
Depo of James Jeffords (McConnell v Federal Election Commission)
9-27-2002

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CONDENSED TRANSCRIPT AND CONCORDANCE
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[1] IN THE UNITED STATES DISTRICT COURT
[2] FOR THE DISTRICT OF DISTRICT OF
COLUMBIA

[3] -----x

[4] SENATOR MITCH MC CONNELL, :

[5] et al., :

[6] Plaintiffs, : Civil Action Number

[7] vs. : 02-0582

[8] FEDERAL ELECTION COMMISSION, : (CKK,
KLH, RJL)

[9] et al., :

[10] Defendants. :

[11] -----x

[12] REPUBLICAN NATIONAL COMMITTEE, :

[13] et al., :

[14] Plaintiffs, : Civil Action Number

[15] vs. : 02-0874

[16] FEDERAL ELECTION COMMISSION, : (CKK,
KLH, RJL)

[17] et al., :

[18] Defendants. :

[19] -----x

[20] CONFIDENTIAL DEPOSITION OF JAMES
JEFFORDS

[21] Washington, D.C.

[22] Friday, September 27, 2002

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[1] Deposition of JAMES JEFFORDS, called for
[2] examination pursuant to notice of deposition, on
[3] Friday, September 27, 2002, in Washington, D.C., at
[4] the Cannon House Office Building, 1st Avenue and C
[5] Street SE, at 8:10 a.m., before VICKY

STALLSWORTH, a

[6] Notary Public within and for the District of
[7] Columbia, when were present on behalf of the
[8] respective parties:

[9]

[10] GRANT VINIK, ESQ.

[11] Assistant Senate Legal Counsel

[12] 642 Hart Senate Building

[13] Washington, DC 20510

[14] 202-224-4435

[15] On behalf of Senator James Jeffords

[16]

[17]

[18]

[19]

[20]

[21]

[22] - continued -

Page 3

[1] APPEARANCES (CONTINUED):

[2]

[3] FLOYD ABRAMS, ESQ.

[4] BRIAN T. MARKLEY, ESQ.

[5] Cahill Gordon & Reindel

[6] 80 Pine Street

[7] New York, New York 10005

[8] 212-701-3230

[9] On behalf of Senator Mitch McConnell

[10]

[11] MICHAEL A. CARVIN, ESQ.

[12] JACK CHANEY, ESQ.

[13] Jones, Day, Reavis & Pogue

[14] 51 Louisiana Avenue NW

[15] Washington, DC 20001-2113

[16] 202-879-3808

[17] On behalf of Republican National Committee

[18]

[19]

[20]

[21]

[22] - continued -

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[1] APPEARANCES (CONTINUED):

[2]

[3] STACY BECK, ESQ.

[4] LYNN BREGMAN, ESQ.

[5] Wilmer, Cutler & Pickering

[6] 2445 M Street NW

[7] Washington, DC 20037

[8] 202-663-6847

[9] On behalf of Defendant-Intervenors

[10]

[11]

[12]

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[21]

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[1] PROCEEDINGS

[2] Whereupon,

[3] JAMES JEFFORDS

[4] was called as a witness and, having first been duly
[5] sworn, was examined and testified as follows:

[6] MS. BREGMAN: I understand that at many of
[7] the depositions we've determined at the beginning to
[8] put it under the protective order although we will
[9] be taking the 10 days to designate, but in the

[10] interim that parties will treat it as under the
[11] protective order. So we'll follow up in 10 days.

[12] But in the interim, ask that it be treated as such.

[13] That's my statement and I think Senator

[14] Jeffords has a brief statement as well.

[15] THE WITNESS: It's been quite a while

[16] since my involvement in the campaign finance reform
[17] legislation at issue in this case. Because of the

[18] many other matters that have occupied my time and

[19] attention more recently, I have not been focused on

[20] the Bipartisan Campaign Reform Act, and my recall

of

[21] some provisions is not good.

[22] Accordingly, you should know that I

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[1] probably will not be able to give an answer to many
 [2] questions about the legislation. And my
 [3] recollection and knowledge of the act are likely to
 [4] be faulty and may be unreliable. The best source
 [5] for the answers to questions you may have will be in
 [6] the legislative record.

[7] MR. ABRAMS: Could you swear the witness
 [8] in, please. He's been sworn in. I'm sorry.

[9] EXAMINATION

[10] BY MR. ABRAMS:

[11] Q Good morning, Senator.

[12] A Good morning.

[13] Q I'm Floyd Abrams. I represent Senator
 [14] McConnell in this litigation. Have you ever had a
 [15] deposition taken before?

[16] A No.

[17] Q I'll be asking you questions. If any of
 [18] them are unclear, please let me know. Obviously, as
 [19] you've said, if you don't recall something, please
 [20] tell me that.

[21] A Okay.

[22] Q You are one of the Senators who intervened

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[1] in this case, are you not?

[2] A Yes, I am.

[3] Q Could you tell us why you did that?

[4] A My concern about the electioneering
 [5] practices and trying to improve the laws to help
 [6] make sure that the elections are fair.

[7] Q Is there any particular reason why you
 [8] intervened personally as opposed to allowing the
 [9] Department of Justice and the Federal Election
 [10] Commission to defend the constitutionality of the
 [11] statute?

[12] A Because I've been running in elections
 [13] since 1970, I guess, '60 something, whatever. And
 [14] at times, I have noticed problems and became
 [15] concerned that one - I know my campaigns had a
 [16] barrage of ads that was very close to the election,
 [17] for which I had no opportunity to respond and
 [18] realized that this was a serious problem.

[19] Q Could you be a little more specific with
 [20] us in terms of your own campaigns?

[21] A My own campaign?

[22] Q Yes. And in terms of the nature of the

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[1] barrage of ads that you told us about?

[2] A Yes. As best I can recollect. It was my
 [3] election for the Senate. I think it was my second
 [4] term. And all of a sudden near the end of the
 [5] campaign, within the last couple of weeks, why,
 [6] there was a tremendous barrage of very inaccurate
 [7] and damaging advertising and it came as a surprise,
 [8] and we had little or no time to react to it.
 [9] And the polling showed that once those ads

[10] started, my rather substantial lead had diminished
 [11] substantially.

[12] Q Do you recall the subjects of those ads?

[13] A A little vague at this point. But it

[14] was - Jan Backus ran the ads, I know that. But I
 [15] really can't remember.

[16] Q Do you recall who paid for the ads?

[17] A Well, my opponent paid for the ads out of
 [18] her campaign.

[19] Q So these were - these were a barrage of
 [20] inaccurate and damaging ads paid for by your
 [21] opponent; correct?

[22] A Yes.

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[1] Q Have you ever been in a situation as a
 [2] candidate where third parties paid for ads towards
 [3] the end of a campaign?

[4] A I don't know.

[5] Q One of the documents that has been
 [6] provided us in this case are certain responses by
 [7] you and the other sponsors of the act to
 [8] interrogatories, questions -

[9] A Yeah.

[10] Q - posed by some of the Plaintiffs.

[11] And I want to put this before you and ask

[12] you one or two questions and see if, consistent with

[13] the statement that you made at the start, you do

[14] recall certain matters which are set forth in this

[15] document. I'm going to mark it first as Jeffords

[16] Exhibit 1 a copy of Senate Resolution 323, which

[17] purports to authorize Senator Jeffords and other

[18] Senators who agree to participate in this litigation

[19] to testify except concerning matters for which a

[20] privilege should be asserted and when their

[21] attendance at the Senate is necessary for the

[22] performance of their legislative duties.

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[1] If you mark this as Jeffords Exhibit 1,
 [2] please.

[3] (Jeffords Exhibit 1 identified.)

[4] MR. ABRAMS: And I'll mark as Jeffords

[5] Exhibit 2 a document entitled "Intervenor's

[6] responses to Madison Center Plaintiffs' first set of
 [7] interrogatories."

[8] (Jeffords Exhibit 2 identified.)

[9] BY MR. ABRAMS:

[10] Q Let me pass this to you. Do you recall,

[11] Senator Jeffords, seeing this document, your - I

[12] believe your signature is about -

[13] A I found it.

[14] Q - about 4/5ths of the way through. Do you
 [15] recall seeing this?

[16] A I can't - I signed it, so I guess the
 [17] answer is yes.

[18] Q Could you direct your attention to page
 [19] 26, please. In fact, why don't we start at page 25.

[20] Interrogatory number 25 asks certain questions of
 [21] all the Intervenor, including yourself. And it

[22] asks you all to state in detail certain matters.

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[1] And your response begins at page 26, which is what I
[2] want to ask you about.

[3] MS. BREGMAN: The response of all the
[4] intervenors.

[5] BY MR. ABRAMS:

[6] Q The response of all the intervenors, which
[7] speaks, as I understand it, Senator, for all of you.
[8] The signature page that you looked at states, does
[9] it not, "I declare that those responses specific to
[10] me as well as the general responses are true and
[11] correct"? That's the page that I think you saw
[12] earlier.

[13] A Page number what?

[14] Q That's the one with your signature on it.

[15] A Yes.

[16] Q Why don't we go back to page 26. There's
[17] a line, which is the beginning of the third
[18] paragraph, which is what I wanted to ask you about.
[19] I will shorten it a little bit in my reading of it.
[20] But it says in substance that intervenors are
[21] tainted with the appearance of undue influence on
[22] their judgment to the extent certain things had

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[1] happened.

[2] And the first that it says is "to the
[3] extent that they have benefitted from soft money
[4] contributions channelled through the political
[5] parties." My question to you is, have you
[6] personally benefitted from that?

[7] A I don't -

[8] Q I'm sorry?

[9] A I don't know.

[10] Q The second one says that "Intervenors are
[11] tainted with the appearance of undue influence on
[12] their judgment to the extent that they have
[13] benefitted from electioneering communications."
[14] Do you know if you have benefitted from
[15] electioneering communications?

[16] A I don't know.

[17] Q The third says that "Intervenors are
[18] tainted with the appearance of undue influence on
[19] their judgment to the extent that they have granted
[20] access to any donor of soft money to their party or
[21] any entity which financed an electioneering
[22] communication benefitting them."

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[1] Have you so benefitted?

[2] A I have no memory of doing so.

[3] Q And the fourth is "Intervenors are tainted
[4] with the appearance of undue influence on their
[5] judgment to the extent that they have cast votes or
[6] undertaken other acts relating to any policy matter
[7] that are consistent with the preferences of any
[8] donor of soft money to their party or any entity
[9] which financed an electioneering communication
[10] benefitting them."

[11] Is that true of you? Do you know?

[12] A Not to my knowledge, no.

[13] Q And the last says "Intervenors are tainted
[14] with the appearance of undue influence on their
[15] judgment to the extent that they have acted in other
[16] ways that would violate the Bipartisan Campaign
[17] Reform Act." And do you know if you have taken
[18] actions which would violate the act?

[19] A Not to my knowledge.

[20] Q Do you recall, Senator Jeffords, if you
[21] joined with the other intervenors, the other
[22] sponsors of the act in making a submission to the

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[1] Federal Election Commission with respect to what's
[2] referred to as "electioneering communications"?

[3] A I may have. But I have no immediate
[4] recollection.

[5] Q Do you recall if - well, let me put this
[6] in front of you.

[7] MR. ABRAMS: I'll mark it as Jeffords
[8] Exhibit 3, a document dated August 23, 2002,
[9] addressed to Ms. Mai, M-a-i, Dinh, D-i-n-h, the
[10] acting assistant general counsel of the Federal
[11] Elections Commission.

[12] (Jeffords Exhibit 3 identified.)

[13] BY MR. ABRAMS:

[14] Q Could you read to yourself, Senator, just
[15] pages 1 and 2 of this document.

[16] A Uh-huh. Yes. I'm sorry. Do I go all the
[17] way through?

[18] Q No, just page 2 is all I'm going to ask
[19] you.

[20] A Right.

[21] Q And you're one of the people who signed
[22] it?

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[1] A Yes.

[2] Q And what did you mean by using the words
[3] "sham issue advertising"? What does that mean?

[4] A Well -

[5] MS. BREGMAN: I'm going to object just
[6] because I'm not sure there's a foundation for the
[7] fact that he used the term or a term that this
[8] particular Senator uses. It is in the paper, which
[9] was prepared with counsel on the advice of his staff
[10] and counsel. But if he has an understanding, he can
[11] give it to you.

[12] MR. ABRAMS: I move to strike counsel's
[13] statement of facts. I'm asking the Senator what
[14] certain language means in a document that he signed.

[15] BY MR. ABRAMS:

[16] Q And the only language I'm going to ask you
[17] about is this use of the words "sham issue ads."
[18] What does that mean, Senator?

[19] A "Sham" means incorrect or misleading, in
[20] my mind. Probably both.

[21] Q What is a sham issue ad?

[22] MS. BREGMAN: What is his understanding of

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[1] that term?

[2] MR. ABRAMS: Yes.

[3] THE WITNESS: It's that it raises an issue
[4] that is incorrect and that is misleading to the
[5] detriment of the campaign.
[6] BY MR. ABRAMS:
[7] Q A false statement?
[8] A Basically. At least incorrect.
[9] Q And the words "issue ads," put aside the
[10] word "sham" for a moment, what do you understand
an

[11] issue ad to be?
[12] A It's an issue that that concerns the
[13] election and the -- the parties to the election
[14] statements, or information.
[15] Q Are there some issue ads, to your
[16] knowledge, which deal with issues like how a Senator
[17] ought to vote on a particular piece of legislation
[18] or what approach a Senator ought to take to
[19] particular topics?
[20] MS. BREGMAN: Again, you're asking for his
[21] use of this word?
[22] MR. ABRAMS: Correct.

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[1] THE WITNESS: That would be an issue ad.
[2] BY MR. ABRAMS:
[3] Q I want to show you now a few documents
[4] which were prepared by an organization called the
[5] Brennan Center?
[6] A The what?
[7] Q The Brennan Center --
[8] A Brennan.
[9] Q -- for Public Politics. They're amongst
[10] your lawyers in this case -- I can ask you, not tell
[11] you. Are they among the lawyers representing you,
[12] do you know, in this case?
[13] A I don't know.
[14] Q Well, what they've done is put together
[15] documents which set forth the text of certain
[16] advertisements which appeared on television in the
[17] 1998 and 2000 campaigns.
[18] A Uh-huh.
[19] Q They photograph from satellites in the sky
[20] and they appear to set forth the language on the ads
[21] and pictures of the ads.
[22] A Uh-huh.

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[1] Q And I wanted to explore with you a little
[2] bit a few of those to get your own judgment as to
[3] whether they are sham issue ads.
[4] MR. ABRAMS: Let me mark as Jeffords
[5] Exhibit 4 a document -- the second line of which
[6] says "AFL/made in China Myrick," M-y-r-i-c-k.
[7] (Jeffords Exhibit 4 identified.)
[8] BY MR. ABRAMS:
[9] Q I would like to ask you to assume,
[10] Senator, that the language you see here is the
[11] language that, in fact, appeared on an advertisement
[12] paid for by the AFL/CIO.
[13] A I've read it.
[14] Q Now, for the record, I'll simply read a

[15] part of it in. This is an advertisement that
[16] reflects an announcer starting out saying the
[17] following: "Behind this label is a shameful story
[18] of political prisoners and forced labor camps, of
[19] wages as low as 13 cents an hour, of a country that
[20] routinely violates trade rules flooding our markets,
[21] draining American jobs.
[22] "Now Congress is set to scrap its annual

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[1] review of China's record and reward China with a
[2] permanent trade deal. Tell Congresswoman Myrick to
[3] vote no and keep China on probation until this label
[4] stands for fairness." Then it says "paid for by the
[5] AFL/CIO."
[6] My question to you, Senator Jeffords, is
[7] this an example of what you would consider a sham
[8] issue ad?
[9] MS. BREGMAN: I'm going to object just so
[10] the record is clear that this is not a term, "sham
[11] issue ad," that this witness uses in the same way or
[12] is familiar with as other Intervenor and other
[13] parties in the case might. And I am quite sure that
[14] this would be a confusing part of the transcript if
[15] we go forward.
[16] You can certainly ask the questions. But
[17] perhaps clarify as to whether you are talking about
[18] whether this ad falls within the Snowe-Jeffords
[19] amendment or meets some definition that you have
[20] that is different than Senator Jeffords.
[21] BY MR. ABRAMS:
[22] Q Let me rephrase it, Senator.

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[1] Assume with me that this ad ran within 60
[2] days of Congresswoman Myrick's re-election day.
[3] A Uh-huh.
[4] Q I'm not telling you that that happened,
[5] but I'm asking you to assume that that happened.
[6] Would this ad be problematic, a concern to you if it
[7] were to run within 60 days of her re-election day?
[8] MS. BREGMAN: Objection. You're asking
[9] for his personal opinion of whether it would be
[10] problematic.
[11] THE WITNESS: Well, this is an issue is a
[12] little bit difficult. It's a complicated issue. I
[13] don't -- just from what I see, I don't -- I couldn't
[14] say one way or the other.
[15] BY MR. ABRAMS:
[16] Q Is this, in your personal view, the sort
[17] of ad that ought not to run within 60 days of the
[18] election of, in this case, Congresswoman Myrick?
[19] MS. BREGMAN: Where was it run?
[20] BY MR. ABRAMS:
[21] Q I ask you to assume that it was run at
[22] least in her district.

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[1] A Uh-huh.
[2] MS. BREGMAN: Can you also elaborate on
[3] what's the sort of the funding?
[4] MR. ABRAMS: The AFL.

[5] MS. BREGMAN: Treasury funds?
 [6] MR. ABRAMS: I don't know.
 [7] THE WITNESS: Well, there are certain
 [8] prerequisites under the law that – that I got in
 [9] which you can't tell from reading this whether they
 [10] met or not.
 [11] BY MR. ABRAMS:
 [12] Q What sort of things would you want to know
 [13] in order to answer it?
 [14] A Well, who paid for the ad?
 [15] Q Why don't you – it's nice to have this
 [16] discussion, Senator.
 [17] A Treasury funds?
 [18] Q Assume that it came from AFL treasury
 [19] funds.
 [20] A Well, then, it would meet one criteria.
 [21] And when was it run? If it was within the
 [22] prescribed time limits, either 30 days to primary,

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[1] 60 days to general election, then it might qualify.
 [2] But is it inaccurate? Misleading? I don't know.
 [3] Q Is it – I'm sorry, Senator?
 [4] A So I'm not sure that it meets the
 [5] disqualifications.
 [6] Q Is it your understanding that the
 [7] disqualification applies to only inaccurate or
 [8] misleading information?
 [9] A Uh-huh.
 [10] Q You have to say "yes" or "no."
 [11] A Yes.
 [12] Q So an ad that appeared within 60 days that
 [13] is true, to your understanding, would not be covered
 [14] by the act that you and Senator Snowe drafted?
 [15] MS. BREGMAN: I think that asks for a
 [16] legal conclusion.
 [17] Can you repeat the question?
 [18] BY MR. ABRAMS:
 [19] Q What I'm asking is, is it your
 [20] understanding – and I understand that you aren't
 [21] appearing as a lawyer.
 [22] A Right.

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[1] Q Let me ask you, are you a lawyer?
 [2] A Yes.
 [3] Q But I'm not asking you now as a lawyer. I
 [4] just want your understanding as to whether an ad
 [5] that appears within 60 days of an election that
 [6] mentions a Congresswoman who was running for
 [7] re-election and which is true falls within your
 [8] understanding of the law that you and Senator Snowe
 [9] drafted?
 [10] MS. BREGMAN: I'm going to object both on
 [11] speech or debate and legal conclusion. You're
 [12] asking him to match the ad with the act. Is that
 [13] what you're doing? The act covers what the act
 [14] covers. And his personal opinion is not relevant.
 [15] The words of the act say what they say. And the ad
 [16] is either false within it or not.
 [17] MR. ABRAMS: You can answer it, Senator.

[18] MS. BREGMAN: So you're asking him what
 [19] his personal understanding of what the words are and
 [20] whether this would fall under it?
 [21] THE WITNESS: Of course within the time
 [22] limits and if the funds came from treasury, then it

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[1] could fall within.
 [2] BY MR. ABRAMS:
 [3] Q And my next question to you is, as you sit
 [4] here today, do you think – do you, Senator
 [5] Jeffords – think that an advertisement which does
 [6] appear within 60 days of an election, which does
 [7] mention the name of a Congresswoman who is
 running
 [8] for re-election, and which says that she should vote
 [9] a certain way on a piece of legislation should fall
 [10] within the realm of the statute that you and Senator
 [11] Snowe drafted?
 [12] A Well, "fall within the realm," I say yes.
 [13] But that doesn't mean that it's in violation of the
 [14] act or not.
 [15] Q Why is that?
 [16] MS. BREGMAN: Objection. Whether
 [17] something is in violation of the act or not clearly
 [18] calls for a legal conclusion under the act. And
 [19] this witness is not a legal scholar that has studied
 [20] the act in order to answer such questions.
 [21] It either falls within the act or it
 [22] doesn't.

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[1] MR. ABRAMS: Now –
 [2] MS. BREGMAN: And his personal opinion is
 [3] irrelevant, or at least I think the witness should
 [4] have an opportunity to read the words of the act.
 [5] BY MR. ABRAMS:
 [6] Q I want to be clear, Senator, I'm not
 [7] interested now whether it falls within the act. I'm
 [8] interested in your views, as you sit here answering
 [9] questions to me, as to whether an ad like this
 [10] should be subject to the provisions of the law that
 [11] you and Senator Snowe drafted, if that is what it
 [12] says.
 [13] MS. BREGMAN: I'm going to have to object.
 [14] I don't understand the question at all. Whether it
 [15] should be subject to the law if it is or if it
 [16] isn't, I guess that would call for speech or debate
 [17] information. What led up to the act and what was
 [18] determined to be covered by it is in the legislative
 [19] record.
 [20] MR. ABRAMS: I'm not asking for what led
 [21] up to the act or what's covered by it. I'm asking
 [22] for Senator Jeffords' view as to whether this

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[1] particular ad, in his view, as he sits here today –
 [2] THE WITNESS: It could fall within the act
 [3] from my understanding. But it depends on the law
 [4] and other aspects as to whether it's accurate or all
 [5] those kinds of things. Certainly if it's something
 [6] which is put on by treasury funds, within those time

[7] frames and it proves to be inaccurate and
 [8] misleading, I say it's within.
 [9] BY MR. ABRAMS:
 [10] Q I'm going to show you now, Senator
 [11] Jeffords, a tape that we made up at my law firm of
 [12] certain advertisements that were shown at different
 [13] times by the AFL/CIO and the United States
 [14] Chamber
 [15] of Commerce.
 [16] And I wanted to ask you first just to
 [17] watch the tape. There are going to be seven ads on
 [18] it. And after you watch it, I'll ask you a few
 [19] questions about it.
 [20] MR. ABRAMS: I'm going to mark the
 [21] tape as Exhibit 5.
 [22] (Jeffords Exhibit 5 identified.)
 (Jeffords Exhibit 5 video played.)

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[1] BY MR. ABRAMS:
 [2] Q Now you've just seen this exhibit, as I
 [3] mentioned to you, contains seven separate
 [4] advertisements and I would like to ask you a few
 [5] questions about that. The first two advertisements
 [6] paid for by the United States Chamber of Commerce
 [7] refer to a Congressman Longley. Do you recall that?
 [8] A Uh-huh.
 [9] Q You have to say yes or no for the record.
 [10] A Yes.
 [11] Q I want you to assume with me for the
 [12] moment that they were run within 60 days of an
 [13] election that Congressman Longley was running in.
 [14] And what I want to ask you is this: in your view, in
 [15] light of the problems that you perceived to exist
 [16] before the adoption of the Bipartisan Campaign
 [17] Reform Act, and before the adoption specifically of
 [18] the legislation you and Senator Snowe drafted, were
 [19] these two ads which refer to Congressman Longley
 [20] the
 [21] sort of things that you believed ought to be in some
 [22] way limited with respect to the ability of the
 Chamber of Commerce to pay for it?

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[1] MS. BREGMAN: Objection, speech and
 [2] debate. What he considered and what his views are
 [3] that led to the enactment of the legislation are
 [4] protected and privileged. And I instruct the
 [5] witness not to answer that question.
 [6] BY MR. ABRAMS:
 [7] Q As you look at these ads that mentioned
 [8] Longley now, are they what you consider to be sham
 [9] issue ads?
 [10] MS. BREGMAN: Objection. That is not a
 [11] term that this witness uses or was familiar with.
 [12] MR. ABRAMS: You keep telling me that, but
 [13] you are not a witness.
 [14] MS. BREGMAN: I understand that.
 [15] BY MR. ABRAMS:
 [16] Q Senator.
 [17] A Well, I go by my counsel here. I don't

[18] know.
 [19] Q The third ad refers to the Kennedy-McCain
 [20] Bill. As you sit here now, does the reference to
 [21] the name of Senator Kennedy or Senator McCain in
 [22] that advertisement, if those ads had been shown in

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[1] either Massachusetts or Arizona prior to their
 [2] election within 60 days, seem to you to be phony
 [3] ads?
 [4] MS. BREGMAN: Objection. I'm not sure
 [5] what "phony ads" are. If you have an understanding
 [6] of the term, you can answer.
 [7] BY MR. ABRAMS:
 [8] Q Let me rephrase it then in the language
 [9] used in the letter signed by you. Does the
 [10] reference to those names, as you sit here, seem to
 [11] you to be sham issue ads?
 [12] MS. BREGMAN: Same objection as before,
 [13] but you can answer your question using your
 [14] understanding of the term, if any.
 [15] THE WITNESS: It could be. It depends
 [16] upon the accuracy and circumstances.
 [17] BY MR. ABRAMS:
 [18] Q What would you have to know, do you think
 [19] in, order to be able to answer that question?
 [20] A Well, you have to have adequate knowledge
 [21] of the issues that are there which are, some, very
 [22] complicated, and give you an opinion.

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[1] Q Is there anything else that you would have
 [2] to know in addition to what you just told us in
 [3] order to answer the question?
 [4] A I'm sure there might be other things, but
 [5] I would have to go over it again.
 [6] Q Would it make a difference, for example,
 [7] how much the ad had been run?
 [8] A Well, during the time periods. And I
 [9] don't think how often is as important as when.
 [10] Q Do you think it's important, Senator
 [11] Jeffords, for groups like the AFL/CIO to be able to
 [12] put advertisements on television urging Senators how
 [13] to vote on legislation affecting their members?
 [14] A There's nothing wrong with that.
 [15] Q Does Vermont - how many television
 [16] stations are there that broadcast in Vermont that -
 [17] strike that.
 [18] When you run for office in Vermont as a
 [19] Senator, are the advertisements that relate to you
 [20] or to your opponent broadcast only on Vermont
 [21] television? Or are they in Massachusetts or
 [22] neighboring states?

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[1] A Both. I mean, it depends on how much
 [2] money you have. With Vermont, you get television
 [3] from Montreal, you get television from New York
 [4] stations. You get television from Massachusetts
 [5] stations. And even New Hampshire stations.
 [6] So there are many options for people,
 [7] depending on the amount of money you want to

spend.

[8] Q Do you recall in your own campaigns if
[9] there have been any ads at all by groups such as the
[10] Sierra Club or the National Rifle Association, third
[11] party groups that are, at least on the face of it
[12] unaffiliated with either candidate? Have any of
[13] those ads appeared?

[14] MS. BREGMAN: Ever?

[15] MR. ABRAMS: Yes. In one of his
[16] campaigns.

[17] MS. BREGMAN: Oh.

[18] THE WITNESS: I suppose so, but I don't
[19] have any recollection.

[20] MR. ABRAMS: I want to mark as Jeffords
[21] Exhibit 6 a storyboard of an ad from the National
[22] Pro-Life Alliance that ran in Wisconsin in the year

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[1] 2000.

[2] (Jeffords Exhibit 6 identified.)

[3] MS. BREGMAN: There's no question
[4] pending,

[5] is there? I want to confer with him for a moment.

[6] (Counsel conferred with witness.)

[7] BY MR. ABRAMS:

[8] Q Can you have a look, Senator.

[9] A Yeah, sure.

[10] Q I'm sorry. There are two pages to the ad.

[11] A Oh, I'm sorry.

[12] Q I ask you to assume with me, Senator, that
[13] this ad was broadcast in Wisconsin in the year
[14] 2000, within 60 days of the re-election of Senator
[15] Feingold.

[16] A Uh-huh.

[17] Q My question is this, as you look at this
[18] ad now, is there anything about it which would lead
[19] you to conclude that the pro-life people that put it
[20] on ought not to be able to put it on as often as
[21] they want, spending as much money as they want?

[22] MS. BREGMAN: Objection. Unclear
[23] hypothetical. Do you mean could they put it on

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[1] absent the act?

[2] MR. ABRAMS: I'm asking for the Senator's
[3] personal views of whether this ad is an ad that the
[4] pro-life people ought to be able to put on within 60
[5] days of Senator Feingold's re-election, putting as
[6] much as they want, spending as much money as they
[7] want to do so.

[8] THE WITNESS: Again, where did the funds
[9] come from? I don't know that. The time period, we
[10] don't know. And the goodwill, it's a prerequisite
[11] of the truth and veracity, all those things. We
[12] don't know the answer to that. I couldn't tell you.

[13] BY MR. ABRAMS:

[14] Q Do you think it's important that the
[15] people on both sides in the debate about partial
[16] birth abortion be able to put advertisements on
[17] television to express their views?

[18] A If they do it in accordance with the law,

[19] sure.

[20] Q And do you think that putting aside the
[21] language of the law which just passed, and simply
[22] addressing it in terms of your own views, do you

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[1] think that this particular ad shown within 60 days
[2] of an election day on which either Senator Feingold
[3] or Senator Kohl was running is the sort of an ad
[4] that should be subject to any limitations at all?

[5] MS. BREGMAN: Objection. Speech or
[6] debate. His views as to those things that should be
[7] legislated are privileged, and in addition are set
[8] forth in the legislation.

[9] BY MR. ABRAMS:

[10] Q I'm not asking you now what's in the
[11] legislation or why you voted for the legislation. I
[12] simply want to know your view, as you sit here
[13] today, as to whether this ad poses some sort of
[14] problem which you think is troublesome.

[15] MS. BREGMAN: Objection. I think that
[16] asks him to determine whether something would have
[17] been the sort of thing considered by him in passing
[18] the legislation. And I think that is speech or
[19] debate.

[20] BY MR. ABRAMS:

[21] Q Again, I'm not asking you how you voted or
[22] why you voted. I'm simply asking you, as you sit

Page 35

[1] here now - let me be clear.

[2] I take it that you haven't seen this ad
[3] before, have you?

[4] A No.

[5] Q So looking at this ad for the first time,
[6] as you just have, and assuming that it ran within 60
[7] days of an election involving either Senator
[8] Feingold or Senator Kohl -

[9] A Uh-huh.

[10] Q - do you have any problems with this ad?

[11] MS. BREGMAN: Objection; vague.

[12] THE WITNESS: Well, "problems" is a
[13] difficult word. I have a problem with it because I
[14] don't know the facts. I don't know how accurate it
[15] is, what their positions were or anything. But
[16] certainly it's an ad that is troublesome from the
[17] possibility of misuse of information.

[18] MR. ABRAMS: Senator, I would like to ask
[19] for about a two-minute break?

[20] THE WITNESS: Sure.

[21] MR. ABRAMS: We may be finished asking you
[22] questions. Thank you.

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[1] (Recess.)

[2] MR. ABRAMS: Senator Jeffords, I have no
[3] more questions for you at this time. Thank you very
[4] much for your time.

[5] THE WITNESS: Thank you.

[6] MS. BREGMAN: Stacy has pointed out
[7] something to me - this can be on the record - that
[8] Mr. Carvin was not in the room at the beginning of

[9] the deposition when Senator Jeffords read his brief
[10] statement.

[11] Could he please repeat that statement?

[12] (The reporter read the record as requested.)

[13] THE WITNESS: That's my statement.

[14] EXAMINATION

[15] BY MR. CARVIN:

[16] Q Thank you, Senator.

[17] For the record, my name is Michael Carvin.

[18] I represent the Republican National Committee and
[19] various Republican state parties in this litigation.

[20] And I would like, without getting into the

[21] details at this point of the legislation, to get a

[22] sense from you as to whether or not you could

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[1] generally explain to me what the public policy
[2] problem is with corporations and union treasury
[3] funds being used for electioneering communications
[4] within 60 days of the general elections, 30 days of
[5] the primary election.

[6] MS. BREGMAN: Objection on speech or
[7] debate grounds. Public policy that led up to the
[8] enactment of the legislation in this particular
[9] Senator's view is privileged, and I instruct not to
[10] answer.

[11] MR. CARVIN: I'm not asking for anything
[12] that led up to the legislation. I'm asking, as he
[13] sits here today, what his views are to the public
[14] policy problems with respect to the question I just
[15] asked.

[16] MS. BREGMAN: I'll object again. Not only
[17] are the statements of a Senator post-enactment not
[18] relevant in any way, but I think this still comes
[19] within the ambit of the speech or debate clause
[20] because those are the very things being considered
[21] in enacting the legislation.

[22] BY MR. CARVIN:

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[1] Q That, of course, is not disclosed in the
[2] speech and debate clause. Senator McConnell,
[3] Senator Feingold, Senator McCain and
Representative

[4] Meehan have been asked and answered identical
[5] questions for an obvious reason. And I'll be happy
[6] to walk you through it, that you signed
[7] interrogatories in this case -

[8] A Yes.

[9] Q - as a party, which gets used both as to
[10] purposes and scope of the act that you played a key
[11] role in drafting.

[12] And I'm not asking you for any
[13] deliberations or conversations that went with that
[14] enactment. I'm simply asking for your understanding
[15] as a party to this litigation as to the purposes or
[16] reasons for various public policy issues.

[17] MS. BREGMAN: Objection. Sorry.

[18] BY MR. CARVIN:

[19] Q And it is quite clear and well established
[20] in case law that legislators cannot, in essence,

[21] offer evidence in a case, as you've done in response
[22] to these interrogatories, and then refuse to answer

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[1] questions on it. Because, obviously, someone
[2] couldn't sit in trial and give direct testimony and
[3] then refuse to be cross-examined on it. You can't
[4] use speech and debate as both a sword and a shield.
[5] So that - and that has been made clear, I
[6] should make it again clear, in all of the
[7] depositions of sitting members of Congress up to
[8] this point.

[9] So I'm going to ask you again, can you
[10] tell me what public policies are adversely affected
[11] by the use of corporation using treasury funds for
[12] electioneering communications within 60 days of a
[13] general election, or 30 days of a primary election?

[14] MS. BREGMAN: Objection. Lack of
[15] foundation as to whether this witness had any role
[16] in the drafts of those responses. Number 2, the
[17] waiver or lack of waiver by any other member of
[18] Congress is personal to that individual and does not
[19] in any way affect the invocation of privilege with
[20] respect to this individual Senator. And 3, you have
[21] just said that the responses are set forth in the
[22] interrogatory responses.

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[1] If you want to put them before the witness
[2] and ask them if they say what they say, he can tell
[3] you that. Beyond that, though, we will not respond.

[4] MR. CARVIN: Are you instructing him not
[5] to answer that question?

[6] MS. BREGMAN: Yes, I am.

[7] MR. CARVIN: That's a real mistake.
[8] Because what we're going to have to do now, Senator,
[9] is probably postpone this deposition, go to court,

[10] move to compel you.

[11] I'm happy to hand this to you, but you
[12] obviously did sign under penalty of perjury the
[13] interrogatory responses. Since all of us can read,
[14] it's no point in asking you whether or not the paper
[15] says what it says. I'm obviously going to have
[16] follow-up questions in light of the interrogatories.

[17] If it would help, I can show you

[18] interrogatories and ask you questions about the
[19] interrogatories.

[20] MS. BREGMAN: Well, let's try that.

[21] MR. CARVIN: Why don't we mark this as.
[22] (Jeffords Exhibit 7 identified.)

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[1] BY MR. CARVIN:

[2] Q If you could look first at page 5 of the
[3] exhibit, Senator, which is "Intervenor-Defendants'
[4] Objections and Responses to Plaintiff McConnell's
[5] First Set of Interrogatories."

[6] A Page 7 you said?

[7] Q I'm sorry. Page 5. And it goes through
[8] page 7. And I guess my first question is, without
[9] getting into detail, you would agree with me that an
[10] examination of the legislative history demonstrates

[11] that this interrogatory represents - this
 [12] interrogatory represents an examination of the
 [13] legislative history demonstrates 10 different
 [14] governmental interest that justified the BCRA; is
 [15] that correct?
 [16] MS. BREGMAN: You're asking if that's what
 [17] it says - if he agrees that it says what it says?
 [18] MR. CARVIN: (No verbal response.)
 [19] THE WITNESS: I would have to read through
 [20] it.
 [21] MS. BREGMAN: By all means.
 [22] THE WITNESS: What does the acronym
 "BCRA"

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[1] stand for?
 [2] BY MR. CARVIN:
 [3] Q Bipartisan Campaign Reform Act, the act
 [4] that's under challenge in this litigation.
 [5] Senator Jeffords, have you had an
 [6] opportunity to review pages 5, 6 and 7 of this
 [7] document?
 [8] A Yes.
 [9] Q And do you agree that the document sets
 [10] forth 10 governmental interests that justify the
 [11] BCRA based on examination of legislative history?
 [12] MS. BREGMAN: Objection. The document
 [13] says what the document says.
 [14] THE WITNESS: What was the question again?
 [15] BY MR. CARVIN:
 [16] Q Does the document list 10 governmental
 [17] interests that justify the BCRA based upon an
 [18] examination of the legislative history?
 [19] A Yes.
 [20] Q Okay. And on page 23 of this document,
 [21] you verified under penalty of perjury that the
 [22] foregoing responses to the interrogatories are true

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[1] and correct; is that right?
 [2] A That's right.
 [3] Q Okay. So would you agree with me that 10
 [4] of the interests justifying the BCRA based upon an
 [5] examination of the legislative history are those 10
 [6] interests set forth on pages 5 through 7 of the
 [7] document?
 [8] MS. BREGMAN: Objection; Speech or
 debate.
 [9] I'll allow you to answer this question. Do you want
 [10] it repeated?
 [11] THE WITNESS: Yes.
 [12] BY MR. CARVIN:
 [13] Q I'll ask it again. Do you agree that 10
 [14] interests underlying the BCRA based upon the
 [15] examination of the legislative history are the 10
 [16] interests set forth on pages 5 through 7 of this
 [17] document?
 [18] MS. BREGMAN: Lack of foundation. It's
 [19] not limited to these 10, but with that clarification
 [20] if you understand the question, you can answer.
 [21] THE WITNESS: I understand, but it's not

[22] limited to.

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[1] BY MR. CARVIN:
 [2] Q Okay.
 [3] A These were examples that we used.
 [4] Q Thank you. Okay. And one of the
 [5] interests underlying the BCRA based upon the
 [6] examination of the legislative history is number 6
 [7] on page 6, "prevents the corruption and appearance
 [8] of corruption that result when corporations and
 [9] unions spend substantial sums through their treasury
 [10] through soft money contributions and electioneering
 [11] communications to influence the outcome of
 [12] elections"; is that correct?
 [13] A That's correct.
 [14] Q In your view sitting here today, why does
 [15] expenditures from corporations and union treasuries
 [16] for electioneering communications create the
 [17] corruption or appearance of corruption?
 [18] MS. BREGMAN: Objection. On the grounds
 [19] of speech and debate.
 [20] BY MR. CARVIN:
 [21] Q You can answer the question.
 [22] MS. BREGMAN: No, he can't answer the

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[1] question.
 [2] THE WITNESS: Do not answer?
 [3] MS. BREGMAN: Correct.
 [4] THE WITNESS: Okay.
 [5] BY MR. CARVIN:
 [6] Q So, Senator, just so I understand your
 [7] testimony, it is your contention that corporations
 [8] and union spending substantial sums from their
 [9] treasuries for electioneering communications to
 [10] influence the outcome of elections creates the
 [11] corruption or appearance of corruption, but you
 [12] don't know why that is so?
 [13] MS. BREGMAN: Objection. That
 [14] mischaracterizes the invocation of the privilege.
 [15] He certainly didn't respond that. We have invoked
 [16] the privilege because you are asking for further
 [17] testimony about something that starts off with three
 [18] objections relating to the speech or debate clause
 [19] that says the list set forth on these pages is
 [20] provided based on the legislative history without
 [21] waiver of any of the objection including speech or
 [22] debate clause, and now you're asking him to go

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[1] behind something that it says right here was set
 [2] forth in the legislative history. And that falls
 [3] within the speech and debate clause, and he's not
 [4] going to answer.
 [5] BY MR. CARVIN:
 [6] Q Sitting here today, what do you mean by
 [7] "appearance of corruption"?
 [8] MS. BREGMAN: I'll make the same
 [9] objection. I will allow you to answer if you have
 [10] an understanding of that phrase.
 [11] THE WITNESS: What do I mean by

[12] "appearance of corruption"?
 [13] BY MR. CARVIN:
 [14] Q (No verbal response.)
 [15] A Well, they're facts that the normal
 [16] individual reading them or could come to the
 [17] conclusion that it was untruthful.
 [18] Q Anything else?
 [19] A No.
 [20] Q Are there any truthful ads designed to
 [21] influence the outcome of elections that create the
 [22] appearance of corruption?

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[1] MS. BREGMAN: Objection. Same objections
 [2] as before. I also object to the question as being
 [3] difficult to comprehend. Could you read the
 [4] question again?
 [5] (The reporter read the record as requested.)
 [6] THE WITNESS: Sorry. Read that again,
 [7] please.
 [8] (The reporter read the record as requested.)
 [9] MS. BREGMAN: If you think you can answer
 [10] it or have an opinion on it, you can give it.
 [11] THE WITNESS: I don't know.
 [12] BY MR. CARVIN:
 [13] Q Why would a truthful ad paid for by
 [14] corporation and union treasury funds designed to
 [15] influence the outcome of elections create the
 [16] appearance of corruption in any circumstances?
 [17] MS. BREGMAN: Objection, under the speech
 [18] or debate clause.
 [19] MR. CARVIN: Are you instructing the
 [20] witness not to answer?
 [21] MS. BREGMAN: To the extent that I can
 [22] understand the question, yes.

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[1] MR. CARVIN: You're really going to have
 [2] to explain that. I'm asking you, sitting here
 [3] today, can you think of any reason that a truthful
 [4] act paid for by corporation and union funds designed
 [5] to influence the outcome of elections could create
 [6] the appearance of corruption?
 [7] MS. BREGMAN: All of that was part of the
 [8] discussion that led up to the act and is set forth
 [9] in the legislative history and it's all there for
 [10] you.
 [11] MR. CARVIN: Well, but Senator Jeffords
 [12] has voluntarily intervened in this case. Senator
 [13] Jeffords has voluntarily offered to the Court his
 [14] understanding of the interests served. The issue in
 [15] front of the Court is the interests served by
 [16] various provisions of the act. That is why these
 [17] interrogatories were directly relevant and why you
 [18] responded to them.
 [19] Now I'm simply asking what these
 [20] interrogatory answers that you signed under penalty
 [21] of perjury mean. So there's absolutely no way that
 [22] that can implicate speech and debate because there's

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[1] absolutely no way that that question implicates

[2] speech and debate if the answer didn't implicate
 [3] speech and debate. If the answer implicated speech
 [4] and debate, you have waived your right to not answer
 [5] follow-up questions.
 [6] Because it is black letter law that you
 [7] cannot selectively invoke and then waive privileges
 [8] to advantage yourself in litigation, whether that's
 [9] attorney/client, speech or debate or anything else.
 [10] I'm going to ask one more time the
 [11] question. I expect an answer.
 [12] MS. BREGMAN: Do you want to ask the
 [13] question one more time?
 [14] MR. CARVIN: Do you want to read it back,
 [15] please?
 [16] (The reporter read the record as requested.)
 [17] MS. BREGMAN: And I will again restate my
 [18] objection. As your lead-in speech referenced, you
 [19] said you are probing the interest underlying the
 [20] litigation, the enactment of BCRA. That is within
 [21] the speech or debate clause. We disagree with your
 [22] assertion that there's been a waiver. The lack of

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[1] waiver was set forth in this document many times and
 [2] certainly cannot be any way construed as unequivocal
 [3] and clear waiver such as the sort that might be
 [4] necessary if there even were such a thing as the
 [5] waiver of speech or debate as the Hestowski Court
 [6] said in itself is a proposition that hasn't been
 [7] established.
 [8] So we will rely on the speech or debate
 [9] clause and take it from there.
 [10] BY MR. CARVIN:
 [11] Q Forget the predicate, forget the
 [12] legislative history, forget the act was enacted.
 [13] Forget all that. I'm asking you here today, as an
 [14] individual, whether or not truthful advertisement
 [15] funded by corporations and union treasuries designed
 [16] to influence the outcome of elections can ever
 [17] create the appearance of corruption?
 [18] MS. BREGMAN: Okay. And I'm going to say
 [19] the same thing I just said so we're sort of spinning
 [20] wheels.
 [21] Can we go off the record and take a break
 [22] and discuss with legal counsel and the client where

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[1] we want to go with this?
 [2] MR. CARVIN: Sure.
 [3] (Recess.)
 [4] BY MR. CARVIN:
 [5] Q Let me make it clear as preface to this
 [6] question that I'm not asking you for anything that
 [7] was said or done in the House or the Senate in
 [8] connection with this legislation. I'm not asking
 [9] you about any motivation underlying the BCRA. I'm
 [10] not asking you for a recitation of events leading up
 [11] to the act or the purposes behind the act, even.
 [12] I'm just asking you, as a litigant in this case
 [13] sitting here today, whether or not you can tell me
 [14] if a truthful advertisement paid for from a

[15] corporation or union treasury designed to influence
 [16] the outcome of elections creates an appearance of
 [17] corruption in any circumstances?
 [18] MS. BREGMAN: Okay. I will incorporate
 [19] without repeating them, my objections. And
 [20] completely without any waiver because I do think
 [21] that we have an appropriate objection that I will
 [22] undoubtedly stand by as we go forward. I will allow

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[1] you to answer that question.
 [2] THE WITNESS: Well, when you're involved
 [3] in the political process, you realize that certain
 [4] things occur by certain conduct. And large
 [5] contributions from anyone give the perception to the
 [6] public of an intent to influence the election. And
 [7] that's why we have the regulations and provisions
 [8] that we do to try to prevent - or to be able to
 [9] handle these kinds of funds that are obviously
 [10] trying to influence an election.
 [11] BY MR. CARVIN:
 [12] Q And is there anything about the fact that
 [13] they're corporate or union funds that creates a
 [14] particular problem in your mind?
 [15] A Yes. Well, there's - people make a
 [16] common sense connection between who's spending the
 [17] money and how they're spending it.
 [18] Q Is it important, in your mind, for the
 [19] public to know who funds the groups or individuals
 [20] that are airing these ads that are designed to
 [21] influence elections?
 [22] A Yes.

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[1] MS. BREGMAN: I'm going to make the
 [2] same - well, the answer may be yes but I'm going to
 [3] make the same objection as before. I think the
 [4] problem we're getting to as the Senator said in his
 [5] own response a minute ago, that's why we have the
 [6] legislation. I can't separate out questions about
 [7] what is important when we're talking about
 enactment
 [8] of legislation from the purposes of the legislation
 [9] or his motivations behind supporting it.
 [10] BY MR. CARVIN:
 [11] Q Maybe I can try and make it as clear as I
 [12] can. And regardless of whether your answers refer
 [13] to legislation, I will have a running stipulation
 [14] that my questions are going to, if you'll excuse my
 [15] rash nature, Jim Jeffords, private citizen, without
 [16] regard to the office you hold or your involvement in
 [17] the BCRA. I'm just asking you, as a litigant in
 [18] this case, these questions. And in that context, is
 [19] one of the concerns you have generally about ads
 [20] that are designed to influence elections whether the
 [21] viewing public or the citizenry know who provided
 [22] the funds that purchased the air time for those ads?

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[1] MS. BREGMAN: I'm going to restate my
 [2] objection again. I don't think a Senator has

[3] concerns about something that he can separate out
 [4] from his activity and conduct as a legislator.

[5] BY MR. CARVIN:

[6] Q Well, let me put it this way, you've been
 [7] a candidate in elections; right?

[8] A Yes.

[9] Q And that's not part of your official
 [10] legislative duties, that's running for office;
 [11] right?

[12] A Yes.

[13] Q So strictly somebody who's been involved
 [14] in the political process, without regard to any
 [15] actions - let's assume you were running for the
 [16] first time. In that circumstance, would you have a
 [17] concern along the lines as I previously asked you?

[18] A You mean about the expenditures of large
 [19] sums of money by some group or individuals to try
 [20] and influence an election?

[21] Q Yes. In that regard, is one of your
 [22] concerns that the source and amount of the people

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[1] providing funds to the group that runs the ads is
 [2] not publicly disclosed?
 [3] MS. BREGMAN: Same objection. I will
 [4] allow you to answer that.
 [5] THE WITNESS: It is appropriate, I
 [6] believe, to try and know who is backing the ads and
 [7] how much money they are expending.
 [8] BY MR. CARVIN:
 [9] Q And how about the ads - I'm sorry, did
 [10] you want -
 [11] A No.
 [12] Q How about the ads potential influence on
 [13] federal candidates? Are you concerned that large
 [14] sums of money might create the appearance that the
 [15] people who devote those large sums of money to
 [16] electioneering communications could unduly
 influence
 [17] the legislator when elected in performance of his
 [18] official duties?
 [19] MS. BREGMAN: Objection on the same
 [20] grounds as before. I suppose also because now we're
 [21] talking about some potential influence on other
 [22] legislation. You can answer the question here.

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[1] THE WITNESS: Yes.
 [2] BY MR. CARVIN:
 [3] Q Do you have a view as to whether or not
 [4] ads designed to influence - ads that refer to a
 [5] clearly identified federal candidate that are run 61
 [6] days before a general election are designed to
 [7] influence federal elections?
 [8] A 61 days?
 [9] Q (No verbal response.)
 [10] A Read the question again.
 [11] Q I'll state it again. Do you have a view
 [12] as to whether or not ads that refer to a clearly
 [13] identified federal candidate that are run 61 days
 [14] before a general election are designed to influence

[15] federal elections?
 [16] MS. BREGMAN: Does he have a view as to
 [17] whether they do or whether the act covers them?
 [18] MR. CARVIN: No, whether they do.
 [19] THE WITNESS: Yes.
 [20] BY MR. CARVIN:
 [21] Q You think they do?
 [22] A They could. Yes. I'm not saying they do.

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[1] I don't know. But obviously the further away from
 [2] the time, the less impact they have.
 [3] Q Do you have a view in terms of time as to
 [4] a cut-off, say, 91 days before a federal election?
 [5] Would that --
 [6] A I don't think the pick of those numbers
 [7] were just -- I think a reasonable -- feeling we had
 [8] as to a reasonable limit. But you have to run a
 [9] number of studies to find out when the change is
 [10] made. But it seems to be a reasonable figure.
 [11] Q Would one year before a federal election
 [12] be a reasonable figure in your mind?
 [13] MS. BREGMAN: For what?
 [14] MR. CARVIN: For ads that refer to clearly
 [15] identified federal candidate.
 [16] MS. BREGMAN: So you're asking him
 [17] whether
 [18] in enacting BCRA it would have been reasonable to
 [19] select one year? That to me is what you're asking
 [20] him.
 [21] MR. CARVIN: Okay.
 [22] MS. BREGMAN: And that comes within the
 [23] speech or debate clause.

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[1] MR. CARVIN: That's fine.
 [2] BY MR. CARVIN:
 [3] Q I'm asking you, again, as somebody who's
 [4] been involved in the political process whether, to
 [5] your personal knowledge or experience, ads that
 [6] refer to clearly identified federal officeholders or
 [7] candidates that are run one year prior to any
 [8] election have either the purpose or effect of
 [9] influencing those federal elections?
 [10] MS. BREGMAN: Objection. I'm not sure how
 [11] he would know what the purpose was intended by
 [12] whoever put the ad on.
 [13] BY MR. CARVIN:
 [14] Q You can answer.
 [15] A In all these matters a sense of
 [16] reasonableness comes in for those of us that are
 [17] trying to put something together, and that
 [18] reasonableness carries over to how many of the
 [19] Senate will agree that your estimate is a reasonable
 [20] one.
 [21] I -- we believe 60 days was reasonable,
 [22] and members agree that it was. So that's the one we

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[1] used.
 [2] Q Fair enough.
 [3] Now, I'm not talking about radio or

[4] television ads. I would like to ask you about what
 [5] I'll call "grassroots voter mobilization," things
 [6] like get out the vote or phone banks on election
 [7] day. And I'm wondering whether or not you have a
 [8] view as to whether or not get-out-the-vote
 [9] activities or phone banks on the day of the federal
 [10] election also have the purpose or effect of
 [11] influencing federal elections.
 [12] MS. BREGMAN: Same objection about the
 [13] purpose and also based on speech or debate. Again,
 [14] you can tell from this witness's last response
 [15] that's answering as to what the legislators did.
 [16] And I don't think he is able to separate out your
 [17] question from those directed at probing the purpose
 [18] and motivations of those that sponsored the
 [19] legislation. And that is the trouble that we're
 [20] having.
 [21] MR. CARVIN: You've given him that
 [22] admonition?

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[1] MS. BREGMAN: What was the question?
 [2] THE WITNESS: Yeah.
 [3] BY MR. CARVIN:
 [4] Q Do you think get-out-the-vote activities
 [5] such as phone banks on an election day, on the day
 [6] of the federal election are also designed and have
 [7] the effect of influencing federal elections?
 [8] MS. BREGMAN: I'll restate my objections.
 [9] If you have a view, I will allow you to answer that
 [10] question. But let's take one at a time.
 [11] THE WITNESS: It's obvious that if you
 [12] know the people that are likely to vote for you,
 [13] it's a good idea to get them to the polls.
 [14] BY MR. CARVIN:
 [15] Q And do you have a view as to whether or
 [16] not the use of, say, union treasury funds to engage
 [17] in get out the vote or phone banks on election day
 [18] create the appearance of corruption?
 [19] MS. BREGMAN: Same objections, which we
 [20] might as well call continuing objections. But if
 [21] you have an answer to that, you can give it.
 [22] THE WITNESS: I don't believe so.

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[1] BY MR. CARVIN:
 [2] Q Okay. Do you have a view as to -- again,
 [3] as a candidate and totally within your personal
 [4] experience, whether or not generic grassroots
 [5] get-out-the-vote activity tends to have more impact
 [6] on an election result than radio, television or
 [7] cable ads run within 60 days of the general
 [8] election?
 [9] A I don't know.
 [10] Q Okay. Again, just turning to your own
 [11] personal experience in Vermont, does the either
 [12] Vermont Republican or Democratic Party, to your
 [13] knowledge, engage in these kind of grass roots voter
 [14] mobilization efforts on -- in connection with
 [15] federal elections?
 [16] MS. BREGMAN: If you know. You do not

[17] have to speculate.
 [18] THE WITNESS: I can't -- yes, I mean, I
 [19] know that those events occur as people do work to
 [20] try to get their voters out.
 [21] BY MR. CARVIN:
 [22] Q Okay. Have you ever been involved in any

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[1] coordinated efforts to get people out in Vermont
 [2] around election day?
 [3] A Myself personally?
 [4] Q You or your campaign staff.
 [5] A We try to get the vote out, yes.
 [6] Q And do you work with the state political
 [7] parties in those efforts?
 [8] A I work with my party.
 [9] Q Without being obnoxious, it's a tad more
 [10] ambiguous. In prior elections, did you work with
 [11] the Vermont GOP on these kinds of get-out-the-vote
 [12] efforts?
 [13] A I don't really remember. I usually have
 [14] my own organization. I'm being serious, I'm not
 [15] trying to take advantage of my personal situation.
 [16] But we've done that ourselves. We have our own get
 [17] out the vote.
 [18] Q Okay. Let me just give you a
 [19] hypothetical, okay. The Democratic National
 [20] Committee in your next election runs an ad that says
 [21] Senator Jeffords is a good guy. And it does that
 [22] with funds, soft money funds provided to it by, say,

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[1] the AFL/CIO. In your mind, would that create an
 [2] appearance of corruption for a federal officeholder
 [3] or candidate?
 [4] MS. BREGMAN: Objection. Same as before.
 [5] I think again it looks to me, or sounds to me as
 [6] it's probing the purposes behind the legislation.
 [7] You can answer the question as to, in your personal
 [8] view, sitting here today would it do that, or could
 [9] it do that.
 [10] THE WITNESS: And repeat the question.
 [11] BY MR. CARVIN:
 [12] Q Sure. The Democratic National
 [13] Committee --
 [14] A Yes.
 [15] Q -- shortly before your re-election for
 [16] Senate runs an ad on radio or television saying
 [17] Senator Jeffords is a good guy. And that money is
 [18] paid for by soft money given to it by the AFL/CIO.
 [19] Does that, in your mind, create an appearance of
 [20] corruption for federal officeholder or candidate?
 [21] A No.
 [22] Q And same question, the AFL/CIO spends

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[1] \$500,000 directly, same exact ad, says Senator
 [2] Jeffords is a good guy shortly before the federal
 [3] election, in your mind, would that create an
 [4] appearance of corruption?
 [5] MS. BREGMAN: Same objections. Are you
 [6] answering for yourself?

[7] THE WITNESS: Yes, I'm answering for
 [8] myself.
 [9] MR. CARVIN: Yeah.
 [10] MS. BREGMAN: About whether you would
 [11] be
 [12] corrupted.
 [13] THE WITNESS: Yes.
 [14] MS. BREGMAN: I thought so.
 [15] MR. CARVIN: That wasn't the question.
 [16] But do you want me to reask it? Does it create the
 [17] appearance of corruption.
 [18] MS. BREGMAN: Not only to you. Not
 [19] only -- he's talking to you personally, not only to
 [20] you. To anybody.
 [21] THE WITNESS: It could.
 [22] BY MR. CARVIN:
 [23] Q In what circumstance would it, what

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[1] circumstances wouldn't it?
 [2] A It depends on the amount of money and how
 [3] it's used.
 [4] Q And that would be in terms of my
 [5] hypothetical about the Democratic National
 [6] Committee, just so the record is clear?
 [7] A Yes.
 [8] Q Now I'm going to ask you a slightly
 [9] different question, just so the record is clear.
 [10] Let's assume that the AFL/CIO spent \$500,000 of its
 [11] own money directly and ran the same ad the same
 [12] time, would that in your mind create an appearance
 [13] of corruption for federal officeholders and
 [14] candidates? Not you in particular.
 [15] A Well, it could. But that's obviously
 [16] different people react differently. Any time large
 [17] sums of money are spent, that does, in the public's
 [18] mind, create a problem.
 [19] Q And so are there some circumstances in
 [20] which it would not create an appearance of
 [21] corruption?
 [22] MS. BREGMAN: Objection. Hypothetical.

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[1] THE WITNESS: Well, obviously we go down
 [2] to zero or 1 or something, it's highly unlikely.
 [3] BY MR. CARVIN:
 [4] Q Let's assume they spent \$500,000. Would
 [5] that create --
 [6] A Well, again, you can't answer that.
 [7] Because that depends on if you're in New York City
 [8] or whether you're in Vermont.
 [9] Q And I take it that's because different
 [10] media markets are either more or less expensive than
 [11] another media market?
 [12] A Yes, sir.
 [13] Q Do you have a view as to whether a Vermont
 [14] citizen would more likely perceive the Senator
 [15] Jeffords ad run by the DNC as opposed to the
 [16] Senator
 [17] Jeffords ads run by the AFL/CIO as creating the
 [18] perception or appearance of corruption?

[18] A I don't believe so.
 [19] Q And if you don't recall -- well, let me
 [20] ask you generally and then I'll ask about a
 [21] specific.
 [22] Is one of the problems, which I think --

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[1] what we've been calling "sham issue ads" that
 [2] outside groups can run them and the candidate may
 [3] not have an opportunity to respond to attacks or
 [4] criticisms in those ads, in your mind.
 [5] MS. BREGMAN: Okay. Objection because
 [6] this witness does not use the term "sham issue ads"
 [7] in the way that the rest of the world does. But if
 [8] you're talking about ads within the act?
 [9] MR. CARVIN: I'll phrase it however you
 [10] prefer. If you want to make it easier.
 [11] MS. BREGMAN: I think it would make it
 [12] potentially more sensible.
 [13] BY MR. CARVIN:
 [14] Q Okay. Ads within the act, those kinds of
 [15] ads. Is one of the problems that you perceive,
 [16] again, as a litigant in this case --
 [17] A Uh-huh.
 [18] Q -- that an outside group can come in and
 [19] run the ad and then the candidate doesn't have an
 [20] opportunity or perhaps even the funds to respond to
 [21] the criticisms voiced in those ads?
 [22] A Yes.

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[1] Q And I believe it was Exhibit 4, which
 [2] we've already looked at, and I'm happy to show it to
 [3] you again. But I'll ask you generally before I do
 [4] ask you this. Do you recall whether the AFL/CIO ran
 [5] a series of ads, some of them in the new England
 [6] area in late 1995 and early 1996, which criticized
 [7] Republican members of Congress like
 Congresswoman
 [8] Myrick. Do you recall that episode?
 [9] A No, I don't.
 [10] Q Okay. Do you have any reference -- do you
 [11] have any recollection, I'll make it a little bit
 [12] more specific, of the AFL/CIO ads that were run
 [13] against Congresswoman Myrick, like the one reflected
 [14] in Jeffords 4?
 [15] A No.
 [16] Q And let me then make it just more general.
 [17] If, say, the AFL/CIO did run a series of ads outside
 [18] the 60- or 30-day period that criticized a federal
 [19] candidate, do you have a view as to whether or not
 [20] the -- and let's assume that candidate was
 [21] Republican -- whether or not the state or national
 [22] Republican parties should have an opportunity to

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[1] respond to those ads to deflect the criticism?
 [2] MS. BREGMAN: I'm going to object. I
 [3] think any view that he has is in the context of
 [4] legislating BCRA. I really can't understand the
 [5] questions in any context other than that. The act
 [6] reflects the determination of Congress.

[7] BY MR. CARVIN:

[8] Q Senator, let me make it clear I would be
 [9] asking you all these questions if the act had never
 [10] been enacted or proposed. And presumably as a well
 [11] informed citizen and somebody who is, not only well
 [12] informed, but has been through the crucible of
 [13] elections you would have some views on it. If you
 [14] don't, that's perfectly an appropriate answer as
 [15] well.

[16] MS. BREGMAN: I don't think we would be
 [17] here if the act wasn't enacted.

[18] MR. CARVIN: We wouldn't be here if you
 [19] hadn't filed the answers to interrogatories. That's
 [20] really not neither here nor there. I'm trying to
 [21] frame the context in which I'm asking these
 [22] questions, okay. And your counsel has admonished

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[1] you repeatedly not to speak as to the purposes
 [2] underlying the act or motivations or whatever. So
 [3] you can take that as a running agreement or
 [4] stipulation that that's not the context in which I'm
 [5] asking you these questions. I'm just asking you, in
 [6] terms of your own views, if good public policy
 [7] whether or not in the scenario I outlined, the
 [8] Vermont or national Republican parties should have
 [9] an opportunity to respond to the criticisms of
 [10] Republican federal candidates paid for by the
 [11] AFL/CIO and run in times that were not within 30
 [12] days of the primary election or 60 days of the
 [13] general election.
 [14] MS. BREGMAN: Same --
 [15] THE WITNESS: That are not within those
 [16] periods?
 [17] BY MR. CARVIN:
 [18] Q Yes.
 [19] A Well, they know how -- the parties know
 [20] how to respond to these things. And it's a
 [21] question, at least my feeling when we created this
 [22] legislation there's a time when it becomes

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[1] unreasonable to be able to do so effectively. And
 [2] so that's the time -- reasonably put the time dates
 [3] that we did to discourage them or make it unlawful,
 [4] so you don't get in a position where you can't
 [5] respond.
 [6] Q And in light of that, let's assume the
 [7] criticizing ads run by the AFL/CIO were run 75 days
 [8] before the general election. In your view, would it
 [9] be contrary to public policy for the Republicans to
 [10] respond to those ads 55 days before the general
 [11] election to respond to the criticism of the
 [12] Republican candidate?
 [13] MS. BREGMAN: I am going to object and
 [14] probably cut off the questioning here, because every
 [15] answer by the witness makes clear that he is talking
 [16] about the deliberations that led up to the act,
 [17] which simply means that he's unable to separate and
 [18] therefore that the question is defective, the part
 [19] of it that you claim to be not and the part that is.

[20] Public policy questions as to his individual views
 [21] all arise in the context of the legislative process
 [22] and are directly related to the passage of the

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[1] legislation.
 [2] So I think we're going to stand by the
 [3] objection in this instance. Because the witness in
 [4] his answers has made clear that's providing
 [5] information that he believes false within the
 [6] provision that he chooses to exercise the privilege
 [7] with respect to.
 [8] MR. CARVIN: I'm really quite confused at
 [9] this point. I'm asking him general questions about
 [10] electioneering communications and the uses of soft
 [11] money, which obviously relate to the kind of things
 [12] that are regulated by the act and that are
 [13] implicated by the first amendment. But it cannot be
 [14] the position that anything that relates to those
 [15] issues is something encompassed within speech or
 [16] debate because otherwise it was neither - any point
 [17] in Senator Jeffords intervening in this case, filing
 [18] interrogatories in this case or appearing for this
 [19] deposition. So I need to have some sense of where
 [20] we draw the line. Surely the topics can't be off
 [21] limits.
 [22] I'm trying to accommodate your concerns as

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[1] best I can by asking you as generally as I can
 [2] without reference to the act or, you know, what you
 [3] went through as a legislator. I'm just trying to
 [4] get your sense.
 [5] MS. BREGMAN: Well, specific questions
 [6] about things that happened in Vermont with which
 [7] he is familiar we are not asserting privilege with
 [8] respect to. But public policy that represented
 [9] whether it should be 60 days or 75 days comes back
 [10] to the motivation and the deliberative process.
 [11] That's how the witness is interpreting the question.
 [12] That's how he's responding to the question.
 [13] MR. CARVIN: Well, I did tie it to this ad
 [14] which they got to ask questions about before. And
 [15] I'm changing the hypothetical slightly.
 [16] BY MR. CARVIN:
 [17] Q Let's assume the AFL/CIO ran the ad
 [18] reflected in Jeffords 4, okay. Let's make it simple
 [19] they ran it 65 days before the general election,
 [20] federal election. And it was paid for out of the
 [21] union treasury funds. In your mind, would a
 [22] response by either the state or national Republican

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[1] parties responding to the criticisms contained in
 [2] that ad create an appearance of corruption or
 [3] otherwise be undesirable?
 [4] MS. BREGMAN: Same objection. If you can
 [5] answer that.
 [6] THE WITNESS: All of this is based upon
 [7] judgment of reasonable exercise of the law to try to
 [8] make campaigns fair. And you can argue about the

[9] number of days one way or the other. But that was a
 [10] judgment that we made as to take care of some of the
 [11] serious problems we saw with unfairness. Those are
 [12] the figures we came up with that we thought was a
 [13] reasonable way to handle these situations.

[14] BY MR. CARVIN:

[15] Q But don't you think it would be unfair,
 [16] potentially disadvantageous to the party who is
 [17] offering up a candidate to not be able to use, I'll
 [18] call it soft money, to respond to ads by interest
 [19] groups that were paid for with soft money during 60
 [20] days prior to the federal election?

[21] MS. BREGMAN: Same objection and also
 [22] unclear as to what you mean by "unfair." If you

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[1] have an answer that you can give.
 [2] THE WITNESS: Well, I just - we used our
 [3] judgment on these dates and figures based upon our
 [4] own experience and the Congress agreed with us. So
 [5] I think we did a good job at estimating fairness.
 [6] BY MR. CARVIN:
 [7] Q Have you, let's make it - have you ever
 [8] been the subject of ads paid for by I'll say
 [9] "outside groups," by that I mean nonparty groups or
 [10] not your opponent in an election, which have
 [11] criticized you in any way?

[12] A Yes.

[13] Q Did you seek to respond to those
 [14] criticisms?

[15] A If I felt response was appropriate or
 [16] needed, but normally I ignore them.

[17] Q I'm sorry?

[18] A Normally I would ignore them, unless I had
 [19] a close election or something and felt compelled to
 [20] do something.

[21] Q Can you recall an instance where you did
 [22] seek to respond to criticisms by outside groups that

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[1] were aired in advertisements?

[2] A I'm sorry.

[3] Q Can you think of an instance where you did
 [4] respond to advertisements by outside groups that
 [5] have criticized you?

[6] A No. I don't believe so. Because I don't
 [7] think when that occurred we had time to do so.
 [8] That's the purpose of passing this law.

[9] Q Okay. When you say you didn't have time
 [10] to do so, how would that have worked as a practical
 [11] matter?

[12] A Well, first of all, can you buy space,
 [13] that's the critical problem usually. And if they're
 [14] run and you can't respond, which is one of the big
 [15] purposes of our law, then you're defenseless.

[16] Q And how does that work, in your experience
 [17] in Vermont? And I'm just - do you buy your - do
 [18] you buy your advertisements in advance and try and
 [19] get time in the period before the election?

[20] A It depends upon how much money you have
 [21] obviously. But you try to buy your ads so that they

[22] will be within, you know, the closeness to the

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[1] election that they're affected. And if you find
[2] yourself you can't do that, it's a big disadvantage.

[3] Q And I'm just trying to get the
[4] practicalities of why you couldn't do it. Because
[5] you wouldn't necessarily have enough money or
maybe

[6] all the slots have been filled?

[7] A All the slots have been filled.

[8] Q So even if you did have the money you
[9] might not be able to get air time to run?

[10] A Right.

[11] (Discussion off the record.)

[12] (Recess.)

[13] (Jeffords Exhibit 8 identified.)

[14] BY MR. CARVIN:

[15] Q Senator, I've handed you an exhibit that's
[16] been marked as Jeffords Number 3.

[17] A 8.

[18] Q Yes. And I represent to you that, and you
[19] should assume that this ad was paid for by the
[20] California Democratic Party. It was run on the
[21] radio in the 1996 election cycle within 60 days of
[22] the general election. Okay.

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[1] A Uh-huh.

[2] Q And then if you wouldn't mind, could you
[3] take a minute, please, just to read the text of that
[4] ad.

[5] Have you had an opportunity to review it?

[6] A I'm sorry?

[7] Q Have you had an opportunity to view the
[8] text?

[9] A Yes. This one right here you mean?

[10] Q Yes. Jeffords 8. And again assume with
[11] me that that was paid for with soft money by the
[12] California Democratic Party and ran 60 days before
[13] the 1996 federal election.

[14] In your mind, does that ad create any
[15] appearance of corruption for a federal officeholder
[16] or candidate?

[17] MS. BREGMAN: Same objection as before.

[18] If you have an answer, you can answer it.

[19] THE WITNESS: I don't -- does it have an
[20] appearance of corruption?

[21] BY MR. CARVIN:

[22] Q Yeah.

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[1] A I don't believe so.

[2] Q And what if it was run by -- the text of
[3] the ad, just so the record is clear, involves an
[4] affirmative action ballot initiative that was
[5] seeking to eliminate affirmative action in
[6] California. And let's assume it was run by the
[7] NAACP within 60 days of a federal election paid for
[8] out of their general organizational funds. Would
[9] that create a potential appearance of corruption for
[10] a federal candidate or officeholder?

[11] MS. BREGMAN: Objection. You're asking
[12] for his personal opinion.

[13] THE WITNESS: My personal opinion would
be

[14] no. But you have to take it in concept of the whole
[15] election going on and things like that.

[16] BY MR. CARVIN:

[17] Q Is there anything in the context of an

[18] election that might create an appearance of
[19] corruption?

[20] A On this ad?

[21] Q Yeah.

[22] A Well, the -- I don't think so.

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[1] MR. ABRAMS: I'm sorry. I couldn't hear
[2] the answer. Could you read it back, please.

[3] (Jeffords Exhibit 9 identified.)

[4] BY MR. CARVIN:

[5] Q I've handed you what's been marked as
[6] Jeffords Exhibit 9. And I again would like you to
[7] read the text of this. While you're doing so, a
[8] couple things. One is this was run in a newspaper,
[9] not over a broadcast station. It was paid for by
[10] soft money by the California Democratic Party. And
[11] I'd like to particularly draw your attention, so I
[12] don't have any trick questions here, that it does
[13] refer to Newt Gingrich. And this is a 1996 ad. So
[14] at the time he was a candidate for federal office.
[15] Just I wanted to make that clear up front for you.
[16] Have you had an opportunity to review the
[17] ad?

[18] A Yes. Uh-huh.

[19] Q Again, same question. And just so we're
[20] clear, Paid for with soft money by the California
[21] Democratic Party shortly before federal election in
[22] 1996. And it references Newt Gingrich, who, in that

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[1] election cycle, obviously in Georgia, was a
[2] candidate for federal office.

[3] With all that in mind, do you think this
[4] newspaper ad creates the appearance of corruption
[5] for federal officeholders and candidates if paid
[6] for --

[7] A First of all, it's a newspaper ad so it's
[8] irrelevant to this situation. And what was the
[9] question again?

[10] Q Just whether or not --

[11] A It creates a --

[12] Q An appearance of corruption for a federal
[13] officeholder or candidate.

[14] A Not on the face of it.

[15] MR. CARVIN: Counsel, I can do this either
[16] way. If you want me to give examples I would be
[17] happy to do that, or I can describe narrowly what
[18] these are. Do you have a preference either way?
[19] Would you prefer real-world examples?

[20] MS. BREGMAN: I'm not sure what you're
[21] referring to. You're going somewhere but I'm not
[22] sure where it is.

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[1] MR. CARVIN: Well, I'll tell you. These
 [2] are things like door hangers and go out and vote
 [3] Democratic and there's some things that deal with
 [4] local elections. And I'd be happy to show them to
 [5] you, maybe that would be the simplest way, and get a
 [6] reaction to whether or not it's the kind of thing
 [7] you think creates appearance of corruption. Do you
 [8] have the next one?
 [9] The reason I ask is none of these are
 [10] Vermont. And these are all from prior elections.
 [11] But instead of giving you complicated hypotheticals,
 [12] just show you some real-world ads.
 [13] (Jeffords Exhibit 10 identified.)
 [14] BY MR. CARVIN:
 [15] Q This isn't the best copy. But it's a
 [16] four-page ad, again paid for with soft money by the
 [17] Indiana Democratic Party.
 [18] A Uh-huh.
 [19] Q And as you can see, it references a
 [20] mayoral election.
 [21] A These are all print ads.
 [22] Q Yes. Exactly. To be clear, this one

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[1] actually was a mailing or handout as opposed to
 [2] appearing in newspapers.
 [3] And again, just so we're clear, I know the
 [4] last page says "vote for Bart Peterson," who was the
 [5] mayoral candidate and the Democratic team for city
 [6] council. And it lists various names, and it
 [7] encourages people to vote on Tuesday, November
 [8] 2nd.
 [9] I'll represent to you that's a date when federal
 [10] candidates were on the ballot. And again the
 [11] Indiana Democratic Party paid for this with soft
 [12] money.
 [13] Does this handout urging people to vote in
 [14] local elections paid for by a state party with soft
 [15] money, in your mind, raise an appearance of
 [16] corruption for federal candidates or officeholders
 [17] who appeared on the ballot the same day?
 [18] MS. BREGMAN: This is his personal -
 [19] MR. CARVIN: Yeah.
 [20] MS. BREGMAN: - opinion sitting here
 [21] looking than this. Nothing more than that.
 [22] THE WITNESS: Well, not on its surface.
 [23] But again, it's not relative to - related to the

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[1] law that we're talking about, because that does not
 [2] restrict the use of print.
 [3] BY MR. CARVIN:
 [4] Q Yeah, and then I'm trying to get a general
 [5] sense from you again with all the caveats, do you
 [6] see a distinction between these kind of television,
 [7] radio ads and what I would characterize as sort of
 [8] generic, vote Democratic that lists candidates for
 [9] state and local office that are either done in
 [10] newspapers or handouts. Do you see a distinction?
 [11] MS. BREGMAN: Objection. I'm going to

[12] object because every answer that this witness is
 [13] giving is displaying the fact that he relates
 [14] everything to the legislation. And that all of his
 [15] views that he's given you are trying to respond in a
 [16] way that sheds light on how Congress drew lines.
 [17] And that is - that is what he keeps coming back to.
 [18] That is why I think the questions, as he hears them
 [19] and as he responds to them, do implicate the speech
 [20] and debate clause.
 [21] He's going back to telling you why certain
 [22] things may have been treated within certain portions

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[1] of the act. And I think that renders it impossible,
 [2] to be asking these questions in a way that does not
 [3] implicate the speech or debate clause.
 [4] BY MR. CARVIN:
 [5] Q That's why I was thinking maybe we could
 [6] switch to a more general. I've given you certain
 [7] illustrative examples. Again, without referring to
 [8] the act or legislative history, just as somebody who
 [9] knows the political process and has been involved,
 [10] do you perceive a difference between the potential
 [11] appearance of corrupting or - corrupting effect of
 [12] these radio ads or television ads and these efforts
 [13] in print or in mailings to encourage people to get
 [14] out to vote on an election day?
 [15] A Yes.
 [16] Q And -
 [17] A That's why we handle them differently.
 [18] MS. BREGMAN: We keep coming back to the
 [19] legislation. I don't think that this witness has a
 [20] view that can be separated from his view as a
 [21] legislator.
 [22] BY MR. CARVIN:

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[1] Q Well, again - and I'll give you a general
 [2] caveat, just to see if discussion. I'm just asking
 [3] you generally okay for your opinion as somebody
 [4] who's been involved in the political process.
 [5] A Right.
 [6] (Jeffords Exhibit 11 identified.)
 [7] BY MR. CARVIN:
 [8] Q Okay. This is Jeffords 11. And please
 [9] look through it. It's what I call a door hanger
 [10] that they put on somebody's handle of a door. And
 [11] as you can see, it says "vote Democratic" and then
 [12] lists various candidates for statewide office. This
 [13] state happens to be Virginia. But assume with me it
 [14] was federal officials on the ballot during the same
 [15] day. And it was paid for by soft money from the
 [16] Virginia Democratic Party. Again, in your mind,
 [17] would this kind of door hanger create the appearance
 [18] of corruption?
 [19] MS. BREGMAN: My same objection. If you
 [20] have a view apart from your view as a legislator,
 [21] and that has nothing to do with what you took into
 [22] account in connection with the act, then you can

Page 87

[1] answer.

[2] THE WITNESS: Well handouts and prints
[3] are totally different from the fairness aspects of
[4] electioneering. These are things that handed out
[5] and thrown away, whatever. But if you are a captive
[6] audience, you're watching television, and the ads
[7] get interspersed with what you're watching, that's a
[8] very different situation, because that audience, the
[9] only way you can reach them is through the same
[10] medium. And if you can't get it, it is -- that's
[11] where you get into a problem. That's why we --
[12] because knowing that that medium is very difficult
[13] to react to.

[14] Q And so --

[15] A Impossible so close to the election.

[16] Q Just to break that down. You say
[17] "captive" audiences. Is it your impression again
[18] people pay more attention to these television ads,
[19] for example, than the kind of door hangers and print
[20] ads that we talked about?

[21] A That would have to be a judgment. That's
[22] my feeling, but I think that's a general feeling.

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[1] But I -- I haven't personally had any studies or
[2] anything that indicate that. But that's the
[3] perception.

[4] Q Uh-huh. And how about you said about
[5] getting back to respond. Does that relate to what
[6] you were saying earlier, it's more difficult?

[7] A Yes. How can you respond?

[8] Q It's more difficult to respond to a
[9] television advertisement given the limited slots
[10] than it would be for these other examples I've just
[11] handed you?

[12] A Well, I think that's -- again these are
[13] all judgments. But generally speaking, handouts are
[14] not considered as effective ways of getting people
[15] to change their mind. It's usually thrown away
[16] faster. If you sit there in front of a TV screen,
[17] you have to watch it because you're watching the
[18] program.

[19] Q All right. Even after people got
[20] clickers.

[21] Well, let me ask you, again, I'm honestly
[22] just trying to get a sense of time here. I

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[1] represent -- let me just be as candid as I can so
[2] counsel knows where I'm going or you know where
[3] I'm

[4] going. I represent the Republican National
[5] Committee. And our big issue, as you can probably
[6] imagine, is the soft money restrictions.

[7] A Uh-huh.

[8] Q I take it since you don't answer this one
[9] way or another that wasn't your principal focus in
[10] terms of the legislation. I'm using that as a
[11] prefacing remark to say that I could walk you
[12] through a whole bunch of examples of things that, in
[13] my view, are implicated by the soft money ban of the
[14] act. But in light of my view, which you don't have

[14] to confirm or deny, maybe that wasn't your principal
[15] focus, what I would like to try, see if it works, is
[16] to just ask you some general questions and see if
[17] you have a reaction, again in your capacity as a
[18] litigant, without maybe walking you through 3- or
[19] 400 examples of this.

[20] A Sure.

[21] Q So my first question would be one of the
[22] things, I'll represent to you, that the national

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[1] party does is solicit funds on behalf of state and
[2] local candidates, mayoral candidates, gubernatorial
[3] candidates. In your experience and in your mind,
[4] does that create a potential appearance of
[5] corruption for federal candidates or officeholders?

[6] MS. BREGMAN: Okay. Now I am going to
[7] object on the speech or debate grounds. I don't
[8] think there's been one answer that this witness has
[9] given that suggests that he is thinking of any of
[10] these questions apart from the legislation, and
[11] indeed apart from the Snowe-Jeffords part of the
[12] legislation. And so I don't think any answer could
[13] be remotely valid, responsive, or meaningful without
[14] reference to the legislation, and you are entirely
[15] correct that Title I is not something that the
[16] witness is familiar with at this point sitting here
[17] today, years later.

[18] And so I -- I don't know that we're going
[19] to get very far. And I am going to instruct on a
[20] lot of these because the witness is bringing
[21] everything back to the lines that were drawn at the
[22] time that the legislation was being considered.

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[1] And so I think by virtue of his
[2] understanding whether there's another way to do it
[3] or not, we are within speech or debate.

[4] MR. CARVIN: What's the bottom line on
[5] this one? I mean, it's fairly generic.

[6] MS. BREGMAN: Let me listen to the
[7] question one more time.

[8] MR. CARVIN: I gave a big buildup.

[9] MS. BREGMAN: Just the question itself.

[10] (The reporter read the record as requested.)

[11] MS. BREGMAN: I think I am going to object
[12] and instruct, because I don't think that in his mind
[13] it's meaningful, apart from in his mind as a
[14] legislator, I don't think that the questions are
[15] interpreted in any way differently.

[16] MR. CARVIN: Well, we obviously disagree.
[17] But you and I don't need to argue about that right
[18] now.

[19] Let me see if I can come at it from a
[20] different way that will make it clear the context in
[21] which I'm answering -- asking you this question.
[22] Now I'm asking -- I'll just ask you

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[1] generally. You were a member of or connected with
[2] the National Republican Senatorial Committee at
[3] some

[3] point?
 [4] A Yes.
 [5] Q Okay. And are you currently a member of
 [6] or affiliated with the Democratic Senatorial
 [7] Committee?
 [8] A No.
 [9] Q And just so I'm clear, you're an
 [10] independent, or what is your party affiliation at
 [11] this point?
 [12] A I am an independent.
 [13] Q Okay. Okay. And?
 [14] A To clarify, I did side at this time with
 [15] the Democrats but for organizational purposes.
 [16] Q Okay. And you have done some
 [17] fund-raising, I believe for the Democratic
 [18] Senatorial Committee?
 [19] A Yes.
 [20] Q Am I right on that? Okay.
 [21] So focusing on your knowledge as somebody
 [22] who's been involved in a national political

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[1] committee, have you had any experience or contacts
 [2] with the Republican National Committee through the
 [3] years?
 [4] A Through the years?
 [5] Q Yeah.
 [6] A Oh, yes.
 [7] Q Okay. And how about the Democratic
 [8] National Committee?
 [9] A Not really. Just the Senatorial
 [10] committee. Democratic Senatorial Committee.
 [11] Q And how about either the Republican or
 [12] Democratic Congressional committees, have you had
 [13] experience with them?
 [14] A Well, I guess the Democratic Senatorial
 [15] Committee, I think -
 [16] Q No. I'm sorry to interrupt you. Now I'm
 [17] focusing on DCCC, the one that helps the House
 [18] members.
 [19] A No, I have not.
 [20] Q Okay. You were a member of the House?
 [21] A Yes.
 [22] Q Yes. And when you were a member of the

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[1] House, you were Republican?
 [2] A Right.
 [3] Q And in that connection, were you involved
 [4] at all with the Republican Congressional Committee?
 [5] A Yes.
 [6] Q Okay. Do you have any knowledge of
 [7] whether or not the expenditure decisions of any of
 [8] those national party committees was in any way
 [9] affected by whether or not a candidate had raised
 [10] soft money or participated in raising soft money?
 [11] A I have no information on that.
 [12] Q Okay. Do you have any information as to
 [13] whether or not the expenditure decisions, where they
 [14] would spend their money in different races, was
 [15] affected by the location or source of who had given

[16] soft money to the national party committee?
 [17] A I have no knowledge.
 [18] Q Okay. And I'll just make it as broad as I
 [19] can. I mean, do you have any information or
 [20] knowledge about any correlation between the
 amounts
 [21] a candidate raised in soft money and any spending
 [22] decisions by a national party committee that had

Page 95

[1] received that soft money?
 [2] A I have no knowledge.
 [3] Q Okay. Some of these I'm just trying to
 [4] make sure the record is clear. Are you aware, with
 [5] respect to any of the committees, of any informal
 [6] understanding between the political committees and
 [7] the soft money donors as to where that soft money
 [8] would be spent?
 [9] A I have no information.
 [10] Q Okay.
 [11] A I'm not involved.
 [12] Q Okay. Does the phrase "tallying" mean
 [13] anything to you, have you ever heard that phrase in
 [14] connection with soft money fund-raising?
 [15] A No.
 [16] Q Okay. I'll reference in this case called
 [17] Colorado Republican two Supreme Court decisions,
 [18] there was some discussion of the Democratic
 [19] Senatorial Committee tallying, that is keeping track
 [20] of who raised certain kinds of money, which
 [21] candidates. Are you aware that practice goes on at
 [22] the Democratic Senatorial Committee today?

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[1] A I have no knowledge of that.
 [2] Q Okay. And same question for all the other
 [3] committees.
 [4] A Same.
 [5] Q Same answer?
 [6] A Same answer.
 [7] Q Are you generally aware of what percentage
 [8] of the committee budgets are composed of soft
 money
 [9] versus hard money?

[10] A I have no idea.
 [11] Q Now I'm speaking in terms of your
 [12] personal, the way you conduct your - either
 [13] previous Congressional or Senate business. Are you
 [14] aware of who gives soft money donations to either
 [15] the Republican or Democratic national political
 [16] committees?
 [17] A Somewhat. I have never spent any time
 [18] either soliciting or - I have done soliciting,
 [19] but - the handling it or working with numbers at
 [20] all.
 [21] Q Does the identity of donors of soft money
 [22] to any of the national political committees affect

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[1] your decisions as to who you meet with or give
 [2] access to?
 [3] A No.

[4] Q Does it affect in any way your decisions
[5] on how you conduct your legislative business?
[6] A No.
[7] MS. BREGMAN: Objection.
[8] THE WITNESS: Whoops. Sorry. She snuck
[9] an objection in there.
[10] MS. BREGMAN: Too late.
[11] BY MR. CARVIN:
[12] Q Let me -- are you aware of any -- you have
[13] to break it down to both parties. Are you aware of
[14] any Democratic Senators who have as a criteria for
[15] access the identity or amount of soft money
[16] donations by a corporation?
[17] A No knowledge.
[18] Q Okay. Same question for Republican
[19] senators.
[20] A Same answer.
[21] Q Same questions for members of Congress.
[22] A Same.

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[1] Q Okay. Do you -- I have to ask a
[2] foundation question. Do you go to what's called I
[3] believe the "Democratic caucus meetings"?
[4] A Well, I go to the lunch. There is a lunch
[5] every Tuesday.
[6] Q Okay. And are soft money donations, to
[7] your knowledge, discussed at those luncheons?
[8] A No. Generally you get a call, come on,
[9] guys, make phone calls.
[10] Q And "phone calls" mean let's --
[11] A Raise money.
[12] Q And do they draw a distinction between
[13] soft and hard money in terms of those phone calls?
[14] A I don't know. I don't participate.
[15] Q Okay.
[16] A I don't make any calls.
[17] Q And when you were a Republican Senator,
[18] did you make those calls?
[19] A Yes, I did.
[20] Q Okay. Can you give me a rough sense of
[21] how often you might have made those kinds of calls?
[22] A Whenever asked. I guess that would be --

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[1] generally they allocated time.
[2] Q How would it work? You go over to the
[3] Senatorial committee and they actually have phones?
[4] A Yes. They have someone there to help you
[5] make calls.
[6] Q And let's, in an election year, how often
[7] did you do something like that? Can you roughly
[8] estimate?
[9] A Well, I don't anymore.
[10] Q Yeah.
[11] A I would say -- you were expected to put so
[12] many hours in. And how you arranged that, it was
[13] pretty flexible. But during a campaign, you could
[14] spend as many as up to a hundred hours maybe. At
[15] most -- I wouldn't. I would say I would maybe spend
[16] 20 or 30 hours doing it.

[17] Q And that would be in the sixth year of
[18] your Senatorial term; that's what you mean by
[19] campaigning year?

[20] A No, sometimes you do it just for the
[21] party.

[22] Q Uh-huh. So it could be even an election

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[1] year where you weren't personally up but you would
[2] be helping raise money?

[3] A Yeah.

[4] Q Okay. Just, I need to get my questions
[5] out because the court reporter -- so if you could
[6] wait to the end of the question, I would appreciate
[7] it.

[8] And would you know the people that you
[9] would be making these calls to previously or?

[10] A Generally, both parties would suggest that
[11] you call people that you're aware of or know or have
[12] some dealings with.

[13] Q And how would they break that down on,
[14] say, a regional basis, people from --

[15] A They just give you a bunch of numbers,
[16] people to call. They take care of that.

[17] Q And would they give you sort of script of
[18] what to say or was it more informal?

[19] A It was pretty informal. But they suggest
[20] what you say.

[21] Q And would they give you an amount to
[22] request or how would that work?

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[1] A I don't -- I don't think so. You're
[2] usually selling tickets. I mean, most types of
[3] calls are for the big galas where the president is
[4] coming to speak, something like that, you try to
[5] sell tickets. Mainly you were trying to sell
[6] tickets to an event.

[7] Q Uh-huh. And in general terms, were these
[8] people that you were calling lobbyists in
[9] Washington? Or representatives of corporations
[10] or --

[11] A All of the above.

[12] Q Uh-huh.

[13] A I'm not making any calls now.

[14] Q Yeah.

[15] A So I want to make that clear. So it's not
[16] something I'm doing now. But that's generally the
[17] way it works.

[18] Q Okay. And when you did that, would you
[19] attend the dinners yourself typically?

[20] A Well, typically, yes.

[21] Q Uh-huh. And during those dinners, did you
[22] ever discuss potential or pending legislative

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[1] business with anybody other than --

[2] A Doubtful. Just generally just a
[3] conversation of -- you might talk about the issues,
[4] but that's -- somebody else did the talk on the
[5] collection of money or whatever.

[6] Q And as to these people you called, would

[7] you see them at the dinner or was that -

[8] A Sure. You try to shake a hand with
[9] everybody that's there and chat.

[10] Q Fair enough. I'm asking a little bit more
[11] specific question. You might call, say, 20 people.

[12] A Uh-huh.

[13] Q Would you make it a point to see those 20
[14] people at the dinner as opposed to other people that
[15] you just might want to?

[16] A Generally, you would go - if you're
[17] working hard, you would go to the table - your own
[18] table. And then you would also go around and if you
[19] knew other tables of interests that you had, you
[20] would go shake their hands to thank them for coming
[21] to the event.

[22] Q And would people typically mention, you

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[1] know, we have this bill pending or our corporation
[2] is interested in this issue?

[3] A Sometimes. Very rarely. But sometimes,
[4] yes.

[5] Q Can you think of any examples where that
[6] happened?

[7] A No, I can't. That's been a while since I
[8] did any of that.

[9] Q And did that in any way ever influence
[10] your decisionmaking as a legislator, these brief
[11] conversations at the dinners?

[12] MS. BREGMAN: Objection. Speech or
[13] debate. You can -

[14] THE WITNESS: I mean, I don't know how to
[15] answer that, because I don't know what goes into
[16] your mind to say yes or no on it. But obviously you
[17] discuss the issues. But I don't know - I never
[18] thought I came away from it saying, well, I guess
[19] I'll vote for them or whatever. I don't think so.
[20] It's generally knowledge and discussion.

[21] BY MR. CARVIN:

[22] Q But would you base your legislative

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[1] activities and votes on the merits of the issue, or
[2] were you influenced by the fact that these folks had
[3] given money to the party that you were going to
[4] affiliate?

[5] A I would vote on the merits of the issue.
[6] But obviously if you talk to people, they can
[7] influence your judgment.

[8] Q Uh-huh. Did they have special influence
[9] because they had given soft money to the party?

[10] MS. BREGMAN: Objection. I'm not sure
[11] what you mean by "special." And I'm not sure
[12] whether he would know whether it was soft money or
[13] not. But given that ambiguity, you can answer the
[14] question.

[15] THE WITNESS: I don't - seriously, I
[16] don't know how to answer that.

[17] BY MR. CARVIN:

[18] Q Let me make it - presumably you met with
[19] people that, at receptions, et cetera, that weren't

[20] fund-raisers for the Senatorial committee; correct?

[21] A Uh-huh.

[22] Q Did you treat those conversations that

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[1] weren't raising soft money for the national
[2] political party to - conversations with people at
[3] those receptions more or less influential than
[4] conversations you had while you were attending a
[5] fund-raising for the Senate committee?

[6] A I have no judgment on that.

[7] Q Okay. So I take it from that that the
[8] fact that these people had paid 5-, \$10,000 to be at
[9] the dinner didn't affect the weight or gravity you
[10] gave to their comments to make them more special or
[11] influential than conversations you would have in a
[12] nonfunding event?

[13] A I always make up my own mind. I take
[14] in - listen to what they have to say. But it may
[15] or may not be worthwhile conversation.

[16] Q Okay. The - did you do the same thing
[17] when you were in Congress for the Republican
[18] Congressional Committee? To be specific, would you
[19] make phone calls soliciting donations to these galas
[20] and fund-raisers?

[21] A Uh-huh. Yes, sir, I did.

[22] Q And I believe you indicated before you

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[1] might do 20 to 30 hours in an election year?

[2] A In the election year, yes.

[3] Q For the Senatorial committee. Can you
[4] recall how many hours you might do in an election
[5] year for the Congressional committee when you were

a
[6] Republican Congressman?

[7] A It was about the same.

[8] Q And I can go through all the questions.
[9] But in terms of your attendance at these
[10] fund-raising dinners and the conversations you had
[11] with people there, was the experience at the House
[12] fund-raisers essentially the same as you described
[13] with the Senate fund-raisers?

[14] A Yes.

[15] Q Okay. Did any of the party leadership
[16] that you've been involved with suggest or imply that
[17] preferential access should be given to large
[18] money - large soft money donors to the national
[19] party committee?

[20] MS. BREGMAN: Do they suggest it to him?

[21] MR. CARVIN: Yeah.

[22] MS. BREGMAN: To you personally. Do you

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[1] recall?

[2] THE WITNESS: I don't recall any.

[3] BY MR. CARVIN:

[4] Q Have you ever heard of a conversation

[5] between a leader of one of the national party

[6] committees and any representative, Senator or

[7] Congressman, where it was implied or suggested that

[8] the federal officeholder should give preferential

[9] treatment or access to large soft money donors?
 [10] A I don't have any recollection.
 [11] Q Okay. Do you know any representative or
 [12] Senator who has ever altered their vote in any way
 [13] because of, in part, soft money donations?
 [14] A No, I don't believe so.
 [15] Q Okay. My questions up to this point have
 [16] been about the national parties.
 [17] A Yes. Uh-huh.
 [18] Q And we chatted about this a little bit
 [19] earlier. I'm not entirely clear. Did you do
 [20] fund-raising for the Vermont Republican Party at any
 [21] point?
 [22] A Yes.

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[1] Q Okay. And you would attend fund-raising
 [2] dinners, for example, for them?
 [3] A Yes.
 [4] Q Would you make any of these phone calls
 [5] that you described for the Vermont Republican
 Party?
 [6] A Yes.
 [7] Q Okay. And what is the law in Vermont in
 [8] terms of - is there - can you make soft money
 [9] donations from corporations and unions?
 [10] A I don't know.
 [11] Q You don't know. I'm trying to figure out,
 [12] were you soliciting soft money or involved in soft
 [13] money fund-raising for the state?
 [14] A Usually at the state level, it was -
 [15] MS. BREGMAN: If you don't know what it
 [16] was when you were doing this solicitation, I think
 [17] you should stick with your don't know. If you know,
 [18] then go ahead and answer it.
 [19] THE WITNESS: I didn't get involved as
 [20] much in state. Staff people did most of that work.
 [21] The only thing I got involved was with to get the
 [22] singing Senators to appear and attract donors, I

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[1] guess.
 [2] BY MR. CARVIN:
 [3] Q Those are the three other Senators and
 [4] you?
 [5] A Right. Trent Lott, John Ashcroft, yeah,
 [6] and Larry Craig.
 [7] Q And you actually appeared at some Vermont
 [8] GOP events?
 [9] A Right. With them.
 [10] Q And these were fund-raising events?
 [11] A Uh-huh.
 [12] Q Okay. And at any of those dinners did you
 [13] discuss with people issues that had or -
 [14] A No, we just sang.
 [15] Q Just sang. Okay. And would you have
 [16] dinner there as well?
 [17] A Yes.
 [18] Q And at your dinner table, would anyone
 [19] approach you about issues you had or likely to come
 [20] before you as representative or Senator?

[21] A I don't remember, because we were usually
 [22] busy.

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[1] Q And just more generally, then, do you have
 [2] any knowledge of any informal arrangement between
 [3] somebody who gives soft money to a state party and
 [4] providing that person access to a federal
 [5] officeholder or candidate?
 [6] A Not that I can remember.
 [7] Q Okay. Do - does the giving of soft money
 [8] to state parties have either the purpose or effect
 [9] of gaining favorable treatment or access to federal
 [10] officeholders?
 [11] MS. BREGMAN: Objection. I'm sorry; I
 [12] didn't mean to interrupt you. I'm going to object
 [13] as to how he would know what the purpose or effect
 [14] is if you said he didn't know of any instances.
 [15] MR. CARVIN: I'm just trying to clarify
 [16] that.
 [17] THE WITNESS: I don't have any
 [18] information.
 [19] BY MR. CARVIN:
 [20] Q Okay. This sounds like a question I've
 [21] asked before but it's going to be slightly
 [22] different.

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[1] MS. BREGMAN: Objection. Asked and
 [2] answered.
 [3] BY MR. CARVIN:
 [4] Q To your knowledge, the spending decisions
 [5] by national party committees, are they affected in
 [6] any way by soft money donations to state parties?
 [7] A I don't know. I have no knowledge.
 [8] Q Okay. This is slightly different. Are
 [9] you aware of any circumstances where people have
 [10] given money to state parties to circumvent or avoid
 [11] contribution restrictions to either national parties
 [12] or national candidates?
 [13] A No.
 [14] Q Okay. How about PAC contributions to
 [15] candidates? Do you know what I mean by that?
 [16] A Yes.
 [17] Q In your experience, are you aware of
 [18] whether or not that has induced preferential acts or
 [19] preferential treatment by a federal officeholder or
 [20] candidate?
 [21] A I have no knowledge.
 [22] Q I take it, then, you have never provided

Page 112

[1] preferential treatment or access, in whole or part,
 [2] because of a contribution by the PAC to your
 [3] campaign?
 [4] A What's the first part of the question?
 [5] Q I'll make it clearer. Have you ever
 [6] provided preferential treatment or access to any
 [7] person because, in whole or in part, because of a
 [8] PAC contribution to your campaign?
 [9] A I may have met with somebody.
 [10] Q Because they made a contribution to your

[11] campaign?

[12] A Yes. Uh-huh.

[13] Q And how about a PAC contribution to a
[14] national party? Have you ever provided preferential
[15] treatment or act because of a PAC contribution to a
[16] national or state political party?

[17] A Not to my recollection.

[18] Q Have you engaged in fund-raising in
[19] Washington - I'll make it that. Other than the
[20] party committee galas here you were talking about
[21] before, now I'm talking about your own personal
[22] campaign fund-raising, have you done that in

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[1] Washington, D.C. or the suburbs?

[2] MS. BREGMAN: Now, when you say his own
or

[3] on his own behalf, does he personally do it? Or
[4] does he know whether his staff is doing it. When
[5] you say "personally."

[6] BY MR. CARVIN:

[7] Q Fair enough. Have there been fund-raising
[8] efforts directed towards your campaign as opposed to
[9] party contributions conducted by you or on your
[10] behalf in the Washington, D.C. area?

[11] A Yes, in the past.

[12] Q Okay. And were - in those circumstances,
[13] were any lobbyists on the host committee for the
[14] event that was seeking to raise money?

[15] A Are any of them lobbyists?

[16] Q Yeah.

[17] A I believe so, yes.

[18] Q And did you give preferential treatment or
[19] access to those lobbyists, in whole or in part,
[20] because they had helped solicit funds?

[21] A Oh, access? Probably, yes. As far as
[22] influence on legislation, not to my knowledge.

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[1] Q Okay. Have you ever had a leadership PAC?

[2] A No.

[3] Q Okay. I'm going to give you a newspaper
[4] account. But if you want to read it, that's fine.
[5] I'll ask you first maybe. Do you recall in February
[6] or March of this year being a featured speaker at
[7] the Senatorial Democratic campaign committee?

[8] A Yes.

[9] Q And the newspaper account suggested that
[10] you raised about \$6 million for the Democratic
[11] Senatorial Committee.

[12] A 6 million you said?

[13] Q Yes.

[14] A Yes. That's right.

[15] Q And that raised soft money as well as hard
[16] money?

[17] A I didn't have anything to do with the
[18] raising, so I don't know.

[19] Q Okay. Do you think your partners for that
[20] fund-raiser for the Democratic Senatorial Committee
[21] created the appearance of corruption with respect to
[22] your conduct with legislative business?

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[1] A No.

[2] Q And do you remember where you sat at that
[3] dinner?

[4] A I stood.

[5] Q Okay.

[6] A It was standing room only. It was a good
[7] event.

[8] Q Okay. Well, maybe - so you didn't sit at
[9] a table and actually have a dinner when you were
[10] there?

[11] A I don't believe so, no. It was a mob
[12] scene.

[13] Q Do you remember who you talked to in the
[14] mob?

[15] A Pardon.

[16] Q Do you remember who the talked to in the
[17] mob scene?

[18] A No.

[19] Q Do you remember if you ever discussed
[20] anything with any corporate donors to the event?

[21] A I don't believe so.

[22] Q How about any lobbyists? Did you have

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[1] any -

[2] A I don't - I'm sure I know enough
[3] lobbyists. There were plenty of lobbyists there,
[4] but I didn't have any real discussions.

[5] Q Okay. Do you recall at that dinner,
[6] anything affecting your legislative business come up
[7] with any conversation?

[8] A Not to my knowledge.

[9] Q Okay. And had you ever been a speaker at
[10] a Republican National Party committee fund-raiser
[11] that you can recall?

[12] A I made speeches for them. I don't
[13] remember. There weren't many. But they weren't big
[14] events.

[15] Q Okay. And again, at those fund-raisers,
[16] can you recall discussing legislative business of
[17] any kind?

[18] A I can't remember any.

[19] Q And I think I've asked you this. But just
[20] so I'm clear. At the state party dinners, do you
[21] recall any conversation discussing legislative
[22] business?

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[1] A I don't believe so. Not usually.

[2] Q Okay. Well, and then that's sort of my
[3] question, I guess. In light of your contact and
[4] experience and to some extent with the national
[5] party committees, are you aware that the national
[6] party committees raise money for state and local
[7] candidates as well as for federal candidates?

[8] A I'm aware of that, yes.

[9] Q Okay. And do you think the solicitation
[10] of that money for state and local candidates would
[11] give rise to an appearance of corruption with
[12] respect to federal candidates such as yourself?

[13] A I don't have any idea.
 [14] Q Okay. Are you aware - okay. And that
 [15] was on the raising side. Now I'm switching, so I'm
 [16] clear, switching to the spending side. Are you
 [17] aware that the Republican and Democratic national
 [18] committees will contribute money and spend money
 on
 [19] strictly state and local candidates and campaigns?
 [20] A Yes.
 [21] Q Okay. In your mind, did those
 [22] expenditures of soft money for state and local races

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[1] create an appearance of corruption for federal
 [2] campaigns?
 [3] MS. BREGMAN: Now let me just clarify,
 [4] because we've had a lot of questions about it. You
 [5] say "do they create an appearance." You mean not
 [6] how you perceive it, Senator Jeffords, but how
 [7] others may perceive it. Do they create among
 [8] anyone.
 [9] MR. CARVIN: Well I want your opinion as
 [10] to whether the appearance exists. You're not the
 [11] only person I suppose who has a view as to whether
 [12] something appears corrupt. But I want your opinion
 [13] as to whether or not you think this appears to be
 [14] corrupt.
 [15] MS. BREGMAN: To anyone. Not only to you.
 [16] MR. CARVIN: Yeah.
 [17] THE WITNESS: I think the perception is
 [18] that with people is that when they - or they find
 [19] out what goes on, how people get money, that I think
 [20] that - that creates in them a - I think a concern
 [21] that's influence peddling.
 [22] BY MR. CARVIN:

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[1] Q And have you examined or studied any
 [2] analysis on that?
 [3] A No, I have not.
 [4] Q Okay. And I can understand if you are
 [5] talking about money that went to federal candidates.
 [6] Now I'm wondering if there's a distinction between
 [7] soft money spent on state and local - let me give
 [8] you the simplest example. For example, Virginia has
 [9] elections in off years, odd years.
 [10] A Yes. I'm aware of that.
 [11] Q Yeah. If, say, the RNC gave money to a
 [12] gubernatorial candidate in Virginia in an election
 [13] where there was no federal candidate on the ballot,
 [14] does that in your mind create an appearance of
 [15] corruption for substantial segments of the
 [16] community?
 [17] A I don't know the answer to that.
 [18] Q Okay. Do you think it has less potential
 [19] for creating the appearance of corruption than
 [20] expenditures for federal elections by the national
 [21] party committees of soft money?
 [22] A I have no feeling on that.

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[1] Q Okay. Is this an issue that you've in

[2] general looked at one way or another, this whole
 [3] question of how soft money is raised and spent?
 [4] MS. BREGMAN: Objection. Has he looked at
 [5] it apart from his behavior as a legislator in
 [6] connection with this legislation?
 [7] MR. CARVIN: We can start there.
 [8] MS. BREGMAN: Like in your free time.
 [9] THE WITNESS: What was the question?
 [10] BY MR. CARVIN:
 [11] Q Well, I mean, you know, I mean, have you
 [12] devoted serious attention to the question of how
 [13] soft money is raised and spent?
 [14] A Have I devoted "serious attention" to it?
 [15] Q Yes.
 [16] A Yes, I'm concerned about it.
 [17] Q And what is your concern relevant to the
 [18] appearance of corruption about raising spending soft
 [19] money as a litigant?
 [20] MS. BREGMAN: Objection. As a litigant,
 [21] his positions will be set forth in litigation
 [22] papers. I don't think he has yet said that he is

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[1] concerned about it as a citizen, apart from as a
 [2] legislator. So I'm coming back to the same
 [3] objection.
 [4] MR. CARVIN: There's a lot of distinctions
 [5] you're drawing here. I'm just trying to get your,
 [6] Senator, not referencing any legislative history or
 [7] discussions leading up to the thing, what is your
 [8] general concern about either raising or spending
 [9] soft money?
 [10] MS. BREGMAN: I have the same objection.
 [11] I guess you said before you have a concern. If you
 [12] want to respond to this question by saying what that
 [13] concern is, again, you may.
 [14] THE WITNESS: Well, I do have concerns.
 [15] Especially as to the public perception. And that's
 [16] why we became concerned, and that's why we're
 [17] involved here today through legislation to try and
 [18] make sure that this kind of problems are diminished.
 [19] BY MR. CARVIN:
 [20] Q Do you think direct spending by
 [21] corporations and unions in an aid to benefit or harm
 [22] a federal candidate similarly creates an appearance

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[1] of corruption?
 [2] MS. BREGMAN: Objection. I believe he
 [3] answered that before. But in any event, as his last
 [4] answer revealed, he is talking about the purposes
 [5] behind the motivations for and the premises of the
 [6] legislation.
 [7] That is within the speech or debate realm.
 [8] It is conceivable that in some other metaphysical
 [9] world that question might be outside the scope of
 [10] the speech or debate clause, but it isn't here.
 [11] BY MR. CARVIN:
 [12] Q Do you have a general view as to whether
 [13] or not spending by corporations and unions directly
 [14] in a manner that criticizes or supports federal

[15] candidates creates an appearance of corruption for a
 [16] federal candidates or officeholders?
 [17] MS. BREGMAN: You may answer the
 question,
 [18] if you can put aside legislative history, what you
 [19] were thinking when you enacted the law and what
 went
 [20] into the act that we're concerned with today. If
 [21] you have some personal view outside of the
 [22] legislative process, you can answer that question.

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[1] THE WITNESS: The question?
 [2] BY MR. CARVIN:
 [3] Q I believe you indicated earlier that soft
 [4] money by parties created this perception of undue
 [5] influence. Now I'm switching it to what about a
 [6] situation where the party doesn't take the
 [7] corporations or union's money but a situation where
 [8] the corporations or unions spend directly on voter
 [9] mobilization or advertisements.
 [10] In your mind, does that create an
 [11] partnerships of corruption as well?
 [12] MS. BREGMAN: Same objection. You can
 [13] answer it if you have a view, in your mind, apart
 [14] from the legislation.
 [15] THE WITNESS: Yes. The problem would be
 [16] the term "corruption." I think "unfair influence"
 [17] or some other term that would be more appropriate,
 [18] to which I would answer yes.
 [19] BY MR. CARVIN:
 [20] Q And just so we're clarifying, and I take
 [21] it you're concerned with soft money activities by
 [22] parties creates a similar perception of undue

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[1] influence?
 [2] A Yes.
 [3] Q Is there a distinction in your mind
 [4] between the two, corporations and unions doing it
 [5] directly or parties using corporations' and unions'
 [6] money to engage in electoral activity?
 [7] A I'm sorry?
 [8] Q Is there a distinction in your mind in
 [9] terms of the potential for the appearance of undue
 [10] influence between parties using corporations and
 [11] union treasury funds to engage in electoral activity
 [12] or the corporations and unions themselves spending
 [13] the money directly for electoral activity?
 [14] MS. BREGMAN: Same objection. Apart from
 [15] the legislation, if you have an answer, you can give
 [16] it.
 [17] THE WITNESS: I don't have an answer for
 [18] that.
 [19] MR. CARVIN: Okay. Can we take a
 [20] five-minute break and I think we can wrap up. As
 [21] least I can fairly quickly.
 [22] MS. BREGMAN: Sure.

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[1] (Discussion off the record.)
 [2] (Recess.)

[3] MR. CARVIN: Senator Jeffords, thank you
 [4] very much. I have no further questions for you.
 [5] EXAMINATION
 [6] BY MR. ABRAMS:
 [7] Q Senator, I'm just going to ask you a few
 [8] more questions from the end of the table now.
 [9] A Sure. Okay.
 [10] Q I want to ask you some questions about the
 [11] concept of corruption and appearance of corruption
 [12] because you've been asked a lot of questions today
 [13] by Mr. Carvin about whether one thing or another
 had
 [14] the appearance of corruption. You've never
 [15] committed any corrupt act of any sort while in the
 [16] Senate, of course; correct?
 [17] A Correct.
 [18] Q Had you ever done anything while you've
 [19] been in the Senate that you believe had the
 [20] appearance of corruption?
 [21] A Not to my knowledge.
 [22] MS. BREGMAN: Can I clarify again. Do you

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[1] mean did it appear to you or do you know whether
 [2] anybody else thought so?
 [3] MR. ABRAMS: Well, I've asked the
 [4] question. And the Senator has answered it. If you
 [5] want to cross-examine it.
 [6] THE WITNESS: Either way.
 [7] BY MR. ABRAMS:
 [8] Q Can you think of any behavior of any of
 [9] your colleagues in the Senate that you've concluded
 [10] was corrupt because their parties had received soft
 [11] money?
 [12] A Not to my knowledge.
 [13] Q And any behavior of any of your colleagues
 [14] that you concluded had the appearance of corruption
 [15] to you because their parties had received soft
 [16] money?
 [17] A Not to my knowledge.
 [18] Q Can you think of any advertisement which
 [19] ran on television in Vermont within 60 days of the
 [20] federal election that identified a candidate for
 [21] federal office that you believe created an
 [22] appearance of corruption?

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[1] A I don't think corruption, but there have
 [2] been some very misleading ads that affected
 [3] elections.
 [4] Q And apart from the fact that they were
 [5] misleading, were there any ads that you believe
 [6] created an appearance of corruption?
 [7] MS. BREGMAN: Whether anybody who
 viewed
 [8] them thought that.
 [9] THE WITNESS: I can't remember. I mean,
 [10] but I just - I don't watch television that much.
 [11] So I'm not a very good example to ask.
 [12] BY MR. ABRAMS:
 [13] Q Do you personally know of any television

[14] ad which ran anywhere in the country in the 1998 or
[15] 2000 election within 60 days of an election of a
[16] federal election that you believed created an
[17] appearance of corruption?

[18] MS. BREGMAN: Objection. You want his
[19] belief as to whether anybody thought that. You can
[20] answer if you know.

[21] THE WITNESS: I don't know how to answer
[22] that.

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[1] BY MR. ABRAMS:

[2] Q Well, you've used the term "appearance of
[3] corruption" —

[4] A Yeah.

[5] Q — a few times. Do you believe there was
[6] an appearance of corruption created by any
[7] particular advertisement run in the 1998 or
[8] 2000 campaigns within 60 days of a federal election?

[9] A That I personally know of —

[10] Q Yes.

[11] A — or had experience of?

[12] I know of during the examination and the
[13] preparation, we had lots of examples of those kinds
[14] of things. But I did not see the specific ads. But
[15] certainly we've had considerable evidence of
[16] problems.

[17] Q And as you sit here today, can you think
[18] of any particular advertisement?

[19] MS. BREGMAN: Objection. Again, I think
[20] that would refer him back to what does he remember
[21] about what led up to the act. I'll let you answer
[22] as to whether — whether you remember what that

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[1] evidence was.

[2] THE WITNESS: I don't remember.

[3] BY MR. ABRAMS:

[4] Q You testified earlier about the
[5] fund-raiser that you attended, the \$10,000-a-plate
[6] Senate fund-raiser that Mr. Carvin asked you about,
[7] and I believe he asked you if you thought there was
[8] an appearance of corruption because of your
presence

[9] at that fund-raiser. And you said no. Am I right?

[10] MS. BREGMAN: Do you remember saying
that.

[11] Do you remember the question and answer?

[12] THE WITNESS: I don't remember exactly
[13] what I said.

[14] BY MR. ABRAMS:

[15] Q All right. Let me just go back.

[16] A Yeah.

[17] Q You attended a fund-raiser.

[18] A Right.

[19] Q And it was \$10,000 a plate?

[20] A Yes.

[21] Q Correct? Do you believe there was an

[22] appearance of corruption?

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[1] A Well, to the public, I think those things

[2] do raise a perception of corruption.

[3] Q Is that a hard issue sometimes, as to

[4] whether something does or doesn't raise an

[5] appearance of corruption?

[6] MS. BREGMAN: Objection. To whom?

"Hard"

[7] in what sense?

[8] THE WITNESS: Well, I — I don't know how

[9] to answer that.

[10] BY MR. ABRAMS:

[11] Q When you've been answering questions
about

[12] whether something has or didn't have an appearance
[13] of corruption, is it sometimes hard to tell if —

[14] A Yeah, to go into somebody else's mind and

[15] find out what they were thinking, yeah, that's —

[16] you can't find that out very easily.

[17] Q And it's hard to tell sometimes, isn't it?

[18] A Yeah.

[19] Q And one of the reasons for that is, as

[20] you've said, because it's hard to know what other

[21] people think about something; right?

[22] A Right.

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[1] Q Are there situations, do you think, in

[2] which reasonable people could disagree about
whether

[3] there's an appearance of corruption about one act or
[4] another?

[5] A Yes.

[6] MR. ABRAMS: I have no further questions.

[7] Thank you very much.

[8] MR. CARVIN: Thank you.

[9] (Whereupon, at 11:31 a.m., the deposition
[10] was concluded.)

[11]

[12]

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[22]

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[1] I HEREBY CERTIFY that I have read this

[2] transcript of my deposition and that this transcript

[3] accurately states the testimony given by me, with

[4] the changes or corrections, if any, as noted.

[5]

[6]

[7] X

[8]

[9]

[10]

[11] Subscribed and sworn to before me this day of

[12] , 20 .
 [13]
 [14]
 [15]
 [16] X
 [17] Notary Public
 [18]
 [19] My commission expires: .
 [20]
 [21]
 [22]

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 [12] E X H I B I T S
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 [16] Jeffords 1 - Senate Resolution 323 10
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 [5] Jeffords 4 - TV Advertisement 18
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