

1           IN THE UNITED STATES DISTRICT COURT  
2           THREE JUDGE COURT, WASHINGTON, D.C.  
3  
4       McCONNELL, et al.,  
5                       Plaintiffs,  
6       -vs-                       Consolidated Cases  
7       FEDERAL ELECTION COMMITTEE,       02-0582  
8                       Defendants.  
9

10  
11                       DEPOSITION OF ANGUS McQUEEN  
12           TAKEN ON BEHALF OF THE INTERVENORS  
13                       IN OKLAHOMA CITY, OKLAHOMA  
14                       ON OCTOBER 20, 2002  
15

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17                       REPORTED BY: KAREN B. JOHNSON, CSR  
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McQueen.Cross

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23

24 \* \* \* \* \*

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1 I N D E X

2 Page  
3 Cross-Examination by Mr. Schwarz .... 5

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4      Cross-Examination by ..... 102  
     Mr. Kesselman

## McQueen Exhibits

No. 7 Transcript of Mr. McQueen .... 7  
depo

1

1 S T I P U L A T I O N S

McQueen.Cross

7 Karen B. Johnson, Certified Shorthand Reporter for  
8 the State of Oklahoma taken pursuant to the Federal  
9 Rules of Civil Procedure.

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1 ANGUS McQUEEN,  
2 after having been first duly sworn at 8:23 a.m.,  
3 deposes and says in reply to the questions  
4 propounded as follows, to wit:

5 CROSS-EXAMINATION

6 BY MR. SCHWARZ:

7 Q welcome, Mr. Ackerman. If you can't hear  
8 me --

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9           A     Just for the record, I'm Mr. McQueen.

10          Q     Mr. McQueen, If you can't hear me, say so,

11 obviously.

12          A     I hear you fine.

13          Q     You gave a deposition in this case on

14 September 24th; correct?

15          A     Yes.

16          Q     And did you tell the truth at that

17 deposition?

18          A     Yes.

19          Q     I'd like to mark, and let's say we deem it

20 marked, if that's okay with everybody, the

21 transcript of Mr. McQueen's September 24th

22 deposition, and that would be deemed marked as

23 McQueen Exhibit 7. What we're doing is going in

24 order after the ones at the deposition so as not to

25 have two Exhibits No. 1. Is that all right, that's

□

6

1 deemed marked as McQueen Exhibit 7?

2           MR. THOMPSON: Yes, that's fine.

3           MR. BALL: That's fine, as long as it is

4 as corrected in his errata sheet.

5           MR. SCHWARZ: Well, is there an errata

6 sheet? Because we concluded that deposition on the

7 24th and it was sent to you with the signature page

8 and you said I will present it to Angus, he'll read

9 it and make his errata, if any. So, Mr. McQueen,

10 are there any errata?

11           MR. BALL: The errata sheet was sent to

Page 5

12 the court reporter on October the 2nd and to you on  
13 October the 2nd by Federal Express.

14 MR. SCHWARZ: I don't think I got that,  
15 Larry, so how much is there by way of errata?

16 MR. BALL: Two slight changes.

17 MR. SCHWARZ: Can you just tell us what  
18 they are?

19 MR. BALL: Yes. At one point, Mr. McQueen  
20 -- the court reporter took down the word read,  
21 r-e-a-d, and he said reg'ed, r-e-g-'-e-d, meaning  
22 that regulations had been written. The other was at  
23 Page 22, line 24, a clarification to add the phrase,  
24 "other than accounting support services generally  
25 provided to the Mercury Group by Ackerman McQueen

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7

1 accounting personnel." Those are the only changes.

2 MR. SCHWARZ: Okay. Thank you, Larry.

3 (McQueen Exhibit 7 marked for  
4 identification and made part of the  
5 record)

6 Q (By Mr. Schwarz) So, Mr. McQueen, you did  
7 read your deposition and you then told your counsel  
8 what the errors were that you thought you read --  
9 you noticed when you read it; correct?

10 A Yes.

11 Q I just want to make sure that you don't  
12 know certain things, so I'm going to ask you whether  
13 you don't know certain things. Is it correct that



17           A     Again, to answer your question, as I have  
18     in my deposition and I will continue today, to  
19     answer as comprehensively as I can. It is my  
20     understanding that the details of this law won't be  
21     known to anyone until the regulations are written.

22                 There's been a great deal of speculation  
23     as to what those regulations would include or not  
24     include, and so the details as you -- as you ask me  
25     to either state knowledge of or not knowledge of, I

□

9

1     don't think exists yet.

2           Q     Okay. Let me ask you one follow-on  
3     question. Is it also true, Mr. McQueen, that you do  
4     not know what portions of the underlying law which  
5     is known as FECA, F-E-C-A, will remain in effect  
6     after BCRA comes into effect?

7           A     Because I don't know what the acronym FECA  
8     even stands for, I can't -- I don't know that I  
9     understand the question.

10          Q     That's a fair point. BCRA amends a  
11     federal campaign law which came into effect back in  
12     the 1970s, are you aware of that?

13          A     Yes.

14          Q     Okay. And why don't we call that the  
15     earlier campaign law, is that okay, as a label for  
16     it?

17          A     Yes.

18          Q     Is it correct that you do not know what



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19 portions of the earlier campaign law remain in  
20 effect after BCRA comes into effect?  
21 MS. MITCHELL: We would object to the  
22 extent that you're calling for a legal conclusion,  
23 but go ahead and answer the question.  
24 THE WITNESS: Again --  
25 MR. SCHWARZ: I'm just asking a question

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10

1 as to his knowledge.  
2 THE WITNESS: To the extent that I can  
3 connect what I suppose has yet to be determined by  
4 regulation, I'm unable to predict how the two laws  
5 will ultimately either support or cancel previous  
6 regulation as we've known it.  
7 Q (By Mr. Schwarz) And the final question  
8 along this line of questions, am I correct that you  
9 do not know the details of Supreme Court decisions  
10 interpreting the prior law?  
11 A No.  
12 Q Now, two questions --  
13 A I do not know the details. I think your  
14 question said are you correct in assuming, and I  
15 think when I said, no, I was giving you a --  
16 Q Good for you.  
17 A -- a wrong answer.  
18 Q That shows you woke up earlier than me or  
19 you're sharper than I am this morning. So now let  
20 me --  
21 A Flattery will get you nowhere, Fritz.

22 Q I'm aware of that, I'm just telling the  
23 truth.

24 So two more questions about whether you're  
25 aware of certain things. Have you read the

□

11

1 complaint filed by the NRA and the NRA Political  
2 Victory Fund?

3 A I don't -- I have read some legal  
4 documents, and I don't know if they included the  
5 complaint or not, or whether it was in a complaint  
6 in its final form or in its entirety, I don't know  
7 what I've read, although I have read certain legal  
8 documents.

9 Q Okay. Among the legal documents you have  
10 read, have you read Mr. LaPierre's deposition?

11 A I have not.

12 Q Have you talked with anybody about  
13 Mr. LaPierre's deposition?

14 A I spoke with attorneys and I spoke in a  
15 very short conversation with Mr. LaPierre.

16 Q And did you also speak with Mr. -- let me  
17 strike that. Have you read Mr. -- the  
18 cross-examination of Mr. LaPierre?

19 A I have not.

20 Q What did Mr. LaPierre tell you about his  
21 deposition?

22 A That it lasted approximately three hours,  
23 that -- I'm trying to relate it now. It happened

24 yesterday in a conversation relating to the sniper  
25 situation that's going on in Washington, and so it

□

12

1 was a kind of a parenthetical discussion about how  
2 so many of the attorneys involved in this lawsuit  
3 don't understand how real-time issues affect the  
4 decisions he has to make.

5 And he was -- I thought he was frustrated  
6 that a lot of what we were discussing relating to  
7 the sniper issue could not be used as illustration  
8 for the point of view he has in this debate.

9 Q Other than that, he didn't talk to you  
10 about the substance of what he said either in his  
11 deposition or in his cross-examination; is that  
12 correct?

13 A That is -- I believe, Fritz, that is  
14 correct. I'm trying to recall if he had any comment  
15 at all about what he said, and I just don't believe  
16 he did. He may have said something about, you know,  
17 all they -- I'm going to paraphrase now, all they  
18 want to do is talk about elections, something like  
19 that.

20 Q Let me ask you two questions about  
21 Mr. LaPierre and then we will be off the preamble  
22 stuff. Would you agree that Mr. LaPierre is a  
23 straightforward individual?

24 A Absolutely.

25 Q Would you agree that Mr. LaPierre is an

1 honest person?

2 A Absolutely.

3 Q what were the names of all of the  
4 infomercials run by the NRA during the year 2000?

5 MR. THOMPSON: Again, Fritz, how does this  
6 relate to his direct testimony?

7 MR. SCHWARZ: Because he makes some  
8 generalities about those infomercials and also  
9 because Mr. LaPierre in his declaration purports to  
10 relay on Mr. Ackerman for certain data.

11 THE WITNESS: Fritz meant to say  
12 Mr. McQueen.

13 MR. SCHWARZ: Did I say that again? I'm  
14 sorry. He purported to rely on you with respect to  
15 certain data.

16 MR. THOMPSON: So because of  
17 Mr. LaPierre's testimony on direct and cross, then  
18 that's the basis for your question?

19 MR. SCHWARZ: It's part of the basis. But  
20 also since Mr. McQueen purports in his declaration  
21 to describe the purpose of broadcast media run by  
22 the NRA, I'm also and therefore entitled to find out  
23 what broadcast media was run by the NRA.

24 MR. THOMPSON: We'll permit the question.

25 MS. MITCHELL: The record should also

1 reflect that all of this information has been  
2 produced in the documents and you have access to all  
3 of the information you're asking --

4 MR. SCHWARZ: What I'm doing -- sorry,  
5 Cleta, I didn't mean to speak over you. What I'm  
6 doing is to determine whether this witness has  
7 knowledge of what NRA was doing and, therefore,  
8 whether he's able, if he doesn't, to provide some of  
9 the assertions that he does in his declaration.

10 Q (By Mr. Schwarz) So the question,  
11 Mr. McQueen, which your counsel are allowing you to  
12 answer, is give us the names of all of the  
13 infomercials broadcast by the NRA during the year  
14 2000.

15 A I manage a staff of over 60 people who are  
16 working on NRA-related issues. The nomenclature  
17 they assign to various aspects of the paid  
18 communications effort, which infomercials are a  
19 part, is not necessarily something I can pull out of  
20 the air two years later.

21 I also remember talking to you about the  
22 infomercial pods, and so I might confuse in my  
23 answer the names assigned to pods with actual  
24 infomercials. Again, the decision as to what to  
25 put, how to name a given infomercial is not mine,

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15

1 and so the labeling that goes on boxes and slates,  
2 and so on, is something that is decided by others.

3 I know we made a -- an infomercial, a pod,  
4 about what was going on in England. I know we made  
5 an infomercial pod about south Africa. I know we  
6 made an infomercial pod about Australia. I know we  
7 made an infomercial pod about Al Gore's history with  
8 the Second Amendment.

9 I know we made an infomercial pod that  
10 included commentary from people who purported to be  
11 members of the labor unions. I know we made several  
12 different pods about the state of California,  
13 covering how law enforcement and individual citizens  
14 and individual legislators in California felt about  
15 the Second Amendment and about laws that were in  
16 force and proposed law in the state of California.

17 These were configured into individual  
18 infomercials in a three-pod configuration, that we  
19 discussed in my deposition, which could allow for  
20 the repetition of a given pod within a given  
21 infomercial.

22 And the actual titles of the infomercials  
23 themselves, I believe one was called Heston/Union.  
24 I'm guessing that one was called California. And  
25 without reviewing some documents, I would probably

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16

1 be unable to accurately give you the titles of the  
2 others.

3 Q Okay. So, but you have given to us what  
4 you know about pods that were done, without regard

5 to the title that was put on the infomercial;  
6 correct?

7 A Yes. Pods, in effect, represent the  
8 content of the infomercials, exclusive of some of  
9 the bumper messaging that goes on between the pods.

10 Q And the bumper things tend to be things  
11 that are spoken by either Mr. Heston or by  
12 Mr. LaPierre; is that correct?

13 A That is correct. But it would also  
14 include, I believe, some off-camera voiceover.

15 Q An announcer, in effect?

16 A That's correct.

17 Q Okay. Now, other than pods or  
18 infomercials, what is in your mind about other  
19 broadcast advertisements made by the NRA during the  
20 year 2000, spots or anything else?

21 A We made a substantial number of 30 second  
22 long, and I think we did some 60-second work also  
23 throughout the year. As to the -- as to the exact  
24 number, I would -- I would have no way of recalling  
25 that without reviewing the information.

□

17

1 Q Okay. Is there anything else in your mind  
2 that you're aware of that were broadcast by the NRA  
3 during the year 2000?

4 A Well, when you say broadcast, I can't  
5 remember in your original question if you included  
6 radio, I think there was some --

7 Q I do mean to include radio, I didn't limit

8 it to television.

9 A Again, without reviewing the details, I  
10 believe that infomercials and 60- and 30-second  
11 broadcast messages would have made up the majority  
12 of the broadcast effort.

13 Q But can you think of any broadcast run by  
14 the NRA, other than what you've detailed so far in  
15 this testimony?

16 A If you're including internet communication  
17 as a broadcast?

18 Q No, I'm not including that for the moment.  
19 I know you talked about that in your declaration,  
20 let's confine ourselves to television, radio, and  
21 cable.

22 MR. THOMPSON: Fritz, just to be clear,  
23 are you asking him his recollection of the content  
24 of these 30-second --

25 MR. SCHWARZ: I'm asking him anything that

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18

1 he has in his mind about the existence of any  
2 broadcast advertisements by NRA during 2000.

3 MR. THOMPSON: Including the content?

4 MR. SCHWARZ: If he knows the content,  
5 fine; if he just knows the existence, fine. But I  
6 want to exhaust and make clear that we have  
7 exhausted his knowledge of broadcast advertisements  
8 run on radio, on television or cable, on behalf of  
9 NRA during the year 2000.



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10 MR. THOMPSON: Very well.

11 MS. MITCHELL: And you are speaking

12 exclusively of paid as opposed to earned media?

13 MR. SCHWARZ: Yes, I am, that's a fair --

14 it's paid media I'm talking about.

15 THE WITNESS: well, if we're going to

16 include content, we did produce a substantial number

17 of commercials, I believe it was 13, Charlton Heston

18 responses to an appearance Bill Clinton made on the

19 Today show.

20 Q (By Mr. Schwarz) That's covered in your

21 declaration, you covered that substantially in your

22 declaration; correct?

23 A I did, but again, if you're asking me to

24 exhaust, I think that was the verb you used.

25 Q I'm really trying to get from you the

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19

1 knowledge you have in your mind of the what I might

2 call the headings or the titles or the general

3 subject matter of broadcast advertisements run on

4 behalf of the NRA during the year 2000.

5 MR. THOMPSON: Now you're saying other

6 than what's covered in his direct testimony?

7 MR. SCHWARZ: Other than what he's told us

8 so far today and what he's mentioned in his what you

9 call direct testimony or what I would call his

10 declaration.

11 MR. THOMPSON: Very well.

12 THE WITNESS: Other than infomercials,

Page 17

13 other than the paid broadcast that we discussed in  
14 either the deposition or in my affidavit testimony,  
15 other than the internet, is there anything that I  
16 can recall, and the answer is no, I cannot, there's  
17 nothing I can recall.

18 Q (By Mr. Schwarz) And when you signed your  
19 declaration on October 3, I think it was, October 3,  
20 yes, was your knowledge any different then than it  
21 is today as to this subject?

22 A No.

23 Q Okay. If you could look at Paragraph 7 of  
24 your declaration. And in particular, if you go over  
25 to Page 3, down about eight lines, there's a long --

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20

1 long sentence after a colon that starts with the  
2 word "specifically," do you see that?

3 A Am I on Page 3?

4 Q Yes. You see about seven lines down,  
5 there's a colon and then the word "specifically"?

6 A I see it.

7 Q Okay. Why don't you just read to yourself  
8 those nine or so lines until the end of the  
9 paragraph.

10 (Witness reviews documents)

11 THE WITNESS: Okay.

12 Q (By Mr. Schwarz) Do you purport in what  
13 you've just read from your own declaration to  
14 include all of the reasons NRA uses paid media?

15 A No.

16 Q Okay. What's missing?

17 A Well, part of the point that I'm trying to  
18 make in this declaration is that we use paid media  
19 at times to influence what news organizations are  
20 saying on a given subject. That would not be  
21 included in this list.

22 Q Okay. Is there anything else that you  
23 failed to include in your list with respect to  
24 purposes for which the NRA uses paid media?

25 A Well, first of all, I'm not going to agree

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21

1 that I failed to include in this list all of the  
2 things that the NRA may at some time or another want  
3 to achieve by using paid media. There are -- over  
4 the last -- over 20 years of deploying paid media,  
5 there are probably dozens of reasons that are not  
6 included in this list why NRA may have used paid  
7 media.

8 Q Well, let me narrow my question to the  
9 year 2000. Was there a purpose that NRA had in the  
10 year 2000 for using paid media that you do not  
11 include in the list that's on Page 3?

12 A The language that you're referencing on  
13 Page 3 is not adequate in that it does not cover  
14 properly or thoroughly the job we try to do in  
15 covering the news that happens on this issue. In  
16 many different parts of the country and even parts  
17 of the world, I don't -- I don't see, for instance,

18 the use of the word news, and we do use paid media  
19 to cover the news of what's happening on this issue  
20 to gather it, to package it, and to distribute it.

21 Q Is there anything else, Mr. McQueen, that  
22 is missing from your list on Page 3 of the reasons  
23 NRA uses paid media?

24 A In all honesty, the only way I could give  
25 you a comprehensive answer to that question would be

□

22

1 to make a list of all the things that we did and  
2 then cross-reference that list with this language  
3 and be certain that I haven't inadvertently left  
4 something out.

5 Q Well, let's just sit here and I'd like you  
6 to do that, please.

7 MR. THOMPSON: You're saying based on what  
8 he can recall?

9 MR. SCHWARZ: Yes, David.

10 THE WITNESS: The problem that I'm going  
11 to run into is trying to remember with all of the  
12 issues of the magazine and all of the news  
13 broadcasts on NRA live.

14 Q (By Mr. Schwarz) Well, that's the  
15 internet thing. I'm asking you with respect to your  
16 use of paid media for a television, radio, or cable.  
17 And you can confine yourself to the year 2000, if  
18 that will make it easier for you.

19 A Okay. But, again, when you say paid media

20 and you don't exclude the internet, I mean, the  
21 internet qualifies as paid media.

22 Q Okay. Now, you having said that, I'd now  
23 like you to answer the question with respect to  
24 television, radio, and cable, are there any uses  
25 that NRA made of paid media in the year 2000 that

□

23

1 are not in your list on Page 3, other than your  
2 previous comment that there should have been a  
3 reference to responding, I guess, to, quotes, news,  
4 closed quotes?

5 A I don't -- I don't see the word  
6 fund-raising.

7 Q Yes, it is right there, it says strengthen  
8 its membership base, do you think that means  
9 fund-raising?

10 A I don't know if you think it means  
11 fund-raising. What I feel compelled to do is to  
12 come up with, to the best of my knowledge, every  
13 reason that NRA used paid media in the year 2000.

14 Q Okay. So --

15 A If I'm to imply that the question -- that  
16 in my estimation, the fact that it says here the NRA  
17 used paid media to strengthen its membership base  
18 and that that covers the term fund-raising. I mean,  
19 you have to understand the question is so broadly  
20 drawn that I've got to be sure that fund-raising  
21 gets said or I appear to have not recalled it.

22 Q Okay. I don't want to interrupt you any

23 more. I'd like you just to complete your list of  
24 whatever you would now say should be added to your  
25 declaration to make your declaration complete with

□

24

1 respect to the uses by NRA of paid media in the year  
2 2000.

3 MR. BALL: Fritz, I'm going to object  
4 because I think you're mischaracterizing his  
5 affidavit. I'm not sure that he intended to make  
6 that a comprehensive list. If you're asking him to  
7 make it a comprehensive list now, then, fine. But I  
8 don't want his declaration characterized as being  
9 incomplete because I'm not sure the intent of the  
10 declaration at the time was to be completely  
11 comprehensive.

12 MR. SCHWARZ: The declaration speaks for  
13 itself and whatever it means, it means.

14 MR. BALL: Fine.

15 MR. SCHWARZ: My question is, would he add  
16 anything to his declaration to make sure that it  
17 covers all reasons the NRA had for using paid media  
18 in the year 2000?

19 MS. MITCHELL: I would like to note for  
20 the record in looking at the additional paragraph of  
21 the declaration, you've directed the witness'  
22 attention only to one paragraph, which does not  
23 confine to the year 2000. But there are subsequent  
24 paragraphs in the declaration which state additional

25 purposes, so are you directing him just to that one

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25

1 paragraph?

2 MR. SCHWARZ: He is now trying to make a  
3 list of everything that he would say if he was  
4 providing to us all of the reasons why NRA used paid  
5 media in the year 2000.

6 THE WITNESS: I don't -- no, I don't  
7 believe that's what I'm doing.

8 MS. MITCHELL: But you're not implying --

9 THE WITNESS: I'm trying to take what time  
10 I have, and I suppose I have as many hours as this  
11 process will allow, but I will not purport to make  
12 in this amount of time or without reference to  
13 records and to my staff a complete list of what --  
14 it's impossible, there's no way I could do that.

15 I'll do my best to come up with some of  
16 the things I do not believe are contained in these,  
17 whatever they are, nine lines. And I suppose in  
18 order to do that thoroughly, what I'll have to do is  
19 read again both the declaration and the deposition  
20 and anything else that -- I mean, you're asking me  
21 to come up with a comprehensive list of every single  
22 reason the NRA used paid communication, paid  
23 broadcast communication in the year 2000. And  
24 although I will try to make the list as complete as  
25 possible, I will not be able to make what I would

1 consider to be a thorough and definitive and  
2 absolutely complete list.

3 Q (By Mr. Schwarz) Okay. You just do the  
4 best you can, that's all I can ask you to do,  
5 Mr. McQueen.

6 A Sure.

7 Q And all I am asking you to do.

8 MS. MITCHELL: But are you confining the  
9 question to just those nine lines of Paragraph 3?

10 MR. SCHWARZ: I've asked the question I've  
11 asked, I think the witness understands it, and I  
12 don't think I need to be interrupted anymore.

13 (Witness reviews document)

14 THE WITNESS: All right. What's not  
15 covered thoroughly in the paragraph you're  
16 referencing, specifically the one, two, three, four,  
17 five, six, seven, eight, nine lines following the  
18 colon, was not covered thoroughly in that list that  
19 is discussed in the balance of my declaration would  
20 be the entire arena of news coverage; fund-raising;  
21 PVF activity, as it relates to elections; influence  
22 on news organizations who cover this issue; the  
23 prolonging of national dialogue; and although it's  
24 probably implied, I don't believe that member  
25 confidence.



1 Q (By Mr. Schwarz) What was that word, I  
2 didn't hear you, member what?

3 A Confidence.

4 Q Okay.

5 A The attracting of new members and  
6 retaining current members might imply that keeping  
7 them fully informed keeps them members, but you have  
8 to understand that although NRA may have 4 million  
9 paid up members, there are millions more who  
10 consider themselves to be members, although they  
11 don't enjoy active membership status at a given  
12 point in time.

13 we have -- we have seen information that  
14 makes us believe that as many as 10 million  
15 Americans believe themselves to be NRA members. And  
16 then, of course, we have something in the order of  
17 70 million additional American gun owners who have  
18 expressed reliance on NRA for information, both  
19 factual and from a NRA point of view, how NRA sees  
20 individual issues.

21 So the dialogue that needs to be deployed,  
22 you know, against a group of people that is tens of  
23 millions large, if you will, goes way beyond what is  
24 included in this -- in these nine lines. And  
25 certainly I don't see any reference here to PVF

□

28

1 activity. And the whole -- as I said earlier, the  
2 whole discussion of achieving dialogue with news  
3 organizations, achieving earned media, is not

4 adequately covered in this paragraph.

5 Now what I'll need to do is go through my  
6 deposition and see if there are any issues that are  
7 covered in the deposition that are not covered in  
8 these nine lines.

9 Q well, that -- your deposition was 146  
10 pages, I don't think it would be appropriate or fair  
11 to anybody to spend the time on that. Let me just  
12 make sure, as far as you're -- as you know, sitting  
13 here today, you are not now able to think of any  
14 other purposes that the NRA had in running broadcast  
15 advertisements in the year 2000; is that correct?

16 A No, I'm able perhaps to think of  
17 something, if I can go through my deposition and if  
18 I can -- again, it was -- it was a 12-month long  
19 year in which millions and millions and millions of  
20 dollars were spent on a wide variety of messages  
21 that were deployed in a wide variety of ways.

22 And I don't pretend, at the age of 58, to  
23 be able to pull everything out of the air in this  
24 short amount of time. But I'm perfectly willing to  
25 go through it and, of course, obviously to give you

□

29

1 a -- an absolutely thorough answer, I've got to rack  
2 my memory, and I'm prepared --

3 Q As you sit here today, Mr. McQueen, can  
4 you think of anything else that NRA -- any other  
5 purpose NRA sought to achieve in its broadcast

McQueen.Cross  
6 advertisements in the year 2000?

7 A If the time to answer that question is  
8 being limited to the time I've given it so far, then  
9 I will say I've done the best I can to give you as  
10 complete a list I can, with the caveat that it's  
11 always possible I've forgotten something.

12 Q Okay. Now, Mr. McQueen, isn't it a fact  
13 that NRA, and when I use NRA, I mean here the NRA  
14 and not the NRA-PVF, let me ask the question of you.  
15 Is it your understanding that this question is going  
16 to be talking about the NRA as opposed to the  
17 NRA-PVF, do you accept that?

18 A I will accept that you want to exclude all  
19 PVF-related issues.

20 Q For the purpose of this question.

21 A That's correct.

22 Q Okay. Isn't it a fact that NRA ran  
23 broadcast ads in the year 2000 whose purpose  
24 included influencing the outcome of the presidential  
25 election; yes or no?

□

30

1 A I believe that there are people inside of  
2 the NRA who believed that was one of the reasons.

3 Q And which people are those, do they  
4 include Mr. LaPierre?

5 A Again, I want to -- you're asking for a  
6 yes or no and --

7 Q My direct question which merits a yes or  
8 no answer is Mr. -- is Mr. LaPierre included among

9 the NRA people that you just mentioned in your last  
10 answer?

11 A I believe, I believe that Wayne, given a  
12 blank piece of paper, would include on his list of  
13 reasons why he deployed paid communication in the  
14 sense that a fully informed electorate has an  
15 influence on an election, I would say that he would  
16 probably include that on that list.

17 Q And you would, too, wouldn't you,  
18 Mr. McQueen?

19 A I believe that as far as -- as elections  
20 form a kind of ongoing management of the health of  
21 the Second Amendment, that certainly the citizenry  
22 needs to be fully informed.

23 Q So the answer so my question is a yes,  
24 isn't it?

25 A Yes -- yes would imply probably some

□

31

1 nuance that I wouldn't agree to, and so I have to  
2 give you the qualified answer that I give you. It  
3 is -- your question would imply that NRA, exclusive  
4 of PVF, is -- has a narrow objective of trying to  
5 influence an election when an election is such a  
6 small part of what goes on in a year like the year  
7 2000.

8 Q Mr. McQueen, I asked you a question about  
9 you, you as a person. Don't you understand --  
10 didn't you understand in the year 2000 that one of

11 the purposes of the broadcast ads that you  
12 constructed for the NRA, one of the purposes was to  
13 influence federal elections?

14 A In the sense that a thorough understanding  
15 of candidates' positions, candidates' histories with  
16 the Second Amendment, in the sense that the  
17 importance of relating Second Amendment freedoms to  
18 other priorities in American life, I would again  
19 give you a qualified yes.

20 Q Now, isn't it a fact, Mr. McQueen, that  
21 your company devised two spot ads, one for the PVF,  
22 and one for the NRA itself that were identical  
23 except for the closing line, one saying, vote for  
24 George W. Bush, paid for by the PVF, and one saying  
25 paid by the NRA, is that a fact or not?

□

32

1 MS. MITCHELL: Where in the declaration  
2 are you referring?

3 MR. SCHWARZ: This is all allowable given  
4 his statement as to the purposes which I believe is  
5 not -- I want to be fair to the witness, is not  
6 complete, but purports to be complete. I'm entitled  
7 to cross-examine him with respect to whether his  
8 declaration was complete, purports to be complete,  
9 fair, all those words.

10 MS. MITCHELL: There's no particular  
11 reference to a particular portion of the  
12 declaration?

13 MR. SCHWARZ: I'm referring to what I  
Page 29

14 referred to.

15 Q (By Mr. Schwarz) So do you want me to  
16 repeat the question for you?

17 A I think you're referring to a radio  
18 commercial that we discussed in my deposition.

19 Q I am.

20 A And I remember the two scripts and I think  
21 Larry has both of them here.

22 Q One would be 6, if you look at 6 and if  
23 you look at 4, compare 6 and 4. And I'll ask, have  
24 you got 6 and 4 in front of you?

25 MR. BALL: Fritz, let me have the Bates

□

33

1 numbers, please.

2 MR. SCHWARZ: Yes. 4 the Bates number  
3 Larry is ACK-14190 and 6, the Bates number is  
4 ACK-14192.

5 MR. BALL: Okay. All right, we have them.

6 Q (By Mr. Schwarz) Do you have them in  
7 front of you, Mr. McQueen?

8 A Yes, I do.

9 Q Okay. Now, first they have the different  
10 statement by the announcer at the end of the ads;  
11 correct?

12 A That is correct.

13 Q And No. 4 says, quotes, Paid for by the  
14 NRA Political Victory Fund and not authorized by any  
15 candidate or candidate's committee; correct?

16           A     That is correct.  
17           Q     And No. 6 says, "Paid for by the National  
18 Rifle Association"; correct?  
19           A     That's correct.  
20           Q     Okay. And the other difference is that at  
21 the very beginning of 6, it happens to be in bold  
22 face, do you see that?  
23           A     I do.  
24           Q     Mr. Heston says, quotes, Other issues may  
25 come and go, but no issue is as important as our

□

34

1     freedom. And the day of reckoning is at hand,  
2     closed quotes. Do you see that?  
3           A     I do.  
4           Q     You testified at your deposition that you  
5     agreed that the words "the day of reckoning is at  
6     hand" referred to the election which was coming in  
7     about three weeks after these ads were prepared;  
8     correct?  
9           MS. MITCHELL: Can you refer him to the  
10    specific portion of his deposition?  
11           MR. SCHWARZ: Well, I imagine he remembers  
12    it. If he needs to have me find it, I can go find  
13    it.  
14           THE WITNESS: I'd like to find it. I'd  
15    also like to have the reporter read back your  
16    comments, if you would, over this issue of  
17    completeness, and, again, how you originally asked  
18    the question relating to these two scripts.

19 MR. BALL: I believe you're referring to  
20 Page 92, line 19. Actually, it begins at line 13.

21 Q (By Mr. Schwarz) Yes, if you look at, on  
22 your deposition, the bottom of Page 96. And I made  
23 the following -- I asked you the following question  
24 and you gave the following answer:

25 "Question: Mr. LaPierre, when they showed

□

35

1 him McQueen Exhibit 6, testified that where  
2 Mr. Heston said in his marvelous and mellifluous  
3 voice," now it's single quotes, 'And the day of  
4 reckoning is at hand,' "that was a reference to the  
5 election of November 2000. Do you have any reason  
6 to disagree with that?"

7 And you answered: "No, I won't, I won't  
8 torture our gathering this morning with any  
9 amplification."

10 Did you give that testimony on September  
11 24th?

12 A I did.

13 Q And was that testimony truthful?

14 A Yes, the testimony was truthful, but it  
15 was in response to a question that asked me do I  
16 have any reason to disagree with that. You said you  
17 showed him an exhibit and that -- you said,  
18 Mr. LaPierre, when I showed him McQueen Exhibit 6,  
19 testified that where Mr. Heston said in his  
20 marvelous and mellifluous voice, "the day of





24 I am not sure -- I believe Mrs. Clinton was running  
25 for the senate, I'm not sure if Senator Schumer was,

□

37

1 I guess he was not up for re-election. I don't know  
2 if Senator Feinstein was up for re-election.

3 Q Who is the candidate that when you first  
4 said there was someone referenced to you, who were  
5 you referring to, was that Al Gore?

6 A Again, when you say I first said --

7 Q Just now, just about ten seconds ago.

8 A I'm not sure what I said ten seconds ago.  
9 I'm trying to get the reporter to tell me what you  
10 said about two minutes ago about completeness or  
11 about --

12 Q I'm asking you, Mr. McQueen, I'm asking  
13 you the questions. Is Al Gore referred to in  
14 Exhibit 6?

15 A Yes.

16 Q He's referred to one, two, three, four,  
17 five times; is that correct?

18 A Yes.

19 Q And is it correct, Mr. McQueen, that if  
20 you leave out the bold-faced material on 6, which  
21 was, "Other issues may come and go, but no issue is  
22 as important as our freedom. And the day of  
23 reckoning is at hand," if you leave that out, and if  
24 you note that the announcer in one -- that is in 4  
25 says, "Paid for by the NRA Political Victory Fund,"

1 and in 6 says "Paid for by the National Rifle  
2 Association" -- I got to go back a little bit.

3 Am I correct that the only differences  
4 between 4 and 6 are that in 4, Mr. Heston says,  
5 "Please vote freedom first, vote George W. Bush for  
6 president," do you see that?

7 A Yes.

8 Q And then the announcer says, "Paid for by  
9 the NRA Political Victory Fund and not authorized by  
10 any candidate or candidate's committee," do you see  
11 that?

12 A Yes.

13 Q At the end of 4?

14 A I do.

15 Q And then at the end of 6, the announcer  
16 says, "Paid for by the National Rifle Association,"  
17 do you see that?

18 A Yes.

19 Q And at the beginning of 6, Mr. Heston  
20 says, "Other issues may come and go, but no issue is  
21 as important as our freedom. And the day of  
22 reckoning is at hand," do you see that?

23 A Yes.

24 Q Other than the differences I've just  
25 articulated, the two ads, 4 and 6, are identical;

1 correct?

2 A The text of both 4 and 6 includes one,  
3 two, three, four, five identical paragraphs.

4 Q Right. And I identified all the  
5 differences, didn't I?

6 A Insofar as you identified text  
7 differences, I would -- again, I would assume that  
8 Mr. Heston -- well, I can't assume that. I do not  
9 know if Mr. Heston read those identical paragraphs  
10 only one time. Perhaps he did, perhaps he didn't,  
11 so there could be inflection differences.

12 Q I will represent to you that the words are  
13 identical on the actual radio ads.

14 A I did agree that the text differences were  
15 identical, you asked for any other differences, and  
16 again, I said as far as the text is concerned, they  
17 are identical.

18 Q Now, do you have any doubt, Mr. Ackerman,  
19 that one of the purposes of McQueen 6 was to  
20 influence the outcome of the presidential election  
21 in the year 2000?

22 A Because you began the question with  
23 Mr. Ackerman, you're going to have to ask me the  
24 question again.

25 Q I'm very sorry, it's because I'm not

1 physically in your presence.

McQueen.Cross

2 Do you have any doubt, Mr. McQueen, that  
3 one of the purposes of McQueen 6 was to influence  
4 the outcome of the presidential election in 2000?

5 A Do I have any doubt that in McQueen 6 that  
6 one of the reasons, was that the question?

7 Q That's the question.

8 A Insofar as somebody at the NRA may have  
9 included that on their list of reasons to run this,  
10 I would give you a qualified yes.

11 Q well, your agency prepared both 4 and 6;  
12 isn't that right?

13 A Yes.

14 Q Do you have any doubt that your agency,  
15 one of its purposes with respect to 6 was to  
16 influence the outcome of the 2000 presidential  
17 election?

18 A I think we clearly understand the  
19 difference between PVF money and non-PVF money. I  
20 believe that we understand that much of what we do  
21 with so-called soft money is intended to inform.  
22 And insofar as information has an influence on an  
23 election, I guess I'd have to again give you a  
24 qualified yes, but I'm not going to agree that it  
25 was the equivalent of a PVF expenditure.

□

41

1 Q But I asked you a question, a very precise  
2 question, which is, is it not a fact that one of the  
3 purposes for your agency creating McQueen 6 was to  
4 attempt to influence the result of the federal

5 election for president? Do you deny that or do you  
6 agree with that?

7 A I think it's an imprecise question,  
8 because, again, you're saying is it -- your question  
9 is saying, is it the equivalent of a PVF  
10 expenditure.

11 Q That was not my question. My question was  
12 one of your purposes to do what I asked you.

13 A I understand that you believe your  
14 question is precise, but again, the way I'm  
15 understanding it is -- it is not precise.

16 Q Are you unable to answer my question? I  
17 want to ask you my question again.

18 A Sure.

19 Q When Ackerman McQueen prepared McQueen  
20 Exhibit 6, was one of your purposes to influence the  
21 results of the federal election in 2000?

22 A Insofar as providing information to an  
23 informed citizenry, the answer is a qualified yes.

24 Q And, of course, the information that was  
25 provided in McQueen 4 is identical to the

□

42

1 information that was provided in McQueen 6, you've  
2 already admitted that, haven't you?

3 A I said that there were five identical  
4 paragraphs.

5 Q And that's the information, isn't it?

6 MR. THOMPSON: Objection; mischaracterizes

7 testimony.

8 Q (By Mr. Schwarz) Those five paragraphs,  
9 that's the information that was provided to viewers  
10 of 4 and of 6; correct?

11 A No, no, you're trying to minimize the  
12 importance of this first paragraph on 6. We're  
13 talking about -- we say very clearly, no issue is as  
14 important as freedom.

15 Q And then you said clearly, you had  
16 Mr. Heston say clearly, "And the day of reckoning is  
17 at hand," didn't you? That's right, isn't it? You  
18 had Mr. Heston say that; correct?

19 A Again, I think -- I believe that in our  
20 discussion at the deposition we discussed the  
21 possibility that Mr. Heston had ad-libbed that. So  
22 when you say we had him say it, I'm not sure,  
23 because I was not at the recording session, that we  
24 had it scripted for him to say or whether he  
25 literally introduced that on his own.

□

43

1 Q Well, really, Mr. McQueen, are you really  
2 saying that? Look at the document No. 6, do you see  
3 what it says up above?

4 A I do.

5 Q It has some words, I just want to recite  
6 the words, it says NRA, then it says, Heston DOJ:60  
7 soft?

8 A Right.

9 Q Over on the right-hand side, it says

10 creative approved?  
11 A Right.  
12 Q And that would mean approved by someone in  
13 creative in Ackerman McQueen; correct?  
14 A You can tell who approved it there by the  
15 parentheses, it says T.O., that's Tim Oden.  
16 Q Mr. Oden; right?  
17 A Oden, right.  
18 Q The line creative approved and the line  
19 that says, RV paren 2 10/19/00 paren T.O. both  
20 indicate that the language that is on McQueen  
21 Exhibit 6 had been approved by your organization,  
22 including the bold-faced language; correct?  
23 A Perhaps. But you have to understand that  
24 this might be -- the fact that I see RV2 tells me  
25 that possibly this is what is referred to as an

□

44

1 as-recorded script. And an as-recorded script is  
2 created as the final memorial, if you will, of what  
3 goes on the air.  
4 It may be identical to what was provided  
5 to Mr. Heston to read, but it's possible that RV1  
6 did not include "And the day of reckoning is at  
7 hand." I am not sure, without going back over the  
8 deposition, but I believe you brought up the  
9 possibility that Mr. Heston may have ad-libbed that  
10 or you referenced, if my memory is correct,  
11 Mr. LaPierre or someone else saying that Mr. Heston



12 may have.

13 Q No, not with respect to this. And,  
14 Mr. McQueen, are you aware that those words, "the  
15 day of reckoning is at hand," were spoken by  
16 Mr. Heston in several broadcast advertisements that  
17 your firm prepared, are you aware of that?

18 A If you say so, I'll take your word for it.

19 Q So you don't think Mr. Heston just  
20 ad-libbed that every time, do you?

21 A I don't know. Again, the way these things  
22 might have worked, if he ad-libbed it at one point  
23 in time, there could have been a group of people who  
24 thought it was a wonderful inclusion in subsequent  
25 work.

□

45

1 Q Well, if we took that out, then -- if it's  
2 your testimony that maybe Ackerman McQueen just  
3 prepared what is now 6 without those words in bold  
4 face, if that's your testimony, then 4 and 6 would  
5 be identical, except for the paid quoting at the end  
6 and except for the please vote for freedom first,  
7 vote George W. Bush for president at the end of 4;  
8 is that right?

9 A No, because the line, other issues may  
10 come and go, but no issue is as important as our  
11 freedom, would be a substantial difference between  
12 the two.

13 Q You're saying that maybe -- I wonder what  
14 you're really trying to say here, Mr. McQueen. Are

15 you saying that maybe the words, "other issues may  
16 come and go, but no issue is as important as our  
17 freedom" were in your original script, but  
18 Mr. Heston just ad-libbed the words and "the day of  
19 reckoning is at hand," is that what you're saying?

20 A I'm surmising that that's possible, I'm  
21 not saying that's what happened; again, I wasn't  
22 there.

23 Q Don't you know, in fact, that the script  
24 prepared by Mr. Oden included the, "other issues may  
25 come and go, but no issue is as important as our

□

46

1 freedom. And the day of reckoning is at hand"?

2 A All I'm doing is trying to recall a  
3 conversation where I thought -- I thought in the  
4 deposition we had discussed the possibility that  
5 someone had ad-libbed the day of reckoning is at  
6 hand, but again --

7 Q The issue of whether Mr. Heston ever  
8 ad-libs was covered, but that was not.

9 A The only reason I bring it up is this is  
10 the kind of thing that a Charlton Heston could have,  
11 at the recording session, said in that wonderful,  
12 mellifluous voice that you referenced.

13 Q Okay. Would you look at your Paragraph 9  
14 of your declaration, and I'm going to read something  
15 to you and then I'm going to ask you if, in your  
16 judgment, Paragraph 9 was fair. Okay? What I'm

McQueen.Cross  
17 going to read to you is the -- I'll read the whole  
18 thing to you, all of your Paragraph 9.  
19 Quote, The work Ackerman McQueen has  
20 performed for the NRA involves a multipronged  
21 approach designed to enhance the NRA's ability to  
22 convey its core message in the most effective manner  
23 possible. The NRA's core message is both  
24 educational and political: It seeks to promote  
25 awareness of the importance to the future of our

□

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1 constitutional frame of government to recognize and  
2 protect the individual right to keep and bear  
3 firearms as set forth in the Second Amendment; in  
4 addition, it seeks to oppose and defeat all public  
5 initiatives designed to weaken or infringe upon that  
6 right. Thus, the NRA engages in a wide variety of  
7 speech that is central to its core institutional  
8 mission and that is not designed to influence the  
9 outcome of a particular election, closed quotes.  
10 Did I read that correctly?

11 A Yes, you did.

12 MR. SCHWARZ: And, Larry, you might give  
13 the court reporter afterwards a chance to just have  
14 the actual text so she's sure she got it right.

15 Q (By Mr. Schwarz) Now, Mr. McQueen, let me  
16 put to you that what I read to you was not fair  
17 because it was incomplete in that, for example, you  
18 say it, the NRA, seeks to oppose and defeat all  
19 public initiatives designed to weaken or infringe

20 upon the Second Amendment right. And you concluded  
21 by saying NRA engaged in a wide variety of speech  
22 that is not designed to influence the outcome at any  
23 particular election.

24 Now, wouldn't it have been more candid,  
25 Mr. McQueen, if you had said, NRA seeks to oppose

□

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1 and defeat candidates that it believes would weaken  
2 or infringe upon the Second Amendment; right?

3 A I see you're reading from something, is  
4 that -- are these your words that you're wanting me  
5 to agree with, or are you reading from something  
6 someone's said or someone's printed or a news  
7 article?

8 Q I don't think it matters to my question.

9 MR. THOMPSON: Let the record reflect it's  
10 the witness' declaration.

11 MR. SCHWARZ: And I would like to have the  
12 question reread to the witness, please. You can  
13 start, if it's okay with you, Mr. McQueen, after I  
14 finished quoting from your Paragraph 9. If the  
15 court reporter could reread that and retype it in  
16 the record here. (directed to the reporter)

17 COURT REPORTER: "Now, wouldn't it have  
18 been more candid, Mr. McQueen, if you had said NRA  
19 seeks to oppose and defeat candidates that it  
20 believes would weaken or infringe upon the Second  
21 Amendment rights?"

22 THE WITNESS: No, it would not.  
23 Q (By Mr. Schwarz) Okay. Now, you referred  
24 in your -- earlier today to an infomercial which has  
25 been called sometimes Heston/Union and sometimes

□

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1 Union/Gore, do you remember that infomercial?  
2 A I do.  
3 Q And indeed, I -- at the -- at your  
4 testimony, we played that entire infomercial, didn't  
5 we?  
6 A We did. Let me say quickly here that we  
7 seem to have lost our video connections with both  
8 New York and Washington. Cleta, can you still hear  
9 me?  
10 MS. MITCHELL: I can still hear and see  
11 you.  
12 MR. THOMPSON: And I can still hear you.  
13 VIDEO TECHNICIAN: I think the video is  
14 frozen, we're not seeing any motion or movement  
15 anymore.  
16 THE WITNESS: All right. As long as  
17 everybody knows that I cannot see Fritz moving  
18 anymore.  
19 MR. SCHWARZ: If you want to, as long as  
20 we have an understanding that you're not going to  
21 talk to your lawyers in this break, I don't mind  
22 taking a five-minute recess and seeing what needs to  
23 be done to make sure you can see me, because  
24 arguably you get some information, you don't get any

25 beauty, but you may get some information if you see

□

50

1 me. So I think it's fair that we should do  
2 something to fix that.

3 THE WITNESS: I will not speak to my  
4 lawyers during the break.

5 MR. SCHWARZ: Okay.

6 (Break taken 10:07 to 10:22)

7 Q (By Mr. Schwarz) So, Mr. McQueen, can you  
8 see me okay now?

9 A I can.

10 Q Okay. Just before we broke, I attempted  
11 to remind you that at your deposition, we played the  
12 entire infomercial which is sometimes called  
13 Heston/Union and sometimes called Union/Gore. So in  
14 any event, do you recall that we did at your  
15 deposition play that entire infomercial?

16 A I remember the playing of an entire  
17 infomercial. Again, the differing -- the use of  
18 these differing titles is something that I'm not  
19 either part of determining or being able to recall  
20 in detail. So you're telling me that we saw -- the  
21 infomercial we saw during the deposition had two  
22 different titles, and they're the two different  
23 titles that you referenced, then I'll take your word  
24 for it.

25 Q Indeed, I think a couple minutes ago you

1 used one of those titles.

2 A I probably did. And, again, I can be  
3 refreshed by even your questions, my memory can be  
4 enhanced by even --

5 Q So, now I'm going to ask you a few  
6 questions from the transcript, but do you remember  
7 that in that infomercial -- that infomercial was  
8 prepared by your firm; right?

9 A Yes. And now you've left my picture,  
10 you've leaned out of my picture. Maybe they want to  
11 pan your camera to the left or something.

12 Q Now, I was so distracted by your demand to  
13 look at my charming face that I don't remember what  
14 I said.

15 A Let the record show it was not a demand,  
16 it was an observation.

17 MR. SCHWARZ: What did I say just before  
18 that? (directed to the reporter)

19 (The record was read as requested)

20 Q (By Mr. Schwarz) The question is, was  
21 that infomercial prepared by your firm?

22 A Yes.

23 Q And is it not --

24 A Again, I must qualify, the infomercial was  
25 prepared by both my firm and the Mercury Group, and

1 insofar as my firm, as you reference it, includes  
2 the ownership of the Mercury Group, the answer is  
3 yes.

4 Q What role did the Mercury Group play in  
5 preparing that infomercial?

6 A Aspects of it were achieved by a news  
7 reporter and anchor named Ginny Simone, who works  
8 for the Mercury Group, and who -- and who works as a  
9 news gathering and news packaging professional.

10 Q So she works for the Mercury Group and she  
11 went and interviewed certain people and then you  
12 guys had some footage; correct?

13 A She had the footage, she would have  
14 created her own report.

15 Q So was it she who made the selections  
16 among -- from her footage that appeared in what you  
17 referred to as pod A of that infomercial and in pod  
18 A which was repeated twice? That's a confusing  
19 question.

20 Did your firm have anything to do with the  
21 selection of the material which was included in the  
22 infomercial that came from her interviews?

23 A To my knowledge, no.

24 Q As opposed to Mercury --

25 A Ginny is her own editor, she does not

1 follow any script provided by Ackerman. And so it  
2 would -- no, to my knowledge, I know of no one at



3 Ackerman who would have told her what to include or  
4 not to include.

5 Q And as far as you know, Ackerman played no  
6 role in determining which words from which  
7 interviewee were included on the pod; is that right?

8 A It would be my testimony that I would not  
9 know of any instruction provided by Ackerman, and it  
10 would surprise me if any instruction of any kind had  
11 been provided by Ackerman.

12 Q Okay. Now, there's a pod relating to her  
13 interviews of union people; correct?

14 A That's correct.

15 Q And there's also a pod which includes  
16 Mr. Heston's statements about Mr. Gore; is that  
17 correct?

18 A That's correct.

19 Q And with respect to the pod that includes  
20 Mr. Heston's statements about Mr. Gore, did Ackerman  
21 itself prepare that pod?

22 A Yes.

23 Q And are you aware that in that pod,  
24 Mr. Heston uses the words, "the day of reckoning is  
25 at hand"?

□

54

1 A If you say so, I'll agree to it. I mean,  
2 I don't --

3 Q well, let me just specifically call your  
4 attention, if you look at Page 129 of your  
5 transcript, starting at line 21. You got it?

6 A Yes, I do.

7 Q I'll read to you what goes from line 21  
8 through line 23, quotes, Other issues may come and  
9 go, but no issue is as important as our freedom.  
10 And the day of reckoning is at hand, closed quotes.  
11 Now, what I've read to you is exactly the same as  
12 the bold-face language in McQueen Exhibit 6, isn't  
13 it?

14 A That is correct.

15 Q So you don't believe any longer that  
16 Mr. Heston may have ad-libbed the words, "And the  
17 day of reckoning is at hand" in McQueen Exhibit 6,  
18 do you?

19 A Oh, on the contrary, I don't know when  
20 that radio commercial was first recorded, I don't  
21 know when the script was first put in front of  
22 Mr. Heston. It could have been long before this was  
23 recorded that he had the opportunity to ad-lib that.  
24 And again, the ad-libbing issue, I believe you  
25 brought up in this deposition, so.

□

55

1 Q Not with respect to day of reckoning.  
2 Now, if I tell you, if I represent to you that the  
3 infomercial, which is quoted in full in your  
4 deposition transcript, was recorded before the date  
5 of October 19th, which is the date of McQueen  
6 Exhibit 6, is it still -- are you still suggesting  
7 that maybe Mr. Heston ad-libbed the words "And the

8 day of reckoning is at hand" in McQueen Exhibit 6?

9 A Let me -- let me -- again, because you're  
10 trying to pin me down on something here that all I'm  
11 saying is that phrase, "the day of reckoning is at  
12 hand," and I'm doing a poor imitation of Charlton  
13 Heston's mellifluous voice, as you referenced in the  
14 deposition, is the kind of thing that Charlton  
15 Heston ad-libs. He's a very gifted communicator,  
16 he's a performer, he's an actor, he played Moses.  
17 All I'm saying is it wouldn't surprise me. I don't  
18 know whether he did or didn't, all I'm saying is it  
19 wouldn't surprise me if he did.

20 And he would have had many opportunities  
21 to have contributed that ad-lib, not just at  
22 recording sessions, but at the moment when a script  
23 is put in front of him for him to review. So I  
24 don't know whether he did or didn't. I'm just  
25 saying it's the kind of thing that he might have.

□

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1 Q Well, let's just ask one final question on  
2 the words "And the day of reckoning is at hand." As  
3 you sit here today, do you have any doubt whatsoever  
4 that that refers to the federal election of 2000?

5 A And I'll answer as I've answered in the  
6 past, on the election day, in November of the year  
7 2000, there were hundreds, if not thousands of  
8 elections.

9 Q Did Heston --

10 A You keep putting the word federal in front

11 of the word election. And --

12 Q Well, let's take McQueen Exhibit 6. Is  
13 there any doubt in your mind that the subject matter  
14 of McQueen Exhibit 6 is the positions on the Second  
15 Amendment of Al Gore?

16 A Could you repeat the question or reread  
17 the question? The questions that begin with is  
18 there any doubt in my mind force me to search for  
19 just that, any doubt in my mind, so let's get the  
20 question.

21 (The record was read as requested)

22 THE WITNESS: The subject of this McQueen  
23 Exhibit 6 is what is characterized as our freedom.  
24 The fact that Candidate Gore was running for an  
25 office, as well as Candidate Clinton running for an

□

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1 office, as well as these other candidates, or these  
2 other preliminary -- political celebrities being  
3 referenced, and their endorsements of other  
4 candidates, and all of the endorsements of state and  
5 local candidates across the country, whose names are  
6 not mentioned here, but clearly will have publicly  
7 aligned themselves with Candidate Gore, Candidate  
8 Clinton, Senators Schumer and Feinstein. As I've  
9 tried very hard to explain in the past, this is --  
10 this is about an issue, it's not about one specific  
11 election.

12 Q Look at McQueen Exhibit 4, do you have

13 that in front of you? <sup>McQueen.Cross</sup>  
14 A Yes, I do.  
15 Q Now, that ends up saying "vote George W.  
16 Bush for president," doesn't it?  
17 A It does.  
18 Q And isn't the text that precedes that  
19 designed to increase the likelihood that a viewer,  
20 having heard McQueen Exhibit 4, would, in fact, vote  
21 for George W. Bush, which means voting against Al  
22 Gore?  
23 A The --  
24 Q It's really a yes or no question.  
25 A The objective of that line is to say

□

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1 please vote for this candidate.  
2 Q And wasn't the text that precedes that  
3 line designed to make it more likely that a viewer  
4 would accept the advice to vote for George W. Bush?  
5 A It's text that was designed to accomplish  
6 in this commercial that payoff, but it's not  
7 necessarily designed -- the same text can have a  
8 multifaceted capability and, therefore, in McQueen  
9 6, it can be designed to lead the listener to a more  
10 large -- a larger kind of context.  
11 Q So is it your testimony, as we finish the  
12 subject of 4 and 6, that 6 -- is it your testimony  
13 that 6 was not designed to help persuade people to  
14 vote against Al Gore? It's a yes or no question.  
15 A Again, the way the question's phrased, I'd

16 have to get it reread so that I know if yes means  
17 yes or yes means no.

18 THE WITNESS: So reread the question,  
19 please. (directed to the reporter)

20 (The record was read as requested)

21 THE WITNESS: Is it my testimony that 6  
22 was not designed -- again, please. (directed to the  
23 reporter)

24 (The record was read as requested)

25 THE WITNESS: I'm having trouble retaining

□

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1 the verb here. 6 was not designed to help -- help  
2 persuade people to not?

3 COURT REPORTER: "To vote against Al  
4 Gore."

5 THE WITNESS: To vote against Al Gore.  
6 McQueen 6 was -- I've got the second half of the  
7 question, so now I'm going to get the first half.

8 MR. SCHWARZ: It starts with "Is it your  
9 testimony," and then she should read it back to you.

10 (The record was read as requested)

11 THE WITNESS: Was not designed to help.

12 MR. THOMPSON: Fritz, we're certainly  
13 willing to let the witness answer that question, but  
14 perhaps if you rephrased it without the negative,  
15 then he wouldn't have a double negative to contend  
16 with.

17 MR. SCHWARZ: I'm satisfied with my

18 question, David.

19 MR. THOMPSON: That's fine.

20 THE WITNESS: I believe -- I believe that  
21 6 was designed to help persuade people that  
22 freedom -- to help persuade and remind people that  
23 freedom is their most important consideration in all  
24 of their participation in the political arena.

25 And I certainly think that it would be --

□

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1 it would be very simplistic to say that 6 was simply  
2 or singularly designed to persuade people to vote  
3 against Al Gore. I think that would be a very  
4 narrowly and inaccurately way to define what was  
5 being attempted.

6 Q (By Mr. Schwarz) Using your words  
7 singularly designed, do you agree that 6 was  
8 designed by your firm in part to help persuade  
9 people to vote against Al Gore; yes or no? It  
10 shouldn't take too long to answer that question yes  
11 or no, Mr. McQueen.

12 A I understand your frustration in my  
13 inability to give you the yes or no you'd like me to  
14 give you as fast as you'd like me to give to you.  
15 At the same time, you've asked me to search my brain  
16 in previous discussion here for any doubt, and that  
17 kind of thing, and so I want to carefully choose my  
18 words. And I certainly don't think you want to rush  
19 me to an answer, do you?

20 MR. THOMPSON: Fritz, in fairness to the  
Page 55

21 witness, if he is confined to yes or no, he should  
22 be permitted to make sure that it's fully accurate.  
23 MR. SCHWARZ: There's a pending question.  
24 THE WITNESS: Read the question again for  
25 me, please. (directed to the reporter)

□

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1 (The record was read as requested)  
2 THE WITNESS: Again, because the question  
3 begins with my phrase, I'm going to have to write  
4 this down. I understand that this is taking time  
5 and I apologize to all concerned that you can't go  
6 watch football, but I'm going to write this down so  
7 I know precisely what I'm answering yes or no to.  
8 So let's start with using my phrase.  
9 Can you read it to me, please? (directed  
10 to the reporter)  
11 (The record was read as requested)  
12 THE WITNESS: Using your words. Okay.  
13 (The record was read as requested)  
14 THE WITNESS: To help persuade people to  
15 vote against Al Gore? No.  
16 Q (By Mr. Schwarz) The answer was no, n-o?  
17 A No, the answer is no.  
18 Q Okay.  
19 MR. SCWARZ: Can you read the question  
20 back again, please? (directed to the reporter)  
21 (The record was read as requested)  
22 MR. SCHWARZ: Okay.



McQueen.Cross

23           Q     (By Mr. Schwarz) Now I'm going to talk  
24 about the infomercial that was played entirely and  
25 is retyped in your deposition. And I think the name

□

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1     which was on the tape that was sent to us by your  
2     counsel was Union/Gore, so is it all right with you  
3     if I use that name, Union/Gore?

4           A     Yes.

5           Q     Okay. Now, are you aware that Union/Gore  
6     started running toward the end of September 2000 and  
7     ran all the way up to election day?

8           MR. THOMPSON: Objection; lack of  
9     foundation.

10          Q     (By Mr. Schwarz) Go ahead, you can  
11     answer.

12          A     If that's -- if you're stipulating that  
13     that's when it ran, I'll agree that that's when it  
14     ran. I, again, don't have a recollection, a precise  
15     recollection of exactly when it began, but I'll take  
16     your word for it.

17          Q     And without regard to -- thank you for  
18     taking my word for it, but without regard to precise  
19     recollection, do you have a general recollection  
20     that that ad was run toward the latter part of the  
21     period running up to the election of 2000?

22          A     Generally, I would suppose so, yes.

23          Q     And do you also have a general  
24     recollection that that ad was run predominantly in  
25     battleground states?

1           A     No, I think we've discussed this in my  
2     deposition. I defy you or anyone to tell me what  
3     book we look up battleground states in.

4           Q     Okay. Did Mr. Heston refer to  
5     battleground states in the infomercial?

6           A     I believe he did, but again, without  
7     looking precisely at the -- at the text, I would not  
8     be positive.

9           Q     Okay. Turn to deposition Page 113. And  
10    do you see that the infomercial begins on line 18?

11          A     Yes.

12          Q     And that's a reference to the fact that  
13    the NRA was paying for the infomercial; correct?

14          A     That is correct.

15          Q     And the first person to speak after that  
16    was Mr. Heston; correct?

17          A     Correct.

18          Q     And did Mr. Heston say as his first words,  
19    quotes, This election could come down to  
20    battleground states, closed quotes?

21          A     He -- that is part of what he says, he  
22    does not -- that's not a complete sentence.

23          Q     I didn't suggest it was. Did  
24    Mr. Heston -- were Mr. Heston's first words, quotes,  
25    This election could come down to battleground

1 states, closed quotes?

2 A Yes.

3 Q And was he referring to battleground  
4 states with respect to the presidential election of  
5 2000?

6 A I doubt it. I would think that he's  
7 referring to battleground states in the sense that  
8 they affect all elections, not just presidential,  
9 not just the presidential election.

10 Q Is there any candidate for office in  
11 Union/Gore, let's start with the union pod first,  
12 are there any candidates for office in the union pod  
13 other than Al Gore and George Bush that are  
14 mentioned?

15 A Again, without looking at the transcript,  
16 I can't be sure, but if you say there weren't, I'll  
17 take your word for it.

18 Q And in the portion of the rest of the  
19 infomercial, except for one reference to Ms. Clinton  
20 as a potential appointee to the Supreme Court by Al  
21 Gore, is there any reference to any candidate other  
22 than Al Gore in the balance of the infomercial after  
23 the union pod?

24 A Again, if you say there wasn't, I'll  
25 accept that.

□

1 Q Okay. Now, look at what Mr. Heston said.  
Page 59

2 Having in mind two things, first, that the  
3 candidates mentioned in the union pod are only Gore  
4 and Bush and that the candidates mentioned in the  
5 rest of the infomercial are Gore, with the exception  
6 of one fleeting reference to Hillary Clinton as a  
7 potential Gore Supreme Court nominee, I want you to  
8 have that fact in mind, okay?

9 A Okay.

10 Q Now, do you have any doubt that when  
11 Mr. Heston said, this election could come down to  
12 battleground states like Pennsylvania, Michigan,  
13 Ohio, and Missouri, states with lots of union  
14 members where the union vote could decide the  
15 outcome, do you have any doubt that he's talking  
16 about the presidential election of 2000?

17 A Well, sure, he's talking about a national  
18 election that includes all kinds of candidates, and  
19 the fact that Candidate Gore may be running for  
20 president does not exclude the fact that candidates  
21 all over the place are running for the senate and  
22 for the house and for mayor and governor and  
23 alderman and sheriff and all kinds of things.

24 Q You just described a truism as to what  
25 happens in American elections. But having in mind

1 the extent to which Mr. Gore is mentioned, that  
2 Mr. Bush is mentioned, and that the only other  
3 mention of a candidate for any office is that

4     fleeting reference to Ms. Clinton as a possible Gore  
5     appointee to the Supreme Court, I ask you the  
6     question again, do you have any doubt that  
7     Mr. Heston was talking about the presidential  
8     election of 2000?

9           A     And, again, I'm trying to answer your  
10    question, but when you say any doubt and try to  
11    confine my answer to a presidential election in a  
12    country where a national candidate for president  
13    simply heads a ticket of a party that is running  
14    candidates for hundreds of offices, dozens,  
15    thousands of offices all across the country, and you  
16    want me to say I have no doubt in my mind that we're  
17    talking about one single election, I just can't say  
18    that.

19          Q     Let me remove the words "no doubt." Do  
20    you believe that Mr. Heston was talking about the  
21    presidential election of the year 2000?

22          A     I believe he was talking about the entire  
23    election season during which Candidate Gore was  
24    heading -- spearheading, if you will, what the  
25    Democrat party was deploying against elections

□

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1     across the country.

2           Q     I want now to ask you some questions about  
3    the union pod. And you were the one that taught me  
4    the word "pod," but pod means the portion of the  
5    infomercial that is devoted to the interviewing  
6    certain union people; correct?

7           A     We can agree that the definition as it  
8 exists in our deposition is understood by both of  
9 us.

10          Q     Okay. And the union pod is repeated twice  
11 in the infomercial at the beginning and then at the  
12 end; is that correct?

13          A     Again, that is correct, I believe that's  
14 what --

15          Q     Okay.

16          A     -- we reviewed.

17          Q     Now, I'll just -- how many times, by the  
18 way, do you think Mr. Gore is referred to in the  
19 total infomercial?

20          A     I don't recall.

21          Q     What would be your best estimate of how  
22 many times Mr. Gore is referred to?

23          A     You're talking about something that  
24 happened two years ago, I have no way of even making  
25 a best estimate.

□

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1           Q     If I told you that the -- his actual name  
2 is used over 70 times, and if you take the he's  
3 h-e-s, he's, that clearly refer to Mr. Gore, it  
4 would be over 90, would you have any reason to  
5 disagree with me?

6           A     If that's the number that you're  
7 stipulating exists, I'll take your word for it.

8           Q     Okay. Now, I want to focus a little bit

9 on what some of the union people said. If you look  
10 at -- and whatever the union people said was  
11 selected by Ms. Simone, who's an employee of the  
12 Mercury Group, which is owned by Ackerman; is that  
13 correct?

14 A I think the question has a number of --  
15 read the question, please. (directed to the  
16 reporter)

17 (The record was read as requested)

18 THE WITNESS: We have two questions inside  
19 the same question.

20 Q (By Mr. Schwarz) why don't I split it up.  
21 First, Ms. Simone is an employee of Mercury, which  
22 is owned by Ackerman; correct?

23 A Right. The proper pronunciation of her  
24 name is Simone.

25 Q Okay. Ms. Simone is an employee of

□

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1 Mercury, which is owned by Ackerman; correct?

2 A That is correct.

3 Q And she did the interviews of the union  
4 people; correct?

5 A That is correct.

6 Q And she selected from the words that the  
7 union people gave whatever it is that's shown in the  
8 union pod; correct?

9 A She took whatever amount of footage she  
10 had and edited that footage into an  
11 eight-minute-long report, which we are now referring

12 to as a pod.

13 Q Okay. And then which was repeated twice?

14 A Right.

15 Q Okay. Now I'm going to call your

16 attention to some of the things that Ms. Simone

17 included in the material that she put into the pod.

18 I'll read to you from line 8 through line 16.

19 A On what page?

20 Q It actually is going to start on line 7 on

21 Page 114.

22 A Okay.

23 Q It reads -- you got it?

24 A I do.

25 Q Quotes, I've been a registered Democrat

□

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1 all my life. I've always just usually voted

2 Democrat straight, but this time around, I can't do

3 it.

4 And then another speaker, unidentified

5 speaker, quotes, Basically the union is always, you

6 know, vote Democrat, vote Democrat, vote for Al

7 Gore, well, I don't see it that way, it's -- you

8 know, I -- I want my freedom, I want to hold on to

9 my guns, I want to vote for Bush, closed quotes. Do

10 you see what I've just read to you?

11 A I do.

12 Q Is it still your testimony that this

13 infomercial is not about influencing votes in the



14 presidential election of 2000?

15 A It is my testimony that this infomercial  
16 is designed to fully inform the viewer on issues  
17 that relate to a much larger discussion than a  
18 single presidential election.

19 Q So is it also about trying to influence  
20 the vote in the presidential election?

21 A Insofar as the more information that a  
22 citizen has influences his vote, you know, I can't  
23 -- I can't disagree that the more people know about  
24 a candidate, the more it influences a vote. But was  
25 it the singular mission of this infomercial to

□

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1 influence a vote in a presidential election, the  
2 answer is no.

3 Q I've never put to you that it's the  
4 singular mission. I've put to you many times and  
5 you have resisted agreeing that a purpose of this  
6 infomercial was to cause people to be more likely to  
7 vote against Al Gore, do you understand that's the  
8 question I'm asking you?

9 A I do understand -- I do understand the  
10 words you're using, it's just that, again, you're  
11 trying to get me to agree that this infomercial was  
12 designed to influence the outcome of a single  
13 election, and I'm not going to agree to that.

14 Q So are you saying this infomercial was  
15 designed to influence the outcome of lots of  
16 elections?

17           A     I think the infomercial is designed to  
18 influence not only lots of elections, but the way  
19 people feel about the NRA, their membership in the  
20 NRA, the way they feel about their willingness to  
21 contribute to NRA causes, the way they speak to  
22 their peers on the issues of firearms or related  
23 issues. I think there's a multitude of tasks that  
24 this infomercial embarks upon.

25           Q     was one of the tasks the infomercial

□

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1 embarked upon to criticize Al Gore's character?

2           A     You've now switched pods, I believe, to  
3 the pod that Charlton Heston --

4           Q     No, my question is designed with respect  
5 to the whole infomercial. And the question is, was  
6 one of the purposes of the whole infomercial to  
7 criticize Al Gore's character?

8           A     I'd have to review the transcript. I  
9 believe that his record would certainly -- as the  
10 Heston pod, I believe, reviewed, I would think that  
11 his record reflected a certain sense of opportunism,  
12 maybe duplicitous history on the issue, insofar as  
13 that makes reference to a man's character, I guess  
14 -- I guess it would have to be included as a part of  
15 a communication.

16           Q     If you look at -- let's see where it is  
17 here. Would you look at what Mr. LaPierre says in  
18 his bumper. It's -- by the way, I can represent to

McQueen.Cross

19 you that Mr. LaPierre's bumper is repeated three  
20 times, do you accept that?

21 A I do.

22 Q If you look at Mr. LaPierre's bumper,  
23 which I think the first time it appears is -- let me  
24 just make sure I've got the first time. Yeah, if  
25 you go to Page 122, that is the first time

□

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1 Mr. LaPierre's bumper appears. Bumper is your word;  
2 right? It just means -- so the record is clear,  
3 what does a bumper mean?

4 A It is the material that separates the  
5 pods.

6 Q It separates the pods, okay. Now, would  
7 you look at the first playing of Mr. LaPierre's  
8 bumper, which starts on line 17 of Page 122.

9 A All right.

10 Q And then runs to line 12 of Page 123. And  
11 let me say in advance, the last sentence of that pod  
12 asks people to call a certain number to join the NRA  
13 or just find out how you can help, do you see that?  
14 Okay. That's on 123. That's the last sentence of  
15 his bumper; correct?

16 A Right.

17 Q Okay. Now, am I right that everything  
18 that Mr. LaPierre says, starting at line 17 and  
19 running up to the words "Second Amendment rights" on  
20 line 10 of 123, is identical to the text of both  
21 McQueen 4 and McQueen 6?

22 A Okay.

23 THE WITNESS: We're going to have to --  
24 again, reread the question, please. (directed to  
25 the reporter)

□

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1 (The record was read as requested)

2 THE WITNESS: It's not identical.

3 Q (By Mr. Schwarz) Let's just see what the  
4 differences are. I'd like you to have in front of  
5 you 4, 6, and this portion of your -- of the  
6 transcript of your deposition. And do you see a  
7 paragraph in 4 and 6 which starts with the words  
8 "did you know," that's the first paragraph of 4;  
9 right?

10 A That's correct.

11 Q And it's the first paragraph of 6 after  
12 Mr. Heston says the day of reckoning is at hand;  
13 right?

14 A That's correct.

15 Q And that paragraph is repeated exactly in  
16 Mr. LaPierre's bumper; correct?

17 A That is correct.

18 Q Okay. And then the next paragraph, which  
19 starts in "when Al Gore's top government lawyers  
20 make it to the U.S. Supreme Court"?

21 A Right.

22 Q That's identical in 4, 6, and also in the  
23 infomercial; correct?

24 A That's correct.  
25 Q Let me just read to you what the paragraph

□

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1 is we're talking about. Quotes, And when Al Gore's  
2 top government lawyers make it to the U.S. Supreme  
3 Court to argue their point, they can have three new  
4 judges hand picked by Al Gore if he wins this  
5 election, closed quotes. That's in, verbatim, in  
6 all three ads; correct?  
7 A That's correct.  
8 Q The next paragraph in the 4 and 6 start  
9 with the words "imagine what would" -- the next  
10 paragraph is, quotes, Imagine what would Supreme  
11 Court Justices Hillary Clinton, Charlie Schumer, and  
12 Diane Feinstein do to your gun rights. Now, that's  
13 word for word in all three ads; is it not?  
14 A Again, I'll accept your use of the word  
15 ads, but the answer is, yes, that line is.  
16 Q Okay. Then the bumper ad's words, "there  
17 would be nothing you can do," which isn't in the 4  
18 and 6; correct?  
19 A That's correct.  
20 Q Then 4 and 6 say, "and what you think  
21 wouldn't matter anymore, because the Supreme Court  
22 has the final say on what the Constitution means,"  
23 that's in both 4 and 6, isn't it?  
24 A That's in both 4 and 6, yes.  
25 Q And in the infomercial what he says is,

1 quotes, what you think wouldn't matter anymore,  
2 because the Supreme Court is the final interpreter  
3 of the Constitution, closed quotes; correct?

4 A Correct.

5 Q And that's in substance the same as what's  
6 in 4 and 6; correct?

7 A In substance, yes.

8 Q Then the -- all three ads have the  
9 following sentence, quotes, When Al Gore's Supreme  
10 Court agrees with Al Gore's Justice Department and  
11 bans private ownership of firearms, that's the end  
12 of your Second Amendment rights, closed quotes.  
13 That's in all three identically, isn't it?

14 A That's correct.

15 Q Now, go back to the reference which is at  
16 the bottom of Page 122 of the infomercial and is in  
17 the identical -- it's identically in the second  
18 paragraph of your Exhibit 4 and in the second  
19 paragraph of 6 after Mr. Heston says, "day of  
20 reckoning is at hand," that's what I'm call your  
21 attention to.

22 A You're comparing the third paragraph of 6  
23 with the second paragraph of 4; am I correct?

24 Q Yes. But the third paragraph of 6 is the  
25 second after Mr. Heston says, "the day of reckoning

1 is at hand"; correct?

2 A Yes.

3 Q Okay. Now, this says in all three, "when  
4 Al Gore's top government lawyers make it to the U.S.  
5 Supreme Court to argue their point, they could have  
6 three new judges hand picked by Al Gore if he wins  
7 the election, closed quotes -- if he wins this  
8 election, closed quotes, do you see those words?

9 A I do.

10 Q That's a reference to the presidential  
11 election in 2000, isn't it?

12 A I think that's -- that's a -- I think  
13 that's one construction of it. I think that, again,  
14 when you look at how elections work, Al Gore's  
15 winning of an election is not limited to his single  
16 election. When you head a Democrat party ticket,  
17 and when you're looking at Democrat senators winning  
18 elections in the United States Senate, and when  
19 you're looking at the confirmation process of United  
20 States senators on the appointment of candidates to  
21 the United States Supreme Court, that there is a  
22 context of winning an election that is not limited  
23 to a single presidential election.

24 Q Mr. LaPierre testified that the NRA's  
25 objectives, plural, in 2000 included maintaining the

1 Republican's, quotes, razor-thin, closed quotes,  
2 majorities in the house and the senate, do you have

3 any reason to doubt that?

4 A I do not.

5 MS. MITCHELL: Objection to the extent  
6 that that characterizes his testimony.

7 MR. SCHWARZ: That was exactly what he  
8 said.

9 Q (By Mr. Schwarz) Do you have any reason  
10 to doubt that, Mr. McQueen?

11 A I have no doubt that if you say he said  
12 it, that he said it.

13 Q Okay. Now, I'd like to have you look at  
14 another thing Mr. Heston said. Mr. Heston starts  
15 talking on the what I think we've called or you've  
16 called the Gore pod at Page 123, line 13; is that  
17 right? Is that where the so-called Gore pod starts?

18 A Yes.

19 Q Okay. Actually, I want to do one thing  
20 just before that, Mr. McQueen. You see at the end  
21 of his bumper, Mr. LaPierre said, "so please call  
22 this number now to join the NRA or just find out how  
23 you can help," do you see that?

24 A I do.

25 Q And we asked your side whether it has a

□

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1 copy of the script that was used by the people who  
2 answered the phone if anybody did call the number.  
3 And they've told us, and I'm not in the slightest  
4 challenging this, but that there's no remaining copy



5 of such a script. <sup>McQueen.Cross</sup> That's a preamble to a question,  
6 Mr. McQueen.

7 The number that was given was an 800  
8 number, and would you agree with me that when the  
9 800 number was called, the person answering would  
10 have once had a script; correct?

11 A I believe so. Again, I think I testified  
12 in my deposition that these services were almost  
13 surely provided by a vendor firm.

14 Q You did testify to that. And, therefore,  
15 the vendor firm would have been given a script as to  
16 what to say if someone called; correct?

17 A No, not necessarily. The vendor firm  
18 might have created a script and the script might not  
19 have been a narrative, it might have been a series  
20 of prompts.

21 Q Do you have any doubt that the -- either  
22 your firm or the NRA or both would have had an  
23 opportunity to approve that script before it was  
24 used by the vendor firm?

25 A Somebody would have approved it either

□

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1 within my firm or within the NRA or both.

2 Q Or both. Right. And do you know whether  
3 that script -- well, let me pull back from that.  
4 You see that Mr. LaPierre says, please call this  
5 number now to join the NRA, then I'm going to ask  
6 you about the balance of what he said, quotes, or  
7 just find out how you can help, closed quotes. Do

8 you see that?

9 A I do.

10 Q Now, you don't know -- do you know, let me  
11 put the question that way, do you know whether  
12 people asking how they could help were told that one  
13 way to help is to vote against Gore or to vote for  
14 Bush, do you know whether that was done or not done?

15 A I don't know.

16 Q Okay. Now, would you go to the bottom of  
17 Page 124 where Mr. Heston is speaking; right? You  
18 can see he starts speaking on line 13?

19 A I do.

20 Q And is that a start of the second pod  
21 which we've been calling the Gore pod of the  
22 infomercial?

23 A Yes.

24 Q Okay. Now, I'll read to you at the bottom  
25 of the page, Mr. Heston is talking about what,

□

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1 quotes, Al Gore's federal lawyers said the  
2 government can do, you see that, that's in line 18  
3 and 19?

4 A I do.

5 Q Do you see that?

6 A I do.

7 Q And then over at the top of the page, he  
8 talks about the next American president being able  
9 to appoint a number of justices to the highest court

10 and he mentions Ms. Clinton, Mr. Schumer, and  
11 Ms. Feinstein, do you see that on the Page 125?

12 A I do.

13 Q And then he -- on lines 10 through 13, he  
14 says, "when Al Gore's Supreme Court agrees with Al  
15 Gore's Justice Department," and so forth. Do you  
16 find what I've been referring to that was in  
17 Mr. Heston's mouth similar, but not identical, but  
18 similar to what was said in McQueen Exhibit 4,  
19 McQueen Exhibit 6, and by Mr. LaPierre in his bumper  
20 on the infomercial we're looking at now?

21 A I find them similar.

22 Q Okay. They're basically on the same  
23 subject; correct?

24 A That's correct.

25 Q Now, I want to call your attention to what

□

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1 Mr. Heston said at the bottom of Page 124. I'm just  
2 going to read one sentence that starts on line 23 of  
3 Page 124 and carries over to the first line of 125.  
4 Okay. Quoting Mr. Heston, quotes, That's chilling,  
5 especially when you consider that Al Gore has the  
6 power, if he wins the White House, to appoint  
7 Supreme Court justices who agree with his government  
8 lawyers. So, you see that, Mr. McQueen?

9 A I do.

10 Q Do you have any doubt that when Mr. Heston  
11 said, quotes, If he wins the White House, closed  
12 quotes, that he was referring to the presidential

13 election of 2000?

14       A     I believe that his reference to the white  
15 House is tantamount to his reference to a Gore  
16 administration. I think the white House is -- is a  
17 different way of saying that there will be a -- I  
18 think he -- I think he's in effect saying Al Gore's  
19 -- if he wins power in Washington, I believe that  
20 trying to narrow the definition of the white House  
21 to, again, that single office is not -- is not what  
22 was intended or is not what really would be  
23 logically construed from a reading, an objective  
24 reading or an objective listening to what was being  
25 said.

□

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1       Q     Well, Mr. McQueen, Mr. Gore would not have  
2 an opportunity to nominate someone for the Supreme  
3 Court unless he won the election of 2000; isn't that  
4 right?

5       A     He would not have the ability to nominate,  
6 but the nomination process is not how you get  
7 somebody -- is not all by itself how you get someone  
8 on the Supreme Court, as you know. So you need --

9       Q     Well, I wonder why you can't answer a  
10 question like that with a simple yes. Let me ask it  
11 to you again.

12               Isn't it correct that Mr. Gore would not  
13 have an opportunity to nominate someone for the  
14 Supreme Court unless he has put -- to quote

15 Mr. Heston, unless he, quotes, wins the white House,  
16 closed quotes?

17 A No, he would not have an opportunity to  
18 appoint anyone unless he were president of the  
19 United States.

20 Q And he can only get to be president of the  
21 United States if he wins the election of 2000; isn't  
22 that obvious?

23 A He can only win the election if he wins  
24 that -- he can only make the appointment if he wins  
25 the election and gains the white House. The

□

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1 context, I believe, of what is being said refers to  
2 his ability to actually accomplish the seating of  
3 justices on the Supreme Court. We talk about  
4 imagine how they would agree with Al Gore's  
5 government lawyers. And we talk about the Court  
6 being a final interpreter of the Constitution and  
7 how a justice department that would seek to ban  
8 private ownership of firearms would have a better  
9 opportunity to win that argument in front of a  
10 friendly, to that point of view, Supreme Court.

11 Q Yeah, I wonder why when I ask you a  
12 question like when Mr. Heston said if he, meaning  
13 Gore, wins the white House, you could not have  
14 simply said -- agree with me when I asked you, was  
15 that a reference to the election of 2000, the  
16 presidential election of 2000, why couldn't you  
17 answer that with a simple yes?

18           A     I believe it is not, in a thorough sense,  
19 in context with what the paragraph says.

20           Q     So that's your answer to my question why  
21 you can't answer the question I put to you with a  
22 simple yes?

23           A     Again, because so many of your questions  
24 have included double negatives and included a very  
25 narrow definition of a very broad issue, and because

□

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1 you have asked me at times to be complete in my  
2 answer, when complete, in my estimation, would be  
3 thoroughly impossible, I have to listen to every one  
4 of your questions very carefully, and I have to try  
5 to answer you truthfully within the context of what  
6 a complete sentence says, not simply one phrase  
7 within the sentence.

8           Q     Okay. I'm going to ask this now of you  
9 one more time.

10          A     Sure.

11          Q     And see if you're willing to answer this  
12 question which has no double negatives in it, you  
13 answer this question -- you're willing to answer  
14 this question with a simple yes. When Mr. Heston,  
15 on Page 124, as quoted on Page 124, lines 24 and 25,  
16 referring to Al Gore, says, "if he wins the White  
17 House," was that a reference to the presidential  
18 election of 2000; yes or no?

19          A     In a literal context, I'll give you a

20 qualified yes.

21 Q What's the qualification? Isn't the  
22 answer yes, without any qualification?

23 A No, because what's happened, what happens  
24 is you're talking about a candidate who wins power  
25 by virtue of not just winning a single election, but

□

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1 by achieving a Gore administration, by achieving a  
2 dominance in the United States Senate, by being able  
3 to accomplish a line of reasoning and initiative  
4 within the United States Justice Department.

5 I just think that there is a narrow  
6 construction that says this is about one single  
7 election, but I don't read the context of that  
8 sentence within the paragraph to mean just that.

9 Q And, in fact, you testified at your  
10 deposition, you used the term coattails in your  
11 deposition, didn't you?

12 A I did.

13 Q And you used the term coattails in the  
14 sense of sometimes a positive view of a presidential  
15 candidate will help members of that candidate's  
16 party to get elected to other offices; right?

17 A I'd have to review my specific testimony,  
18 but --

19 Q I mean, whether -- just let me ask you,  
20 you used the word coattails, and without having to  
21 refer you to specific pages, which I could do, but  
22 is it your understanding of the word coattails that

23 sometimes a positive view of a candidate for  
24 president can help get elected candidates of that  
25 same party who are running for lesser offices; is

□

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1 that correct or not correct?

2 A It is correct.

3 Q And is it also correct that sometimes a  
4 negative view of a candidate running for president  
5 can help defeat candidates of the president's party  
6 who are running for lesser offices; is that correct?

7 A That is correct.

8 Q Okay.

9 MR. BALL: Fritz, before we move on, could  
10 you move your papers away from the microphone,  
11 please, and be careful about throwing things on the  
12 microphone, it makes it noisy on us.

13 MR. SCHWARZ: I assure you I haven't  
14 thrown anything on.

15 MR. BALL: You know what I mean.

16 MR. SCHWARZ: Well, can you hear me  
17 clearly now?

18 MR. BALL: Yes, thank you.

19 MR. SCHWARZ: Okay.

20 MR. BALL: It's just causing a lot of  
21 noise when they bump up against the microphone.

22 MR. SCHWARZ: Okay. Very sorry.

23 Q (By Mr. Schwarz) So you referred earlier  
24 this morning to a -- I think your exact words were



McQueen.Cross

25 several different pods, closed quotes, that referred

□

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1 to the state of California and certain legislation  
2 that had been passed in the state of California;  
3 correct?

4 A I did.

5 Q Okay. And in your affidavit, in Paragraph  
6 12, you refer to one of those pods, this is the end  
7 of your Paragraph 12, you indicate that one of the  
8 California pods contained a picture of an NRA  
9 magazine, the cover of which happened to show a  
10 picture of Al Gore, do you see that?

11 A I do.

12 MR. THOMPSON: Objection; lack of  
13 foundation. I don't think it was a pod.

14 MR. SCHWARZ: Well, he used the word pod  
15 in his earlier testimony, David, as there being pods  
16 that were California.

17 Q (By Mr. Schwarz) Are you troubled by pods  
18 here, Mr. McQueen?

19 A I can't recall if the photograph occurred  
20 within a pod or within a bumper. But I do recall  
21 the magazine cover appearing.

22 Q Okay. And you do recall it as being --  
23 David, actually, I think you made a good point  
24 there. You do recall it as being in connection with  
25 an infomercial that dealt with the state of

1 California; is that right?

2 A I do.

3 Q I didn't hear you.

4 A I do recall that, yes.

5 Q Okay. Now, are you aware -- you must be,  
6 because you said there were several different pods  
7 relating to California, but having that in mind, are  
8 you aware that NRA ran in the year 2000 more than  
9 one infomercial that dealt with the state of  
10 California?

11 A I don't recall.

12 Q When --

13 A Go ahead.

14 Q If I were to tell you that there was one  
15 called California and there was one called  
16 California Battleground, would that bring anything  
17 back to you?

18 A It doesn't bring anything back, but I  
19 would agree. I mean, if you say that's what  
20 happened, I'll agree.

21 Q Now, picking up on what your counsel David  
22 Thompson said, was the picture of Mr. Gore in a  
23 bumper as opposed to in a pod?

24 A First of all, Mr. Thompson, is not my  
25 counsel. Secondly, I think he's representing the

1 NRA, he's not representing me. And as to whether it  
2 occurred within a pod or occurred within a bumper, I  
3 don't recall.

4 Q Okay. Well, I mean, how were you able to  
5 write the last sentence of Paragraph 12 if you  
6 didn't know what you were talking about in the last  
7 sentence of Paragraph 12 of your declaration?

8 A I didn't say I didn't know what I was  
9 talking about, I said that in my declaration, that  
10 it was briefly shown in the program. The program is  
11 the entire half-hour, it's not --

12 Q Do you -- when you wrote your declaration,  
13 did you actually remember that there was an  
14 infomercial that within it showed a picture of Al  
15 Gore, that related to California?

16 A Prior to writing my declaration, I was  
17 reminded that there was a single visual reference to  
18 Al Gore in that infomercial.

19 Q Who reminded you of that?

20 A You know, I think it was Wayne. It might  
21 have been Melanie Hill, it might have been Tim Oden.

22 Q But was it only one person of those three?

23 A It might have been somebody else. Again,  
24 you're talking about dozens of discussions.

25 Q I am -- this is not exactly ancient

□

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1 history, you signed your declaration on October 3;  
2 correct?

3 A Yes.

4           Q     It wasn't very long ago, that wasn't very  
5 long, was it?

6           A     The signing of the declaration occurred on  
7 the single date, the preparation for this  
8 declaration and the preparation for this entire  
9 process has been going on now for months.

10                So when you ask me to recall when somebody  
11 told me about a single visual reference, again, this  
12 is where I'm having this trouble. Now, do you want  
13 me to take some time and take my legal pad and see  
14 if I can reconstruct the number of people who may  
15 have reminded me of that, I'll do that, I'll do my  
16 best.

17           Q     In a minute I'm going to ask you the  
18 substance of what you were told without regard to  
19 who reminded you of it. But you testified at your  
20 deposition on October -- on September 24 that you  
21 had not started working on a declaration at that  
22 point, was that truthful when you said that?

23           A     That was truthful. If I used the word  
24 declaration in a previous answer and I used it  
25 carelessly when I really meant process of responding

□

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1 to this litigation, then I apologize.

2           Q     I'm not requesting or requiring an apology  
3 from you.

4                What were you told about the reference to  
5 Mr. Gore in -- that was contained within a

6 California infomercial?

7 A What I have in my head, Mr. Schwarz, is a  
8 comingling of conversations covering so much subject  
9 matter and so many details that relate to that  
10 subject matter, and it is two years ago. And I have  
11 been asking people on my staff to provide me with as  
12 much reminder as possible as to what happened, when  
13 it happened, how we did it, how we didn't do it, and  
14 I have been in conversations with attorneys, I have  
15 had conversations with Mr. LaPierre, I've had  
16 conversations with people at the Mercury Group and,  
17 you know, I don't know that I could -- that I could  
18 figure out when and how and from whom I was reminded  
19 that that magazine cover appeared in that  
20 infomercial.

21 Q Now, did you look at any videos in  
22 preparation of your declaration?

23 A I did.

24 Q Which ones did you look at?

25 A I did view the California infomercial.

□

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1 Q Did you view the -- which version of the  
2 California infomercial did you view?

3 A I don't know.

4 Q Was it a version --

5 A I'm sorry.

6 Q Was it a version that had or didn't have  
7 the picture reference to Mr. Gore?

8 A It was the one that had the picture

9 reference to Mr. Gore.

10 Q Were you told that there was another  
11 California infomercial that did not have a reference  
12 to Mr. Gore in the -- did not have a reference to  
13 Mr. Gore?

14 A I don't know if I was told that there was  
15 a version without it or not.

16 Q Do you know that without regard to whether  
17 you were told it?

18 A Do I know that there is one without, is  
19 that the question?

20 Q Yes.

21 A No, I think we established earlier that if  
22 you said there was, I'd take your word for it. I  
23 don't know that there is.

24 Q So how recent was your viewing of the  
25 California infomercial that does include a picture

□

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1 of a magazine cover which has a picture that is  
2 actually not Al Gore, but it is a composite of  
3 Mr. Gore and Mr. Clinton, how recent was it that you  
4 viewed that infomercial?

5 A Within the last few weeks, several weeks,  
6 I'm not sure. Within the last few weeks.

7 Q Did you view any other infomercials in  
8 preparation for this testimony?

9 MR. BALL: I'm going to object to that.  
10 That mischaracterizes testimony. You asked him

11 before if he viewed any infomercial in preparation  
12 of his declaration, are you distinguishing --

13 MR. SCHWARZ: That's entirely fair, I'll  
14 change.

15 Q (By Mr. Schwarz) Did you view any other  
16 infomercials in connection with preparing your  
17 declaration?

18 A As you know, we reviewed the infomercial  
19 Heston, I guess the one that's called Heston/Union,  
20 during the process of my deposition.

21 Q Did you view that again after your  
22 deposition?

23 A I did view it again after my deposition.

24 Q When was that?

25 A I can't tell you the date.

□

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1 Q Roughly when was that?

2 A Again, I'm sorry I can't be more precise,  
3 within the last few weeks.

4 Q And did you view any other infomercials  
5 either in preparation for your declaration or in  
6 preparation for this testimony?

7 A I did not view entire infomercials. I  
8 viewed portions of some infomercials that were used  
9 in the year 2000 and that are in keeping with some  
10 of the infomercial development that is underway at  
11 the present time.

12 Q And which ones were those?

13 A The ones that related to Great Britain.

14 Q Uh-huh. Great Britain and South Africa  
15 and Canada and Australia or just Great Britain?

16 A No, I think I looked at pieces of all of  
17 them. I was meeting with Ginny Simone and we were  
18 talking about a trip that she had just completed to  
19 Great Britain and the possibility of a follow-up  
20 trip.

21 Q Okay. Now, I want to call your attention  
22 to a piece of your deposition testimony, two pieces,  
23 one's on Page 71 of your deposition. And I'm going  
24 to read both this passage and then one on Page 105  
25 to you. The one I'm going to read to you from Page

□

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1 71 is -- well, we got to get the context.

2 Let's start with line 14, which is just to  
3 make clear to you I was asking you about any  
4 infomercials other than Heston/Union, okay? And I  
5 asked you this question, quotes, Are you aware of  
6 any other, the one we looked at, Heston/Union, I  
7 believe the count is over 70 references to Al Gore.  
8 Then I start my question again. Are you aware of  
9 any other infomercial run by the NRA in the 60 days  
10 prior to the November 2000 election that also refers  
11 to Al Gore? Answer, no, closed quotes.

12 And on Page 105, starting at line 4, I  
13 asked this question, quotes, Other than Heston/Union  
14 infomercial, can you remember -- was there any other  
15 infomercial that played in the year 2000 that



16 mentioned Al Gore? McQueen.Cross Answer, to my recollection, no.  
17 Closed quotes.

18 Now, you've now testified that a  
19 infomercial dealing with California has the one, as  
20 you put it at Paragraph 12 of your declaration,  
21 picture of Al Gore. Other than that correction, was  
22 the testimony that you provided at your deposition  
23 that I read to you correct?

24           A       The verbs you used in your questions on  
25   Page 71 and on Page 105 refer, on line 19, and the

1 verb, I believe, is mentioned on line 7, in my mind,  
2 would refer to spoken narrative, and so I'm not  
3 going to agree that this represents a correction.

4 Q Okay. I'm not trying to be critical in  
5 any way of you, Mr. McQueen. But if one were to ask  
6 you the question today, which is, let's start with,  
7 are you aware of any infomercial run by the NRA in  
8 the 60 days prior to the November 2000 election that  
9 refers to or depicts Al Gore, how would you now  
10 answer that today?

11 A I would say that the answer is yes.

12 Q And would the yes mean would you refer to  
13 the California infomercial?

14           A     I would.

15 Q But nothing else, because you haven't  
16 mentioned anything else; right?

17           A     Once again, as hard as I've tried to  
18   review all of this material and to search my memory

19 and to have others help me jog my memory, I will not  
20 represent that I am able to recall in a  
21 comprehensive manner anything other than what memory  
22 will allow and --

23 Q Yeah, but this memory is supplemented by  
24 questions you asked of your staff; correct?

25 A That's correct.

□

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1 Q I'm just trying to make sure we're in  
2 agreement as to what you're understanding as you sit  
3 here today, after having first given your  
4 deposition, then worked with your staff and others  
5 to prepare your declaration, and then done whatever  
6 preparation you did for this testimony, whether as  
7 you sit here today, the only infomercial that either  
8 refers to or depicts Al Gore are, one -- in the year  
9 2000, are, one, the Heston/Union infomercial and,  
10 two, a California infomercial; is that right?

11 A To the best of my recollection, yes,  
12 that's right.

13 Q And with respect to the 60-day question,  
14 are you certain that the California infomercial that  
15 does include for -- for how long is the picture of  
16 Al Gore depicted on the screen, by the way? It's a  
17 cover of a magazine, it's depicted on the screen, if  
18 I said to you one second or at most two seconds,  
19 would you agree?

20 MR. THOMPSON: Objection; lack of

21 foundation.

22 MR. SCHWARZ: well, he said he saw the  
23 infomercial.

24 MR. THOMPSON: But if you're making a  
25 representation to him, are you making a

□

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1 representation to him?

2 Q (By Mr. Schwarz) I am asking him, given  
3 that he recently reviewed that infomercial, is it  
4 correct that the depiction of Mr. Gore, who's made  
5 to look like Mr. Clinton was for, at most, two  
6 seconds and probably as short as one second?

7 A No, my recollection, it was somewhat  
8 longer, but I can't -- I can't pull out of air on  
9 some number of seconds. I think it was longer than  
10 one second, that's not --

11 Q Am I right that the picture actually isn't  
12 of Al Gore, but it's of Al Gore sort of  
13 metamorphosizing, however I pronounce the word, into  
14 Mr. Clinton?

15 A It's really the reverse of that, I  
16 believe. I believe the headline on the magazine  
17 says Clinton to the Gore. And so, therefore, the  
18 morphing process would have been, therefore, just  
19 the other way around.

20 Q Okay. I want to go back to the subject of  
21 coattails. And I believe you indicated in your  
22 deposition anyway -- here's my question, the  
23 coattail effect works if you are describing a

24 president favorably, a candidate for president  
25 favorably, or if you're describing a candidate for

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1 president unfavorably, the coattail effect works not  
2 only on candidates for federal office, but may work  
3 for candidates for state or local office as well;  
4 isn't that right?

5 A That's right.

6 Q Okay.

7 MR. SCHWARZ: Let's -- if we could take a  
8 three-minute recess, let's go off the record now.

9 (Break taken 11:56 to 12:01)

10 MR. SCHWARZ: We're back on the record?

11 MR. BALL: Yes.

12 Q (By Mr. Schwarz) You testified at your  
13 deposition how long you worked with NRA, but it's  
14 more than 20 years; is that right?

15 A That's right.

16 Q Prior to 19 -- prior to the election of  
17 1996 -- I'll withdraw that. Prior to calendar year  
18 1996, was there any instance in which NRA, to your  
19 knowledge, ran a broadcast advertisement that  
20 mentioned the name of a federal candidate in the 60  
21 days prior to a federal election, can you think of  
22 any as you sit here today?

23 A I'm going to need a substantial amount of  
24 time to try to recall the period between 1981 and  
25 1996, which --

1           Q     And having in mind, my question relates to  
2     the 60 days prior to a federal election.

3                 MR. THOMPSON:  Fritz, can you please just  
4     clarify how this relates to his direct testimony,  
5     since it doesn't speak about any ads, I don't  
6     recall, that were before 2000.

7                 MR. SCHWARZ:  Well, to be candid with you,  
8     David, I think I have a harder time articulating a  
9     reason, but -- than I did the other times you've  
10    interjected in that way.  So to be perfectly candid  
11    with you, I have a harder time.

12                However, I think when he says with the  
13    generality he does, for example, in Paragraph 7 and  
14    in Paragraph 9 what NRA uses paid media for, I think  
15    this fairly opens the door to this question.

16                THE WITNESS:  Let me answer your question  
17    by first saying I have not reviewed the 15 years' --  
18    approximately 15 years' worth of work we've done for  
19    NRA between 1981 and 1996 to give you an informed  
20    answer to your question.

21                It is my general recollection that in the  
22    Reagan, Mondale, Bush, Ducakis years, and I'm not --  
23    I don't mean to be limiting the 15 years to just  
24    those four candidates, and I use the names of those  
25    candidates as leaders of party initiatives that

1 related to, again, so many elections, not just  
2 general elections, but primary elections. It is my  
3 general recollection that there have been several,  
4 if not many, occasions during which NRA was active  
5 within the 60 days prior to an election with  
6 broadcast communication.

7 Q Do you know the name of -- the full name  
8 of the Political Victory Fund?

9 A Do I know the full name?

10 Q Yes.

11 A I know what I think, but I'm not going to  
12 testify that I precisely know the full name, no.

13 Q Does the full name include the words --  
14 either the words National Rifle Association or NRA?

15 A I believe they do. I believe it's NRA --  
16 either NRA-PVF or NRA-ILA PVF.

17 MR. SCHWARZ: I concede the balance of my  
18 time to the United States Department of Justice.

19 MR. KESSELMAN: Thank you, Fritz. I will  
20 be very brief.

21 CROSS-EXAMINATION

22 BY MR. KESSELMAN:

23 Q Good day. I'm not sure if it's morning or  
24 afternoon anymore. My name is Marc Kesselman and  
25 I'm a trial attorney with the United States Justice

1 Department. I have just a few questions for you.

2                   It's true, is it not, that you and your  
3 firm have produced paid media work for the NRA not  
4 just in the 60 days prior to federal elections, but  
5 also throughout the years, both even and odd number  
6 years, going back for awhile now; correct?

7           A     Yes.

8           Q     If I could ask you to turn in your  
9 declaration to Paragraph 30, and I'd like to read  
10 this aloud for the record, if you could follow  
11 along.

12                   "Election periods are critical periods in  
13 which Americans take a more active interest in  
14 politics and political issues than they normally do.  
15 For that reason, election periods are very likely  
16 the single-most important time for a group like the  
17 NRA to communicate its message to the broadest  
18 possible audience." And today you would stand by  
19 the testimony that's in Paragraph 30?

20          A     I would.

21          Q     You used the words "very likely," do you  
22 see those words in Paragraph 30?

23          A     I do.

24          Q     Can I take it that you've inserted those  
25 words of qualification in Paragraph 30 because you

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1 are not referring to any scientific studies of this  
2 fact, but that it's just your impression; correct?

3          A     I am exposed to a great deal of what you  
4 refer to as scientific study. To agree that the

5 words "very likely" excludes some influence over the  
6 21 years I represented NRA, that scientific research  
7 may have contributed to my use of the words, I can't  
8 agree with that.

9 I think very likely it is used in the  
10 context of my making a statement that it's very  
11 likely that people buy products when there's a sale.  
12 And I have both anecdotal evidence that that's true  
13 and I also have scientific evidence that that's  
14 true. I could not sit here and tell you precisely  
15 to what degree the science might represent -- or to  
16 what percentage the science might represent the  
17 context of my answer or choice of words.

18 Q So as you sit here today, there is no --  
19 other than your years of experience, nothing in --  
20 no specific studies or scientific research or polls  
21 that you could point to that would prove  
22 definitively that Americans pay more attention to  
23 political issues than they normally do during the  
24 months and weeks immediately prior to an election,  
25 is there?

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1 A Again, you're going to have to be much  
2 more precise with your question because election  
3 periods are most precisely measured by people going  
4 to the polls and voting, and that's a form of  
5 scientific measurement that can't be denied. And so  
6 people do, by virtue of the fact that they don't



7 vote when there aren't elections and they do vote  
8 when there are, and I rely on that fact when I use  
9 the verb -- words "very likely." You know, again,  
10 you're going to have to be more precise with your  
11 question for me to agree.

12 Q well, to help me be more precise,  
13 Mr. McQueen, could you tell me what then you mean by  
14 the terms -- the words "election periods" at the  
15 first two words in Paragraph 30 of your declaration?

16 A Speaking for myself and not for my firm, I  
17 would think that an election period begins when the  
18 national consciousness is raised in its favor. In  
19 other words, when the media starts talking about  
20 candidates for office, who's filing for various  
21 candidates, who's raising money, who's receiving  
22 endorsements, it marks the beginning of an election  
23 period.

24 There are many differences between an  
25 election period for county office, for county

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1 assessor, and election period for president of the  
2 United States.

3 So, again, to answer your question  
4 election periods, what I mean by election periods  
5 are those periods of time that could be marked --  
6 measured in days, they could be measured in weeks,  
7 they could be measured in months, but those are the  
8 periods in time when the general consciousness of  
9 the electorate is being raised.

10           Q     And these scientific studies that you've  
11 referred to reading over the last 21 years, would  
12 they have used the phrase "national consciousness"  
13 in their definition of demarcating the period of  
14 time that people are paying attention, or is that  
15 your phrase?

16           A     I can't be sure. I may be cribbing it  
17 from several scientific studies and not knowingly  
18 doing so. You can't look at 21 years' worth of work  
19 in this arena and know precisely whether I'm coining  
20 the phrase "national consciousness" all by myself.

21           Q     And by your definition, and please correct  
22 me, I don't want to mischaracterize your testimony,  
23 but by your definition, you just said that national  
24 conscious is raised when the media talks about who  
25 is filing, who's starting to raise money, what

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1 people are starting to declare and talk about their  
2 intentions for running for future office, and I  
3 would submit to you that that happens the very day  
4 after any given election. So according to your  
5 testimony, wouldn't it be true that we are always in  
6 an election period?

7           A     No. That's -- that's your point of view  
8 that it begins on the very day following an  
9 election, but that's not one that I share.

10           Q     But I'm just using your definition. The  
11 media certainly talks about -- the day after the

12 2000 election, they were already talking about 2004,  
13 weren't they?

14 MR. THOMPSON: Objection; lack of  
15 foundation.

16 THE WITNESS: I'll debate this with you if  
17 you want, but on the day following the election what  
18 the media was talking about was what was going on in  
19 Florida. So if you want to be more precise with  
20 your question about what day following the election,  
21 I'll be happy to discuss it with you.

22 Q (By Mr. Kesselman) Fair enough. But as  
23 the phrase "election period" is used in your  
24 Paragraph 30 of your declaration, it is a debatable  
25 term; correct?

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1 A It's a subjective term.

2 Q And how would you define that objectively  
3 then?

4 A Well, I'm not so sure that it can be, and  
5 that's the problem here. You have atmospherics that  
6 can't be as precisely defined as a lot of people  
7 would like them to be. There's no book to look all  
8 this up in. And that's why I've described the whole  
9 process of issue management as flowing, literally,  
10 flowing from day to month to year to decade, I mean,  
11 it's just a long, long river of discussion.

12 Q So the times when Americans are paying a  
13 great deal of attention to political issues varies  
14 from day to month to year; correct?

15           A     There is no doubt that during election  
16 periods, there's a greater interest than there is  
17 outside of an election period.

18           Q     But, again, you're unable to define  
19 precisely what an election period is by your own  
20 definition?

21           A     By my definition, I'm saying that I don't  
22 think anybody can define what an election period is.  
23 Everybody can have an opinion, but not a definition.

24           Q     One last line of questions, then I'll be  
25 through for the day. Do you recall in your

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1 declaration that you recounted an episode of  
2 President Clinton going onto the Today show and you  
3 needing to form a response on behalf of your client,  
4 the NRA, specifically to those comments by President  
5 Clinton?

6           A     I do.

7           Q     Now, for purposes of question now, I would  
8 like for you to take the same exact set of facts,  
9 but assume that President Clinton or President Bush  
10 or any federal office holder went on the Today show  
11 with Katie Couric and didn't mention the NRA by  
12 name, but instead mentioned, for instance, Colt,  
13 I'll use them as an example, because they are a gun  
14 producer; are they not?

15           A     They are.

16           Q     Now, if Mr. Clinton had gone onto the

17 Today show and given the same speech he gave about  
18 the NRA, but gave it instead about the Colt  
19 Corporation, would you say that, in your opinion,  
20 they should have the right to engage in the same  
21 kind of media -- paid media response that you've  
22 testified here the NRA should have the right to do?

23 A I believe that there is a difference  
24 between an organization like the National Rifle  
25 Association that is made up of individual members

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1 who give \$25 at a time to a -- to a movement that is  
2 designed to give them a voice, designed to defend  
3 their freedom, their rights, to defend their  
4 reputation.

5 I think that if a politician today were to  
6 go on television two weeks from this upcoming  
7 election and say that the National Rifle Association  
8 is a den of snipers, that there should be no  
9 impediment to the NRA's ability to defend itself.

10 I'm not in possession of 21 years' worth  
11 of experience in the differences that individual  
12 corporations should be willing to endure in defense  
13 of their well-being in identical situation to the  
14 one I referenced in my affidavit. The protection of  
15 the American Constitution, and more specifically,  
16 the Second Amendment is NRA's mission, it's not  
17 Colt's, it's not RCA's or General Motors'. It's  
18 very clearly the mission of the NRA.

19 And the hypothetical that you're offering

20 is one that I would have to ponder to see if I would  
21 agree that they enjoy identical rights and I'd need  
22 you to give me some time. That's the most  
23 thoughtful answer I can give you to the question.  
24 Q I appreciate that thoughtful answer, but I  
25 notice that your answer merely sought to distinguish

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1 the NRA from Colt rather than to -- rather than to  
2 answer specifically or formulate an opinion of your  
3 belief about what corporations rights should be;  
4 correct?

5 MR. THOMPSON: I'm sorry, which  
6 corporations? The NRA?

7 MR. KESSELMAN: Colt's, Colt's.

8 THE WITNESS: Again, you're asking me  
9 to --

10 MR. THOMPSON: Angus, hold on a minute,  
11 because I want to object to this line of  
12 questioning. Mr. McQueen doesn't speak about  
13 for-profit corporations or non-for-profit  
14 corporations in any distinctions in his direct  
15 testimony. And he doesn't, as far as I can recall,  
16 talk about rights either. I mean, he merely talks  
17 about the practical, real world effects of paid  
18 media for the NRA, and questions about what those  
19 effects may be for for-profit corporations are  
20 beyond the scope of his direct.

21 MR. KESSELMAN: I'm sorry, was there an

McQueen.Cross  
22 instruction not to answer?  
23 MR. THOMPSON: Marc, I think it's  
24 incumbent on you to explain to the witness, we don't  
25 have a judge to rule, with Fritz, I've been willing

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1 to see when he's made a good point about it and tied  
2 it to the direct. But you use the term rights of  
3 the NRA, I don't think that's something Mr. McQueen  
4 spoke to.

5 But more importantly, there's nothing in  
6 here that speaks to for-profit corporations. So, I  
7 mean, unless you can tie it to the direct testimony,  
8 I don't see why he is required to respond to it.

9 MR. KESSELMAN: Well, I would say that  
10 generally in this declaration, there is talk of  
11 rights of the NRA, and he's been very willing to  
12 testify about the infringement on the NRA, and in  
13 order to understand his position with respect to the  
14 NRA, I think that it's a fair and incredibly  
15 relevant comparison to make vis-a-vis a corporation  
16 such as Colt. So that would be the basis of the  
17 question.

18 MR. THOMPSON: You know, again, where does  
19 he talk about rights in his direct testimony?  
20 Because I reviewed it this morning, I did not see  
21 that, perhaps it alluded my eyes. That's really a  
22 legal characterization, he doesn't engage in that.

23 MR. KESSELMAN: Certainly in Paragraph 35  
24 and Paragraph 36 and 37, he talks about fairness.

25 MR. THOMPSON: So your question now is

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1 would it be fair for Colt not to be permitted to  
2 respond by name?

3 MR. KESSELMAN: If the court reporter  
4 could please go back and read the exact question  
5 that I asked. (directed to the reporter)

6 (The record was read as requested)

7 MR. THOMPSON: He gave you a very  
8 thoughtful answer to that. If you have, you know,  
9 one more question in this line that you want to  
10 pose, in the spirit of accommodation, I'll let you  
11 do so, but I really think we're far afield from his  
12 direct testimony.

13 THE WITNESS: I'm not sure who's got the  
14 ball here, guys.

15 MR. THOMPSON: I think, Marc, you've got  
16 the ball. If you want to ask a follow-up, I'm  
17 willing to let you do so, but we're getting very  
18 close to the point of which I think we've gone  
19 beyond the relevance.

20 MR. SCHWARZ: David, you're not, according  
21 to Mr. McQueen, you're not his counsel.

22 MR. THOMPSON: I'm trial counsel for the  
23 NRA, we don't have a judge here, if we did have a  
24 judge, I would be the one who would be chairing this  
25 for the plaintiffs.



1 MR. SCHWARZ: Okay.

2 MR. KESSELMAN: That's fine. Either the  
3 witness can -- there's a question pending that I  
4 think actually came after the statement that was  
5 just read by the court reporter.

6 MR. THOMPSON: Read the last question back  
7 and, Mr. McQueen, you go ahead and try to answer it  
8 if you can. And, Mr. Kesselman, I'll just tell you  
9 that I think we're really getting to the outer  
10 bounds.

11 (The record was read as requested)

12 THE WITNESS: well, I think the question  
13 -- read the question again. The question is a  
14 complex one, I'm not even sure the structure is one  
15 I can decipher properly, but go ahead, read it to me  
16 one more time. He's saying I drew a distinction  
17 between Colt and the NRA.

18 MR. BALL: I'm not sure that's what he's  
19 asking.

20 (The record was read as requested)

21 MR. THOMPSON: Again, we do have a  
22 relevance objection, the extent to which the witness  
23 has an opinion as to the legal distinctions between  
24 the rights of for-profit and not-for-profit  
25 corporations we think is irrelevant, but you can

1 answer the question.

2 THE WITNESS: Here's my problem. You  
3 know, I don't know that I understand the question.

4 MR. BALL: That's fine.

5 THE WITNESS: So I don't know the answer.

6 MR. KESSELMAN: That's fine. I will do --  
7 I will do my best to break it up.

8 Q (By Mr. Kesselman) Mr. McQueen, just so I  
9 understand the basis for your declaration, you don't  
10 work directly for the NRA, and so you would have no  
11 basis to know whether or not they receive all of  
12 their funding from individuals or not, would you?

13 A I know only what I heard, and so the -- I  
14 think a proper answer to your question is that I  
15 really don't know. What I may have in the way of  
16 hearsay, or whatever, no, the answer is I don't know  
17 what they receive from individuals versus what they  
18 might receive from corporations or from third  
19 parties or somewhere else, I don't know.

20 Q Okay.

21 MR. KESSELMAN: That will do it for me.  
22 Thank you. I don't know if there's redirect by  
23 counsel?

24 MR. THOMPSON: No. Off the record for a  
25 moment.

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1 (Discussion off the record)

2 MR. THOMPSON: Then we don't have any

3 redirect. This is David Thompson, we do not have  
4 any redirect of the witness.

5 MR. SCHWARZ: So I guess the  
6 cross-examination and the cross-examination is  
7 closed, so let's go off the record for some  
8 mechanical things.

9 (Deposition concluded at 12:34 p.m.;  
10 signature requested)

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ANGUS MCQUEEN

6 STATE OF \_\_\_\_\_ )  
7 COUNTY OF \_\_\_\_\_ )

8

9 Subscribed and sworn to before me this \_\_\_\_  
10 day of \_\_\_\_\_, 2002.

11

12

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\_\_\_\_\_  
Notary Public for the State of  
\_\_\_\_\_.

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My Commission Expires: \_\_\_\_\_

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CORRECTION SHEET

2

3 Case Style: McConnell v. Federal Election Committee  
Reporter: KBJ  
Witness: Angus McQueen  
4 Date reported: 10-20-02  
Attorney: Larry Glenn Ball  
5 OA: Frederick A.O. Schwarz, Jr., 825 8th Ave., New  
York, NY 10019

6

7 PAGE LINE CORRECTION REASON FOR CORRECTION

8 \_\_\_\_\_ McQueen.Cross \_\_\_\_\_  
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1 C E R T I F I C A T E  
2  
3 STATE OF OKLAHOMA        )  
4 COUNTY OF OKLAHOMA      ) ss:  
5  
6 I, Karen B. Johnson, Certified Shorthand  
7 Reporter for the State of Oklahoma, certify that the  
8 above-named Angus McQueen was by me first duly sworn  
9 to testify the truth; that the above and foregoing  
10 deposition taken by me in stenotype and thereafter  
transcribed is a true and correct transcript of the  
Page 109

11 testimony of the witness; that the deposition was  
12 taken on October 20, 2002, at 8:23, at 1601  
13 Northwest Expressway, Oklahoma City, State of  
14 Oklahoma; that I am not an attorney for nor a  
15 relative of any said parties, or otherwise  
16 interested in the event of said action.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand and seal of office on this 22nd day of October,  
19 2002.

20

21 Karen B. Johnson,  
22 Certified Shorthand  
23 Reporter for the State  
24 of Oklahoma  
25

□