 THE WITNESS: I actually said tack.

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2 BY MR. SCHWARZ:

3 Q Go to the penultimate paragraph on that
4 page where Mr. Sweeney said, quotes, now we owe it
5 to the people we represent to finish the job and
6 reclaim the Congress from the extremists that
7 snatched control in 1994, close quotes.

8 You have no doubt that was Sweeney's
9 goal, do you?

10 A I mean, I certainly -- as we approached
11 election day and were communicating to members of
12 the executive council about what he wanted them to
13 do and so go out and participate and maximize the
14 union vote and union participation, that he believed
15 that he should communicate in the strongest possible
16 terms that they needed to help bring out this
17 outcome in terms of, you know, our election effort.

18 Q That was a long answer to my question,
19 which you could have answered yes, but you answered
20 it as you did.

21 Okay. Who is Mike Klein?

22 A Mike Klein is in the field operation. He
23 is currently based in the Midwest and the Chicago
24 area. I'm not -- I believe he was probably in that
25 area in 1996. I don't know exactly what his job was

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2 then.

3 Q Okay. Did he work with Mr. Rosenthal?

4 A He worked in part of the field, you know,
5 ground campaign effort, so he probably didn't work
6 directly with Steve Rosenthal but probably worked,
7 you know, as part of that apparatus.

8 And, you know, I had mentioned before
9 that there was this sort of Chinese wall between
10 what the political department did and what I was
11 doing at the time, so I was not thoroughly familiar
12 with exactly what they were doing.

13 Q After the election of 1996, did you talk
14 with Mr. Sweeney about the results of the election
15 that were obtained? Did you talk to him about the
16 results that were obtained in the election of 1996?

17 A I'm sure I talked to him about the
18 election outcomes at some point in time.

19 Q What do you mean by the "election
20 outcomes"?

21 A Well, the -- there were, you know, races
22 all over the country and I'm sure at some point we
23 had some conversation about it.

24 Q Did you talk with him about the election
25 outcomes in the races in which you had run ads?

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2 A I don't know that I did.

3 Q So you just think you had an abstract
4 discussion with him about what happened in the
5 elections?

6 A I was part of, you know, to the high
7 senior staff discussions as I'm sure, you know,
8 there would have been some post election
9 discussions, you know, here is what we need to do
10 with this kind of conversation here, what this
11 means, you know, for this or that.

12 Q Did you ever discuss with Mr. Sweeney how
13 many of the Republicans who had been mentioned in
14 your ads that ran in the 60 days prior to the 1996
15 election had been defeated?

16 A I don't remember having that conversation
17 with him.

18 Q Without regard to whether you talked about
19 that with Mr. Sweeney, did you obtain information
20 about how many of the Republicans you had mentioned
21 in ads in the 60 days prior to the 1996 election had
22 been defeated?

23 A I don't remember whether I sort of looked
24 at it in exactly that way. You know, I know that
25 sort of stepping back in the role, whereas sort of

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2 the press department, we talked about election
3 outcomes and what that means for labor and for our
4 broad effort.

5 And we talked about places where we
6 had ground campaigns and where something might have
7 happened, but I -- I don't remember ever linking
8 that to people who were named in ads and certainly
9 not in the last 60 days.

10 I mean, that was sort of never part
11 of our radar screen.

12 Q If Mr. Sweeney made a statement as to how
13 many House races in which you ran ads had been won
14 by the Democrats, where would he have gotten that
15 information if he didn't get it from you?

16 A You know, somebody in the political
17 department after the fact could possibly have put
18 together something. I don't know.

19 Are you saying he made a statement
20 about ads that were run in the last 60 days?

21 Q I'm asking the question I asked you, and I
22 will show you a document of this shortly.

23 Do you remember the name of a
24 Republican representative from the State of Michigan
25 who you mentioned in ads run in the last 60 days

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2 before the election in 1996 --

3 A I don't.

4 Q -- called Chrysler, Dick Chrysler?

5 A Vaguely. It's been a while.

6 Q Was he defeated in the election?

7 A I believe he might have been since I
8 haven't heard his name in a while.

9 Q Let's talk about all the things the
10 AFL-CIO was doing. Let's concentrate on the 1996
11 election. All the things the AFL-CIO was doing to
12 communicate to voters in the last 60 days of that
13 election.

14 A Only in the last 60 days?

15 Q Yeah. Right.

16 Now, one thing was the AFL-CIO was --
17 well, you tell me, what were all the things the
18 AFL-CIO was doing in the last 60 days to communicate
19 with voters about people involved in the election?

20 A Well, we had a big campaign aimed at
21 communicating with union members. Aimed at
22 providing them with information on candidates'
23 records and encouraging them to vote, and that would
24 have been work site leaflets. That would have been
25 direct mail. That would have been telephone.

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2 None of that I would have had
3 anything to do with, but I would have known it was
4 happening and I wouldn't have known where it was
5 happening, and we did these electronic voter guides.

6 I believe that we did a week or two
7 of issues advertising while Congress was still in
8 session in the early part of September, you know,
9 early to mid-September during that time where we,
10 you know, communicated with viewers, constituents
11 broadly, you know, many of which would be voters.

12 So that would be some of the range of
13 things. There may be some other things I'm not
14 thinking of.

15 Q You were not responsible for the first
16 thing you mentioned there, that was communicating
17 directly with union members?

18 A That is right.

19 Q But you were responsible for electronic
20 voter guides, right?

21 A Right.

22 Q And you were responsible for what you
23 called issue ads that you say were run in early
24 September?

25 A Right.

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2 Q And are you testifying that those ads were
3 not run later than early September?

4 A My recollection -- and I haven't, you
5 know, looked at this information in a while -- but
6 my recollection is that they were in early
7 September, the issue ads.

8 Q In the election of 2000, when did you run
9 such ads? I don't mean electronic voter guides. I
10 mean what you are calling issue ads.

11 A I think we continued to run issue ads
12 later.

13 Q Up to the eve of the election, correct?

14 A Well, I mean, we saw the ads that named
15 George Bush that ran that late. I don't believe --

16 Q And Spencer Abraham?

17 A I don't believe that ad ran that late.

18 Q Wasn't that in the latter part of October,
19 that Spencer Abraham ad?

20 A I was thinking we established earlier that
21 it ended about two weeks before the election.

22 Q Yeah, to the end of October, right?

23 A Yeah.

24 MR. GOLD: That is in the record. We
25 don't have to recharacterize the dates.

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2 MR. SCHWARZ: So are we up to 12?

3 MR. GILLIGAN: Yes.

4 MR. SCHWARZ: If we could mark as Sweeney
5 12 --

6 THE WITNESS: Sweeney?

7 MR. SCHWARZ: -- a document off the --
8 taken from the AFL-CIO web site. It consists
9 of seven pages, John J. Sweeney Michigan State
10 University Annual Labor Forum series,
11 November 19, 1996.

12 (Thereupon, Mitchell Exhibit No. 12 was marked
13 for identification and was attached to the transcript.)

14 MR. GOLD: Do you want to go off the
15 record so we can read it, or we can read it
16 while we are on the record. I don't care, but
17 we are going to read it.

18 MR. SCHWARZ: Sure.

19 MR. GOLD: Take your time, read through
20 it.

21 BY MR. SCHWARZ:

22 Q I will ask you some very simple questions
23 about this.

24 A Okay.

25 MR. GOLD: Well --

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2 MR. SCHWARZ: You should read what you
3 want to.

4 MR. GOLD: I'm reluctant to have you ask
5 questions if she hasn't finished.

6 MR. GILLIGAN: Take your time. Finish it.

7 MR. GOLD: If it is simply whether or not
8 she has seen it before, she has read far enough
9 to know that, that's fine.

10 But if it is anything beyond that, she
11 should read the whole thing.

12 MR. SCHWARZ: Let's go off the record
13 while she completes her reading.

14 (Off-the-record discussion.)

15 BY MR. SCHWARZ:

16 Q Did you ever see this before or know of
17 the speech that was given by Mr. Sweeney?

18 A I probably did at the time. I just don't
19 recall it specifically.

20 Q You would have known of a speech before or
21 after it was given?

22 A Probably before. Before it was given. He
23 gives lots and lots of speeches, four, five, six a
24 week.

25 Q When he gives speeches, which kind of

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2 speeches does -- was it his practice to show you
3 before he gave it, or does he show all the speeches
4 to you?

5 A I see most of the speeches he gives.

6 Q You see them before he gives them?

7 A Yes.

8 Q I want to show you an article in The
9 Washington Post that quotes you in October of 1998.
10 This would be Mitchell 13.

11 MR. GOLD: While we are marking, do you
12 mind closing the door?

13 MR. GILLIGAN: I have got it.

14 (Thereupon, Mitchell Exhibit No. 13 was marked
15 for identification and was attached to the transcript.)
16 BY MR. SCHWARZ:

17 Q This is dated October 23. This is the
18 article. All I want to ask you about is the quote
19 from you on page 3 and the reference to ads run by I
20 believe your group also on page 3.

21 You can read whatever you want to,
22 but that is all I wanted to ask you about.

23 MR. GOLD: I will ask Ms. Mitchell to read
24 as much as she needs to to put the quotes in
25 context in the article as done.

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2 MR. SCHWARZ: Why don't we go off the
3 record while she is reading it.

4 (Off-the-record discussion.)

5 BY MR. SCHWARZ:

6 Q Have you had a chance to read Mitchell 13?

7 A Yes.

8 Q And did you see that article when it came
9 out?

10 A I guess I did. I don't remember it
11 specifically.

12 Q And in general, the article is about the
13 reduction in 1998 of what you call issue advocacy
14 advertising as compared to 1996; is that right?

15 A That is right.

16 Q And on the third page -- well, actually at
17 the bottom of the second page and the top of the
18 third, it says the AFL-CIO is running many fewer
19 such ads in '98 as compared to '96, correct?

20 MR. GOLD: That says -- you know, you have
21 paraphrased it.

22 MR. SCHWARZ: I think I have paraphrased
23 it accurately.

24 MR. GOLD: It doesn't say many fewer, but
25 it talks about in dollar volume. What the

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2 article characterizes is dollar volume. If you
3 have a question, I'm asking her to --

4 BY MR. SCHWARZ:

5 Q Is it accurate that the AFL-CIO in '98, in
6 terms of money, ran about 25 percent of the ads as
7 compared to 1996?

8 MR. GOLD: In terms of money?

9 MR. SCHWARZ: Yeah, because you asked me
10 to change the question.

11 MR. GOLD: You said percent of the ads.

12 THE WITNESS: In dollar volumes.

13 MR. GILLIGAN: Dollar volume.

14 THE WITNESS: In dollar amounts, we did
15 less issue advertising in dollar volume in 1998
16 than we did in 1996.

17 BY MR. SCHWARZ:

18 Q Is it true it was roughly 25 percent less
19 that it was in '96?

20 A You know, I'm not sure the \$22 million
21 figure is right, so I don't remember that number
22 exactly.

23 Q In fact, some people say it was higher
24 than that, don't they?

25 A Well, it was misreported a lot. There

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2 were people that attributed the whole budget, the
3 whole effort to media advertising and that is not
4 the case.

5 Some portion of our budget were
6 electronic voter guides which we thought of as a
7 different thing, you know, as we -- sort of came
8 under a different section of FEC law, so we would
9 have never lumped it all together.

10 We were facing a different
11 environment in 1998. We probably ran as many ads in
12 1997 as we did in 1998. I say that probably. And
13 we had been running ads in '95, '96, '97 and '98.
14 1996 in some ways was the biggest year.

15 And it sort of directly reflected
16 what was happening in Congress that year where we
17 have real polarization around issues that were
18 really important to us.

19 And we, you know, made an issue of
20 that, you know, a big public issue of it.

21 Q In any event, without now being too
22 precise, you were doing much less in '98 than you
23 had done in '96; is that correct?

24 A That is correct.

25 Q There is a reference to you in this

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2 article. Do you see that?

3 A Yes.

4 Q I will just read the paragraph.

5 "Denise Mitchell, who oversees the
6 union's issue advocacy effort, said the union looked
7 among other things at the avalanche of outside
8 groups spending in the special election in
9 California last January to fill the seat of the late
10 Representative Walter Holden, (D), and decided
11 against devoting so much to issue advocacy, 'we just
12 heard it was so cluttered nothing was getting
13 through', she said."

14 First, did you make the statement we
15 just heard, "it was so cluttered nothing was getting
16 through"?

17 A I'm sure I did. I'm sure it was part of a
18 longer interview I gave.

19 Q When you used the term "so cluttered that
20 nothing was getting through," what did you mean by
21 "cluttered"?

22 A There was a lot of noise. There was a lot
23 of advertising of various types.

24 One thing to -- part of our goal in
25 1996, as I think I said earlier --

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2 Q Just to --

3 A Can I --

4 Q I think if you could just answer my
5 question what you meant by "so cluttered."

6 MR. GOLD: I think she is explaining it in
7 context.

8 THE WITNESS: I want to explain because it
9 was a concept we thought of frequently and
10 maybe -- I will try to say it short instead of
11 long, but you know, we were trying to frame the
12 legislative and political environment and set
13 the issues, debate.

14 We knew that to do that effectively you
15 need to do it early, as early as you can.

16 It has never been our goal to be late
17 rather than early, although there are times
18 that circumstances force you to be late.

19 And one of the reasons we never wanted to
20 be late is because there is a lot of, quote,
21 clutter.

22 So it is not our goal to be in an
23 environment where we can't help set the agenda.

24 BY MR. SCHWARZ:

25 Q So by "clutter," you mentioned a lot of

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2 ads. You mean there were a lot of political ads as
3 one gets up toward the date of an election, correct?

4 A There could be issue ads. There could be
5 political ads. I don't know what I was referring to
6 and I don't remember.

7 Q You didn't mean commercial ads; you didn't
8 mean ads by Coke or General Motors, did you?

9 A No, I didn't.

10 Q You meant ads directed at public policy
11 issues, correct?

12 A Correct.

13 Q And in the days before an election, those
14 ads overwhelmingly mention candidates' names, don't
15 they?

16 A I assume that some do and some don't.
17 I -- I don't know.

18 Q Did you run any ads in the 60 days -- this
19 will be a totalative question, so it will not work.

20 You live in Washington, so you
21 probably don't see as many political ads as the
22 election comes near that some people do?

23 A Right.

24 Q Have you been told that sometimes there
25 are in a given day in a given television market

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2 scores of ads that are referring to candidates?

3 A I'm generally aware of that. I don't know
4 about scores per se, but I'm generally aware of that
5 there begin to be a lot of political ads.

6 Q When there is that kind of clutter, it is
7 harder to get a message across, right?

8 A Especially a message about an issue.

9 Q Right. Okay. You see the next paragraph
10 refers to Senator Feingold?

11 A Correct.

12 Q Did you have any communications with
13 Senator Feingold or the subject talked about in that
14 paragraph?

15 A No.

16 Q As far as you are aware, did anybody at
17 the AFL-CIO have communications with Senator
18 Feingold or anybody from his staff?

19 A I don't know.

20 Q Were you ever told that Senator Feingold
21 did not want this article called "issue advocacy"
22 efforts on his behalf?

23 A I think I was aware perhaps of the press
24 reports that Senator Feingold was not looking for --
25 was not comfortable with issue advocacy ads, but I

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2 don't remember being told that by anybody.

3 Q And the Mr. Newman who is referred to was
4 a House member, and is it correct that you had a
5 spot that blasted Mr. Neumann?

6 A Blasted? I don't know that it blasted
7 him, but it named him.

8 Q But it indicated to you, to use your word,
9 that he had been wrong on some matter?

10 A It indicated he had cost a vote against
11 HMO reform.

12 Q And that was when he was a House member
13 running for the Senate, correct?

14 A That is correct.

15 MR. GOLD: Is the "it" when he cast the
16 vote or the "it" when the ad was run? You need
17 to make that clear.

18 BY MR. SCHWARZ:

19 Q He cast his vote when he was a House
20 member, correct?

21 A Correct.

22 Q And your ad was run when he was running
23 for the Senate, correct?

24 A I think he was an announced candidate. He
25 was still a House member.

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2 Q Yes, but the House wasn't in session when
3 you ran your ads, was it?

4 A I don't know.

5 Q And after Senator Feingold said he thought
6 that he didn't want such ads run in Wisconsin, did
7 you stop your ads that were announcing that you
8 thought, to use your words, Senator Neumann was
9 wrong?

10 A You know --

11 Q Just yes or no. Did you or didn't you?

12 A I actually don't know that he ever
13 contacted us, but we had an agenda of our own and we
14 were not doing what we were doing, running ads about
15 HMO.

16 Q So you are saying no?

17 MR. GOLD: She hasn't finished.

18 THE WITNESS: I don't remember when we
19 stopped, whether the timing coincided, but we
20 certainly didn't stop running ads because he
21 made any statements.

22 BY MR. SCHWARZ:

23 Q Did you conclude at some time after the
24 1996 election that the massive effort on TV was a
25 mistake allowing Republicans to paint the AFL-CIO as

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2 labor bosses out to control the elections?

3 A I never concluded that.

4 Q Did anybody else at the AFL-CIO conclude
5 that?

6 A I don't think so. I believe that that was
7 sometimes reported, and occasionally inside, we
8 would laugh about how people outside had come to
9 that conclusion, but we thought that what we had
10 done had created a seat change in terms of working
11 peoples' issues and we thought it was very
12 successful.

13 MR. SCHWARZ: I would like to mark
14 something as the next exhibit something which
15 we don't have copies but we will make them at
16 the next break.

17 (Thereupon, Mitchell Exhibit No. 14 was marked
18 for identification and was retained by counsel.)

19 BY MR. SCHWARZ:

20 Q Exhibit 14 is a five-page fax, five-page
21 copy of a complaint made by the National Republican
22 Congressional Committee for the Federal Election
23 Commission entitled "In the matter of AFL-CIO
24 project 95."

25 Now I will show it to you.

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2 MR. GOLD: Fritz --

3 MR. SCHWARZ: Do you want to stay on the
4 record?

5 MR. GOLD: I want to stay on the record
6 because there is a -- if I think we have to go
7 off the record, I will, because this is a
8 confidential area, but I will first address it
9 in the way that the record, given the scope of
10 the counsel only nature of this at this point.

11 As you know, there were various complaints
12 filed against the AFL-CIO during 1996 by the
13 NRCC and others.

14 They were subject to an FEC investigation
15 which eventually closed in the year 2000 and
16 documents, as you well know in that
17 investigation, are confidential by Court order
18 and, in fact, there is a confidentiality
19 provision that affects virtually all
20 information emanating from that unless that
21 investigative party, in our case, the AFL-CIO
22 waives that.

23 And in the course of this case, that issue
24 has come up and we have not waived it. As a
25 matter of fact, there is a motion, as you know,

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2 that the FEC brought to even provide lawyers
3 access in this case which was denied by the
4 Court.

5 So I guess perhaps you could explain --
6 and maybe we need to go off the record -- where
7 you are going with this because I'm concerned
8 about -- I will not have anybody questioned
9 about that investigation as such.

10 You can ask people about things that
11 happened during that year and that is what you
12 have been doing, but the investigation itself
13 is not something, and what we did in the course
14 of that investigation is not something --

15 MR. SCHWARZ: I will not ask what you did
16 in the course of the investigation. I would
17 like to authenticate the complaint. That will
18 be first thing I would like to do.

19 And, Larry, you can do that without the
20 witness and I would like to ask the witness if
21 she heard there was a complaint, and that is
22 all I would be asking.

23 MR. GOLD: Let the three of us look at
24 this or read this.

25 (Off-the-record discussion.)

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2 MR. SCHWARZ: We had a discussion, and
3 counsel for the AFL-CIO expressed some concern
4 under the rules relating to FEC MUR proceedings
5 on whether we should use this document, and I
6 agreed to set it aside.

7 We will talk later about whether it can be
8 included as an exhibit or not and what the
9 reasons are that you would say it couldn't, or
10 you may agree to it, and we will leave blank
11 now Exhibit 14, and the next one I will use is
12 Exhibit 15.

13 Is that a fair description of what we have
14 said?

15 MR. GOLD: Yes, that afterward we will
16 consult with you about how we are going to deal
17 with this, but we can't resolve it right now
18 for the reasons you expressed which do have to
19 do with 2U.S.C.f437g(a)(12)(A), as I remember
20 it very well.

21 BY MR. SCHWARZ:

22 Q Without reference to the document which
23 you never got a chance to look at, were you aware
24 that during 1996 Representative Paxon, I think his
25 name was, who was -- what was his position with the

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2 Republican Congressional -- National Congressional
3 Committee?

4 A I don't remember his exact position, but
5 he was head or something of the NRCC, I believe.

6 Q And you are aware he wrote letters to
7 television stations trying to, I will use a nice
8 word, persuade them not to run your ads, correct?

9 A You know, I remember his issuing press
10 releases about complaints he was making about our
11 ads.

12 I don't remember whether he was the
13 signer of those to the television stations, but I
14 know that some letters went to television stations.

15 Q You know that some letters went to
16 television stations from Republican party officials
17 to stop various stations from running various
18 AFL-CIO ads?

19 A If you said who, I wouldn't have
20 remembered which party. I don't mean party, party.
21 I remember that stations got letters trying to
22 persuade them not to run our ads.

23 Q Okay. And you responded to those letters,
24 you or other people on behalf of the AFL-CIO,
25 responded to those letters?

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2 A Not me personally. I believe counsel.

3 Q And some stations refused to run your ads
4 and most stations continued to run your ads; is that
5 correct?

6 A That's -- I'm not sure any refused to run
7 ads, but if some ultimately did, it was very few.

8 For the most part when this happened,
9 stations hadn't run into this and were taken aback
10 by it and they became familiar with the routine,
11 they were pretty unresponsive to those arguments.

12 Q Did the Peter Hart people -- I will now
13 switch back to 2000, if that is okay with your mind?

14 A 2000, okay.

15 Q Did the Peter Hart people make some
16 suggestions to you about the text of ads that were
17 critical of candidate Bush?

18 A I don't recall that, actually. Although,
19 they could have. They could have, because I might
20 have consulted with them.

21 Q And when you say you might have consulted
22 with them, do you have any recollection, however
23 vague, about what you consulted with them about?

24 A I'm trying to think -- you know, from time
25 to time, I would show them an ad and ask them if

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2 they thought, you know, we were representing the
3 issue correctly and made the right points.

4 And, you know, I think I may very
5 well have done that with one or both of those ads.

6 Q I will show you a string of what looked
7 like e-mails, and I want you to straighten us out on
8 who sent the first e-mail and just take us through
9 the steps. I will show it to you.

10 This would be Exhibit 15, and it is a
11 string of e-mails that include things from Mr. Garin
12 to you, things from you to Axelrod with copies to a
13 lot of people, and things from someone at the --
14 Geoffrey Garin to you.

15 In any event, if you could look at
16 Exhibit 15 and tell us who sent the first e-mail to
17 whom and what the flow is.

18 MR. GOLD: We will have to take a few
19 minutes to do this.

20 (Thereupon, Mitchell Exhibit No. 15 was marked
21 for identification and was attached to the transcript.)

22 BY MR. SCHWARZ:

23 Q So who started this, who jumped in next,
24 then what happened?

25 A I think, as I said earlier, after the

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2 debate, we were -- we knew that in the debate --

3 Q By "the debate" you mean the presidential?

4 A Bush/Gore debate, we knew that George Bush
5 misrepresented his record on the Patient Bill of
6 Rights, and we made a decision, maybe not a final
7 decision, but we thought we would highlight that and
8 clarify his record and raise this issue on that
9 matter.

10 So I said to -- I believe the first
11 in this series of e-mails is the bottom of the
12 second page where -- well, it is also at the bottom
13 of the second page because the bottom of the first
14 page is just a duplicate.

15 So I said to David Axelrod, I think
16 we should find somebody in Texas who can testify to
17 what actually happened in the Patients' Bill of
18 Rights debate there.

19 So he came back with a proposed
20 concept for an ad that might do that, and he
21 suggested maybe we should just find the author of
22 the bill in the Texas legislature.

23 And then I responded to him that I
24 thought, you know, a doctor or a nurse and/or
25 somebody from the Nurses or the Texas Medical

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2 Association would be a better spokesperson on that.

3 And then I sent that to David Axelrod
4 but copied other people inside the AFL-CIO and Larry
5 and I guess on this e-mail -- oh, and Geoff Garin.

6 Q Who is at Peter Hart?

7 A Right.

8 Q Who is Mike Podhorzer?

9 A He is the main issues specialist in the
10 political department, so he sort of heads up the
11 issues research within the Political Department.

12 Q That is Steve Rosenthal's department?

13 A Correct. So -- and then Geoff Garin
14 responded with a note that is at the top of page 1.

15 Q And then the last page is the Axelrod
16 people to you on --

17 A Right.

18 Q Further on the structure and the wording
19 of the ad?

20 A Well, I think this is a response to some
21 suggestion that maybe we should just continue to
22 focus on Social Security, but that is not what we
23 did.

24 Q And is the handwriting on the second page
25 yours?

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2 A Yes.

3 Q And is that mark on the third page which
4 is next to the words "George Bush lied" and then
5 some other words yours, also?

6 A I don't know.

7 Q And were the people to whom you copied
8 this exchange, Geoff Garin, Larry Gold, Mike
9 Podhorzer and Steve Rosenthal, the people you
10 generally got involved in your ads?

11 A They were part of the universe of people
12 generally, generally involved. At this point in
13 time. Remember, I said sort of ground rules changed
14 after 1998.

15 Q Yes. Yes.

16 A Or after 1999, excuse me.

17 Q Have you ever heard of a storyboard.

18 A Yeah. Sure.

19 Q What is a storyboard?

20 A A literal storyboard -- I'm not sure that
21 is a literal storyboard.

22 Q Yeah.

23 A A literal storyboard is when you are
24 developing a concept for an ad and you might develop
25 it first as a storyboard where you would have a

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2 picture, so you would have a picture of what you see
3 on the screen and the words of what you hear on to
4 it and you often -- you know, if you are a Madison
5 Avenue company and you are developing a bunch of
6 ads, you would develop, you know, 20 storyboards and
7 you would focus group test them and decide what you
8 were going to do.

9 MR. SCHWARZ: Could you mark as Mitchell
10 16 a document which the lawyers here know as a
11 CMAG, C-M-A-Gs, storyboard of an ad run by the
12 AFL-CIO; in this case, focusing on Congressman
13 Sherwood. Can you do that as 16?

14 (Thereupon, Mitchell Exhibit 16 was marked for
15 identification and was attached to the transcript.)

16 MR. GOLD: Fritz, Ms. Mitchell's
17 description of a storyboard -- you have used
18 storyboard here, but I will acknowledge you are
19 using it in a different context.

20 MR. SCHWARZ: Yes, we are. We are.

21 THE WITNESS: Right.

22 MR. GOLD: You going to ask her about this
23 without looking at the ad?

24 MR. SCHWARZ: I'm not sure we have that
25 ad, and it is easy for me to do what I want to

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2 do with this.

3 MR. GOLD: I would ask, though, that she
4 be advised that, as I understand the CMAG
5 system, they draw electronic signals down from
6 the sky when they are broadcast and they
7 produce pictures and text and it is on some
8 course of time segment, so it is snapshots.

9 MR. GILLIGAN: Every four seconds or so.

10 MR. SCHWARZ: It has all the words and
11 video snapshot every four seconds, so that is
12 what it is.

13 MR. GOLD: That is what it is. There may
14 be other pictures within the 30 seconds that
15 fell within each four-second interval. We
16 don't know how much, but they purport to get
17 all of the words anyway.

18 MR. SCHWARZ: Yes.

19 MR. GOLD: I want her to understand.

20 MR. SCHWARZ: I should tell her another
21 thing and I know it is correct, but this one
22 happens to mention Congressman Don Sherwood.

23 It was run with other people's names as
24 well as Sherwood in various other districts in
25 the country, and the way the CMAG electronic

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2 capture does it, if they recognize it as the
3 same ad except for it being a different person
4 at the end, they lump them all together. But
5 the same text, other than the name, is used in
6 all of the ads.

7 THE WITNESS: Okay.

8 BY MR. SCHWARZ:

9 Q Further, I can represent to you that this
10 ad was run between July 31st and November 6 all over
11 the country with respect to different
12 congresspeople.

13 MR. GOLD: Which year?

14 MR. SCHWARZ: 2000.

15 MR. TRISTER: Did you say July 31st?

16 MR. SCHWARZ: Yes, July 31st through
17 November 6. It was run very extensively.

18 MR. GOLD: Okay. I don't know if -- well,
19 you are going to elicit whether or not that is
20 her recollection?

21 MR. SCHWARZ: Yes.

22 MR. GOLD: Okay. Go ahead.

23 BY MR. SCHWARZ:

24 Q Now, do you recognize this ad, the
25 substance of this ad?

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2 A Right, I recognize the ad generally
3 speaking.

4 Q And without regard to which congresspeople
5 it mentioned, do you remember that this ad was used
6 by the AFL-CIO and mentioned a number of different
7 congresspeople?

8 A I remember that it was multiple, yeah.

9 Q Okay. Do you see the lines -- these are
10 in the second and third from the end, the words,
11 tell Sherwood, quit putting special interests ahead
12 of working families, close quotes?

13 A Yes.

14 Q And if I call that a tag line, would that
15 be a -- what would you call it if you had to use a
16 general statement about those words?

17 A Directive. I mean, you know, it was -- I
18 wouldn't call it a tag line, but I would call it
19 a --

20 Q You would call it a directive?

21 A Right. It is what we are saying to tell
22 Sherwood. We are saying to viewers, a directive to
23 viewers to tell him, right, understand?

24 Q Now, it also has, if you look at the
25 penultimate picture, call Congressman Sherwood and

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2 it gives a telephone number?

3 A That is right.

4 Q That's not an 800 number, is it?

5 A I believe that is his district number.

6 Q Did you make any effort to find out who,
7 if anybody, called either Congressman Sherwood or
8 anybody else who is mentioned in this, any other
9 congressperson who is mentioned in this same ad?

10 A We didn't have a way of tracking it
11 generally. We started using local, i.e., district
12 phone numbers in the last few years.

13 There was a period of time when we
14 were using an 800 number that people would call for
15 that exact reason, because we wanted to be able to
16 track what kind of response we were able to
17 generate.

18 And that was one of those numbers
19 where they call the number and it says, again,
20 Medicare is important and tell your member you think
21 it is important and then to be switched to their
22 office, push 1 now and then you would say what state
23 you are from.

24 But we got a lot of complaints from
25 people who would call our switchboards, would take

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2 the trouble to find us, even though we hadn't given
3 them the number for us, that they found it really
4 frustrating to be connected to a member of Congress'
5 Washington number, you know, 8:00, 9:00 at night.
6 You might be on the west coast or even later and
7 nobody is answering the phone.

8 So it was very frustrating, so we
9 gave up the option of being able to track in favor
10 of putting local numbers, that if it gave them their
11 local number, they could find their member of
12 Congress and at least have the number in front of
13 them and realize they could call sometimes during
14 business hours.

15 Q But am I correct that you did not
16 determine whether anybody called the number of
17 Congressman Sherwood or the number of any other
18 congressperson that you used in an ad identical to
19 this?

20 MR. TRISTER: I think the question assumes
21 that there was a similar number in the other
22 ads, which I'm not sure.

23 MR. SCHWARZ: Well, we will ask the
24 witness.

25 BY MR. SCHWARZ:

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2 Q Instead of having this ad talk about
3 Congressman Sherwood, if the ad talked about
4 Congressman Northup, for example, or Congressman
5 Fletcher, both of whom were from Kentucky, let's
6 take Congressman Fletcher, and I will represent to
7 you your ad did talk about Congressman Fletcher from
8 Kentucky.

9 When you ran an ad that mentioned
10 Congressman Fletcher, did you also include a
11 telephone number?

12 A Assuming that we did an ad that mentioned
13 Congressman Fletcher, we in all likelihood would
14 have had a telephone number.

15 Q For any congressman that mentioned a
16 number in an ad that was not an 800 number, did you
17 make any effort to determine whether or not anybody
18 in fact communicated with the congressperson?

19 A I don't think we had any way of tracking
20 when we used district phone numbers.

21 You know, you can't quite see it, but
22 we also have on this screen a web site people can go
23 to for more information called medicare drugs.org.

24 Q Who came up with the words, quotes, quit
25 putting special interests ahead of working families.

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2 A You know, I don't remember precisely
3 whether that was something we suggested or something
4 that came back from, you know, the Axelrod agency.

5 It was sort of similar to words what
6 we had used in issues ads and communications for a
7 number of years with this notion of who are you
8 going to stand with, working families or special
9 interests.

10 Q That ad was run 35 times on the day before
11 the election in Charleston/Huntington. I will
12 represent that to you.

13 MR. GOLD: Well, why don't you ask her
14 instead of representing?

15 MR. SCHWARZ: I have represented that to
16 her.

17 BY MR. SCHWARZ:

18 Q Do you have any reason to doubt that that
19 ad was run on the day before the election in
20 Charleston/Huntington?

21 A I wouldn't have remembered that. If you
22 had asked me, I wouldn't have expected that it would
23 have been run on the day before the election. I
24 just don't recall.

25 Q Why would you not expect an ad to be run

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2 the day before an election?

3 A I just don't recall that.

4 Q If you assume the ad was run the day
5 before the election, did you actually expect that a
6 viewer would in fact pick up the telephone on the
7 day before the election and call a particular
8 congressman?

9 MR. GOLD: I object, Fritz, because she
10 doesn't even remember that it ran the day
11 before the election. And --

12 MR. SCHWARZ: I think the facts speak for
13 themselves and all those facts --

14 MR. GOLD: If that is a fact, it will have
15 to be on the record somehow. It may be that it
16 is.

17 MR. SCHWARZ: It will be on the record.

18 MR. GOLD: I don't know that that is a
19 fact myself, but she doesn't recall.

20 We can try to figure out if we can shed
21 light on it, but I'm telling you in good faith
22 this did not run. I could be wrong.

23 MR. SCHWARZ: Did not run?

24 MR. GOLD: We think that one ran in August
25 of 2000?

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2 MR. TRISTER: (Nods head.)

3 MR. GOLD: And not later, but we are
4 trying to figure it out, too, but that is what
5 our information is on this, and --

6 MR. SCHWARZ: There is more than one sure
7 way to add.

8 MR. GOLD: I was looking at the ad
9 regardless of what congressman was referred to.

10 MR. GILLIGAN: That whole box of cookies.

11 MR. SCHWARZ: I don't think we need to
12 bother the witness with that.

13 BY MR. SCHWARZ:

14 Q Without regard to whether it was this ad
15 that ran the day before the election, were you
16 running ads the day before the election in 2000?

17 A You know, I don't remember running ads the
18 day before the election in 2000. So that is kind of
19 a surprise to me.

20 MR. SCHWARZ: I'm going to take a
21 few-minute break to see if I have more, and if
22 not, turn it over to my friends here.

23 (Brief recess.)

24 EXAMINATION BY COUNSEL FOR THE
25 UNITED STATES DEPARTMENT OF JUSTICE

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2 BY MR. GILLIGAN:

3 Q Ms. Mitchell, hi, just so you have some
4 idea who the heck I am, I am Jim Gilligan. I'm the
5 Department of Justice and I'm also representing the
6 defendants in the lawsuit. I want to start with a
7 couple of mop-up questions.

8 Just so the record is clear, can you
9 tell us what COPE is?

10 A You know, it is a term that is not used
11 very much anymore. It used to refer almost to the
12 political department.

13 And so then, you know, to be precise,
14 you would need to ask somebody in the political
15 department, but the way I would differentiate it is
16 I think I would say that, you know, it may be only
17 what they refer to their PAC as, but then some might
18 refer to the political operation as COPE, so left
19 over from the old days.

20 Q But generally speaking, it is the
21 AFL-CIO's PAC; is that correct?

22 A I don't know if that would be a widely
23 shared definition.

24 MR. GOLD: May I?

25 MR. GILLIGAN: Sure.

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2 MR. GOLD: COPE stands for Committee On
3 Political Education, and that is what we call
4 our federal PAC, AFL-CIO COPE Political
5 Contribution Committees. It is one of the
6 plaintiffs. That is the federal PAC.

7 Historically, as Denise says, COPE has in
8 older times, more than now, is a word that
9 almost means the political operation of any
10 union, not just the AFL, means you are a
11 political operation, whatever it is, and then
12 people may have different meanings.

13 People have different things in mind.
14 Sometimes they mean member program. Sometimes
15 they mean whatever your political contributions
16 are or your endorsements.

17 So if there is a specific use, I think we
18 can clarify how it is used, but so you know.

19 MR. GILLIGAN: I want something -- I'm not
20 sure. I appreciate the enlightenment, but I'm
21 not sure it achieved the purpose of clarifying
22 the record.

23 How about this, strictly speaking, with
24 respect to the AFL-CIO, why don't, Larry, you
25 give your understanding of what COPE is and we

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2 will see if Ms. Mitchell agrees with that?

3 MR. GOLD: That's fine. Did you hear what
4 I said? Is that your understanding of it
5 generally?

6 THE WITNESS: Right. And I just think
7 that people, depending how long they have been
8 part of the labor movement, might use it to
9 mean different things. It is a word I never
10 use.

11 MR. GOLD: When I use it, I do mean the
12 PAC because that is certainly the name of the
13 PAC and it is a distinction.

14 BY MR. GILLIGAN:

15 Q COPE, the PAC runs political
16 advertisements, correct?

17 A Not to my knowledge.

18 Q Not to your knowledge?

19 A No.

20 Q At all?

21 A I don't think so.

22 Q Well, earlier in the deposition, I
23 believe -- again, your counsel was speaking, and you
24 were talking about ads that explicitly tell voters
25 to vote for or against a candidate, and I believe

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2 your counsel said that COPE had never run an ad like
3 that.

4 Do you recall your counsel saying
5 that?

6 A I don't remember that statement, actually.

7 MR. SCHWARZ: Do you recall making that
8 statement, Larry?

9 MR. GOLD: I do, and I certainly had in
10 mind the period '95 to the present, and I'm
11 unaware that it ever did it before that, but it
12 may have. But it may have, but certainly not
13 in a long time is my experience.

14 MR. GILLIGAN: Is it your recollection --

15 MR. GOLD: I will defer to the witness.

16 MR. GILLIGAN: Start with the witness.

17 BY MR. GILLIGAN:

18 Q Is it also your recollection in addition
19 to not running TV or radio ads that asked voters to
20 vote for or against a candidate, that COPE does not
21 or has not run any television ads at all?

22 A The PAC?

23 Q The PAC since you have been with your
24 organization?

25 A I do not know of any TV or radio ads they

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2 have run. But there may have been something that
3 was some minor thing. I can't say that I really
4 know, and there may be state PACs called state
5 Co-PACs that could've run some ads. So I don't know
6 about that.

7 MR. TRISTER: Not in federal?

8 MR. GOLD: You are asking the federal
9 plan. I would stipulate and I think this is
10 our answer to discovery otherwise, is that COPE
11 has done -- certainly since '95 or as far as
12 anybody can recall, has not done -- has not
13 paid for any advertising, any broadcast
14 advertising, regardless of content.

15 The Hart money, the COPE money has
16 strictly been used for contributions,
17 candidates, parties within the limitations of
18 the campaign act and I guess state campaign
19 finance laws, as far as it has done that. It
20 is contributions, independent expenditures.

21 MR. GILLIGAN: Okay.

22 BY MR. GILLIGAN:

23 Q Then let's move on then to -- quickly to
24 another subject.

25 The AFL-CIO's advertising, what I

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2 will call off years, meaning nonelection years, '95,
3 '97, '99, 2001 --

4 A Okay.

5 Q -- in terms of the volume of advertising
6 done, how would you compare the AFL-CIO's
7 advertising in those off years to the advertising
8 done in election years?

9 A It might be -- well, it might be not --
10 fairly similar depending on the year. I mean,
11 you -- I don't think you said '95.

12 MR. GOLD: He did.

13 BY MR. GILLIGAN:

14 Q I did.

15 A You did. I should listen more carefully.

16 In '95, as I recall, the AFL-CIO
17 spent about \$7 million on ads. That was less than
18 in '96. You are asking about '97, and it might have
19 been comparable, you know, but it might have ranged.

20 Q '97 might have been comparable to '95?

21 A To '95.

22 Q Is that what you are saying?

23 A But I think that was not terribly
24 different from '98. So we did a lot of issue
25 advertising throughout the years and I have not

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2 separated it into --

3 Q What about '99? Do you have the same --

4 A It was probably a little less still, but
5 maybe in the like \$5 million range. I'm relying on
6 memory here.

7 Q Thank you. Then moving quickly on to
8 another subject, Mr. Cowart, Joe Cowart, is that the
9 gentleman's name?

10 A Right.

11 Q I believe you were speaking to Mr. Schwarz
12 about him, and do you recall correctly your
13 relationship with Mr. Cowart as that of an
14 acquaintance or friend of some kind?

15 A He is an acquaintance and then for a short
16 time in '96 he was a consultant to me who helped
17 organize the selection process for new agencies.

18 Q And what is Mr. Cowart's profession or
19 professional affiliation, or what was it in '96, I
20 guess?

21 A I mean, I think he was an independent sort
22 of free-lance consultant then. As I believe we said
23 for the record earlier, he worked in a variety of
24 kind of campaigns, initiative campaigns, some
25 election campaigns, on staff.

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2 He actually was for a period of time
3 in 2000 or something a communications staff person
4 for the federal government.

5 So he is sort of a communications
6 person who has sometimes worn a political hat.

7 Q Do you know how long he has been in the
8 business, the consultancy and communications
9 business?

10 A I don't really know. You know, I would
11 guess maybe 20 years or something.

12 Q Do you know who Congressman Ernie Fletcher
13 is, or do you know of him?

14 A It is familiar. I mean, I don't --

15 Q You don't know him personally?

16 A No.

17 Q But you know of -- you know that Ernie
18 Fletcher is a congressman from Kentucky, as a matter
19 of fact?

20 A It is pretty familiar, yeah.

21 Q Okay. Okay.

22 A Not somebody I deal with.

23 Q I understand you may not have a personal
24 relationship with him. He is a Republican
25 congressman from Kentucky, correct?

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2 A I think that's right, yeah.

3 Q Do you recall the AFL-CIO ran
4 advertisements referring to Congressman Fletcher in
5 the year 2000?

6 A I don't recall that specifically.
7 Although, I believe that Mr. Schwarz mentioned it
8 earlier.

9 Q But you have no independent recollection
10 of that?

11 A (Shakes head.)

12 Q Do you recall -- well --

13 A I don't deal with members of Congress
14 every day, so while we have done a lot of different
15 advertising, no, it is not the thing that sticks
16 with me about it.

17 MR. GILLIGAN: Well, let me mark this as
18 Mitchell 17.

19 (Thereupon, Mitchell Exhibit Nos. 17-19 were
20 marked for identification and were attached to the
21 transcript.)

22 MR. GILLIGAN: For the record, while you
23 are having an opportunity to look these over,
24 Ms. Mitchell, I would say that Mitchell Exhibit
25 17 is a CMAG storyboard entitled "AFL-CIO,

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2 Kentucky, Fletcher PBR."

3 Mitchell 18 is a CMAG storyboard entitled
4 "AFL-CIO Kentucky Fletcher, Pay for Rx."

5 And 19, the quality of which I apologize
6 for, is a CMAG storyboard entitled "CAHC, Call
7 Ernie Fletcher."

8 MR. GOLD: These are titles given by CMAG
9 because they are not the AFL-CIO title, I
10 believe.

11 MR. GILLIGAN: I don't know the answer but
12 I will stipulate I'm reading from the top of
13 the page regardless of who gave that.

14 MR. GOLD: That's fine.

15 BY MR. GILLIGAN:

16 Q Have you had an opportunity to look these
17 over?

18 A Yes.

19 Q Does your review of these three exhibits
20 refresh your recollection as to whether the AFL-CIO
21 ran ads concerning Congressman Fletcher?

22 A I remember the ads more than I remember
23 Congressman Fletcher. I remember producing the ads
24 and I remember running them in some Congressional
25 districts. I don't remember specifically very much

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2 about Fletcher.

3 Q Do you recall Mitchell 17 as an ad that
4 was produced by the AFL-CIO?

5 A Yes.

6 Q And 18?

7 A Yeah.

8 Q How about 19, was that an ad produced by
9 the AFL-CIO?

10 A Yeah.

11 Q And each of these three advertisements
12 refers to Congressman Fletcher, correct?

13 A Correct.

14 Q And the first ad, Mitchell 17, says that
15 to make a -- well, a 30-second story even shorter,
16 it says that essentially Congressman Mitchell is on
17 the wrong side?

18 A Fletcher.

19 Q Excuse me. You are Ms. Mitchell. Do you
20 want to be a member of Congress?

21 A (Shakes head.)

22 MR. GOLD: I instruct the witness not to
23 answer.

24 MR. SCHWARZ: On the grounds it might be
25 incriminating.

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2 MR. GILLIGAN: I will not move to compel.

3 MR. GOLD: I will grant you it is
4 confusing enough without getting into those
5 kind of questions.

6 BY MR. GILLIGAN:

7 Q Referring to Exhibit 17, that says
8 Congressman Fletcher was on the wrong side of the
9 Patients' Bill of Rights issue, correct?

10 A Correct.

11 Q And Exhibit 18 says that Congressman
12 Mitchell, or Congressman Fletcher, excuse me, it has
13 been a long day, Congressman Fletcher was on the
14 wrong side of the prescription benefits issue?

15 A Correct.

16 Q It doesn't say that literally?

17 A It doesn't say that literally.

18 Q But that is the AFL-CIO's position, as is
19 reflected on this ad?

20 A We are providing information that he sided
21 with the drug industry.

22 Q On the prescription benefits?

23 A On the prescription benefits.

24 Q To use the lingo we have been using in
25 this deposition, that is the wrong side as far as

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2 the AFL-CIO is concerned?

3 A Given our position, yes, it is on the
4 wrong side of the issue.

5 Q Turning to 19, again, 19 refers to
6 Congressman Fletcher?

7 A Uh-huh.

8 Q And it refers to the issue of a
9 prescription benefit under the Medicare program,
10 correct?

11 A Correct.

12 Q And it states Congressman Fletcher's
13 position on that, correct?

14 A Correct.

15 Q And then the point of the ad is that he
16 was on the wrong side of this issue?

17 MR. GOLD: I'm going to object to the
18 form. The point of the ad. The ad said what
19 it said. You asked her did the other ads say
20 that he was wrong, but if you are sort of
21 making a --

22 MR. GILLIGAN: I'm not trying to make a
23 distinction. There was nothing --

24 MR. GOLD: All right.

25 MR. GILLIGAN: There was nothing behind

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2 the different phraseology.

3 BY MR. GILLIGAN:

4 Q The ad states that Congressman Fletcher
5 voted against guaranteeing seniors prescription
6 benefits under Medicare, correct?

7 A That is correct.

8 Q And that was the wrong side of that issue
9 based on the AFL-CIO's stated position, correct?

10 A That's -- and as the ad says, that is the
11 side of special interest instead of the side of
12 working families.

13 Q And the AFL-CIO believes it is on the side
14 of working families?

15 A We do believe that.

16 Q Do you recall when these different
17 advertisements referring to Congressman Fletcher
18 aired?

19 A I don't remember.

20 Q You don't remember if they aired in the
21 summer and fall of the year 2000?

22 A I don't remember specifically, I would
23 have to say I would be -- I would have to be sort of
24 guessing.

25 Q You are familiar with -- you are familiar

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2 with the ads in -- setting aside the specific
3 reference to Congressman Fletcher, you are familiar
4 with these ads as having been produced by the
5 AFL-CIO?

6 A Yes.

7 Q And again, without specific reference to
8 Congressman Fletcher, did ads identical to these run
9 in other areas of the country in the year 2000?

10 A Yes.

11 Q And is it your recollection that these ads
12 generally ran in the summer and fall of the year
13 2000?

14 A That is my recollection. It could have
15 been spring, summer, fall. I just don't remember
16 precisely.

17 Q All right. Do you recall how many House
18 and Senate races that the AFL-CIO ran ads in during
19 the year 2000?

20 A I don't.

21 Q Well, if I were to say it was about a
22 dozen, would that help refresh your recollection?

23 A That would sound small to me, but -- so I
24 don't -- I don't know. That sounds small to me.

25 Q Okay. Regardless of what the number was,

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2 do you have any recollection as to why Congressman
3 Fletcher was chosen as a subject of these ads?

4 A You know, when we would sit down to decide
5 where we were going to run ads and which members of
6 Congress we were going to name in ads, we would have
7 a range of criteria that might have to do with what
8 role they were playing in Congress, you know, did
9 they sit on a committee, were they sort of a leader
10 of a blue dog caucus or a, you know, some group
11 members. You know, they were sort of thin skinned
12 or not thin skinned.

13 Were they -- had they been sort of
14 outspoken in their opposition to an issue, were
15 there a lot of union members in that district where
16 they would be excited about seeing that we were
17 being a visible advocate for working families.

18 And as we said earlier, whether there
19 might be -- this might be a marginal Congressional
20 district where people would pay special attention
21 and it would an important impetus, sort of framing
22 the environment and the -- sort of the -- driving
23 the debate because we wanted working families,
24 working people to be debating working family issues.

25 And to understand that those were the

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2 issues that were sort of front and center for them,
3 and we wanted these elected officials and these
4 members of Congress to know that we were watching
5 them and watching their votes and trying to get them
6 to change their votes, and we knew we could impact
7 them especially in places where support for them was
8 at a marginal level.

9 Q When you say "marginal," is another way of
10 understanding that to say that the election was very
11 close?

12 A It was a competitive -- they might be in
13 competitive election. But, you know, many of these
14 ads ran, you know, way before any election was in
15 sight, you know, perhaps before they were
16 candidates.

17 We often ran ads places where we knew
18 people weren't even going to run for re-election or
19 in any event where, you know, there was no primary
20 candidate yet.

21 It was not as if they were in an
22 election yet, but we knew that they should be
23 sensitive to what their constituents knew about them
24 and thought about them and they know that somebody
25 is watching.

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2 Q It was the case, was it not, when this ad
3 was run?

4 MR. GOLD: Which ad?

5 BY MR. GILLIGAN:

6 Q These ads, the Fletcher ads, that he had
7 already obtained the nomination for -- there was a
8 Republican nomination for --

9 A I don't know.

10 Q -- for this seat? You don't know that?

11 A Well, I would follow at that time, you
12 know, what districts may be seeing competitive races
13 or something. I wouldn't be following closely
14 exactly who did what or even retain it for very
15 long.

16 Q Do you recall anyone ever telling you that
17 Mr. Fletcher's race for re-election in the year 2000
18 was a toss-up? Did anyone ever tell you that?

19 A They might have. I might have read that
20 in Rothenberg or something, but I don't remember
21 that.

22 Q Do you recall how many times any one of
23 these ads, referring to Congressman Fletcher, ran in
24 the year 2000?

25 A I don't. When I place a buy or instruct

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2 the media buyer to place a buy, we buy sort of based
3 on rating points, which would be buy enough ads in a
4 district where it would get enough repetitions that
5 it would make an impact and could do, you know,
6 achieve those goals we talked about, and people
7 would -- really cause people to talk about and pay
8 attention to these issues, but I would not really
9 know and I could know -- I could look at the media
10 buy books and I could sort of know numbers, but that
11 wouldn't be the way I would look at it.

12 Q What are the media buy books?

13 A Well, we get reports after the media buys,
14 reporting on the buy in detail, and I don't really
15 care at that point.

16 Q That tells you how many times the ad ran,
17 the media buy book?

18 A It would. It would identify the spots
19 that ran. You know, it would identify the spots
20 they had placed, not necessarily what ran. Right,
21 because sometimes spots end up not running.

22 Q Do you have any recollection here today as
23 to whether the volume of advertising referring to
24 Congressman Fletcher was greater to the volume of
25 advertising, AFL-CIO's advertising, referring to

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2 other members of Congress?

3 A I would not expect that to be the case. I
4 would think more often than not when we would place
5 a buy for any one spot it would be, you know, pretty
6 much the same level for all the members it named.

7 Q Why would you expect that?

8 A Well, I mean, if we are going to say, you
9 know, sort of decent buy for a week -- you wouldn't,
10 you know, spread yourself really thin. You would
11 want to sort of pick out a number of places you are
12 going to run an ad and run it at a point level where
13 it would be significant and have an impact.

14 Generally speaking, barring some
15 exception, something that happened, it would be the
16 same level for that particular buy.

17 Q A couple of moments ago in talking about
18 the factors you take into consideration in
19 determining where to place an ad, you made a
20 reference as to whether the member of Congress is
21 thin skinned or not?

22 A Uh-huh.

23 Q Can you elaborate what you meant by that,
24 please?

25 A Well, I would -- often, I would sit down

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2 with Peggy Taylor, the legislative director, and
3 talk about what does it make sense to do on
4 prescription drugs, for instance, or a Patient's
5 Bills of Rights.

6 So if a member of Congress is sort of
7 known to be touchy and, you know, would be yelling a
8 lot because we were publicly highlighting their
9 vote, that would be a plus because it would reflect
10 more on other members of Congress, and our goal is
11 to impact more people than we can actually name in
12 ads.

13 Q Is that to say you would look for somebody
14 if you ran an ad naming them and saying they were on
15 the wrong side of an issue, you would be likely to
16 publicly complain about it so that more members of
17 Congress would know that you had run ads against
18 this other member of Congress?

19 A Not against this other member of Congress.

20 Q About?

21 A About -- maybe not even publicly, maybe
22 within their caucus, right, but they would talk
23 about it, right, and, you know, perhaps would say to
24 the Speaker, please let's not have that vote right
25 now because, man, you know, in my district, people

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2 are going to take me to task for it. Right?

3 Q Okay. Another criterion I believe you
4 mentioned was whether or not the member of Congress
5 under consideration was outspoken on an issue?

6 A Right.

7 Q Can you elaborate on what you mean by
8 that?

9 A Right. I don't mean to make too much of
10 any one factor. I'm just saying some of the things
11 I can remember talking about from time to time.

12 If a member of Congress -- let's talk
13 about 1996 where we sort of had the Gingrich
14 revolution and there were these members of Congress
15 who came in with a big charge to, you know, change
16 life as we knew it and sort of set a new order, and
17 so some of those who were particularly chesty,
18 particularly.

19 Q Chest thumping, as it were?

20 A Yeah, but, you know, to lead with their
21 chins on, you know, just saying, hey, we will -- you
22 know, Newt Gingrich himself from time to time would
23 say we will change Medicare.

24 This is not an exact quote, but as
25 you know it, it will not exist like this anymore,

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2 and so that might cause us to want to be sure.

3 We would highlight those kind of
4 statements as we were making this point.

5 Q And this would be people who are
6 outspoken, as it were, on the wrong side of the
7 issue --

8 A Correct.

9 Q -- in their tacks on families?

10 MR. GILLIGAN: Let me just consult with
11 counsel for a moment.

12 I have no further questions. And I did it
13 in under 20 minutes.

14 MS. MEDINA: I will jump in.

15 EXAMINATION BY COUNSEL FOR THE INTERVENORS
16 BY MS. MEDINA:

17 Q I am Monica Medina, and I'm a lawyer at
18 Heller Ehrman White & McAuliffe, and my firm also
19 represents the defendant intervenors in the case,
20 members of Congress.

21 MR. GOLD: We had a conversation, let me
22 just say, off the record, on a break --

23 MS. MEDINA: Yes.

24 MR. GOLD: -- because we --

25 MR. TRISTER: Did you want this on the

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2 record or off?

3 MR. GOLD: No, on the record. On the
4 record. That's fine.

5 Because Ms. Medina represents the same
6 client as Mr. Schwarz, I raised a question off
7 the record as to whether or not it was
8 appropriate I had an objection to somebody else
9 asking questions.

10 And she promised to ask questions in a
11 distinct area. And I think as long as you do
12 that as a distinct area, let's see how it goes.

13 We are not comfortable generally with the
14 notion of two lawyers for the same party asking
15 questions, but if it is a distinct area, and
16 you explained what they were and it did sound
17 like sufficiently distinct, in that Fritz
18 didn't ask questions in those areas, so let's
19 proceed and I may object at some point but
20 hopefully not.

21 MR. GILLIGAN: Off the record.

22 (Off-the-record discussion.)

23 MR. GILLIGAN: The same set of facts, I
24 hope you understand, can raise different legal
25 issues.