

1 IN THE UNITED STATES DISTRICT COURT
2 THREE JUDGE COURT, WASHINGTON, D.C.

3 MCCONNELL, et al.,
4 Plaintiffs,
5 vs. Consolidated Cases
6 FEDERAL ELECTION COMMITTEE, 02-0582
7 Defendants.

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10 DEPOSITION OF ANGUS MCQUEEN
11 TAKEN ON BEHALF OF THE INTERVENORS
12 IN OKLAHOMA CITY, OKLAHOMA
13 ON SEPTEMBER 24, 2002

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18 REPORTED BY: ELIZABETH CAUDILL, CSR, RMR, CRR
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3 For the Plaintiff Cleta Mitchell
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6 Suite 500
7 Washington, DC 20007

8 For the Intervenors: Frederick A.O. Schwarz, Jr.
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12 For Ackerman McQueen and Angus McQueen: Larry Glenn Ball
13 Spadling, Alpern & Gum
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1 S T I P U L A T I O N S
2 IT IS HEREBY STIPULATED AND AGREED by
3 and among the attorneys for the respective
4 parties hereto that the deposition of ANGUS
5 MCQUEEN may be taken on behalf of the Intervenors
6 on SEPTEMBER 24, 2002 in Oklahoma City, Oklahoma,
7 by Elizabeth Caudill, Certified Shorthand

8 Reporter within and for the State of Oklahoma,
9 pursuant to Notice.

10 IT IS FURTHER STIPULATED AND AGREED by
11 and among the attorneys for the respective
12 parties hereto that all objections, except as to
13 the form of the question, are reserved until the
14 time of trial, at which time they may be made
15 with the same force and effect as if made at the
16 time of the taking of this deposition.

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1 * * * * *
2 ANGUS MCQUEEN,
3 after having been first duly sworn at 8:02 a.m.,
4 deposes and says in reply to the questions
5 propounded as follows, to wit:

6 DIRECT EXAMINATION

7 BY MR. SCHWARZ:

8 Q So, Mr. McQueen, are you the CEO of
9 Ackerman McQueen?

10 A Yes.

11 Q And what does it do for the NRA?

12 A We provide advertising and public
13 relations and communications support services.

14 Q And what does it mean to provide public
15 relations and communications services?

16 A We, aside from the preparation of paid
17 media, provide advice and counsel in terms of
18 public image issues, that kind of thing.

19 Q Give an example of that in the last
20 four, five or six years for the NRA. Why don't
21 you take an example for that in the year 2000.

22 A President Clinton made some very harsh
23 comments about the NRA on the Today Show one
24 morning.

25 Q In the spring of 2000?

□

6

1 A Spring of 2000. And our opinion was
2 sought as to how the NRA might respond.

3 Q And what did you say?

4 A I don't know that I can -- I don't know
5 that I can distill what I said into a sentence or
6 a paragraph.

7 we had -- we had protracted
8 discussions. As with any consultation
9 relationship, there's an ebb and flow. There are
10 a multitude of options that are discussed.

11 Q And let me ask you if you gave any
12 similar advice in connection with a speech made
13 by Mr. Kayne Robinson.

14 MR. SCHWARZ: Robinson or Robertson?

15 MS. MITCHELL: Robinson.

16 Q (By Mr. Schwarz) Robinson, in which he
17 said if Bush wins, we'll work out of the white
18 House.

19 A I did not.

20 Q And when I use the word "you,"
21 sometimes I mean you and sometimes I mean your
22 organization.

23 A No one in our firm did.

24 Q Okay. What did you do to prepare for
25 this deposition?

□

7

1 A I reviewed, to the best of my ability,
2 the events of the years in question with Ackerman
3 employees and executives, and I met with my
4 attorney, as well as with the attorneys
5 representing the National Rifle Association.

6 Q Okay. And when you say you reviewed
7 the events of the years in question, which years?

8 A I believe it's '96, '98, and 2000.

9 Q All right. And in reviewing those
10 events, what were you considering? What were you
11 looking at?

12 A Well, I was trying to refresh my -- my
13 memory of the events that transpired in that time
14 period. I didn't concentrate on just those
15 single years. I looked at the period from '96 to
16 the present.

17 Q Yeah. And, indeed, for the off years,
18 non-election years like '97 and '99, the NRA,
19 from time to time, runs ads that deal with
20 matters of public concern; is that correct?

21 A Yes.

22 Q And your firm helps on some of those
23 ads, anyway?

24 A That's correct.

25 Q Did you ask people within your

□

8

1 organization to refresh your recollection about
2 ads run by the NRA and worked on by your firm
3 during the years that we're talking about?

4 A Generally.

5 Q Okay. And when I use the word "ads," I
6 mean to include infomercials as well as shorter
7 30-second or 60-second ads. Is that okay?

8 A Yes.

9 Q Because infomercials are ads, aren't
10 they?

11 A I would -- I would characterize the
12 work we do for the National Rifle Association as
13 public communication. We prepare ads for clients
14 who are selling products and services. Paid
15 communication is not necessarily deployed only in
16 support of an ad.

17 Q Infomercials, though, are things that
18 are paid for; they're not free?

19 A That's correct.

20 Q They're put on broadcast channels or
21 stations, and in this case, the NRA pays for
22 them?

23 A Right.

24 Q But you look at them as being part of a
25 broader communications strategy; correct?

□

9

1 A Sure.

2 Q And 30-second-ads or 60-second-ads also
3 fit into a broader communications strategy?

4 A Yes. Length is not -- is not a
5 differentiator between what qualifies in your
6 term as an ad.

7 Q Has Ackerman McQueen, in the years '96,
8 '98, and 2000 had any other clients who are what
9 I'll call advocacy groups?

10 A Yes.

11 Q Who are those clients?

12 A We did some work -- and I did not --
13 I'm going to have to -- I'm going to have to be a
14 little bit vague of terms of exactly when. We've
15 done some work in that time period, off and on,
16 for the National Shooting Sports Foundation.

17 Q And did any of that work include
18 running broadcast ads?

19 A Yes.

20 Q And did any of those ads include the
21 names of candidates for federal office?

22 A I'm going to say a qualified no, to my

23 knowledge, they did not.

24 Q Okay.

25 A I can't be positive without having

□

10

1 reviewed the records that something somewhere

2 was --

3 Q Okay. Do you have any other clients --

4 did you have any other clients in the years '96,

5 '98, and 2000 who were -- strike the word other.

6 Let me just restart the question.

7 In the years '96, '98, or 2000, did you

8 have any clients who were politicians?

9 A Not politicians running for office. We

10 serve the State of Oklahoma as the advertising

11 agency for their tourism department. And we are

12 often working directly with the governor, the

13 lieutenant governor, and other elected officials.

14 Q Okay. And just to make sure we've

15 completed that circle, in those years, did you

16 have any clients who were political parties or

17 wings of political parties?

18 A No.

19 Q Now, you said that to prepare for this

20 deposition, you reviewed the events of the years

21 in question with people at Ackerman McQueen;

22 right?

23 A To the best of my ability. Generally

24 reviewed.

25 Q Sure. So who were the people you spoke

1 to about -- let me narrow the question a little
2 bit. I want to focus on broadcast ads run on
3 behalf of the NRA during those years. And who
4 were the people you spoke to in your organization
5 to help refresh your recollection on that
6 subject?

7 A Melanie Hill, executive vice-president
8 and director of client services; Tim Oden,
9 O-D-E-N, executive vice-president and the
10 creative director in charge of the National Rifle
11 Association account; William Winkler, chief
12 operating officer and chief financial officer;
13 Peggy Howard, executive vice-president, corporate
14 director of media services. And I probably had
15 four or five other support personnel who were
16 walking in and out of various meetings.

17 Q All right. And which of those people
18 -- or do all of those people have something to do
19 with ads that were produced on behalf of the NRA?

20 A They all have something to do with the
21 communications work. And again, I think what --

22 Q That's fair.

23 A I don't want to be, in any sense of the
24 word, uncooperative other than I am going to
25 agree with the term "ads" only to be polite.

1 Q Okay.

2 A I don't consider them to be ads.

3 Q That's fair. You regard your function
4 as to help communicate a message to whoever
5 you're trying to reach?

6 A Right. It's a 22-year long
7 relationship that, with the exception of selling
8 a windbreaker here or there, has never really
9 involved, in my estimation, the development of
10 ads.

11 Q Okay. And in that relationship, I read
12 some things about a controversy maybe four years
13 ago or something like that. This is going to
14 sound like a funny question, but did that
15 controversy have anything to do with the issues
16 in this case, in your judgment?

17 A No.

18 Q I don't think I disagree with that.
19 what is the relationship between the
20 work of Ms. Hill, who is the executive
21 vice-president for client services, and Mr. Oden,
22 if I pronounced his name right --

23 A Uh-huh.

24 Q -- who is the executive vice-president
25 in charge of the NRA account? How do they work

□

1 together?

2 A When -- when a task is identified,
3 Mrs. Hill is responsible for the management of

4 the process of completing the task. To that end,
5 if there are creative development issues, she has
6 an involvement with the people who are doing the
7 creative development.

8 Q Okay. And Mr. Oden, how does he --
9 he's the executive in charge of the relationship
10 with NRA. But what does he actually do in
11 connection with developing a communications
12 strategy and then carrying that down all the way
13 to the level of what product you put out?

14 A The executive in charge of the
15 relationship with the NRA is me.

16 Q Okay.

17 A The functions in terms of accomplishing
18 the work operate pretty simply like a wheel. If
19 you think of Mrs. Hill being the hub of the
20 wheel --

21 Q Uh-huh.

22 A -- and the people who actually perform
23 the services being the spokes, then you
24 understand how it works.

25 Mr. Oden is the creative spoke,

□

14

1 Mrs. Howard is the media spoke, and then you have
2 a variety of other television producers who are
3 spokes and print production people and traffic
4 people who get materials -- they're all spokes in
5 the wheel.

6 But Mrs. Hill, as the -- as the process
Page 12

7 manager, has to be sure that all of those people
8 function successfully with each other.

9 Q And where do you fit into the process,
10 you as you?

11 A I'm Mrs. Hill's boss.

12 Q That's obvious, because you're the CEO.
13 So the NRA has a problem or an objective. And
14 when do you intersect with the framing of the
15 objective or the creating of a product to serve
16 that objective?

17 A When it's appropriate.

18 Q And when would that be?

19 A Well, there are -- there are a number
20 of circumstances. When asked to participate,
21 when -- when I consider my participation useful.
22 We do many things for the NRA that I do not have
23 an involvement with.

24 Q Sure. Let's take the year 2000.
25 During the year 2000, you've mentioned helping to

□

15

1 frame a strategy to respond to certain remarks
2 that ex-President Clinton made on the Today Show.

3 what else, during the year 2000, did
4 you personally engage in as far as the NRA is
5 concerned?

6 A Again, a wide variety of discussions,
7 meetings, telephone calls, copy development
8 sessions, strategic discussions.

9 Q So to net that out, is it fair to say

10 you were substantially involved in work for the
11 NRA through the whole year 2000?

12 A Yes.

13 Q How important is the NRA in the ranking
14 of your clients? And I'm not interested in who
15 all the other clients are, but just in terms of,
16 in whatever way you want to describe it, how
17 important are they?

18 A Every client I have is important.

19 Q Of course that's what I would say and
20 that's what Larry would say, too. Every client
21 is right at the heart of our practice, and always
22 has been.

23 So, now, in terms of other than that,
24 in terms of revenue, just roughly, how important
25 is the NRA?

□

16

1 A The NRA is not our largest client.
2 They would some years make the top five, some
3 years they would not.

4 Q And you also represent companies that
5 produce products?

6 A Uh-huh.

7 Q And are you familiar with sort of
8 generalizations about what makes a successful
9 communications strategy for companies, as well as
10 groups like the NRA?

11 A Yes.

12 Q That may lead to some questions later

13 on. Doesn't now.

14 Are you familiar with the subject
15 matter of this lawsuit?

16 A I don't know.

17 Q Okay.

18 A I will -- I will, again, in an attempt
19 to be helpful and not appear to be, in any sense
20 of the word, unhelpful, the law as it was passed
21 and the law as it's being read has been described
22 in so many different ways to me that if I had to
23 try to write it down, I couldn't.

24 Q Let me try a narrowing of that
25 question. Part of the law as it was passed and,

□

17

1 thus far, not affected by any regulations,
2 provides that -- I'll go to a general election, a
3 federal general election.

4 A All right.

5 Q Describe to you how the law works.

6 MR. SCHWARZ: And you correct me if I'm
7 wrong on it.

8 Q (By Mr. Schwarz) It says that within
9 the 60-day period before a federal general
10 election, if somebody runs -- and now I have to
11 use the word ad, I think -- broadcast
12 advertisement on television --

13 A Paid communication would be the --

14 Q No, because there are other forms of
15 paid communications that you've worked on; for

16 example, billboards that aren't covered by the
17 law.

18 A Paid broadcast communication.

19 Q If somebody runs a paid broadcast
20 communication -- I'll now focus on the general
21 election -- the 60 days before the general
22 election, that names a federal candidate in that
23 election and is targeted at voters in that
24 candidate's district -- and they define targeted
25 ad as being more than 50,000 people -- then

□

18

1 certain consequences apply. And I think the
2 consequences, for my question, are not important.

3 Are you able, as you sit here today, to
4 say what ads run on behalf of the NRA that your
5 company worked on would be affected by that law?

6 A I don't -- I don't think I could list
7 them.

8 Q Can you think of any? And by ads, I
9 include anything that you paid for, that the NRA
10 paid for and that your firm worked on.

11 A I'm sure that there are some, but I'm
12 not going to -- I'm not going to, without being
13 able to specifically review them, name one.

14 Q Okay. And as far as you know, your
15 firm hasn't done any work to produce a list of
16 any such ads, if there are any?

17 A No.

18 Q Your firm, as far as you know, hasn't
Page 16

19 done any work to review invoices or any other
20 data that would help answer the broad question I
21 put to you?

22 A Again, when you say as far as I know, I
23 don't know, without asking these other
24 executives, whether they have done this kind of
25 review on their own or through some request that

□

19

1 has been made outside of my knowledge.

2 But to my knowledge, there has been no
3 list made or review done to create that kind of a
4 list.

5 Q Now I want to go back to what
6 intersection you had with people at NRA in
7 connection with developing communications
8 strategy.

9 Let's talk about the year 2000, and
10 then after that I'll ask you whether, in earlier
11 years, there were any other people.

12 But in the year 2000, which people at
13 NRA did you communicate with in connection with
14 helping to develop a communications strategy?

15 A Primarily Wayne LaPierre.

16 Q Anybody else you can think of?

17 A To a -- to a far smaller degree, Jim
18 Baker.

19 Q Just to go off on the Jim Baker side,
20 did your firm, as far as you know, produce any --
21 here I'm going to use advertisements.

22 A I understand.

23 Q If you don't like the word -- sometimes
24 I have to use it to make my question work with
25 that machine over there.

□

20

1 A Sure.

2 Q Did your firm produce ads that were
3 paid for by the NRA Political Victory Fund?

4 A I don't know.

5 Q And other than Mr. LaPierre primarily
6 and Mr. Baker much less, was there anybody else
7 at NRA that you communicated?

8 A Charlton Heston, Woody Phillips. I
9 want to be precise, and that's why I'm taking my
10 time. I see a lot of NRA people, board members,
11 throughout any year. I go to board meetings.

12 Q Do you go to all the board meetings?

13 A No. I go to many. And I'm trying to
14 recall in 2000 how many I went to. And I may --
15 I may shake hands with 200 people in the course
16 of a year, and then how many of those people I
17 had a substantive discussion with relating to the
18 issues that you're asking me about, I -- I would
19 say, other than passing comments, the people I've
20 named are a complete list.

21 Q Did you ever attend a meeting of the
22 NRA public relations board -- I think it's called
23 the board public relations committee?

24 A Uh-huh, yes.

25 Q Mr. LaPierre said, without using your

□

21

1 name, that your firm came to that meeting,
2 meetings.

3 In the year 2000, how many meetings of
4 the NRA board public relations committee did you
5 attend?

6 A I don't recall. And it's not that I
7 don't recall my own participation as much as I
8 can't even recall if the public affairs committee
9 met at each board meeting. They don't meet at
10 every board meeting. They meet at many, but not
11 at all. And I can't recall in the year 2000 when
12 or even if they met.

13 Q Mr. LaPierre testified -- and I think
14 to be fair to him, his memory was not 100 percent
15 precise on this -- but he testified he thought
16 there were meetings of that committee somewhere
17 in January and in sometime like September. Does
18 that refresh you in any way?

19 A He could be -- he could be right.

20 Q And do you remember anything about any
21 meeting with the board public relations committee
22 in the year 2000?

23 A No.

24 Q Mr. Heston, who is --

25 MR. SCHWARZ: what is he now, the

□

1 chairman of the board of --

2 MS. MITCHELL: He's president.

3 MR. SCHWARZ: The president, and Wayne
4 LaPierre is the executive vice-president.

5 Off the record for a second.

6 (Off the record from 8:26 to 8:27)

7 Q (By Mr. Schwarz) Mr. Heston, does he
8 have his own public interest group or group which
9 also comes up with communications, including
10 advertisements?

11 A He has his own political action
12 committee. And to my knowledge, they do not
13 develop any communications initiative on their
14 own.

15 Q And is he a client of yours in his
16 capacity as head of that group or only in his
17 capacity as the president of NRA?

18 A He's a client in that -- in that --
19 he's not a client of Ackerman McQueen, he is a
20 client of the Mercury Group. And in as far as
21 Ackerman owns the Mercury Group, he would -- he
22 would qualify as a client of the Mercury Group.

23 But, no, Ackerman does not do any work
24 for Mr. Heston's political action committee.

25 Q Okay. Mr. LaPierre agreed with me that

□

1 Mr. Heston has, I think my words were, a

2 marvelous mellifluous voice. Would you agree
3 with both those characterizations?

4 A Yes.

5 Q And I used those words when I was
6 questioning Mr. LaPierre about the following
7 proposition.

8 I played for him an ad in which
9 Mr. Heston talked about various things relating
10 to candidate Gore. And the very end of it said
11 vote for George Bush. It may have been vote for
12 George W. Bush, but it said vote for George Bush.

13 And I put to Mr. LaPierre that you'd
14 never run an ad in which Mr. Heston, even with
15 his marvelous mellifluous voice, chanted for 120
16 times the words "Vote for George Bush." Do you
17 agree with that, that you would not do that?

18 A I don't understand the question. You'd
19 have to --

20 Q I had in front of -- actually, I played
21 on a machine an ad in which Mr. Heston spent 58
22 seconds talking about the Gore Justice Department
23 and a potential Gore Supreme Court and the harm
24 that would be caused by a potential Gore Supreme
25 Court. And at the end of it, he spent two

□

24

1 seconds saying "Vote for George Bush."

2 A Okay.

3 Q If you can put such an ad in your mind.
4 Actually, I think it was an ad produced by

5 Ackerman McQueen.

6 And I said to Mr. LaPierre, just
7 thinking about effective advertising, do you
8 agree with me, Mr. LaPierre, that it would not be
9 effective advertising to spend all those 60
10 seconds having Charlton Heston, even with his
11 marvelous mellifluous voice, chant "Vote for
12 George Bush" 120 times in the 60 seconds?

13 would you agree, as an advertising
14 professional, that would not be an effective use
15 of Mr. Heston?

16 A That's the kind of hypothetical I can't
17 pass judgment on. I don't know that Charlton
18 Heston chanting might not, under some
19 circumstances, some way, some day be very
20 effective.

21 Q But you've never, in fact, urged that
22 he do that, I take it?

23 A I've never even considered it.

24 Q Okay. Good. Let me ask you if you
25 recognize the names of some other people who work

□

25

1 in your -- how many employees are there in your
2 organization?

3 A Approximately 250.

4 Q And the Mercury Group is not located
5 here; right?

6 A No.

7 Q It's located in Virginia or Washington

8 or something like that? ^{McQueen Dep}

9 A Old Town Alexandria.

10 Q What is the relationship between the
11 work of Ackerman McQueen and the work of the
12 Mercury Group?

13 A We own the Mercury Group.

14 Q Uh-huh.

15 A And we provide services at times to
16 Mercury Group clients. Occasionally we partner
17 in a new business development effort.

18 we will -- we will go to prospect X and
19 say hire the Ackerman McQueen family of
20 companies, and so we will have Mercury Group
21 personnel available in that -- in that context.

22 Q Has the Mercury Group done any work on
23 NRA matters?

24 A Yes.

25 Q And what work have they done on NRA

□

26

1 matters from '96 to date?

2 A They provide some -- some services to
3 NRA that I'm not familiar with in detail. They
4 provide ongoing collaboration in strategic
5 thinking, and the -- primarily the -- the access
6 to news organizations that -- not just the access
7 but the coordination with the earned media
8 efforts that often are part of the overall
9 communications strategy.

10 Q To try and make any of that more

11 concrete, take the year 2000. In connection with
12 the strategies that led to broadcast
13 advertisements, including infomercials, for the
14 NRA, was Mercury involved in those?

15 A To the extent that there were strategic
16 discussions, yes. To the extent that certain
17 components of the infomercials were assigned for
18 completion, production to individuals inside the
19 Mercury Group, yes.

20 But to make it easy so you don't have
21 to probe, fundamentally, Ackerman deploys the
22 paid media side of the relationship and,
23 fundamentally, Mercury deploys the earned media
24 side of the relationship.

25 Q Okay. And is earned media the same

□

27

1 thing as saying --

2 A Non-paid.

3 Q -- non-paid?

4 A Non-paid.

5 Q On people within the Ackerman
6 organization, you've mentioned Melanie Hill,
7 you've mentioned Peggy Howard. Let me give you a
8 few other names. Someone called Brian Krueger.

9 A He works for Peggy Howard. And his
10 name is pronounced Kreeger. It's spelled
11 Krueger, but don't ask me.

12 Q And do you know what his function is
13 under Ms. Howard?

14 A ^{McQueen Dep} Yes. His title is media director. He
15 is the most senior media executive under Ms.
16 Howard.

17 Q Okay. And someone called Randy
18 Schoyneman?

19 A Scheunemann.

20 Q All these German names here, I should
21 know them.

22 A Randy Scheunemann was the president of
23 the Mercury Group. I'm not sure when he left,
24 but I think he was president throughout the year
25 of 2000.

□

28

1 Q Okay. Shannon Swafford?

2 A Shannon Swafford worked for Mrs. Hill.
3 He was an account executive.

4 Q What was his account? What connection,
5 if any, did he have with NRA matters?

6 A He was an Ackerman employee who officed
7 in Washington. And again, Mrs. Hill is in charge
8 of making the trains run on time. So he was her
9 agent on the ground, if you will.

10 Q Someone called Kara Davis?

11 A An account coordinator working with
12 Mr. Swafford. I would say somewhat junior to
13 Mr. Swafford.

14 Q Someone called Mike Wilkinson?

15 A A media planning -- planning executive,
16 works for Mrs. Howard.

17 Q And someone called Jay Finks.

18 A A media buyer, works for -- he no
19 longer works for us, but he worked at the time
20 for Ms. Howard.

21 Q Okay. Without making any remark other
22 than just the fact, I was surprised at the
23 paucity of strategy documents in connection with
24 the NRA's communications, goals and strategy and
25 implementation of those goals, both from the NRA

□

29

1 side and from your firm.

2 The fact I was surprised is not a
3 question. But to make it into a question, for
4 other clients, do you have more documents
5 relating to strategy -- communications strategy?

6 A Probably not.

7 Q And your reason for the probably is?

8 A Again, without -- without going through
9 some review process and trying to stack on a
10 table like this documents, it would be hard for
11 me to give you a very definitive answer on that.

12 Q Did anybody connected with NRA ever
13 communicate to you the thought that it would be
14 inadvisable to have many strategy documents in
15 connection with broadcast ads run by the NRA?

16 A Never.

17 Q Let me now ask you if you can remember
18 a certain infomercial. And it's one that in your
19 documents is referred to as Heston/Union. I

20 think it's Heston/Union.

21 Does that ring a bell with you?

22 A Uh-huh. Yes.

23 Q Tell me what the Heston/Union

24 infomercial was.

25 A It was -- it was another link in the

□

30

1 chain of years of message development that --

2 that continues to this day.

3 Q So it's all a seamless web. Is that

4 your testimony?

5 A Yes.

6 Q And beyond that broad point, what do

7 you remember specifically about the infomercial

8 called Heston/Union, first as to its content?

9 what do you remember about its content?

10 A Well, it was a -- it was a review of

11 facts that were relevant to a listener's ability

12 to reach an informed understanding of the issues

13 and general public discourse of the time.

14 Q Okay. What do you remember -- let me

15 ask a background question. When you're thinking

16 of an infomercial, do you think of sections, or I

17 think the word is pods?

18 A Yes. We think of the architecture of

19 an infomercial as being constructed in pods.

20 Q And just so the transcript knows,

21 describe what you mean by a pod. I know, you

22 know, but the transcript doesn't know.

23 A Sure. Most infomercials are structured
24 as follows: three eight-minute pods are
25 connected in a variety of different ways.

□

31

1 In some infomercials, a single pod is
2 repeated three times. In some infomercials,
3 there are two pods, an A pod and a B pod, and one
4 is repeated twice. And in some infomercials,
5 there are three different pods, an A, a B, and a
6 C pod.

7 Q So if the infomercials -- is it correct
8 that infomercials either run for 30 minutes or 60
9 minutes?

10 A You can buy two-minute long
11 infomercials, five-minute long infomercials.
12 It's kind of like buying property. If you have
13 enough money, the media will sell you whatever
14 you want.

15 Q Okay. In the year 2000, were most of
16 the infomercials run on cable?

17 A Yes.

18 Q Did you make any radio infomercials in
19 the year 2000 or just television infomercials?

20 A Just television.

21 Q And cable, why on cable as opposed to
22 -- what's the opposite of cable? Network? Is
23 that the right thing to say? Or network
24 affiliate?

25 A The traditional network broadcasting

□

1 outlets are not generally offering an infomercial
2 alternative. The cable networks are most often
3 the -- the only affordable and reasonable
4 deployment opportunity for an infomercial
5 strategy.

6 Q Available and cheaper?

7 A Available and cheaper. Again, I
8 amplify only so you can understand that a network
9 affiliate station, WRC in Washington, D.C., has
10 overnight infomercial access. You can buy 2:00
11 in the morning on that network affiliate an
12 infomercial. The question is audience quality at
13 2:00 in the morning.

14 Q Quality or number, I suppose, too? How
15 many people are watching, too?

16 A Quantity is an issue, but in many
17 markets, very large markets, for instance, there
18 is a substantial overnight audience.

19 I don't -- I don't want to mislead you
20 into believing that the only low-cost infomercial
21 inventory is on cable.

22 Q Okay. And how does one know, in
23 connection with cable -- or let me ask it
24 differently.

25 Does one know, in connection with a

□

1 given cable station, how many homes or people are
2 reached by that cable station?

3 A We know how many homes are wired, and
4 if that's what you mean by the word "reached" --

5 Q You mean wired for cable?

6 A Yes.

7 Q So you know, someplace in Wisconsin,
8 you can go somewhere to look up and determine,
9 for station whatever the four letters are, which
10 is a cable station, how many homes are wired in
11 that area for cable?

12 That's a long question, but I think you
13 understood what I was saying.

14 A There aren't really cable stations.
15 There are cable operators.

16 Q Okay.

17 A And the cable operator knows the homes
18 he's wired.

19 Q And how do you know? When you at
20 Ackerman McQueen are thinking about placing an
21 infomercial in a certain geographic area, and you
22 say, well, maybe I'm going to use such and such a
23 cable station, how do you know -- or do you know
24 how many homes are reached by that cable station?

25 A We know how many homes are wired.

□

1 Again, you're using --

2 Q What's the difference between -- I'm
3 not using the right terminology, but what's the

4 difference between being wired and being reached?

5 A I'm not -- I'm not trying to be
6 disrespectful here.

7 Q You're being helpful to me.

8 A Most people won't let us come into
9 their homes and monitor what they're watching.

10 Q Okay.

11 A And we don't consider somebody reached
12 unless we can be certain that they are watching.

13 Q Okay.

14 A All we know, for instance, is that your
15 house is wired, but we don't know whether you're
16 actually watching it or -- watching television or
17 not.

18 Q Well, whether the word know is the
19 right word, but aren't there surveys for regular
20 television, like the Nielsen survey, which will
21 tell you how many people are -- tell you in
22 quotes, I guess, how many people are watching a
23 given program?

24 A It's a very inexact science. It's the
25 best tool we have, but we have no way of knowing

□

35

1 precisely who is watching anything.

2 Q But is there anything -- recognizing
3 that the Nielsen service is a very inexact
4 science, is there any science related to that
5 that covers cable stations?

6 A Yes.

7 Q And what is that?

8 A I'm not -- you'd have to ask Ms.
9 Howard. She's the scientist in charge of that
10 activity.

11 Q Okay. So there is something that at
12 least you and I have heard of called Nielsen that
13 covers regular stations, you think there's
14 something that covers cable but you don't know
15 what it is?

16 A I think there's -- I think Nielsen has
17 some form of cable measurement capability. I
18 think there are other cable measurement services.
19 I think there are many different ways that all of
20 us are able to relatively accurately predict what
21 audience size is. But it's a -- when you get
22 right down to it, it is a guessing process.
23 Informed guessing, but guessing.

24 Q What generalizations can you provide
25 about the extent to which homes are wired in

□

1 different parts of the country, either
2 geographically or urban against rural or any
3 other generalization that you're able to provide,
4 wired for cable?

5 A The question is --

6 Q I'm asking you whatever generalizations
7 you're able to provide about the extent to which
8 there are variations in wiring for cable among
9 areas of the country, between urban and non-urban

10 centers, or anything else that you can think of.

11 A Here's the best generalization I can
12 give you. Anybody who wants access to cable
13 networks can get it one way or the other, either
14 by virtue of being wired or by a dish, either a
15 small dish or large dish technology.

16 I have a home in Colorado. I have a
17 large dish and I have a small dish, and I can --
18 there's nothing I can't get.

19 Q Okay. So wired, then, includes not
20 just literally a wire that comes under the ground
21 or through a pole, but also a satellite dish
22 which would enable someone to get cable?

23 A Right. In the context of an earlier
24 question as I understood it, you were interested
25 in our ability to know -- you were using the term

□

37

1 "reach."

2 Q Yes.

3 A I know when I buy from a cable operator
4 the audience that he claims he can deliver, that
5 he's basing that information based on the homes
6 that he's wired. He has no way of factoring in
7 what signals are being pulled out of the air by a
8 variety of dish technologies.

9 There are ways to get that. Most dish
10 access is by subscription, but it becomes so
11 complex, and the amount of people are so small
12 that it's just not worth the time.

13 Q Okay. Now I want to go back to the
14 questions I started on about the Heston/Union
15 infomercial. And I asked you about pods, and you
16 helpfully defined what those are.

17 what were the pods in Heston/Union?

18 A I did not look at that infomercial in
19 preparation for this, and I can't be sure that
20 the pods were in a single configuration, so I
21 don't know.

22 Q When you say you can't be sure that
23 they were in a single configuration, are you
24 testifying that it might be that something called
25 Heston/Union would be run, now hypothetically,

□

38

1 with pods A, B and C in one market and in another
2 market it might be run with A, B, B, and in
3 another market it might be run with A, B, D?

4 A There would not have been a D. I don't
5 think there was a D. But, yes, the answer is
6 basically the configuration may have been
7 different from market to market.

8 MR. SCHWARZ: Of course, all we can go
9 on is what you guys gave us, we take the --

10 MS. MITCHELL: That's what we received.

11 Q (By Mr. Schwarz) That leads to another
12 question. Recognizing that the pods can be
13 reshuffled or recombined -- or combined
14 differently, when you -- let me pull back a
15 little bit.

19 so I'm going to have to give you a little bit of
20 history.

21 We have been counseling the NRA for
22 some number of years to develop an infomercial
23 delivery system. It's a message length issue,
24 it's a content richness issue. And in that time
25 period, some prototype work was probably done.

□

40

1 And so the answer to your question is
2 sometime in the '80s. That's the answer to your
3 question, when did we first. That is an accurate
4 answer.

5 Q But that's when you started urging the
6 concept and doing prototype work?

7 A Yes.

8 Q Now, Mr. LaPierre testified that, in
9 his mind, he thinks of infomercials as starting
10 or becoming important -- I'm not quite sure which
11 one he said -- at the end of '99.

12 Did something happen at the end of '99
13 that would relate to increased emphasis on
14 infomercials?

15 A He finally agreed with us.

16 Q Okay. That's good. How do you gauge
17 the effectiveness of an infomercial?

18 A I personally believe that the
19 infomercial is the most complete way to
20 thoroughly explore a complex subject.

21 Q Yes, but so might be, you know, a 500

22 page book which maybe 1/2 of 1 percent of the
23 people in the country might read.

24 So other than an infomercial being the
25 best way, I think you put it, to thoroughly

□

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1 explore a complex subject, in what other way do
2 you gauge the effectiveness of infomercials,
3 let's say that you produce for the NRA?

4 A We rely -- I would say we rely almost
5 exclusively on an anecdotal process of
6 non-scientific informed opinion gathering.
7 People who are very knowledgeable about the issue
8 are asked for their opinion as to whether the
9 infomercial is successfully communicating,
10 period.

11 Q And is that done before the infomercial
12 runs so that it helps you decide that it is a
13 good infomercial or is that done after the
14 infomercial has run so you decide whether it's
15 been effective in attaining the objectives you've
16 set forth, or both?

17 A It certainly is a process we go through
18 in the -- in the development phase and in the
19 production phase. There are -- there are always
20 reports from the field, if you will.

21 Once an infomercial is running in a
22 market, there are always people locally who have
23 a reaction, and those reactions are -- are
24 certainly taken into consideration.

25 Q So are those reactions random and

□

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1 anecdotal or systematically obtained in any way?

2 A They're random and anecdotal.

3 Q Okay. In the development phase, do you
4 do something that's more than random and
5 anecdotal in testing, if I can use that word,
6 whether the infomercial will be effective?

7 A We have not. To my knowledge, we have
8 not.

9 Q Then what is it -- you said that during
10 the development phase, knowledgeable people are
11 asked. What actually happens with such
12 knowledgeable people?

13 A We're advocates of a point of view.

14 Q Uh-huh.

15 A And hypothetically, it goes something
16 like this. Let's make an infomercial, and let's
17 develop the structure this way --

18 Q Uh-huh.

19 A -- to make an argument that will be
20 persuasive. And here's how I think it should go.
21 What do you think?

22 Q Uh-huh.

23 A You're knowledgeable on the issues
24 being discussed, and your reaction is valuable.
25 You might say, I don't think it will work.

□

1 Q Uh-huh.

2 A You might say, I don't think it's
3 complete enough. You might say, I think it's too
4 confusing. You might say, I think it's fabulous.

5 Your opinion is important. It won't
6 necessarily change anything, but maybe it will.

7 Q That's in what I might call -- tell me
8 -- should I call that the concept phase of your
9 work?

10 A There's a -- let's call it the
11 development phase.

12 Q Okay.

13 A Everything's in development until it's
14 deployed. Until we send it out the door, it's
15 being developed.

16 Q And as you go between the earliest germ
17 of an idea to the thing you send out the door, is
18 there a point where people look at the actual
19 draft video?

20 A Yes.

21 Q Now I want to apply those thoughts to
22 the Heston/Union infomercial. With whom did you
23 discuss the concept of the Heston/Union video?

24 A Well, certainly -- certainly Wayne
25 LaPierre, certainly the people I mentioned

□

1 earlier.

2 Q Uh-huh.

3 A Probably some of the people that you
4 mentioned who I identified as being in support of
5 those individuals.

6 Q Uh-huh.

7 A There are a number of producers and
8 editors. I can give you names.

9 Q Within your organization?

10 A Within my organization.

11 Q What about outside of your
12 organization, other than Mr. LaPierre, with whom
13 did you discuss the concept that ultimately
14 became the Heston/Union infomercial?

15 A I didn't personally discuss it with Jim
16 Baker, but I'm reasonably sure that somewhere in
17 our organization, someone did. I'd have to --
18 I'd have to ask that question, but I think the
19 answer would be yes. I'm sure we consulted with
20 Jim.

21 Q What did Mr. LaPierre -- I think I
22 wanted to do a little something else before I
23 come back to that.

24 And as far as drafts of the video were
25 concerned, did you show drafts of the video -- is

□

1 drafts a proper word to use for a video, or what
2 word would you use?

3 A There are -- there are a variety of
4 different terms that would be appropriate.

5 Certainly draft would describe the written or
6 scripting process, if scripting is appropriate.

7 Q Uh-huh.

8 A We then would reach a stage where there
9 are initial edits, first cuts, if you will. And
10 those initial versions are circulated for
11 reaction.

12 Q Okay. And to whom at NRA, as a
13 generality, are those circulated; and to whom at
14 NRA, in fact, were initial edits, first cuts or
15 drafts in connection with Heston/Union
16 circulated?

17 A We -- we do not circulate anything to
18 anyone at NRA until Mr. LaPierre has seen it and
19 authorized it.

20 Q Uh-huh.

21 A At that stage, others within NRA are
22 probably shown edits, drafts, first cuts. I
23 mean, depending on what we've shown Wayne and
24 what he has authorized, then I'm sure other
25 people -- that my staff shows other staff at NRA

□

46

1 these materials. And it would be an impossible
2 process for me to precisely know.

3 Q That's okay. So Mr. LaPierre is
4 involved both in the concept and in the analysis
5 or reaction to the initial edits and first cuts?

6 A He is involved, yes.

7 Q Are you able to testify whether

8 Ackerman McQueen or Mr. LaPierre had the initial
9 idea of the concepts that ultimately became
10 Heston/Union?

11 A I believe that infomercial was
12 conceived in a process of mutual discussion that
13 identified many different alternative message
14 configurations, that being one of the ones
15 identified.

16 whether it came first out of someone at
17 Ackerman's head or whether it came out of Mr.
18 LaPierre's head or someone else at NRA, I just
19 don't know.

20 MR. SCHWARZ: Okay. There were two
21 words in that I want to use in the next question,
22 so maybe you could just read back to me what he
23 said.

24 (The record was read as requested)

25 Q (By Mr. Schwarz) Tell us about the

□

47

1 process of mutual discussions that identified
2 many different alternative message
3 configurations.

4 A The process is like a river. It
5 stretches back to 1981, and it proceeds as we
6 speak. The process is one of constant discussion
7 about this struggle that the Second Amendment
8 endures in this country.

9 Q Okay. So that's the broad concept that
10 you were discussing. What do you remember about

11 any more specific conversations with Mr. LaPierre
12 that led to the specific content of Heston/Union?

13 A I speak to Wayne almost every day.

14 Q Uh-huh.

15 A There are exceptions, because I take
16 vacations and he takes vacations.

17 Q Uh-huh.

18 A Although he has no reluctance to
19 interrupt mine. We speak many days, on numerous
20 occasions, we'll speak throughout the day.

21 I think the answer to your question is
22 that that infomercial emerged over a period of
23 time. The idea was conceived in fragments of
24 telephone conversations, direct meetings,
25 face-to-face meetings, video conferences,

□

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1 discussions with surrogates.

2 It is a very intricate process. There
3 is not a single strategy development meeting that
4 everyone attends on a given weekend and all the
5 decisions are made in that time. It just doesn't
6 work that way.

7 MR. SCHWARZ: All right. So let's take
8 a 10-minute break for whatever reasons one wants
9 to take a break, and we'll come back, and then
10 I'm going to ask you questions about what pods
11 are in that particular Heston/Union infomercial.

12 (Break from 9:13 to 9:19)

13 MR. SCHWARZ: We're back to play for

McQueen Dep

14 the witness the document called NRA ACK 00018.
15 And it's headed, in what we were furnished by the
16 NRA, National Rifle Association Union/Heston
17 infomercial online master with number 10/27/00.

18 And so we'll play this now just on the
19 fast forward basis so it can remind you of what
20 the pods were. And can we just deem it having
21 been marked as McQueen Exhibit 1.

22 Is that okay, Larry?

23 MR. BALL: That's fine.

24 (McQueen Exhibit Number 1 deemed marked
25 for identification purposes)

□

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1 MR. SCHWARZ: Say how fast he should do
2 it for your purpose.

3 (Video shown)

4 Q (By Mr. Schwarz) So having reviewed
5 that fast forward, I guess the question is: what
6 are the pods that are in Heston/Union?

7 A Okay. They are an A, B, A
8 configuration. I'm going to give them my names
9 for the purposes of this discussion.

10 Q Sure.

11 A That does not mean those are the
12 accurate names as they're reflected in any
13 documents we've provided. I'm sure our people
14 gave them a variety of different names.

15 Q Okay.

16 A But I'm going to call it pod A, the

17 Ginny pod. I'll explain that if you ask me.

18 Q G-I-N-N-Y?

19 A Right. And I'm going to call pod B the
20 Heston pod.

21 Q So now let's ask you some more about,
22 what is the Ginny pod?

23 A The Ginny pod is a gathering of citizen
24 discourse that was collected by Ginny Simone, the
25 producer of the pod.

□

50

1 Q And who is Ginny Simone? who does she
2 work for?

3 A She works for the Mercury Group. She
4 is a reporter, news writer, and news anchor.

5 Q And she did certain interviews of
6 people, and from among those, certain excerpts
7 were selected and put in the Ginny pod; is that
8 correct?

9 A That's correct.

10 Q Were those people all union members?

11 A I don't -- I don't know. There were no
12 -- there were no instructions given to Ginny --
13 to separate the people she was talking to in a
14 union and non-union context.

15 So when you say were they all union
16 members, I would have no way of knowing. I never
17 did ask her that.

18 Q well, my question had a little bit of
19 imprecision in it. I'm not now talking about the

20 universe of people she talked to, but is the
21 universe of the people on screen in the Ginny pod
22 union members?

23 A Is the universe of people --

24 Q On the screen.

25 A -- on the screen? I think you're

□

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1 asking me if every one of the people is a member
2 of the union, and I don't know the answer to
3 that.

4 Q Okay. So she did a lot of interviews,
5 out of which certain pieces are excerpted?

6 A That's correct.

7 Q And I certainly don't expect you to
8 know with any precision the answer to this
9 question, but if that was eight minutes, the A
10 pod was eight minutes -- is that what it --

11 A Generally.

12 Q If that was eight minutes, do you have
13 any idea how many minutes of total interviews she
14 would have taken?

15 A I have no idea.

16 Q Except it would be a lot more than
17 eight minutes, I take it?

18 A I have no idea.

19 Q Okay. Now, the B pod, Heston pod,
20 other than referring to it as Heston pod, what is
21 your memory as to what is in that pod?

22 A It is a review of Al Gore's history

23 with the Second Amendment.

24 Q Unless your eyes are fantastic, you
25 wouldn't have picked this up, but I can tell you

□

52

1 that in what you call the Heston pod, there is a
2 reference to and a quotation from -- and on the
3 screen the quotation is included, as well as in
4 the words that are being spoken -- there's a
5 reference to a letter written by someone in the
6 Justice Department on August 22, 2000.

7 A, are you familiar with that fact?
8 And then I'll have a B if you're not.

9 A Generally. If you want me to speak
10 more specifically, I'll have to watch the exact
11 spot that you're referring to.

12 Q So what's the generally that you are
13 familiar with?

14 A You are -- you are -- you are reminding
15 me of a part of the infomercial that is just
16 vague enough to me that I can't be precise. I'd
17 like to be, and if you'll -- if you want me to
18 be, I'll try to be, but I'll have to watch it.

19 Q Okay. We might do that later. But let
20 me represent to you --

21 MR. SCHWARZ: And you would correct me
22 if I'm wrong --

23 Q (By Mr. Schwarz) -- that there is a
24 reference in that pod to a letter written by a
25 Justice Department official to someone in the

□

1 NRA, and the letter's dated August 22. So if you
2 will accept my representation that it's in there.

3 A I will.

4 Q Okay. Now, having that in mind and
5 having in mind the general time it takes to go
6 from concept all the way to final version,
7 roughly how long would it take to go from a
8 concept that includes using a letter that is
9 dated August 22 to the final version which here
10 has the date on -- Ackerman 00018 has the date of
11 10-27-00 on it?

12 A The question is how long would it
13 take --

14 Q Let me see if I can generalize. It
15 might help you a little bit. In general, between
16 the germ of an idea that becomes a concept that
17 is then discussed back and forth, that then
18 begins to be produced in video form, and
19 ultimately is in a final edit or whatever your
20 word was, and then that's reviewed and then it's
21 run, in general, how long does it take between
22 the original germ of an idea and having something
23 which is distributed to stations?

24 A There is no answer to that question
25 that would -- that anyone else in my business

□

1 would agree to.

2 Q Okay.

3 A We can take a germ of an idea and have
4 it thoroughly aired, thoroughly discussed,
5 executed and on the air in 24 hours.

6 Q Okay. So can you give us any testimony
7 at all as to your recollection of how long it
8 took to put together the Heston/Union pods that
9 were ultimately run as the Heston/Union
10 infomercial?

11 A No, because I can't -- I couldn't, no
12 matter how hard I tried, figure out when it
13 started. It implies that there was a meeting --
14 your question implies that there was a
15 beginning --

16 Q Uh-huh.

17 A -- that I could actually recall.

18 Q Uh-huh.

19 A And I don't know when that would be.

20 Q Well, of course, would you agree the
21 best evidence of when this infomercial was run
22 would be in the invoices that you, Ackerman
23 McQueen, paid and then passed on to the NRA for
24 repayment?

25 A They would -- they would reflect the

□

1 process of deciding to actually put it on the
2 air. They would not reflect the process of
3 developing the concept for the work.

4 Q Yes. But I was now saying if I was
5 trying to determine when it was put on the air,
6 the best evidence of that would be the bills that
7 you received from stations all over the country?

8 A Right.

9 Q You probably saw just in the fast
10 forward there, there are a number of pictures of
11 Al Gore that are on the screen.

12 A Yes.

13 Q who selected those pictures?

14 A Somebody or some amalgam of somebodys
15 in my firm. I don't know.

16 Q were those pictures designed to make Al
17 Gore look attractive or unattractive?

18 A They -- they were designed to reflect
19 the same kind of spectrum of images that a photo
20 editor at a newspaper would choose from in a kind
21 of a similar effort of reviewing an individual's
22 point of view.

23 Q well, you're aware, as a newspaper
24 reader, that sometimes photo editors select
25 attractive pictures of the subject of the article

□

1 and sometimes they select unattractive pictures;
2 right?

3 A Yes.

4 Q All right. And would you agree with me
5 that the pictures of Al Gore that were selected
6 for the Heston/Union were unattractive?

7 A No, I don't think I would -- I don't
8 think that I would agree with the word
9 "unattractive." If you would --

10 Q What word would you use?

11 A I think -- I think they were in keeping
12 with -- I think they paralleled the language that
13 he was quoted as having used. Let me --

14 Q Go ahead.

15 A If I might amplify.

16 Q Please do.

17 A A good photo editor will try to put an
18 appropriate image with the quote or the content
19 of the individual's commentary. An angry comment
20 should be accompanied by an angry photograph, not
21 with a --

22 Q A beaming photograph?

23 A Yeah.

24 Q And just speaking generally, from the
25 point of view of the NRA, who was your client,

□

1 the Heston pod is designed to help persuade
2 viewers that Mr. Gore's position on the Second
3 Amendment is wrong; correct?

4 A It is designed to remind viewers that
5 Mr. Gore has a long history of antagonism to the
6 Second Amendment.

7 Q And, thus, from the point of the view
8 of the NRA, his position is wrong?

9 A Again, I'm not going to split the hair.

10 I'll generally agree with the word "wrong." It
11 is -- we won't split that hair.

12 Q When I was clerking in the Second
13 Circuit, I was right across the hall from Leonard
14 Hand, and he died at the end of that year. But I
15 became friends with him.

16 This probably is a better story for
17 lawyers, but it's also a good story for
18 communicators.

19 So he's a great writer. So I said,
20 tell me the secrets of your great writing. He
21 said, I'll take my first draft and I'll X out
22 every word that has a Norman French origin and
23 substitute a shorter Anglo-Saxon word. And it's
24 not bad advice in my field and your field.

25 who decided that the video would

□

1 include in, I think it's three, maybe four
2 places, a banner that said Election 2000 in the
3 video?

4 A Probably Tim Oden.

5 Q At Ackerman?

6 A Uh-huh.

7 Q And Tim Oden, you described what his
8 function was, but say it again for here.

9 A He's the creative director in charge of
10 the creative product development for the National
11 Rifle Association client. We have several
12 creative directors. He happens to be the one

13 deployed to the NRA relationship.

14 Q Okay. Were there references to Mr.

15 Gore in the Ginny pod?

16 A I don't recall.

17 Q Would you be surprised if I told you

18 that there were -- let me ask the question a

19 little differently.

20 Are you able to testify in any way

21 about approximately how many references to Mr.

22 Gore are in the Heston/Union infomercial?

23 A No.

24 Q If I told you that there were more than

25 50 references to Gore in the Heston infomercial,

□

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1 the whole thing, would that surprise you?

2 MR. BALL: Did you ask about the Heston

3 pod or the whole infomercial?

4 MR. SCHWARZ: No, the whole thing.

5 THE WITNESS: Would it surprise me?

6 Q (By Mr. Schwarz) Yes.

7 A No.

8 Q And if I told you there were more than

9 70 references to Mr. Gore, would that surprise

10 you?

11 A Again, I don't want to argue over the

12 word "surprise." No, the answer to your question

13 is no, it would not surprise me.

14 Q Do you run infomercials in a given

15 market on more than one day, as a generality?

16 A As a generality, yes.

17 Q And what's the reason for that?

18 A The more -- the more days in a
19 schedule, the more opportunity for them to be
20 seen.

21 Q Okay. And do you reach -- so you want
22 to get a certain critical -- what word would you
23 use? I would use critical mass, but it's
24 probably inept.

25 what word would you use about how often

□

60

1 you want to repeat an ad in a given media market
2 in order to reach the point that you desire to
3 reach?

4 A You'd have to first ask me the question
5 on the basis of -- you'd have to define what the
6 point is.

7 In other words, in our business, we
8 have two standards by which we determine how much
9 placement is necessary. We want to reach
10 audience, but we also want to achieve a level of
11 frequency. So I want to reach you with this
12 message, but I probably want you to see it more
13 than once.

14 Q Uh-huh.

15 A So the determination of what is going
16 to be effective is based on a combination of how
17 many people do we want to reach and how often do
18 we want them to see it. That's the point that

19 you mentioned earlier.

20 Q Okay. So it's a formula that has two
21 elements in it?

22 A Right.

23 Q How many people you want to reach and
24 how often.

25 So, again, at that level of generality,

□

61

1 what are you able to say is the number of times
2 in a given market that you want to run an
3 infomercial to have it have the effect you seek
4 it to have?

5 A You'd have to be more specific, because
6 in a very small market running it a few times --

7 Q Uh-huh.

8 A -- will almost ensure that everyone
9 sees it all the time.

10 Q Okay. So my question -- there are too
11 many variables to answer my question in a
12 simple-minded way?

13 A Right. I would not --

14 Q It's a simple-minded question, so it
15 would not be --

16 A I wouldn't have put it that way, but
17 since you did.

18 Q I'm happy to put it that way.

19 Take Gainesville, Florida. Are you
20 familiar at all with the broadcast market in
21 Gainesville, Florida?

22 A Not at all.

23 Q So if I were to ask you questions about
24 your familiarity with particular markets, would
25 they all be that you're not familiar with them?

□

62

1 A That is not my area of expertise.

2 Q Okay. If I were to represent to you
3 that, based on looking at your invoices, with one
4 week to go before the election of 2000, the
5 Heston/Union ad was run in Gainesville, Florida;
6 Detroit, Michigan; St. Louis, Missouri; Grand
7 Rapids, Michigan, those places, what
8 characteristics come to your mind that bring
9 together Gainesville, Florida; Michigan, Detroit
10 and Grand Rapids; and St. Louis, Missouri?

11 A In someone's estimation, it would
12 appear that the deployment of the message will
13 enrich public understanding of the issue.

14 Q And let me be more pointed in my
15 question. Weren't those states, Florida,
16 Michigan, and Missouri, states which you
17 understood to be states that were battleground
18 states between Gore and Bush in the election of
19 2000?

20 MR. BALL: Before he answers that, are
21 you representing to him that those are the only
22 markets in which that ad was run during the week?

23 MR. SCHWARZ: During the last week, I
24 am. Based on their invoices.

25 MR. BALL: Based on their invoices.

□

63

1 Okay.

2 THE WITNESS: Again, I want to be
3 precise. Are you telling me those were
4 battleground states, or are you asking if, in my
5 opinion, they were battleground states, or to my
6 informed --

7 Q (By Mr. Schwarz) I'll do all of those.

8 A, they were battleground states.

9 A Okay.

10 Q That's in all the reports that state
11 what battleground states were. But I'm really
12 going at your understanding.

13 was it your understanding -- I'm now
14 focusing on that last week -- that those ads were
15 run and intended to be run in battleground
16 states?

17 A It is my understanding that those
18 markets were among the battleground states that
19 most people in the country, most informed people
20 in the country considered to be critical to the
21 election.

22 Q Okay. Then if I were to go back
23 earlier than the last whatever it was, number of
24 days --

25 MR. SCHWARZ: I want to make sure I

□

1 have the right chart so that I can be fair in
2 answering your question.

3 Q (By Mr. Schwarz) If I go back earlier
4 than a week to go, I would add the state of West
5 Virginia. That was also a battleground state;
6 correct?

7 A Yes.

8 Q And I would add the state of Wisconsin,
9 that was also a battleground state; correct?

10 A Yes. Again, that's been my difficulty
11 in understanding your question, because there
12 were many battleground states.

13 Q Okay.

14 A The limitation is not defined by our
15 media buying as to which were battleground states
16 or not battleground states.

17 Q I'm just reading from a chart that
18 deals with your invoices, and I'm asking you --
19 which says, by date, when this ad was run.

20 A Right.

21 Q And I'm going backwards from the
22 election.

23 A Right.

24 Q So we've agreed that West Virginia was,
25 in fact, a battleground state?

□

1 A That's correct.

2 Q And Wisconsin also?

3 A I don't -- I don't recall. I know we
4 -- I know we did not limit our buy to just
5 battleground states. I know we went into
6 California, for instance.

7 Q You did go into California, but I'm
8 going backwards from the election and going to
9 take you all the way back until we reach a state
10 which you might say isn't a battleground state.

11 A Here's the problem we're going to have
12 in that your definition of a battleground state
13 and my definition of a battleground state, my
14 personal definition of a battleground state, does
15 not qualify what somebody else in my company may
16 have considered a battleground state and what
17 Wayne LaPierre may have considered a battleground
18 state. So we get into this kind of foggy
19 discussion.

20 Q Well, was it your --

21 A We did not -- the buy was not limited
22 to just battleground states.

23 Q Am I not correct -- the documents
24 establish this, but let me ask you.

25 Am I not correct that the overwhelming

□

66

1 weight of the locations in which you ran
2 Heston/Union was in battleground states?

3 A I don't know that I will agree with
4 overwhelming weight without a very precise

5 analysis process. And at the conclusion of that,
6 I might agree that your overwhelming weight --

7 Q Characterization.

8 A -- is accurate, but I can't at this
9 time.

10 Q Okay. I'm going backwards in time
11 here. Was Tennessee a battleground state?

12 A In my opinion, it was a battleground
13 state. That's in Angus's opinion.

14 Q Okay. Did you ever have any
15 discussions -- I could go back further in the
16 list, but I think we've done enough for the
17 present purposes.

18 Did you have any discussions with Mr.
19 LaPierre about the importance of running
20 Heston/Union in various battleground states?

21 A Yes.

22 Q And what did he say to you and what did
23 you say to him?

24 A Let me -- let me try to answer you by
25 giving you a hypothetical snapshot of what these

□

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1 discussions sound like.

2 "Wayne, do you think Gore is going to
3 carry his home state?" Wayne says, "wouldn't it
4 be embarrassing if he loses Tennessee?" I said,
5 "Do you really think it's possible? Don't you
6 think he's going to go in there and spend the
7 last week -- I mean, he can't -- he can't

8 possibly lose Tennessee. He'll never run
9 successfully for dog catcher any place if he
10 loses Tennessee." And Wayne says, "Yeah, I think
11 -- I think he'll pull it out."

12 Now, at that moment in time, 14
13 calendar days before an election in a
14 conversation snippet that I just gave you, when
15 we both hang up, which one of us thinks of
16 Tennessee as a battleground state or as a not
17 battleground state? The conversation doesn't go
18 that way. It doesn't -- it doesn't work the way
19 you think it works.

20 Q That, as you say, was a hypothetical
21 conversation?

22 A That was a hypothetical conversation.

23 Q Did you have any actual conversations
24 with Mr. LaPierre in which he mentioned his
25 desire to have Heston/Union run in battleground

□

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1 states? I'm not saying exclusively in
2 battleground states, but in battleground states.

3 A Yes.

4 Q And what did he tell you in that
5 connection?

6 A I can't recall precisely.

7 Q That's okay. In general, what do you
8 recall?

9 A He believes that there would be
10 battleground states, his definition of a

17 important consideration in determining where we
18 were going to run it.

19 Q You're not suggesting, are you, that
20 it's a coincidence that when I work backward from
21 the election -- I could keep going.

22 A No, I understand.

23 Q -- they're in battleground states?
24 You're not suggesting that's a coincidence, are
25 you?

□

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1 A No, I'm not suggesting it's a
2 coincidence. I'm trying to explain that there
3 are a lot of issues that come into play as to --
4 as to how we select where these infomercials ran.

5 Q Mr. LaPierre testified in the
6 deposition he gave on the day after Labor Day
7 that one of the factors that he took into account
8 was his hope that an impact of the ads run on
9 behalf of NRA, including the infomercials, would
10 be to affect votes in close states. That was
11 Mr. LaPierre's testimony.

12 Do you disagree with that in any way?

13 A No.

14 Q Okay. Are you aware of any other --
15 the one we've looked at, Heston/Union, I believe
16 the count is over 70 references to Al Gore.

17 Are you aware of any other infomercial
18 run by the NRA in the 60 days prior to the
19 November 2000 election that also refers to Al

20 Gore?

21 A No.

22 (McQueen Exhibit Number 2 marked
23 for identification purposes and made a
24 part of the record)

25 Q (By Mr. Schwarz) If I could mark as --

□

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1 this would be McQueen Exhibit 2 -- a memorandum
2 dated August 7th, 2000, from Brian Krueger to
3 Melanie Hill with copies to a lot of people,
4 including Mr. McQueen, headed, quote, NRA
5 National Election Media Recommendations.

6 MR. BALL: Just for the record, before
7 he begins testifying about this document, were
8 the handwritten notations on the document present
9 when produced?

10 MR. SCHWARZ: They were. They were.
11 If I didn't say the Bates numbers, it's NRA-ACK
12 17913 through 17917.

13 MS. MITCHELL: Can you say that again?

14 MR. SCHWARZ: 17913 through 17917. And
15 it was, I think, just produced to us within the
16 last week or something like that.

17 MS. MITCHELL: You don't have a copy of
18 that?

19 MR. BALL: We can share.

20 Q (By Mr. Schwarz) You've got in front
21 of you Number 2.

22 A Oh, I'm sorry.

23 Q Do you see your name as a copy-ee?
24 A I do.
25 Q Do you have any reason to believe you

□

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1 did not receive this document?
2 A I have no reason to believe that my
3 office did not receive it.
4 Q Okay. Do you recall seeing the
5 document?
6 A No.
7 Q So you don't recall if you reacted to
8 it in any way?
9 A This is not the kind of document that I
10 would -- that would normally make it to my desk.
11 Q Because?
12 A In my company, people believe that my
13 name needs to be cc'd on damn near everything,
14 and I -- I get a lot of paper.
15 Q Okay. So I asked you -- you mentioned
16 Ms. Hill. I asked you about Mr. Krueger before
17 -- Kriger, you said his name was?
18 A Kreeger, double E's, Kreeger.
19 Q Ms. Howard and so forth, you've
20 identified all these people.
21 A Right.
22 Q Do you see the heading "objectives"?
23 A Right.
24 Q And it has four bullets there. Do you
25 see those?

□

1 A Yes.

2 Q The first of which is, quote, Influence
3 outcome of presidential election and other key
4 congressional seats in 10 battleground states,
5 close quote. Do you see that?

6 A I do see it.

7 Q The next one is, quote, Blunt Al Gore
8 strategy of targeting suburban 'soccer' moms. Do
9 you see that?

10 A I do.

11 Q Third bullet is "Mobilize
12 traditionalists, shooters and hunters." The
13 words "mobililize traditionalists" are circled.
14 Do you see that?

15 A I do.

16 Q Then the fourth is "Maximize
17 presidential exposure prior to presidential
18 election." Do you see that?

19 A I do.

20 Q Did anybody ever tell you those were
21 not among the objectives of the people at NRA
22 working on materials for NRA during the year
23 2000?

24 A Did anybody tell me they were not the
25 objectives. No.

□

1 Q Okay. You're not able, I take it, to
2 recognize the handwriting that's at the bottom of
3 the first page?

4 A I am not.

5 Q Now I'd like to mark as McQueen Exhibit
6 3 another document. It's from Jay Finks,
7 F-I-N-K-S, to Melanie Hill dated August 11, 2000.

8 (McQueen Exhibit Number 3 marked
9 for identification purposes and made a
10 part of the record)

11 Q (By Mr. Schwarz) And it says, "RE:
12 NRA Media Recommendation Additional States." And
13 it is NRA-ACK Bates stamps 17918 through 17921.

14 Your name is on it again. I think that
15 -- do you have any reason to believe your office
16 didn't get this document?

17 A No.

18 Q And I take it you would testify you
19 have no recollection of the document?

20 A No recollection.

21 Q And Jay Finks is the last person on the
22 list of the cc's in the prior document, and he's
23 the author of this one.

24 Remind us again what Jay Finks'
25 responsibilities were.

□

1 A He was a media buyer who reported to
2 Mr. Krueger who reported to Ms. Howard.

3 Q who worked with Ms. Hill?

4 A Ms. Hill is the hub of the wheel, and
5 so that performance of the media department
6 headed by Ms. Howard ultimately was monitored by
7 Ms. Hill.

8 MR. SCHWARZ: Okay. Just off the
9 record.

10 (Off the record)

11 Q (By Mr. Schwarz) Have you ever been
12 examined under oath before?

13 A Yes.

14 Q And in what context? I don't need much
15 detail on that.

16 A Civil litigation.

17 Q And it didn't involve the NRA -- or did
18 it involve the NRA?

19 A I have no recollection of any NRA-
20 related deposition. In 22 years, I have no
21 recollection of it.

22 Q How did you first start working with
23 NRA? And I intentionally use the word "with"
24 instead of "for." Somehow I think that's a
25 fairer word.

□

1 A In 1981, Harlan Carter, the executive
2 vice-president of the National Rifle Association
3 at the time, was looking for an advertising
4 agency.

5 And my dad, a life member of the NRA,
6 and a man named Jack Powers, a life member of the

7 NRA who had worked his lifetime at the Daisy Air
8 Rifle Company, and Harlan all got together in
9 Washington.

10 And out of that -- out of that initial
11 discussion came the relationship. There was a
12 process that everybody went through. But three
13 old friends got together, basically, and it led
14 to a formal relationship.

15 Q Okay. You've said something that
16 triggered in my mind a desire to find another
17 document. And that's not your fault. You
18 shouldn't feel unhappy about that. But let's
19 take just a five-minute recess, and then I can
20 find the other document.

21 (Break from 10:11 to 10:23)

22 Q (By Mr. Schwarz) We got something from
23 a search, I think for your name or Ackerman
24 McQueen or something like that. We got a lot of
25 things.

□

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1 But one of the things we got related to
2 a 1995 convention in Las Vegas of, quote, Firearm
3 Manufacturers and Pro-gun Organizations meeting
4 for the SHOT, Shooting Hunting Outdoor Trade
5 Show, the annual trade show for America's gun
6 industry.

7 Are you familiar with that
8 organization?

9 A Right.

10 Q And without refreshing your
11 recollection at all, are you aware that your
12 firm, Ackerman McQueen, appeared at that annual
13 trade show sometime prior to January 20th, 1995,
14 and conducted a seminar on dealing with the
15 media?

16 A Am I aware. Our firm often addresses
17 that issue with a variety of groups.

18 Q Uh-huh.

19 A To that extent, I'd be aware that we
20 would have appeared in front of that group. I
21 have no recollection of the event you're
22 referencing.

23 Q Okay. Let me read it to you. I'd mark
24 this, but it has all kinds of my notes on it that
25 are either scurrilous or irrelevant. Certainly

□

1 irrelevant.

2 But let me just read to you the
3 references to your firm. One is at the beginning
4 of this printout that says --

5 MS. MITCHELL: Could you identify what
6 you're reading from?

7 MR. BALL: Why don't you identify that
8 document more particularly.

9 MR. SCHWARZ: I'm reading something
10 called press release index or release, Friday,
11 January 20, 1995. And it is headed, quote, Gun
12 industry pro-gun lobbying organizations meet at

13 Las Vegas SHOT shall preview new products and
14 hone marketing and press strategies.

15 MR. BALL: Where did that document come
16 from?

17 MR. SCHWARZ: It comes from somebody
18 who knows how to push buttons and get certain
19 information. It is generated by an organization
20 called Violence Police Center that is -- not
21 generated, but they are there ones who put out
22 this press release.

23 MR. BALL: Is there a web address at
24 the bottom of the page?

25 MR. SCHWARZ: Yes, there is.

□

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1 [HTTP://www.vpc.org/press/9501shot.htm](http://www.vpc.org/press/9501shot.htm).

2 MS. MITCHELL: Is that B as in boy, BC,
3 or V as in victory?

4 MR. SCHWARZ: No, V as in victory, to
5 coin a word from your organization.

6 Q (By Mr. Schwarz) So there are two
7 references to your firm. This is all a preamble
8 to a related line of questioning.

9 "In addition to being the showcase for
10 new products and technology, workshop topics
11 would include how to increase firearm sales to
12 women, as well as a National Rifle Association
13 sponsored seminar on how to interact with the
14 news media, period."

15 That's one reference to your firm.

16 That's one reference that leads up to the
17 reference to your firm.

18 And then on the second page of this
19 printout, there is a bullet that says, "Dealing
20 with the media: Promotional material promises
21 'learning what to say and what not to say, how to
22 act and how not to act when interviewed on
23 television or radio can make all the difference
24 between making you look like a well-meaning
25 concerned expert, or something else.' Despite

□

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1 the National Rifle Association's constant
2 assertions that it represents gun owners and not
3 the gun industry, the program is conducted by the
4 NRA's public relations firm of Ackerman McQueen
5 public relations and is provided courtesy of the
6 NRA."

7 So you did testify that your firm does
8 provide a service of educating people on how to
9 deal with the media; correct?

10 A We speak to groups of all kinds about
11 media relations. Dealing with the media is not a
12 term I would use.

13 Q Media relations is fine. Media
14 relations is a better term.

15 So you do speak to people on that
16 subject. Do you have any reason to doubt that
17 Ackerman McQueen, in fact, provided that
18 information to the trade show for America's gun

19 industry?

20 A I have no -- I have no way of reaching
21 any conclusion. I don't know whether I believe
22 it or doubt it.

23 The Violence Policy Center is a very
24 virulent opponent of NRA, and what they say in a
25 press release is certainly nothing I would rely

□

82

1 on.

2 Q Okay. Now going more generally, what
3 do you understand the NRA's relationship to
4 corporations to be? That's a very broad question
5 and intended as a very broad question. Let me
6 narrow it a little bit.

7 NRA, itself, is a corporation; right?

8 A NRA is, in a legal sense of the word,
9 is a corporation.

10 Q Now I'm saying, what do you understand
11 NRA's relationship to business corporations to
12 be?

13 A It's so broad I don't know how to
14 answer the question.

15 Q Because you're saying they buy
16 products, so forth and so on. So it is too
17 broad.

18 Are you aware that NRA gets some money
19 from business corporations for use in their
20 programs, in the NRA programs?

21 A I am -- I am not informed on that

22 issue.

23 Q Okay. So if I --

24 A I have no direct knowledge.

25 Q All right. That's okay.

□

83

1 Have you drafted a written affidavit
2 for use in this case?

3 A No.

4 Q Have you been working on a written
5 affidavit for use in this case?

6 A I don't know what will end up being
7 written. I don't know if conversations I've been
8 having with NRA attorneys or my own attorneys
9 will result in a written affidavit.

10 Q Okay.

11 A No one has prepared me.

12 Q I want to be careful not to ask you a
13 question which causes you to say or blurt out
14 anything about conversations with attorneys. So
15 don't do that.

16 But I think I can ask you some yes or
17 no questions --

18 MR. SCHWARZ: And you've got to decide
19 whether they're okay.

20 Q (By Mr. Schwarz) Just answer these yes
21 or no. Have you been told that you might be
22 asked to contribute an affidavit to this case?

23 MR. BALL: I'm just going to object to
24 the extent that it calls for him to discuss the

25 contents of any conversation between he and I.

□

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1 I guess I want to say this would be a
2 standing objection, and instruct him not to
3 answer to the extent it reflects any
4 conversations between Mr. McQueen and I.

5 And he may be able to answer without
6 reflecting on any conversations he and I have
7 had, but --

8 THE WITNESS: Can we go off the record
9 for just a moment?

10 MR. SCHWARZ: Sure. If you want to
11 talk with --

12 (Off the record from 10:33 to 10:36)

13 Q (By Mr. Schwarz) I'm not going to ask
14 you any questions about any communications you've
15 had with counsel, and I'm not even going to ask
16 you about communications you've had with Mr.
17 LaPierre because, frankly, I think those would be
18 sort of affected by his conversations with
19 counsel.

20 But have you had any conversations with
21 anybody within Ackerman McQueen about pulling
22 data for use in a potential affidavit by you?

23 A No.

24 Q Okay. I'd now like to mark as -- would
25 you mark as McQueen Exhibit 4 a one-page document

□

1 Bates stamps NRA-ACK 14190, also NRA 10573,
2 headed NRA Heston DOJ Radio:60.

3 (McQueen Exhibit Number 4 marked
4 for identification purposes and made a
5 part of the record)

6 MR. SCHWARZ: which is the one I gave
7 you? I think I'm screwing up here.

8 MR. BALL: I've got 14191. Is that
9 what you intended to give me?

10 MR. SCHWARZ: 14190?

11 MR. BALL: I've got 14191.

12 MR. SCHWARZ: I screwed up. You keep
13 that because you're going to get it. Here's
14 14190.

15 MR. BALL: And you've got 14190.

16 MR. SCHWARZ: He has 14190.

17 MR. BALL: Okay.

18 MS. MITCHELL: And that's Number 4;
19 right?

20 MR. SCHWARZ: Yes.

21 MS. MITCHELL: This is Number 5?

22 Q (By Mr. Schwarz) Have you got McQueen
23 Exhibit 4 in front of you?

24 A Yes.

25 Q Okay. This is a PAC ad, a script for a

□

1 PAC ad; correct?

2 A Yes.

3 Q I can represent to you that we have,
4 from the NRA, the audio for this ad so that it
5 did run.

6 So let's look at the headings up at the
7 top. NRA Heston DOJ Radio:60. So you guys gave
8 it the code or the name of Heston DOJ?

9 A I would assume we did.

10 Q And then if you look over to the right
11 where it says RV(1)10/13/00(TO)?

12 A Uh-huh, yes.

13 Q Does RV means revised version?

14 A It means first revision. There's an
15 original draft, and this is a first revision.

16 Q So if I saw RV 2, I would know that was
17 the second revision and so forth?

18 A That's correct.

19 Q Mr. LaPierre said that these scripts
20 would, among other things, from his perspective,
21 they would bounce back and forth between your
22 office and his office, and he would get a chance
23 to look at them. I suppose all sorts of people
24 might make comments to change from version 1 to
25 the final one?

□

87

1 A That's a very good assumption.

2 Q Did you, yourself, get involved at that
3 level of detail or not?

4 A With this particular radio commercial,

5 I probably had very limited involvement. I
6 remember seeing this, but I don't remember making
7 a comment one way or the other on it.

8 Q In general, does your firm do most of
9 the NRA's PAC ads or does another firm called
10 Edmonds do most of the PAC ads?

11 A Edmonds historically has done most.

12 Q Okay. And what's the reason for that
13 division of responsibility between you and your
14 firm and the Edmonds firm?

15 A In my opinion, Jim Baker has
16 historically, while he was running ILA,
17 historically has been more comfortable with the
18 Edmonds firm.

19 Q why?

20 A I don't know.

21 Q So as a generality, they run more of
22 the PAC ads and you run more of the non-PAC
23 materials that come out paid for by NRA.

24 why was this one, which is a PAC ad,
25 done by your firm?

□

88

1 A I don't know. We -- we always have
2 done some. And I don't know why we did this one.

3 Q Now, it was this ad that led me to say
4 it wouldn't be an effective ad to -- led me to
5 say with Mr. LaPierre it wouldn't be an effective
6 ad to say -- have Charlton Heston say, for 120
7 times, please vote freedom first, vote George W.

8 Bush for president. You said you could imagine
9 it would be but you never thought of it, that
10 never had been done.

11 But let me talk with you about the
12 paragraphs that led up to the conclusion please
13 vote freedom first, vote George W. Bush for
14 president. There are one, two, three, four --
15 five substantive paragraphs that lead up to the
16 vote-for conclusion; right?

17 A Right.

18 Q Now again, speaking generally -- and
19 speaking generally about advertisements and not
20 limiting ourselves to political advertisements
21 that say vote for -- is it correct that in the
22 advertising business, you want to deliver some
23 kind of substantive message or image before
24 coming to the conclusion like vote for or buy
25 such and such a product; is that right?

□

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1 A Again, with all respect, the question
2 is so --

3 Q I know it is.

4 A -- is so broad that you make me -- you
5 force me to sit and agree with something that I
6 would -- I would, in ordinary circumstances --

7 Q But not when it's being written down?

8 A well, it's like saying the sky is blue;
9 correct? well, the answer is that is correct,
10 the sky is blue. Somewhere it's always blue.

11 Q Yeah. But just speak generally, let's
12 talk about commercial ads. Your firm does some
13 commercial ads.

14 A (Nods head)

15 Q Do you have Coke as a client or Nike as
16 a client?

17 A No.

18 Q Let me take those two and draw upon
19 your general familiarity with advertising
20 campaigns.

21 I mean, Coke, when they're advertising
22 Coke, doesn't end up with a tag line saying buy
23 Coke, does it? It talks Coke is it or some kind
24 of slogan like that after having delivered a
25 message of happy people or some such thing.

□

90

1 Isn't that correct?

2 A Not all the time. In retail
3 configurations, Coca-Cola will provide money,
4 advertising dollars, to retailers so that, at the
5 end of their advertisements, the retailer can say
6 buy a six-pack of Coca-Cola and get a second
7 six-pack free or something like that.

8 Q Sure. But when Coke, itself, is
9 advertising on broadcast TV, its ads don't
10 conclude with the words "Buy Coke," do they?

11 A First of all, I don't know, because I'm
12 not an expert on what Coca-Cola has done with the
13 entirety of its advertising.

14 McQueen Dep
14 It is not unusual for a client to ask
15 the viewer, the listener, to buy its product.
16 That is not unusual.

17 Q Okay. So I now want to show you
18 another -- this is 14191. You guys already have
19 14191?

20 would you mark at Exhibit 5 a document
21 Bates stamped NRA-ACK 14191 and also NRA1-0574
22 which is headed NRA Heston DOJ Radio:60 SOFT,
23 S-O-F-T capitalized. And that's McQueen 5.

24 (McQueen Exhibit Number 5 marked
25 for identification purposes and made a

□

91

1 part of the record)
2 Q (By Mr. Schwarz) Have you seen McQueen
3 5?

4 A Yes.

5 Q Is the text of McQueen 4 and McQueen 5
6 identical, except McQueen 5 does not have the
7 "Please vote freedom first, vote George W. Bush
8 for president," and McQueen 5 is paid for by the
9 National Rifle Association, and McQueen 4 is paid
10 for by the NRA Political Victory Fund?

11 A Yes.

12 Q Okay. And what, to your mind, do the
13 words 60 SOFT, S-O-F-T, capitalized mean up in
14 the upper left-hand corner of this Ackerman
15 document?

16 A It would be, in my estimation, a

17 reference to a SOFT money expenditure.
18 Q Okay. And OC would mean original?
19 A Original copy.
20 Q Original copy. Did I ask you what TO
21 means?
22 A Tim Oden.
23 Q Tim Oden. Okay.
24 Then I'm going to show you, as McQueen
25 6, NRA-ACK 14192, which is also NRA1-0575. It's

□

92

1 also called Heston DOJ 60 Radio:SOFT, and it has
2 two lines added to Mr. Heston's narration.
3 (McQueen Exhibit Number 6 marked
4 for identification purposes and made a
5 part of the record)
6 Q (By Mr. Schwarz) Do you have McQueen 6
7 in front of you?
8 A Yes.
9 Q And this is revised version number 2,
10 dated the next day, 10-19. So these revisions
11 can be done pretty quickly sometimes?
12 A Yes.
13 Q And you see there's an added two
14 sentences where Mr. Heston says, "Other issues
15 may come and go, but no issue is as important as
16 our freedom, and the day of reckoning is at
17 hand?" Do you see that?
18 A Yes, yes.
19 Q And were those words -- was one of the

20 reasons those words were inserted, because when
21 you compare McQueen 4 and McQueen 5, McQueen 5 is
22 not going to use the whole 60 seconds because of
23 the deletions, so you have a little extra time to
24 add an additional thought?

25 A Possibly. I just don't know. I was

□

93

1 not -- I wasn't in the meeting.

2 Q Are you familiar with the fact that
3 McQueen 6 was, in fact, run on the radio in the
4 latter part of October and the early part of
5 November?

6 A If you tell me it was --

7 Q You'll accept that?

8 A -- I'll accept that.

9 Q Okay. Now, I don't know if -- pods is
10 not the right word, but in McQueen 4, we've got
11 Mr. Heston speaking, and that ad is run --
12 McQueen 4 is run on the radio. And it's a
13 Victory Fund ad. And then McQueen 5 is, in
14 effect, a draft of McQueen 6, and McQueen 6,
15 which is paid for by the NRA, is run on the
16 radio.

17 So I want to straighten out who pays
18 for the work on -- maybe I need to ask a preamble
19 question.

20 You get Mr. Heston to record for
21 McQueen 4 the words that are next to Mr. Heston's
22 name in McQueen 4, and he does that. Where does

23 he do that?

24 A Probably from Los Angeles, either at a
25 studio or his home. That's conjecture, but I

□

94

1 think it's informed conjecture.

2 Q And someone from the Ackerman firm
3 would go out there to see Mr. Heston, and you
4 guys would rent the studio, if it's a studio, or
5 set up the home, if it's his home?

6 A Most likely, yes.

7 Q And some creative work goes into the
8 creation of McQueen Number 4?

9 A Yes.

10 Q I mean, those words didn't just come
11 out of the sky? There was some creative work
12 done?

13 A Yes.

14 Q And done by your firm, the back and
15 forth with people at NRA; correct?

16 A Yes.

17 Q And then your firm has to pay for the
18 expenses of traveling to California and recording
19 the ad, having Mr. Heston speak the words that
20 are recorded; right?

21 A We pay for the expenses in that we
22 incur the expense and then rebill it to the NRA.

23 Q Sure. Is Mr. Heston paid in any way
24 for his speaking?

25 A No, not at all.

1 Q Was he ever paid in connection with
2 speaking in NRA ads?

3 A I'm going to say never, because he
4 never was paid by anyone that worked for us or
5 anyone that I ever heard of.

6 Q That answer doesn't surprise me, but I
7 just wanted to clarify that.

8 Now, so to prepare McQueen Number 4,
9 there's a certain amount of work done. Now you
10 come to McQueen Number 6 which, with the
11 exception of the first paragraph which is in bold
12 face and what the announcer says, it's identical
13 to McQueen 4; correct?

14 A Right.

15 Q So you didn't go out to Los Angeles and
16 have Mr. Heston record the exact same words a
17 second time, did you?

18 A Because of the dates involved here, I
19 would say probably not.

20 Q Okay. So then how do you decide,
21 having seen, as you do here, that Mr. Heston's
22 words are identical, except for on 6 he has an
23 introductory two lines and on 4 he says, "Please
24 vote freedom first, vote George W. Bush for
25 president," how do you decide whether to bill the

McQueen Dep

1 NRA Victory Fund or the NRA for the time spent on
2 creating the ads and on causing Mr. Heston's
3 recording to be made?

4 A First of all, it's not -- it's not my
5 decision. That would be Mrs. Hill's decision.

6 Q Okay.

7 A She would factor into her decision a
8 variety of factors. Some would be time related.
9 What might look like a very simple five-minute
10 decision to add two lines to a script may have
11 been the result of hours of debate, discussion.
12 There could have been other lines that were
13 recorded by Mr. Heston that he ad-libbed in the
14 studio, that he, in his opinion, thought were a
15 better way to do it.

16 Q Yes.

17 A The bouncing around of the process, it
18 truly is sausage making. And she will have
19 weighed all of that in her determination of what
20 to bill and who to bill it to.

21 Q Mr. LaPierre, when I showed him McQueen
22 Exhibit 6, testified that where Mr. Heston said,
23 in his marvelous and mellifluous voice, "And the
24 day of reckoning is at hand," that that was a
25 reference to the election of November 2000.

□

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1 Do you have any reason to disagree with
2 that?

3 A No. I won't -- I won't torture our
Page 87

4 gathering this morning with any amplification.

5 Q Would it surprise you to learn that
6 both McQueen 4 and McQueen 6 were run
7 overwhelmingly in battleground states?

8 A Again, because I think you and I have
9 had some difficulty defining what is a
10 battleground state, I'm going to have trouble
11 answering that question in a -- in a yes or no.

12 Q Would you agree, then, that the best
13 way to answer that question is to look at the
14 invoices where you paid -- Ackerman McQueen paid,
15 and then had NRA reimburse you for, bills from
16 stations where the NRA 6 and NRA 4 were run, and
17 then let anybody who is deciding this case decide
18 whether those are battleground states? Do you
19 think that's the best way to get at it?

20 MR. BALL: I'm not sure that -- that
21 question went on for a long time, and I'm not
22 sure --

23 MR. SCHWARZ: It did. It wasn't a very
24 good question.

25 THE WITNESS: Again, I want to be

□

1 cooperative. And I don't want to be difficult.
2 I think that what I tried to give you earlier was
3 an example of a battleground state one day is not
4 a battleground state the next. Tennessee could
5 be a battleground state, in my opinion, but not
6 in yours.

7 And so the whole issue of what truly
8 constitutes a battleground state is imponderable.
9 Time Magazine may think it's a battleground state
10 and Wayne LaPierre may think it's not. He has
11 political instincts that will turn a battleground
12 state in your estimation into a non-battleground
13 state in his estimation.

14 It's just -- it's just a very troubling
15 term.

16 Q (By Mr. Schwarz) Okay. Was it your
17 understanding, during the election of 2000 -- now
18 I'm talking about you -- that Arkansas was a
19 battleground state?

20 A It was my opinion that it was.

21 Q Okay.

22 A It wasn't an understanding.

23 Q That's fine. That Michigan was a
24 battleground state?

25 A I don't recall what I thought about

□

1 Michigan.

2 Q Okay. So you're saying you may not be
3 the best witness on the subject of what is or is
4 not a battleground state?

5 A As a -- as a veteran in this business
6 of, now, 40 years, I would defy anyone to, in a
7 finite, precise way, define a battleground state.

8 Q Are you aware that people at the NRA
9 looked at certain reports that refer to states as

10 being either battleground or non-battleground
11 states?

12 A I'm aware that in my discussions with
13 the NRA professionals over the years, that the
14 debate of what constitutes a battleground state
15 and what is not a battleground state rages inside
16 the organization, itself.

17 Q Yes. But --

18 A Jim Baker and Wayne LaPierre often
19 don't agree on what is a battleground state.

20 Q Let me see if I can get the precise
21 question I asked you which is, are you aware that
22 people within the NRA were consulting certain
23 reports that are periodically issued on the
24 subject of which states are close or not close?

25 A Aware in the sense that I hear of

□

100

1 those.

2 Q The fact that they were consulting
3 certain reports?

4 A Right. I have no -- I have no
5 firsthand.

6 Q That's fair. Do you have, as you sit
7 here today, a memory of what reports you heard
8 they were consulting?

9 A No.

10 Q Any of the reports?

11 A No.

12 Q If I use certain names, if I said a
Page 90

13 name like Cook Report, would that refresh you in
14 any way?

15 A No.

16 Q You just have a memory that they were
17 consulting certain reports but not a memory of
18 which ones or what their names were?

19 A Yes.

20 Q I'm now asking you a question that
21 comes from my memory of Mr. LaPierre's testimony.
22 And I know he said an organization helped him
23 with his fund raising letters directed toward
24 NRA members.

25 Has your organization ever done that?

□

101

1 A Yes.

2 Q Okay. What has been your role in
3 connection with helping Mr. LaPierre -- well,
4 have you also helped Mr. Baker on fund raising
5 letters or just Mr. LaPierre?

6 A I don't believe we've ever worked for
7 Mr. Baker.

8 Q Okay. And in connection with Mr.
9 LaPierre's fund raising letters, what has been
10 the role of, A, yourself and, B, your firm,
11 Ackerman McQueen?

12 A I have participated in strategy
13 discussions that led to fund raising letters
14 being drafted and ultimately deployed by my firm.

15 Q When you say "ultimately deployed,"

16 what does that mean?

17 A There's a mailing process --

18 Q Uh-huh.

19 A -- that is vendor supported. Sometimes
20 we supervise it, sometimes we don't.

21 Q Uh-huh.

22 A So to deploy --

23 Q Is to send it to the NRA members, for
24 example?

25 A We may actually supervise the printing,

□

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1 the actual mailing, itself, or we may turn it
2 over to a vendor group that does that for the
3 NRA and that we have no further --

4 Q Leaving aside -- let me call that
5 implementation or mechanics. Leaving aside the
6 implementation or mechanics, your firm has played
7 a role in helping Mr. LaPierre draft or refine
8 some of his fund raising letters; is that
9 correct?

10 A That's correct.

11 Q And what determines, as far as you
12 understand it, what determines when he involves
13 your firm and when he doesn't involve it?

14 A When he thinks our contribution or our
15 suggestion is more valuable than our
16 competitor's. Competitor is probably the wrong
17 word. That implies that there's a competitive
18 process.

19 Q Yeah.

20 A Than one of his other resources.

21 Q As far as you understand it, which
22 other resources help Mr. LaPierre with fund
23 raising letters?

24 A I don't know all of the people that
25 Wayne talks to about fund raising.

□

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1 Q Uh-huh.

2 A I think that -- I believe, in my
3 opinion, that the individual he uses most is a
4 man named Brad O'Leary, and I believe the
5 company's name is PM Consulting, but it may have
6 changed.

7 Q He also did refer to PM Consulting in
8 his deposition, which brings that back to me.

9 Do you have a memory of -- now, you,
10 yourself, do you get involved when he asks
11 Ackerman McQueen to help on the fund raising
12 letters?

13 A Involved in the sense that I
14 participate in the strategic discussions that
15 will surround the decision to use our firm and
16 general content of what a letter may include.

17 Q But you don't go beyond that to -- once
18 there's an agreement on the general content, do
19 you or do you not get involved in the specific
20 language of the fund raising letter by Mr.
21 LaPierre?

22 A At times.

23 Q Are you able to remember any occasions
24 in the year 2000 or the first three months of
25 2001 when you did that?

□

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1 A I would -- I do not recall. I would
2 not be even able to recall if our firm did any of
3 that. So when I say I don't recall being
4 involved, I don't want to appear to be saying we
5 did something, because I don't even know that we
6 did any of that.

7 Q Has it been your experience in working
8 with Mr. LaPierre, in doing his fund raising
9 letters, he attempts to be accurate in his fund
10 raising letters?

11 A Yes. He's never -- he's never, in my
12 estimation, attempted to be inaccurate.

13 Q And as far as I know, he's never been
14 inaccurate, as far as you know?

15 A As far as I know, he's never been
16 inaccurate.

17 Q Okay.

18 MR. SCHWARZ: Let's just take a little
19 recess here. I might show you one letter and ask
20 you whether it rings a bell with you, which it
21 probably doesn't.

22 THE WITNESS: Sure.

23 MR. SCHWARZ: Let's take a little
24 recess.

25 (Break from 11:08 to 11:10)

□

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1 Q (By Mr. Schwarz) I think I asked you
2 this question, but in case I didn't, I want to be
3 sure I did ask you it.

4 Other than Heston/Union infomercial,
5 can you remember -- was there any other
6 infomercial that played in the year 2000 that
7 mentioned Al Gore?

8 A To my recollection, no.

9 Q Let me ask you the degree of detail
10 that you get involved with. The Exhibits 4, 5
11 and 6 all speak about potential Supreme Court
12 justices that might be appointed by Al Gore, and
13 so does the infomercial, I'm quite certain, the
14 Heston/Union infomercial. And it mentions three
15 people: Hillary Clinton, Charlie Schumer, and
16 Diane Feinstein.

17 who would make the decision to include
18 the names of those particular individuals?

19 A It could be a single person, but it
20 probably is a byproduct of a discussion wherein a
21 lot of names are suggested.

22 Q And why were those particular names
23 suggested, Hillary Clinton, Charlie -- that's the
24 name that's used -- Schumer, and Diane Feinstein,
25 F-E-I-N-S-T-E-I-N?

□

1 A I don't know who made the decision, so
2 I can't testify as to why the decision was made.

3 Q Well, wouldn't you be able, without
4 knowing who made the decision, to have a sense as
5 to why advertising -- communications -- I'll use
6 the word communications -- communications
7 professionals would think it useful to
8 specifically refer to Hillary Clinton, Charlie
9 Schumer, and Diane Feinstein?

10 A I think that we would want the listener
11 to recall the anti-Second Amendment history,
12 years of anti-Second Amendment public posturing
13 on this issue by those individuals.

14 Q And who would decide that the reference
15 to Mr. Schumer, Senator Schumer, who I know as
16 Chuck and whose name is Charles, would be
17 referred to as Charlie?

18 A You know, I really don't know. Chuck
19 Heston tells a great story. The reason I smile
20 is that when I met him years ago, I said, "It's
21 so nice to meet you, Mr. Heston." He said, "You
22 may -- you may call me C.H." He said, "Strangers
23 call me Mr. Heston, close acquaintances call me
24 C.H., good friends call me Chuck, but only Lydia
25 calls me Charlie."

□

1 So when you were saying --

2 Q That's a good story.

3 A I don't know that Mrs. Schumer doesn't
4 call him Charlie and that --

5 Q Does it convey to you anything -- does
6 the choice between Charles, Chuck, C.S., which
7 wouldn't mean anything to the viewer, and
8 Charlie, does that choice mean anything to you as
9 a professional in the world of communications?

10 A And that's why I told you the story,
11 because I know you think it was chosen in an
12 attempt to be disrespectful, and I told you the
13 story because when -- in our business, when you
14 sometimes leap to that conclusion, you find out
15 that it's a term of endearment.

16 Q Yes. But do you think the word Charlie
17 was intended as a word of endearment in the NRA
18 ads?

19 A I -- I don't -- I don't think it is, in
20 and of itself, a very clear indication of any
21 disrespect. I think that it's no different than
22 people who refer to Bill Clinton as Bubba or
23 whatever. You know, it's just people say things
24 about people.

25 Q The case is not going to be decided on

□

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1 the basis of this question.

2 A I certainly hope not.

3 Q I'm willing to stipulate that.

4 MR. BALL: So stipulated.

5 MR. SCHWARZ: So I'd like now to play
6 the one that was deemed marked as Exhibit 1,
7 which is the Union/Heston infomercial, ACK 00018.

8 And are you able, Larry, if I ever want
9 to stop somewhere, do that or is that --

10 MR. BALL: I'll give you the remote.
11 That's it right there and stop is right there.

12 MR. SCHWARZ: Stop is where? Okay.
13 Right there.

14 Q (By Mr. Schwarz) Are you technically
15 facile?

16 A I'm probably technically facile. Is
17 there a pause button?

18 MR. BALL: Stop will return to a blue
19 screen, and pause will still it right where it
20 is, but it won't stay paused forever.

21 (Video played)

22 "ANNOUNCER: The following is a paid
23 program of the National Rifle Association.

24 MR. HESTON: This election could come
25 down to battleground states like Pennsylvania,

□

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1 Michigan, Ohio, and Missouri, states with lots of
2 union members where the union vote could decide
3 the outcome."

4 (Video off)

5 Q (By Mr. Schwarz) So Mr. Heston
6 apparently had some idea of what battleground
7 states were. And did you understand him as

8 meaning battleground between Mr. Gore and Mr.
9 Bush?

10 A The election process is always led by
11 the presidential election contest. By NRA
12 standards, the election contest is much richer,
13 much deeper. Senatorial races, governor's races,
14 House of Representative races, all the way down
15 to sheriffs and mayors and aldermen, these people
16 all have a very substantial impact on the health
17 of the Second Amendment.

18 So the battleground definition is not
19 limited to a presidential context.

20 Q Okay. But if at any point in this ad
21 you hear a reference to any people who were
22 candidates other than Mr. Gore or Mr. Bush, raise
23 your hand and we'll stop and talk about that.
24 But I believe it's the case that only Mr. Gore
25 and maybe Mr. Bush are referred to in this

□

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1 Heston/Union infomercial.

2 A And I understand. I think that we all
3 are familiar with the coattail process of an
4 election.

5 Q Right.

6 A So what happens to Mr. Gore does not
7 happen in a vacuum. There are candidates who are
8 pro Gore, pro Bush candidates whose political
9 health will rise and fall.

10 Q So that's a reason why -- did you use

11 the term coattail, by ^{McQueen Dep} the way?

12 A Uh-huh.

13 Q That coattail effect is a reason why
14 one might believe that an ad that was an
15 infomercial that was critical of Mr. Gore might
16 reverberate in terms of coattail effects and help
17 some Republican candidate for an office lower
18 than the Presidency in some state in the country;
19 correct?

20 A When you -- when you think of the
21 Second Amendment, you don't -- as an informed
22 citizen, you don't limit your sense of security
23 for that freedom to a presidential contender.

24 Q I understand that. Let me see if I can
25 take your word coattail and apply it.

□

111

1 A Okay.

2 Q If you run an ad -- now speaking
3 generally, if you run an ad that's highly
4 critical of Mr. Gore or extremely favorable of
5 Mr. Bush, that ad could have a coattail effect
6 that would help -- critical of Gore, favorable to
7 Bush -- that would help some other Republican
8 candidate in some state somewhere in the country;
9 correct?

10 A Again, what you -- what you have to
11 think in terms of is an informed citizen who says
12 to himself, if the guy running for sheriff in my
13 county is a very ardent supporter of someone who

14 is anti-Second Amendment, I'm concerned about
15 that candidate for sheriff.

16 Q That's fair. And that would be a
17 reason why, if you're a voter and you're
18 convinced that Mr. Gore is very bad for the
19 Second Amendment, and if the NRA infomercial
20 helps you reach that conclusion -- okay?

21 A Yes.

22 Q -- it may have a coattail effect in
23 leading that person not only to decide he wants
24 Bush to beat Gore but in deciding he wants a
25 certain sheriff to win or a certain Senator to

□

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1 win or a certain House of Representatives person
2 to win; is that correct?

3 A It is correct in the sense that it
4 allows the citizen, what you called the voter, to
5 question, to seek more information, to become
6 even more informed, to become more directly
7 involved in the entire process.

8 It is a -- it is a process we all go
9 through. I tell people all the time, no voter is
10 a light switch. No voter is on and off. It's a
11 rheostat that gets brighter and softer and that
12 throbs throughout the process.

13 And so what you want, when you're an
14 advocate of the Second Amendment, is for the
15 citizenry to become as informed as they possibly
16 can be on the issue. And that information is not

17 limited to an infomercial. They don't -- they
18 don't live in that vacuum. They read newspapers
19 and they watch television and they go to the
20 union hall and they sit in the bar and talk to
21 their buddies.

22 And it's a process that leads to
23 watching -- after watching an infomercial, to
24 sitting in the restaurant and looking at a
25 neighbor and saying, what do you know about this

□

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1 guy running for sheriff who's so pro Gore? where
2 is he on the gun issue?

3 Q Okay.

4 (Lunch break from 11:24 to 11:46)

5 Q (By Mr. Schwarz) Do you have any
6 current plans that will take you to Washington,
7 D.C., in the month of October?

8 A No.

9 Q That was a pure convenience-to-me
10 question, because if you did, I was going to --
11 you're going to have to be cross-examined if you
12 put in an affidavit, which you know what
13 cross-examination is. And I was hoping we could
14 do that in Washington. And if you'd be willing
15 to come to Washington, it would be a good thing.

16 (Off the record)

17 (Video played)

18 "ANNOUNCER: The following is a paid
19 program of the National Rifle Association.

MCQueen Dep

23 UNIDENTIFIED SPEAKER: I have to vote
24 my heart. My heart says, well, I'm sorry, union.
25 You say endorse this man, I can't do it in good

□

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1 conscience.

2 GINNY SIMONE: well, Gore's
3 counting on you guys.

4 UNIDENTIFIED SPEAKER: He can count on
5 who he wants to, but he's not going to get my
6 vote.

7 UNIDENTIFIED SPEAKER: I believe that
8 the Democrats at one time was a party for the
9 working people. I believe now it's a party who
10 wants to control the working people, not for the
11 working people.

12 UNIDENTIFIED SPEAKER: My biggest issue
13 probably is Gore's ideas about the Second
14 Amendment, about wanting to take away your --
15 your freedom to carry a gun. Even though we're
16 out in the country, crime does come out here, car
17 jackings happen, robbery happens. It makes me
18 feel safe. I know I'm safe with it, and it makes
19 me feel safe having it.

20 GINNY SIMONE: Are there gun owners
21 like yourself who may be registered Democrats who
22 are looking at the race differently because of
23 the current issue? I mean, do you hear them
24 talking about it?

25 UNIDENTIFIED SPEAKER: Yeah, I know

□

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1 that some are. I know that some are very opposed
2 to what Gore has been saying. I know of two that
3 actually changed their parties. They went down
4 and reregistered as Republicans because they were
5 so upset.

6 UNIDENTIFIED SPEAKER: Look at the
7 crime in this country. I think I should have the
8 basic right to defend not only myself but my
9 family, my home, my castle, if you will. I don't
10 want someone telling me that I can't do that.

11 UNIDENTIFIED SPEAKER: All the laws
12 that they pass today have really done nothing to
13 deter crime or change the situation. All they've
14 done is interfere with my right as a law-abiding
15 citizen.

16 UNIDENTIFIED SPEAKER: Al Gore has
17 already stated that he would register all
18 firearms, and I just -- I can't support that type
19 of a philosophy.

20 UNIDENTIFIED SPEAKER: What concerns me
21 the most is what Steve just said about
22 registering our guns. I don't want to -- I have
23 a hand gun, and I've had NRA training, and I'm a
24 survivor of domestic violence, and I believe in
25 self-protection, and I do not want my guns taken

□

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1 away.

2 UNIDENTIFIED SPEAKER: A loss of my gun
3 rights is what Al Gore represents. There's no
4 ifs, ands, or buts about that. In my mind, this
5 administration -- if Al Gore and his
6 administration is voted in, we will lose firearm
7 rights.

8 UNIDENTIFIED SPEAKER: Every move they
9 made was a calculated effort to take us further
10 down the road to having to give up our guns.

11 GINNY SIMONE: But Al Gore says I'm
12 different, I'm a strong supporter.

13 UNIDENTIFIED SPEAKER: Al Gore, you
14 know, discovered the Love Canal, and Al Gore
15 invented the Internet.

16 UNIDENTIFIED SPEAKER: I resist a man
17 who wants to take away guns. I would not believe
18 Al Gore for a minute on anything.

19 GINNY SIMONE: These politicians, they
20 go, I know that guy out there. I understand
21 where he's coming from. Do those politicians in
22 Washington really understand what you mean when
23 you say I don't want you taking away my rights?

24 UNIDENTIFIED SPEAKER: The politicians
25 in Congress and the politicians in the white

□

1 House don't have a clue what an average American
2 lives through. I drive through a neighborhood
3 now going to work every day that the crime rate

4 has gone through the roof.

5 UNIDENTIFIED SPEAKER: It scares me to
6 see four more years of this, because it's just
7 more and more of these people in the White House,
8 and that's the way -- that's the way you lose
9 your rights. You don't lose them all at once.
10 You lose them slowly over time.

11 UNIDENTIFIED SPEAKER: Al Gore, I can't
12 trust the man, for one. The man is like watching
13 a modern-day version of Dr. Jekyll and Mr. Hyde.
14 He's says one thing out of this side of his mouth
15 and then he goes with the other side. And I just
16 believe he just wants to tear this country apart.

17 UNIDENTIFIED SPEAKER: I see him as the
18 enemy of gun owners, the enemy of freedom.

19 GINNY SIMONE: What do you say to that
20 union guy out there that says how could you vote
21 your rights over your job?

22 UNIDENTIFIED SPEAKER: My rights are
23 most important. My job, I can always find
24 another one. My rights, I can't replace.

25 UNIDENTIFIED SPEAKER: Yes, it's nice

□

1 being part of my union, it helps protect me. But
2 having my right to bear arms is something that is
3 extremely important to me. It's something that's
4 kind of just been engrained in me.

5 UNIDENTIFIED SPEAKER: You got to have
6 your freedom. And the Second Amendment is one of

7 them. And you take that away, something else is
8 going to follow right behind it.

9 UNIDENTIFIED SPEAKER: First off, if a
10 Republican is elected to office, the world's not
11 going to end, the jobs aren't going to go away,
12 unions aren't going to disappear. That's a great
13 myth perpetuated by the Democrats.

14 UNIDENTIFIED SPEAKER: George Bush
15 isn't going to take away my job as a union job,
16 but I can see Al Gore taking away my freedom for
17 firearms, my Second Amendment rights. I can see
18 that coming. It's there.

19 UNIDENTIFIED SPEAKER: We wouldn't be
20 Americans if we didn't have firearms.

21 UNIDENTIFIED SPEAKER: Apparently the
22 people who don't know history are doomed to
23 relive it, and that's where I see this going. If
24 it weren't for firearms in this country, this
25 country would never have been established as it

□

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1 was over 200 years ago.

2 UNIDENTIFIED SPEAKER: Guns are part of
3 our life, just like a hammer or a saw. And to
4 lose that freedom, to be willing to give that up
5 for our children and our grandchildren, I'm not
6 willing to do that.

7 UNIDENTIFIED SPEAKER: We grew up with
8 guns. We enjoy guns. I'm going hunting here in
9 a couple of weeks. It's a heritage. It's

10 American heritage.

11 UNIDENTIFIED SPEAKER: I risked my life
12 to protect the freedoms of all the people, and
13 they're trying to take some of that freedom away
14 from me that I fought for, and I just can't
15 believe that they would do something like that.

16 UNIDENTIFIED SPEAKER: It is a freedom,
17 and I don't want it taken away. Someone worked
18 very hard to give me that freedom, and I want to
19 keep it, I want to keep it safe.

20 GINNY SIMONE: When you go to that
21 voting booth in November, what do you think is
22 really at stake?

23 UNIDENTIFIED SPEAKER: What's at stake?
24 A way of life.

25 UNIDENTIFIED SPEAKER: The Second

□

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1 Amendment is definitely in jeopardy this time,
2 and America better wake up because this is one of
3 our freedoms that we do enjoy, and it's in danger
4 of being gone.

5 UNIDENTIFIED SPEAKER: You have to vote
6 to keep your country free. You have to vote for
7 the Constitution. That's one of the things on
8 January 20th, when they go up and they swear to
9 uphold the Constitution of the United States, you
10 put that in the background and say it doesn't
11 matter, you know, it's just -- it's crazy.

12 UNIDENTIFIED SPEAKER: I never thought
Page 109

13 it would be under attack like it is now. It
14 really hurts me. And Al Gore's definitely going
15 to try to take our rights away from us, just like
16 they did in Australia, like they did in England.
17 It's very disheartening.

18 UNIDENTIFIED SPEAKER: The freedoms we
19 do have are very important to me, and when I go
20 in to vote on November 7th, I am going to vote
21 for my freedom first.

22 MR. LAPIERRE: Did you know that right
23 now in federal court, Al Gore's Justice
24 Department is arguing that the Second Amendment
25 gives you no right to own any firearm?"

□

122

1 (Video off)

2 Q (By Mr. Schwarz) Is this pod B we're
3 now seeing?

4 A I'm trying to remember how it went. I
5 think this is A.

6 Q Let me just ask you, since we're on a
7 pause, have you reached the end of pod B?

8 A Pod B?

9 Q Is this pod B?

10 A No. These are bumpers. The intro --
11 the Heston and the LaPierre pieces are bumpers,
12 they're intros and --

13 Q Gotcha. So let's go back again.

14 MR. BALL: You ready?

15 MR. SCHWARZ: Yeah.
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16 (Video played)
17 "MR. LAPIERRE: Did you know that right
18 now in federal court, Al Gore's Justice
19 Department is arguing that the Second Amendment
20 gives you no right to own any firearm? No hand
21 gun, no rifle, no shotgun? And when Al Gore's
22 top government lawyers make it to the U.S.
23 Supreme Court to argue their point, they could
24 have three new judges hand picked by Al Gore if
25 he wins this election.

□

123

1 Imagine, what would Supreme Court
2 Justices Hillary Clinton, Charlie Schumer, and
3 Diane Feinstein do to your gun rights? There'd
4 be nothing you can do. What you think wouldn't
5 matter anymore, because the Supreme Court is the
6 final interpreter of the Constitution.
7 When Al Gore's Supreme Court agrees
8 with Al Gore's Justice Department and bans
9 private ownership of firearms, that's the end of
10 your Second Amendment rights. So please, call
11 this number now to join the NRA, or just find out
12 how you can help. Thank you.
13 MR. HESTON: It's only days away, maybe
14 a few hours, the day that the remarkable freedom
15 you enjoy needs you to return that favor on
16 election day. I urge you to protect your
17 freedoms on November 7th. It's one way you can
18 thank the many souls sacrificed in freedom's name

19 over the past couple hundred years. They did
20 their part then so you can do your part now. And
21 that includes carefully considering which
22 candidates promise to defend our freedoms and
23 which candidates promise to diminish or even
24 destroy them.

25 A good place to start is with the most

□

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1 fundamental freedom of them all, the right to
2 keep and bear arms. If you're like most
3 Americans, you believe you have a constitutional
4 right to own a firearm, but Al Gore's top
5 government lawyers say you're wrong.

6 Quote, the Second Amendment does not
7 extend an individual right to keep and bear arms.
8 It must be considered as settled that there is no
9 personal constitutional right under the Second
10 Amendment to own or use a gun.

11 Shocked? Amazed? I was. I mean,
12 sure, we've seen the Clinton-Gore administration
13 trying to use the power of the federal government
14 to help sue firearm makers into bankruptcy, but
15 now Al Gore's top government lawyers have argued
16 in federal court that you and I have no
17 individual right to keep and bear arms.

18 In fact, witnesses reported that Al
19 Gore's federal lawyers said the government can
20 ban or confiscate your guns at will, because they
21 say, quote, the Second Amendment does not extend

22 an individual right to keep and bear arms.

23 That's chilling, especially when you
24 consider that Al Gore has the power, if he wins
25 the white House, to appoint Supreme Court

□

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1 justices who agree with his government lawyers.
2 And the next American president will likely
3 appoint up to four justices to the highest court
4 in the land. Imagine Justices Hillary Clinton,
5 Charlie Schumer, and Diane Feinstein on the U.S.
6 Supreme Court. Imagine how they would agree with
7 Al Gore's government lawyers. And since the
8 Supreme Court is the final interpreter of the
9 Constitution, there's nothing that you or anyone
10 else could do to stop them. When Al Gore's
11 Supreme Court agrees with Al Gore's Justice
12 Department and bans private ownership of
13 firearms, what freedom is next?

14 So whether it's affordable guns or
15 expensive guns, advanced guns or antique guns, Al
16 Gore's Justice Department says they're not
17 protected under the Second Amendment. In fact,
18 Al Gore says, quote, I think that we should ban
19 so-called junk guns. I think that the kinds of
20 weapons that have no legitimate use for hunting
21 or the kind of weapon that a homeowner would use,
22 I think they should be banned, yes, those kind of
23 weapons.

24 Now, maybe Mr. Gore's never had to
Page 113

25 worry about money, but is freedom only for those

□

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1 who can afford it? Does the Second Amendment say
2 the right to keep and bear high-priced arms shall
3 not be infringed?

4 Don't get me wrong. Any firearm so
5 poorly made it's unsafe to operate should be
6 prohibited, and under product liability law, it
7 is. But why should a senior citizen or low
8 income working parent or a single mom or anyone
9 on a fixed budget be denied access to self-
10 defense because they can't afford Al Gore's
11 prices? They shouldn't.

12 Al Gore's also called for a ban on
13 semi-automatic firearms, saying they, quote,
14 didn't exist in the past. But the truth is, the
15 first semi-automatic pistol was produced 108
16 years ago.

17 Mr. Gore's contempt for and ignorance
18 of your gun rights seems boundless. Al Gore
19 says, quote, Incredibly, while 18- to
20 20-year-olds cannot legally buy a beer, cannot
21 purchase a bottle of wine, cannot order a drink
22 in a bar, they can walk into any gunshop,
23 pawnshop, or gun show in America and buy a hand
24 gun.

25 That's a lie. The fact is, for more

□

1 than 30 years, federal law has prohibited anyone
2 under 21 from buying a hand gun from a licensed
3 dealer.

4 But it seems Al Gore would rather pass
5 new laws than enforce the laws we have on the
6 books. In fact, in the first six years of his
7 administration, Al Gore presided over a 44
8 percent drop in BATF federal gun law prosecutions
9 of violent armed criminals. Yet while he
10 tolerates reduced enforcement of laws against
11 criminals, he wants new laws against gun owners.

12 Al Gore says, quote, I will fight for a
13 national requirement that every state issue photo
14 licenses for anyone who wants to buy a hand gun.

15 So to own a firearm in Al Gore's
16 America, you'd be screened by passing the
17 government's test, as if there were an abundance
18 of shooting ranges, honest examiners and unbiased
19 bureaucrats all ready to process millions of gun
20 owners. And if they decided you passed their
21 test, you'd have to be photographed and licensed
22 at regular intervals, all to exercise a freedom
23 that the Constitution says shall not be
24 infringed.

25 But for Al Gore, that's still not

□

1 enough. Mr. Gore believes, quote, we should

McQueen Dep

2 limit gun sales to one gun a month.

3 Since when is constitutional freedom
4 rationed? It can't be. Freedom that can be
5 rationed is freedom that can be revoked. A
6 government given the power to say one a month
7 also has the power to say none a month.

8 But the worst is this. Besides
9 banning, testing, screening, licensing, and then
10 rationing what little freedom is left, Al Gore
11 wants gun registration. Quote, I believe all gun
12 manufacturers and federally licensed dealers
13 should have to report hand gun sales to a state
14 authority.

15 Registration is the final fatal blow
16 for firearm freedom, because what Al Gore isn't
17 telling you is that where guns are registered,
18 guns are confiscated.

19 You don't have to take my word for it.
20 Ask the law abiding citizens of England,
21 Australia, South Africa, Canada, even California.
22 They dutifully lined up to register their guns,
23 and all too soon they lined up to turn in their
24 guns.

25 So an Al Gore government would seek to

□

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1 ban affordable hand guns, ban semi-automatic
2 guns, order government screening to pass their
3 test, require national photo ID's and licenses,
4 limit you to one gun a month, then require your

5 gun be registered with state authorities. And we
6 all know where that leads. All because Al Gore's
7 government insists, quote, The Second Amendment
8 does not extend an individual right to keep and
9 bear arms.

10 So what we have in Al Gore is a
11 candidate who wants to ban guns, register guns,
12 ration your right to buy a gun and make you pass
13 tests and apply for a license, all to exercise a
14 constitutional right.

15 what's more, if elected president, Al
16 Gore may hand pick as many as four U.S. Supreme
17 Court justices who might likely agree with his
18 government lawyers that say you have no
19 individual right under the US Constitution to own
20 a rifle, a hand gun, a shotgun, or any gun.

21 Other issues may come and go, but no
22 issue is as important as our freedom. And the
23 day of reckoning is at hand. On election day,
24 November 7th, you must choose. Your freedom and
25 the freedoms of future generations will hinge on

□

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1 how you choose. So when you go into the voting
2 booth and close the curtain, consider the cost to
3 our way of life when essential liberty is lost.
4 Let's honor the full measure of freedom given to
5 us by those who sacrificed their all. Thank you.

6 MR. LAPIERRE: Did you know right now
7 in federal court, Al Gore's Justice Department is

8 arguing that the Second Amendment gives you no
9 right to own any firearm? No hand gun, no rifle,
10 no shotgun? And when Al Gore's top government
11 lawyers make it to the US Supreme Court to argue
12 their point, they could have three new judges
13 hand picked by Al Gore if he wins this election.

14 Imagine, what would Supreme Court
15 Justices Hillary Clinton, Charlie Schumer and
16 Diane Feinstein do to your gun rights? There'd
17 be nothing you can do. What you think wouldn't
18 matter anymore, because the Supreme Court is the
19 final interpreter of the Constitution.

20 When Al Gore's Supreme Court agrees
21 with Al Gore's Justice Department and bans
22 private ownership of firearms, that's the end of
23 your Second Amendment rights. So please, call
24 this number now to join the NRA, or just find out
25 how you can help. Thank you.

□

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1 MR. HESTON: This election could come
2 down to battleground states, like Pennsylvania,
3 Michigan, Ohio, and Missouri, states with lots of
4 union members where the union vote could decide
5 the outcome. But not all union members will vote
6 as political observers might expect. So we sent
7 NRA correspondent Ginny Simone deep into the
8 heart of union country to talk with union members
9 about this election, about the candidates, the
10 issues, and what to them really matters most.

11 Here's Ginny's report." ^{McQueen Dep}

12 (Video off)

13 Q (By Mr. Schwarz) So is the first pod
14 now repeated verbatim?

15 A That's correct.

16 Q So why don't we -- recognizing the
17 first pod was all those interviews with those
18 union people. So why don't you fast forward to
19 the end of the interviews, which is where that
20 man is quite emotional at the end, and then stop
21 there and we'll start up again.

22 (Video played)

23 "MR. LAPIERRE: Did you know right now
24 in federal court, Al Gore's Justice Department
25 argues that the Second Amendment gives you no

□

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1 right to own any firearm? No hand gun, no rifle,
2 no shotgun?

3 And when Al Gore's top government
4 lawyers make it to the U.S. Supreme Court to
5 argue their point, they could have three new
6 judges hand picked by Al Gore if he wins this
7 election.

8 Imagine, what would Supreme Court
9 Justices Hillary Clinton, Charlie Schumer, and
10 Diane Feinstein do to your gun rights? There'd
11 be nothing you can do. What you think wouldn't
12 matter anymore, because the Supreme Court is the
13 final interpreter of the Constitution.

14 McQueen Dep
14 When Al Gore's Supreme Court agrees
15 with Al Gore's Justice Department and bans
16 private ownership of firearms, that's the end of
17 your Second Amendment rights. So please, call
18 this number now to join the NRA, or just find out
19 how you can help. Thank you.

20 ANNOUNCER: The preceding was a paid
21 program of the National Rifle Association."

22 Q (By Mr. Schwarz) That's the end there?

23 A Yes.

24 Q You saw that Mr. LaPierre appeared
25 three times during the almost 30 minutes of the

□

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1 infomercial. And would you pull out your copy of
2 McQueen Number 4.

3 A Uh-huh.

4 Q And if you look at -- which happens to
5 be spoken by Mr. Heston, but if you look at the
6 first, second, fourth, and fifth paragraphs of
7 McQueen Number 4, are those identical to what
8 Mr. LaPierre said in his comments?

9 A If you say they are, I'll agree that
10 they are. I don't have a transcript.

11 Q All right. I believe they are 100
12 percent identical.

13 MR. SCHWARZ" Do you disagree with me?

14 MS. MITCHELL: I don't disagree.

15 Q (By Mr. Schwarz) Now, at the end of
16 Mr. LaPierre's three bumpers, you call them?

17 A (Nods head)

18 Q At the end of Mr. LaPierre's three
19 bumpers, he asks people to call and give money to
20 the NRA, and then he says or, quote, just find
21 out how you can help, close quotes.

22 Do you know who --

23 MR. SCHWARZ: Is that rewind?

24 MR. BALL: Uh-huh.

25 MR. SCHWARZ: Great. Thanks.

□

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1 Q (By Mr. Schwarz) Do you know who
2 managed those calls, and do you know what was
3 said when someone said, "How can I help"?

4 A The answer is I don't know precisely.
5 I believe that a vendor firm was deployed or was
6 hired to field those calls, and I believe that
7 what was said was scripted so that the operators
8 could respond appropriately to the caller.

9 MR. SCHWARZ: Now, we never got a copy
10 of such a script. And I recognize we are beyond
11 time to ask for that, but we now have testimony
12 that there was a script, which doesn't surprise
13 me. I know how these things work.

14 THE WITNESS: I'm not even sure that we
15 prepared it. In other words, a vendor firm may
16 have prepared it.

17 MR. SCHWARZ: Are you able to attempt
18 to find that script?

19 MS. MITCHELL: I'll see.

23 Q Did your firm come up with that slogan
24 or did NRA come up with that slogan?
25 A Our firm did.

□

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1 Q Did you see a number of photos of Mr.
2 Gore in the infomercial?

3 A Yes.

4 Q Do you want to change in any way the
5 testimony you previously gave about Mr. Gore's
6 photos?

7 A No.

8 Q Did you see that on three or maybe four
9 or it may even be five occasions, a letter from
10 the Justice Department was referred to?

11 A Yes.

12 Q And did you see from the video portion
13 that the date of that letter was August 22?

14 A I don't recall that, but if you say it
15 did, I'll agree that it did.

16 Q Do you ever recall having any
17 discussions about that letter with Mr. LaPierre
18 or anybody else at NRA?

19 A Not precisely, but I'm sure I was
20 involved in discussions where that came up.

21 Q And what do you remember being said by
22 anybody in those discussions?

23 A You know, other than -- other than a
24 general agreement that the letter was in
25 existence, I couldn't quote specifically what --

1 what anyone said at any particular moment in
2 time.

3 Q without being able to quote
4 specifically what anyone said, can you remember
5 any generalities that anybody voiced about that
6 letter?

7 A Not precisely enough to testify to.

8 Q Okay. And did you see that in the
9 background on several occasions, a banner that
10 had the words Election 2000 was displayed on the
11 video?

12 A Yes.

13 Q Who actually made that banner, do you
14 know?

15 A I believe it was a projected image on a
16 rear projection screen. But I could be wrong. I
17 wasn't there, but based on what I think I was
18 looking at, I believe it was a projected image.

19 Q So does that mean the technology is
20 such that the image could be projected after the
21 film was taken of the speaker behind which you
22 see the banner -- what I call banner Election
23 2000?

24 A The background images and the speaker
25 were accomplished at different times.

1 Q Okay. That's a way of agreeing with
2 what I probably inarticulately expressed to you.

3 And did Mr. LaPierre see this
4 infomercial before it ran?

5 A Yes.

6 Q And when he saw it, it would have had
7 that superimposition of Election 2000 on the
8 image that one sees when one sees the video; is
9 that correct?

10 A Almost surely. Again, because these
11 things are prepared in stages, it's possible that
12 the first time he saw it, he did not see the
13 background behind himself, that he saw what we
14 would call just the raw footage of his own and
15 Mr. Heston's performance before the background
16 plates were --

17 Q But do you think it's likely that
18 before the film -- before the video actually ran,
19 Mr. LaPierre would have seen the finished video
20 which would have included that Election 2000
21 picture?

22 A It's truly hard to say, because the
23 background would be one of the last pieces to put
24 into the process. And without knowing exactly
25 how the countdown was going to air date, it's

□

1 possible that he saw the completed version after
2 it had run someplace.

3 I mean, he would have had an approval

4 moment where his -- where the content was
5 complete and the content completion would
6 probably have included that final background
7 behind him. But again, like I say --

8 Q Just give me your best --

9 A I see these things often brought to me
10 the same way they're brought to him, and they're
11 very rough. They're -- they're not polished.
12 And I'm given that opportunity to say yes or no
13 to content decisions, knowing that there's going
14 to be a lot of polishing that follows on.

15 In my own situation, I often don't see
16 the very final version until after it is on the
17 air. So it wouldn't shock me to find out that
18 Wayne didn't see a final version until it had
19 gone out.

20 Q But based on the way Mr. LaPierre
21 usually works, do you think it's more likely that
22 he did see a final version before it went on the
23 air?

24 A I would -- I would say that -- it's
25 hard for me to know what's more likely. I would

□

1 say that we try as hard as we can for all of our
2 clients to see finished product before it goes on
3 the air so that there is no possibility of
4 surprise. But as hard as we try, it sometimes
5 just doesn't work out that way.

6 Q Two or three minutes ago you used an
Page 126

7 expression, countdown to air date.

8 A Right.

9 Q Let's see if you can answer this either
10 particularly for this infomercial or give
11 generalizations that are useful.

12 A Sure.

13 Q If you're running an infomercial, which
14 this was 29 minutes or half an hour, do you have
15 to reserve that time in advance of the date that
16 it's actually run?

17 A The -- the commitment is reserved.
18 Often the exact time is subject to preemption by
19 someone who's willing to spend more money for the
20 time or by the media outlet, itself, which
21 decides it wants to substitute a different
22 programming.

23 Every effort is made to be as precise
24 as possible with the commitment to purchase time.
25 However, we also try to buy at the lowest

□

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1 possible rate, and that means that we accept the
2 fact that someone can preempt our purchase with a
3 willingness to pay the station more than we're
4 paying.

5 Q This infomercial started running
6 sometime around the middle of October. Whether
7 it was in the October 20 period or earlier than
8 that, I'm not certain from my memory. But it's
9 sometime around the middle of October. And it

10 ran in a number of places.

11 I know you don't -- you're not
12 responsible for going out and reserving those
13 places, but hearing that it ran starting sometime
14 in the middle of October and ran in a number of
15 places, from your experience, what can you tell
16 us about how much in advance of the middle of
17 October your firm would have reserved space on
18 stations?

19 A Again, the process is not a very
20 precise one. You can -- you can secure what are
21 called availabilities from media outlets months
22 in advance, weeks in advance, days in advance,
23 hours in advance. You can have a standing offer,
24 in effect, for a certain quality of availability,
25 of time availability, should one become

□

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1 available.

2 And so the process can be played out in
3 a number of ways. You can actually begin weeks
4 in advance putting a schedule together, but the
5 modification of that schedule and the
6 modification of that plan will continue right up
7 to within hours of time periods being made
8 available.

9 Again, it can go something like this.
10 Hello, Ackerman McQueen, this is media outlet X.
11 We have a half hour available tonight, four hours
12 from now, that just came available. Do you want

13 it? Ackerman McQueen can respond yes or no.
14 That will modify a plan that started months,
15 weeks, some time before.

16 Q You used something that may help here.
17 Hearing two dates, the Justice Department letter
18 that's referred to that was dated August 22, the
19 ad starts running -- the infomercial starts
20 running sometime in the middle of October, are
21 you able, based on your experience, to estimate
22 when Ackerman McQueen started reserving time for
23 what became Heston/Union?

24 A I don't know when we started reserving
25 time for Heston/Union, but I will -- I will

□

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1 speculate that the planning process was underway
2 sometime in the period between August 1st and
3 August 30th.

4 I believe that our media people were
5 generally probing with media outlets in that time
6 period for what we call availabilities.

7 Q And probing for availability in the
8 period starting in the middle of October?

9 A That would be my guess, yes.

10 Q Now, in receiving testimony from
11 various witnesses who have been talking only
12 about spot ads -- do we use the term in common, a
13 30-second ad or a 60-second ad is a spot ad?

14 A I understand what you're saying, yes.

15 Q In talking with witnesses who dealt
Page 129

16 only with spot ads, they've all told me that
17 those ads become more expensive as one nears an
18 election.

19 Is a similar phenomenon operating with
20 respect to infomercials?

21 A Certainly as the inventories tighten,
22 as with any commodity, prices rise. And so what
23 happens in a -- in an environment where there's a
24 lot of demand, you have a willingness on the part
25 of the stations to take advantage of that

□

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1 opportunity.

2 Q You phrase yourself very carefully.
3 And I have no criticism of how you phrase
4 yourself.

5 Now, you used the term in an
6 environment where there's a lot of demand. With
7 respect to cable channels that ran your
8 infomercials, is there an increased demand as one
9 approaches an election?

10 A Yes.

11 Q And is that phenomenon a reason why it
12 is desirable, from your client's point of view,
13 the NRA's point of view, to begin reserving time
14 for ads to be run starting in the middle of
15 October, to begin reserving that time even way
16 back in the period of August?

17 A A client who has an intention of being
18 visible on television --

19 Q In an election season.
20 A In any season.
21 Q Okay.
22 A In a pre-Christmas selling season.
23 Q Fair.
24 A In a 4th of July holiday season. I
25 mean, media pressure on inventories happens all

□

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1 through out the year. And it happens over
2 certain events like Super Bowls and March Madness
3 and basketball and that kind of thing.

4 Q Uh-huh.

5 A But any client whose intention is to be
6 visible at a high pressure point when it comes to
7 inventories during a year is best served by
8 planning as far out as possible.

9 Q Okay. And am I correct that the period
10 close to an election is one of the high pressure
11 points that exists?

12 A Yes.

13 MR. SCHWARZ: Off the record.

14 (Off the record)

15 Q (By Mr. Schwarz) I'm not sure that
16 I've actually got anything else that I need to do
17 with you.

18 MR. BALL: which is lawyer-speak for
19 this will be over in about three hours.

20 MR. SCHWARZ: Can you two think of
21 anything else I should be doing with him?

22 MR. BALL: I can't tell you how many
23 times I've had somebody say, you know, I'm just
24 about done here.

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1 MS. MITCHELL: Confessed judgment. How
2 about that?

3 MR. SCHWARZ: Larry, I asked whether
4 you two think there are subjects I should have
5 covered that I have not covered.

6 MR. BALL: None from my side. Thanks.

7 MR. SCHWARZ: Well, I don't think I
8 have any more questions.

9 MR. BALL: In this jurisdiction, we are
10 required to state on the record whether or not we
11 will read our deposition and sign it or waive
12 signature. I don't know what the custom is in
13 your jurisdiction.

14 MR. SCHWARZ: It varies all over the
15 lot. And frankly, I don't know what it is in DC
16 since I'm only admitted there pro hoc vice.

17

18 MR. BALL: We will read and sign.

19

20 MR. SCHWARZ: Do I have to send you a
21 letter demanding that you read or sign?

22

23 MR. BALL: No. She will send it to me
24 with a signature page. I will present it to

McQueen Dep

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STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, ELIZABETH CAUDILL, CSR in and for the State of Oklahoma, certify that ANGUS MCQUEEN was by me sworn to testify the truth; that the above and foregoing deposition was taken by me in stenotype and thereafter transcribed and is a true and correct transcript of the testimony of the witness; that the deposition was taken on SEPTEMBER 24, 2002 at 8:02 a.m. in Oklahoma City, Oklahoma; that I am not an attorney for or a relative of either party, or otherwise interested in this action.

witness my hand and seal of office on this 25th day of September, 2002.

ELIZABETH CAUDILL, CSR, RMR, CRR
CSR No. 161

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