

1 THE COURT: I think we are ready  
2 to continue. Please have the witness and  
3 the jury step back.

4 ( Witness enters courtroom).

5 COURT OFFICER: Jury entering.

6 ( Jury enters courtroom).

7 THE COURT: Thank you again ladies  
8 and gentlemen. We are ready to continue.

9 I knew there was something I  
10 left out of my preliminary instructions,  
11 that is the secret to successful jury  
12 service is layered clothing.

13 You need to be able to adjust  
14 climate changes in the courtroom, sometimes  
15 it rains in here. I think it will be warmer  
16 this afternoon. Mr. Hafetz, you may  
17 begin.

18 CROSS EXAMINATION

19 BY MR. HAFETZ:

20 Q. Good morning, Mr. McCann.

21 A. Good morning.

22 Q. I believe you testified that one of  
23 the main purposes of the campaign financing  
24 law is to be able to let the public know the  
25 source of the money for contributions that are

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Senior Court Reporter

1 made to a campaign, is that correct?

2 A. Yes sir.

3 Q. And it is your testimony that the  
4 Board of Elections does not permit  
5 contributions by, individual contributions  
6 without disclosing the source of the money, is  
7 that correct?

8 A. I don't know if I exactly testified  
9 to that. I think I testified that you have to  
10 report the name of the contributor on the  
11 disclosure.

12 Q. Right, and the disclosure form has  
13 to show the source of the money, correct?

14 A. Well, it is stating where the money  
15 came from.

16 Q. That applies to individuals who are  
17 making contributions, correct?

18 A. Yes sir.

19 Q. And am I correct that the Board of  
20 Elections treats limited liability  
21 corporations as individuals?

22 A. For the purpose of applicable  
23 limits, yes.

24 Q. And for contributions, am I correct?

25 A. For the contribution limits, yes.

1 Q. With respect to the campaign finance  
2 law, am I right?

3 A. Yes, yes.

4 MR. CORT: Objection as to this  
5 line of questioning.

6 THE COURT: Overruled.

7 Q. In fact, there is a Board of  
8 Elections opinion that states that for  
9 purposes of campaign finance and  
10 contributions, LLC's are treated as  
11 individuals, am I correct?

12 A. Yes sir.

13 Q. Therefore, from what you state, that  
14 the Board of Elections requires that the  
15 public know the source of a contribution,  
16 LLC's would be required to identify the source  
17 of their contribution, am I right?

18 A. No, sir.

19 Q. Well, how can that be. I mean, if  
20 an LLC gives a contribution -- let me withdraw  
21 that.

22 Am I correct sir that it is  
23 acceptable by the Board of Elections that if  
24 an LLC is treated as an individual, that the  
25 LLC which is treated as an individual, gives a

1 contribution and the disclosure form lists  
2 only the name of the LLC, there is no  
3 requirement that the source of the money into  
4 the LLC be disclosed, am I correct?

5 A. The source of the funds would be the  
6 LLC, they would be listed as the contributor.

7 Q. The LLC would be the source of the  
8 funds because they are giving the check to the  
9 committee, is that correct?

10 A. Correct.

11 Q. In this case, you realize that the  
12 check came from Nora Anderson to the  
13 committee, correct sir?

14 A. Which check?

15 Q. The check for 100 thousand dollars?

16 A. That is what was disclosed, yes.

17 Q. And on a contribution by an LLC, the  
18 disclosure is the same, am I correct, the  
19 signatory on the check, the LLC is the proper  
20 party or entity to be disclosed on the  
21 disclosure form for the contribution, am I  
22 correct?

23 A. If the money came from the LLC as  
24 the contributor, you would be correct.

25 Q. There is no tag on or supplement

1 that is required under the listing of the LLC  
2 of where the LLC got the money from, correct?

3 A. The presumption is that the LLC is  
4 an ongoing business enterprise much like any  
5 type of contributor; whether it is a  
6 corporation or a partnership or limited  
7 liability company. The presumption in the  
8 case of an LLC is as an ongoing business  
9 enterprise with a profit and loss. It has  
10 income and earnings. That LLC then determines  
11 to make a contribution, if you are telling me  
12 that the LLC is an ongoing business enterprise  
13 engaged in something and it is using its money  
14 and makes a decision because the LLC is not a  
15 person, it is an entity, and under the  
16 Election Law it has its own giving limit,  
17 while it gives as a person, it is for the  
18 purpose of establishing under the Election  
19 Law, what its limit is, the LLC is a thing, so  
20 if the LLC has a profit and loss and is  
21 earning money and decides as an entity it  
22 wants to give a contribution, then it gives  
23 contributions subject to that limit.

24 Q. Is there anything, am I correct that  
25 there is a statute that governs campaign

1 financing, correct?

2 A. Yes.

3 Q. That is called the Election Law, and  
4 Mr. Cort showed you some sections on that on  
5 his examination, am I right?

6 A. Article 14, yes sir.

7 Q. That statute creates a board of  
8 elections, am I correct?

9 A. It does, yes.

10 Q. And the Board of Elections by  
11 statute is empowered to issue regulations, am  
12 I correct?

13 A. Yes sir.

14 Q. And the Board of Elections has  
15 issued regulations from time to time, am I  
16 correct?

17 A. Yes, sir.

18 Q. And the Board of Elections by its  
19 own rules, determines to issue opinions from  
20 time to time, am I correct?

21 A. Yes, sir.

22 Q. Am I also correct that the Board of  
23 Elections from time to time or on a yearly  
24 basis rather, issues a handbook for each of  
25 the collection years, correct?

1           A.     It does.

2           Q.     Is there anything in any of the  
3 campaign finance statutes or any of the  
4 regulations governing campaign finance or any  
5 opinion issued by the Board of Elections, or  
6 any handbook that was issued by a Board of  
7 Elections that supports or states rather what  
8 you just said, that is that for an LLC to be  
9 able to properly file as the individual making  
10 a contribution on the disclosure form, that  
11 the LLC has to be an ongoing already operating  
12 business, is there, sir?

13          A.     It is the presumption of the  
14 Election Law. The Election Law states when it  
15 comes to contributors, again, the purpose of  
16 the opinion for the limited liability  
17 companies goes to establish what its limit  
18 will be for limit purposes.

19                   The New York State Board of  
20 Elections has opined an entity which is called  
21 an LLC can make contributions and it makes  
22 those contributions subject to a limit.

23                   The Board of Elections has  
24 determined that the applicable limit in the  
25 case of a limited liability company is treated

1 as an individual, meaning individuals, a  
2 person has an aggregate contribution limited  
3 in the calendar year for instance of 150  
4 thousand dollars, the same thing with a  
5 corporation, the corporation in the statute  
6 has a limit of 5000 dollars. The presumption  
7 under the Election Law, when it comes to the  
8 true name of the contributor or where the  
9 source of the contribution is, if an LLC is  
10 the contributor, they are entitled to make  
11 contributions, that entity can make a  
12 contribution.

13 Q. What is an LLC?

14 A. A limited liability company.

15 Q. Am I correct they have to do a  
16 filing with the Department of State in Albany,  
17 correct?

18 A. Yes sir.

19 Q. Am I correct that the filing with  
20 the New York State Government for an LLC does  
21 not need to list who the owner is, am I  
22 correct?

23 A. Correct.

24 MR. CORT: Objection.

25 THE COURT: Overruled.

1 Q. So, if an LLC, let's say we have an  
2 LLC called X Y Z LLC, withdrawn. Sometimes  
3 LLC's are formed in the name, for example, of  
4 the street addresses, am I correct, you have  
5 seen that, right?

6 A. Yes, sir.

7 Q. Like 200 West 42nd Street company,  
8 correct?

9 A. Sure.

10 Q. And the filing in the Albany for the  
11 LLC for 200 West 42nd Street would not  
12 require, would not require, there is no  
13 requirement that the filing for the creation  
14 of that LLC with the State Government needs to  
15 list the owner of 42nd Street LLC, am I  
16 correct?

17 A. I'm not a hundred percent sure, but  
18 again, the LLC is a thing.

19 THE COURT: Just answer the  
20 question.

21 Q. My question is am I correct the LLC  
22 does not have to list the owner in order of  
23 the LLC?

24 THE COURT: The owner of the LLC.  
25 The answer is I'm not sure?

1 A. I'm not a hundred percent sure.

2 Q. 42nd Street company, if they made a  
3 contribution, 42nd Street Company LLC, if they  
4 made a contribution to a campaign, the proper  
5 way to disclose that would be 42nd Street  
6 company LLC, am I correct?

7 A. Yes, sir.

8 Q. And the disclosure statement would  
9 not show who the owner of the LLC 42nd Street  
10 company is, correct?

11 A. It does not have to.

12 Q. Pardon me?

13 A. It does not have to.

14 Q. It does not have to. So, that if  
15 the owner of that company, if that LLC had no  
16 assets, 42nd Street company had no assets, but  
17 the owner of it then put in let's say 30  
18 thousand dollars, gave a check to the 42nd  
19 Street company and then the 42nd Street  
20 company issued a check for 30 thousand dollars  
21 to the campaign, the proper disclosure would  
22 be just to list 42nd Street company, am I  
23 correct?

24 A. It would list the contribution from  
25 the LLC.

1 Q. And that would be the proper  
2 disclosure, correct?

3 A. It would be as far as who the  
4 committee is reporting the contribution from,  
5 but it would not necessarily make it a  
6 legitimate contribution.

7 Q. That is all we are talking about,  
8 the propriety of the disclosure statement.  
9 That would be a correct disclosure statement  
10 filed with the Board of Elections, am I  
11 correct?

12 A. Yes.

13 Q. 42nd Street company, 30 thousand  
14 dollars to the committee, correct sir?

15 A. Yes sir.

16 Q. And even if the day before that 30  
17 thousand dollar check was written by the 42nd  
18 Street company to the committee, there were no  
19 funds in the company on that day, and the  
20 owner put in 30 thousand dollars, and then the  
21 next day a 30 thousand dollar check was  
22 written by that LLC to the committee, the  
23 proper way to disclose that on the disclosure  
24 form, that is all we are talking about, would  
25 be contribution from 42nd Street LLC, correct

1 sir?

2 A. Correct.

3 MR. HAFETZ: If I can have one  
4 second, your Honor.

5 THE COURT: Yes.

6 Q. I believe you stated that an LLC,  
7 limited liability company, is treated as an  
8 individual for campaign limitation purposes,  
9 correct sir?

10 A. Yes sir.

11 Q. Am I correct sir -- withdrawn. You  
12 have been counsel or deputy enforcement  
13 counsel for the State Board of Elections for  
14 how long sir?

15 A. Nine and a half years.

16 Q. And as part of your duties, you  
17 attend meetings from time to time of the Board  
18 of Elections?

19 A. Yes sir.

20 Q. As part of your duties, you also  
21 follow Legislative proposals that relate to  
22 campaign financing, correct?

23 A. If they are brought to my attention,  
24 yes.

25 Q. And are you aware in your capacity

1 as an official of the New York State Board of  
2 Elections, that in July of, 19, 2007, then  
3 Governor Spitzer made a Legislative proposal  
4 to the State Legislature to quote, a  
5 prohibition against contributions from LLC's  
6 that have little or no assets, income, or that  
7 have recently been created, are you familiar  
8 with that proposal, sir?

9 MR. CORT: Objection.

10 THE COURT: I'll permit the  
11 witness to answer.

12 A. Generally, yes.

13 Q. Did that proposal pass the New York  
14 State Legislature sir, yes or no?

15 A. No.

16 Q. I take it, sir, that the reason that  
17 Legislative proposals are needed to prohibit  
18 something is because there is already, because  
19 there is no existing prohibition against it?

20 MR. CORT: Objection.

21 THE COURT: I'll sustain that  
22 objection.

23 Q. Are you aware, sir, of a Legislative  
24 proposal in January 2009 by Assemblyman  
25 Cavanaugh with respect to campaign financing

1 which stated in the sponsor's memorandum, that  
2 the State Election Law currently allows quote,  
3 allows virtually unlimited campaign  
4 contributions?

5 THE COURT: The objection is  
6 sustained.

7 MR. CORT: Objection.

8 THE COURT: Objection  
9 sustained.

10 Q. Are you aware of the memorandum of  
11 the Legislative proposal by Assemblyman  
12 Cavanaugh in January 2009 a memorandum which  
13 he stated, quote --

14 MR. CORT: Objection.

15 THE COURT: Excuse me, there is  
16 an objection, you should wait. Finish the  
17 question and I'll rule if I think it is  
18 improper.

19 Q. Which he stated in the Legislative  
20 proposal, Assemblyman Cavanaugh to the New  
21 York State Legislature, quote, LLC's serve to  
22 mask the identity of the individual making the  
23 choice to contribute. Are you aware of that?

24 THE COURT: I'll permit it,  
25 are you aware of that proposal?

1 A. Not the memos.

2 THE COURT: All right.

3 Q. So, when you testified on direct  
4 examination that the purpose of the New York  
5 State Election Law is to, one of the purposes  
6 rather, is to have identified in disclosure  
7 statements that are filed the source of the  
8 funds of a contribution that is made to a  
9 campaign committee where an individual makes  
10 the contribution, you are wrong, aren't you  
11 sir, because LLC's are allowed and they do not  
12 disclose that, am I right?

13 A. No.

14 Q. Didn't you just testify that in a  
15 situation where an LLC has no funds --  
16 withdrawn. You testified that an LLC is  
17 treated as an individual, number one, correct?

18 A. Correct.

19 Q. Number two, you testified just a few  
20 minutes ago, am I correct, that in a situation  
21 where an LLC which is treated as an individual  
22 has no funds in it and someone puts funds into  
23 the LLC, an individual gives funds to the  
24 individual LLC, and the LLC then subsequently  
25 writes a contribution check to the campaign

1 committee, the proper way to disclose this on  
2 the campaign disclosure statement is to list  
3 the name of the LLC as the contributor,  
4 correct sir?

5 A. If the --

6 Q. Yes or no sir?

7 A. It depends.

8 THE COURT: If you can answer that  
9 yes or no, please do that.

10 A. Can you ask the question again.

11 Q. Didn't you just testify a few  
12 minutes ago that as to an LLC that has no  
13 funds in it, and funds are put in, and  
14 subsequently the LLC uses those funds to issue  
15 a check as a contribution to a campaign  
16 committee, that the proper way to list this on  
17 the disclosure form is the LLC as the  
18 contributor, didn't you testify to that a few  
19 minutes ago sir, yes or no, did you say that  
20 this morning?

21 A. Yes on--

22 Q. Were you giving correct testimony  
23 when you said that?

24 A. Yes sir, but it was based upon the  
25 presumption of the committee reporting what it

1 received and strictly on that fact sir.

2 If I'm a treasurer of a  
3 committee and I get a check, I'll report it as  
4 I received it assuming no other facts. So,  
5 from the standpoint of the recipient  
6 committee, the proper report would be the  
7 check from the LLC, just on that alone, that  
8 would be the appropriate thing.

9 Q. Is there anything in any statute  
10 governing campaign finance law, in any Board  
11 of Elections opinion, in any regulation issued  
12 by the Board of Regulations or any handbook  
13 promulgated by the Board of Regulations --

14 THE COURT: Board of Elections.

15 Q. Board of Elections rather, there is  
16 a presumption as you have just stated sir, is  
17 there?

18 A. A presumption?

19 Q. If so, would you kindly point to  
20 it.

21 THE COURT: Is that written  
22 someplace?

23 A. The presumption comes from 14 dash  
24 120 which is the true name the contributor.  
25 There is an automatic -- for instance, when

1 the State Board of Elections reviews a report,  
2 it takes it on face value. Absent some reason  
3 to question it, we accept what is reported.

4 So, if I'm a treasurer and  
5 I get a contribution and it is from an LLC, I  
6 disclose it as coming from the LLC, just on  
7 that fact, is that the appropriate disclosure,  
8 yes, just on those facts, but it presumes  
9 several things.

10 But again, if I'm the  
11 treasurer and all I know I got this check from  
12 the LLC and nothing else, that is the  
13 appropriate disclosure.

14 Q. But you just heard and said you were  
15 familiar with the proposal by Governor Spitzer  
16 in 2007 to stop this practice, am I correct?

17 A. Yeah.

18 Q. And the reason there was a necessity  
19 for stopping the practice according to the  
20 Legislative proposal is because that was the  
21 practice with regard to LLC's and the Board of  
22 Elections, am I right?

23 MR. COURT: Objection.

24 THE COURT: I'll sustain the  
25 objection.

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1 Q. But that practice existed at the  
2 time, am I correct, Mr. McCann?

3 A. There --

4 MR. COURT: Objection as to the  
5 form.

6 THE COURT: Do you know?

7 A. There is a presumption that LLC's  
8 are used as a tool to subvert contribution  
9 limits. In my opinion, the law as proposed by  
10 the Governor was not necessary because there  
11 are already provisions of the Election Law  
12 that make those violations violations.

13 I don't need a change of  
14 the law to make what happens with an LLC  
15 illegal.

16 Q. Wasn't it widely reported in the  
17 newspaper sir over the last few years, that  
18 many companies, many companies, particularly  
19 in the real estate area, formed LLC's which  
20 had no funds and funds were put in and then  
21 the funds were used by those LLC's to make  
22 contributions to committees?

23 MR. COURT: Objection.

24 Q. Are you aware of that newspaper --

25 THE COURT: I'll permit the

1 question whether you are aware of allegations  
2 of abuse of LLC's in this matter.

3 Q. Not abuse.

4 THE COURT: The use of LLC's.

5 Q. Whether the practice existed?

6 A. Sure.

7 Q. So, there was wide spread newspaper  
8 publicity that LLC's were formed for the  
9 purpose of making campaign contributions,  
10 LLC's with no funds, an individual would fund  
11 those LLC's and the LLC would make  
12 contributions to the committee, and the  
13 committee would then disclose -- sorry, the  
14 disclosure form would state the contribution  
15 was from the LLC, correct?

16 A. Yes sir.

17 Q. And in deed, that was what the  
18 Legislative proposal that I just had by  
19 Governor Spitzer was designed to stop, am I  
20 correct?

21 MR. CORT: Objection.

22 THE COURT: Overruled, is that  
23 your understanding?

24 A. Partially, yeah.

25 Q. So in the year 2008, withdrawn.

1 Now, with regard to -- your testimony is that  
2 the source of the funds has to be disclosed,  
3 is that correct?

4 A. Well, the contributors, yes.

5 Q. No, no, the source of the funds read  
6 -- aside from the definition of what  
7 contributors means, the source of the funds,  
8 it is your testimony that the source of the  
9 funds have to be disclosed in the disclosure  
10 statement?

11 A. Correct, it is one in the same. The  
12 contributor identified, the presumption is it  
13 is their funds, that is who is giving the  
14 money. So in essence, yes, the contributor  
15 listed is presumably the source of the funds.

16 Q. Isn't it permitted by the Board of  
17 Elections that the situation with respect to  
18 joint accounts, if a joint account has no  
19 money in it and one of the persons in a joint  
20 account funds it and then a check is drawn on  
21 the joint account and signed by the signatory  
22 who put no money into the joint account, the  
23 proper way to report this on the disclosure  
24 form has the contribution coming from the  
25 signatory on the check, am I correct?

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1 MR. CORT: Objection.

2 THE COURT: Overruled, if you can  
3 answer?

4 A. It is a false premise. You're  
5 having a false premise to have an answer, and  
6 that is just not right.

7 Q. What do you base that on?

8 A. Because when the recipient or the  
9 candidate of the committee gets the check,  
10 they don't know they are taking the check --  
11 if the check is signed, I have John Doe and  
12 Jane Doe, when they have a joint account and  
13 the check comes to the recipient, they are  
14 going to look at the check, it will be joint.  
15 If it is signed by one person, the presumption  
16 is it is from that person. They will not go  
17 back and check where the funds come. You want  
18 to establish somehow they know when they  
19 report it that occurred, and it was not their  
20 funds. The treasurer is disclosing based upon  
21 the information they have the source of the  
22 funds, based upon the check they got.

23 Q. My question is you stated a  
24 proposition boldly, that the public has the  
25 right to know the source of the funds, and

1 that the Board of Elections implements that  
2 policy, am I correct, didn't you say that?

3 A. Yes.

4 Q. In a case of a joint account, the  
5 Board of Elections permits a disclosure  
6 statement to be filed listing the contributor  
7 as the person, the signatory on a check drawn  
8 from a joint account even though the person  
9 whose name is listed did not put one nickel  
10 into that account, am I correct?

11 A. You are trying to say what the Board  
12 allows. It is what is required. The  
13 contributor must be disclosed. The recipient  
14 discloses what they know. The recipient gets  
15 the check, they do not have a basis to know  
16 unless they know specifically that the person  
17 is making a contribution that is not really  
18 their money. The presumption on its face is  
19 when you get the check, the signatory is the  
20 one giving it to you. You want to premise it  
21 that somehow that illegal act in the first  
22 place makes the reporting of it okay, that is  
23 not true.

24 Q. Let's see if I'm clear. The  
25 signatory is the contributor, even though the

1 signatory had no money, am I right, and the  
2 funds were put in, the signatory is recorded  
3 as the contributor, isn't that what you are  
4 saying?

5 A. Yes, you take it on its face, absent  
6 any other information.

7 Q. That is the proper way to disclose  
8 it?

9 A. From the standpoint of the  
10 recipient, yes.

11 Q. If we have A and B and they have a  
12 joint account, and there is zero dollars in  
13 the joint account, and A puts 30 thousand  
14 dollars into the joint account and B puts in  
15 not one penny and then a check is drawn to the  
16 committee, and the check is signed by B who  
17 put in no money, that the contribution is  
18 recorded as coming from B, am I correct?

19 A. From the standpoint of the  
20 recipient, yes, but it would be a violation.

21 Q. Pardon me?

22 A. It would be a violation.

23 Q. It would be a violation. Can we --

24 MR. HAFETZ: Your Honor, I offer

25 --

1 Q. You said you are familiar with the  
2 handbooks. In fact, they are promulgated by  
3 the Board of Elections, correct?

4 A. Yes sir.

5 MR. HAFETZ: I off into evidence  
6 the handbook for the year 2000.

7 THE COURT: Do you have an exhibit  
8 number?

9 MR. CORT: I object to 2000.

10 MR. HAFETZ: Sorry, 2007.

11 MR. CORT: I object to 2007.

12 THE COURT: In light of other  
13 evidence in the case, I'll permit it. The  
14 jury will ultimately decide its  
15 significance, but I believe we already tried  
16 to mark something, didn't we?

17 MR. HAFETZ: I don't know if it is  
18 in yet.

19 THE COURT: What letter?

20 MR. HAFETZ: I have this marked as  
21 Rubenstein D.

22 THE COURT: D for identification  
23 Rubenstein.

24 Q. I hand this up to the witness.

25 ( Handed to witness).

1 Q. Is that the handbook promulgated by  
2 the Board of Elections for the year 2007?

3 A. Yes sir, it appears to be.

4 MR. HAFETZ: I move this into  
5 evidence.

6 THE COURT: I'll permit it into  
7 evidence as Rubenstein D.

8 Q. May we show on the screen page 16 of  
9 that handbook, Rubenstein Exhibit D. There is  
10 a section we would like blown up.

11 Let's start with A, second  
12 paragraph. That says, am I correct, a limited  
13 liability company is treated as an individual  
14 for limitation purposes. Contributions  
15 received from LLC's are reported on schedule  
16 C, it says that, correct?

17 A. Yes sir.

18 Q. And jumping down a little bit, it  
19 states that checks drawn on a joint account  
20 are assumed given by the signatory if no other  
21 information available?

22 A. Yes.

23 Q. The proper way for disclosure, this  
24 is the handbook from the BOE, the proper way  
25 for disclosure on a disclosure statement with

1 regard to a joint account is that the  
2 signatory on the check is regarded as the  
3 contributor, am I correct sir?

4 A. Yes.

5 Q. Is there anything stated there about  
6 a presumption that the signatory put the money  
7 into the account, is there?

8 A. No.

9 Q. In fact, you can search the entire  
10 election statute and every single handbook  
11 ever promulgated by the BOE and every opinion  
12 and every regulation, and you will find  
13 nothing that says that there is a presumption  
14 that the signatory on a joint account is the  
15 person who funded the joint account, correct  
16 sir?

17 A. Correct.

18 Q. And this is information that is put  
19 out to the public, am I right?

20 A. Yes.

21 Q. This is for the guidance of people  
22 who are making contributions to a committee,  
23 to a campaign, correct sir?

24 A. This would go to the treasurer.

25 Q. But it is put out by the Board of

1 Elections, correct?

2 A. Yes sir.

3 Q. And it is available on a website, am  
4 I right?

5 A. Yes sir.

6 Q. It is not a secret document, am I  
7 right?

8 A. Absolutely not.

9 MR. HAFETZ: Your Honor, just for  
10 demonstrative purposes, not for evidence,  
11 may I show a slide with respect to the, I  
12 can show it to your Honor and Mr. Cort and  
13 the witness first.

14 THE COURT: Perhaps that is the  
15 way to do it.

16 MR. HAFETZ: Can we just show what  
17 has been marked for identification. I'm not  
18 offering it into evidence, as Rubenstein KK,  
19 slide one.

20 THE COURT: I'll permit you to use  
21 this.

22 MR. HAFETZ: Just slide one.

23 MR. CORT: It is not in Evidence.

24 THE COURT: It is not in  
25 Evidence. It is to assist the jury in

1 understanding the testimony of the witness.

2 I'll permit it for that limited purpose.

3 Q. The one we just had on the screen.

4 So, in this slide which is for demonstrative  
5 purposes, we see a situation in which Joe  
6 Smith gives 30 thousand dollars to an LLC and  
7 the LLC gives 30 thousand dollars to the  
8 committee.

9 The proper way to disclose  
10 this on the campaign disclosure statement, am  
11 I correct, is contribution by LLC for 30  
12 thousand dollars, correct sir?

13 A. What do you mean by give?

14 Q. Like I said, in this scenario Joe  
15 Smith gave 30 thousand dollars to an LLC and  
16 the LLC gave 30 thousand dollars to the  
17 campaign committee.

18 The proper disclosure would  
19 be, on the disclosure form required, would be  
20 to list LLC as a contribution of 30 thousand  
21 dollars, correct?

22 A. From whose perspective?

23 Q. Pardon me?

24 A. From whose perspective?

25 Q. From the perspective of the New York

1 State Finance Law?

2 A. There can be multiple answers. I'll  
3 give you a for instance. Does the LLC know  
4 Joe Smith is just giving the 30 thousand  
5 dollars? For instance, when Mr. Smith gives  
6 it, the 30 thousand dollars, that the purpose  
7 is so that it can give the money to the  
8 committee so it shows up coming from the LLC  
9 and not Mr. Smith, then there would be one  
10 answer.

11 If you are asking me if all  
12 the campaign committee knows when it gets the  
13 check from the LLC is it has a check from the  
14 LLC, that committee, if that is all it knows,  
15 would say I have a contribution from the LLC,  
16 I will disclose it as such. But it is apples  
17 and oranges, it all depends.

18 Q. Where is it in the Election Law that  
19 says in this scenario the proper disclosure  
20 would not be the LLC, where does it say, do  
21 you have an opinion of the Board of Elections  
22 that says that sir?

23 A. It is 14 dash 120, contributions  
24 must be listed in the true name of the  
25 contributor. The purpose is so the public and

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1 the board knows where the money came from.

2 If you are making  
3 contributions or using intermediaries to  
4 subvert the disclosure of the contribution, it  
5 depends who you are talking about.

6 If all the committee knows  
7 is that it got a check from the LLC, of course  
8 the committee is just going to disclose I got  
9 a check for 30 thousand dollars from the LLC.

10 Q. The reason for the Governor Spitzer  
11 proposal was exactly because the law does not  
12 clearly provide what you say it does, correct  
13 sir?

14 A. No sir. The reason why the Governor  
15 proposed that in my opinion, there was  
16 pervasive misuse of the Election Law to  
17 subvert contribution limits.

18 Q. In other words, the practice that  
19 people perceived was okay under section 120  
20 was to do exactly what was on the screen and  
21 you think that is wrong, correct sir?

22 MR. COURT: Objection.

23 THE COURT: Sustained.

24 Q. The reason for the statute is  
25 because there was a perception by persons

1 giving money through LLC's and the LLC giving  
2 money to the campaign, that was okay, right?

3 MR. COURT: Objection.

4 THE COURT: Mr. Hafetz, I  
5 permitted some questions about what was  
6 proposed and whether or not it passed, but  
7 to be asking this witness about somebody  
8 else's reason for proposing something I  
9 believe is beyond the scope of what the  
10 witness can testify to. So, I'm sustaining  
11 these objections.

12 Q. All you are talking about is your  
13 opinion, correct sir?

14 A. Based upon the Election Law.

15 Q. And the Board of Elections issues  
16 opinions from time to time, right sir?

17 A. It does.

18 Q. And these are public, am I right?

19 A. Yes sir.

20 Q. Was there any Board of Elections  
21 opinion ever issued, ever, that supports your  
22 opinion as to what you just said with regard  
23 to this statute, with regard to this situation  
24 with the LLC's, is there sir?

25 A. No.

1 Q. And the Board of Elections meets  
2 several, many times a year?

3 A. Yes sir.

4 Q. And they had many opportunities to  
5 issue such an opinion, am I correct sir?

6 MR. COURT: Objection.

7 THE COURT: Sustained.

8 Q. But there is no Board of Elections  
9 opinion that states what William McCann's  
10 opinion states as articulated herein the  
11 courtroom today, am I correct sir?

12 A. No, sir.

13 Q. Those opinions are promulgated and  
14 available for the public to see, correct sir?

15 THE COURT: You are talking about  
16 formal board opinions?

17 Q. There are only formal opinions,  
18 correct?

19 THE COURT: You are talking  
20 about his opinion?

21 Q. Opinions, I'll reword it, your  
22 Honor. Opinions of the Board of Elections are  
23 public information, correct sir?

24 A. Yes sir.

25 Q. And Board of Elections opinions are

1 available to all individuals in the State of  
2 New York, correct sir?

3 A. Yes sir.

4 Q. Including people who own limited  
5 liability companies, correct sir?

6 A. Presumably.

7 Q. Including people who have joint bank  
8 accounts, correct sir?

9 A. Yes sir.

10 Q. Available to all individuals in the  
11 State of New York, correct sir?

12 A. Yes sir.

13 Q. Now, yesterday on direct examination  
14 Mr. Cort asked you some questions about the  
15 filing obligations of a candidate for office,  
16 am I correct sir?

17 A. Yes.

18 Q. New York State office, that is all  
19 we are talking about, correct?

20 A. Yeah.

21 Q. And I believe your testimony was  
22 that if the candidate files a statement  
23 pursuant to Section 104 of the campaign law,  
24 campaign financing law, then the candidate  
25 does not have to do any filing and the

1 committee then takes over the filing  
2 obligations, do I understand that correctly?

3 A. Yes sir.

4 Q. And the statement that the candidate  
5 files if he chooses to file that under section  
6 104 is called an in lieu of statement, am I  
7 correct?

8 A. No, sir.

9 Q. In any rate, there is a form  
10 promulgated by the Board of Elections for that  
11 statement. By that statement, I mean  
12 statements filed by a candidate which relieves  
13 the candidate of any filing obligation,  
14 correct sir?

15 A. Correct.

16 Q. That form is called a CF 16, am I  
17 right?

18 A. Yes sir.

19 Q. And you are aware in this case the  
20 candidate, Nora Anderson, filed a CF 16 form,  
21 correct sir?

22 A. Yes sir.

23 Q. Can we show on the screen People's  
24 Exhibit Nine. I show you the form, it is in  
25 evidence, and if we can go through, can we

1 blow up the top half and go down to the  
2 bottom.

3 This is the form we are  
4 talking about, correct sir, the one filed, I  
5 can show you the bottom, the one filed by Nora  
6 Anderson, CF 16 form, correct?

7 A. Would I be able to have the  
8 exhibit?

9 MR. HAFETZ: Sure, I'll give you a  
10 copy.

11 Q. I show you what is in evidence as  
12 People's Nine and ask you if that is the CF 16  
13 form filed by Nora Anderson?

14 A. Yes.

15 Q. And can we just blow up the bottom  
16 half. Go all the way to the bottom, the CF,  
17 all the way on the left. Can we blow up the  
18 CF, enlarge that section. That is the CF 16  
19 form, correct sir?

20 A. Yes sir.

21 Q. That is promulgated by the New York  
22 State Board of Elections, correct?

23 A. Yes sir.

24 Q. Can we blow up that bottom half.  
25 Nora Anderson signs the statement which she

1 swears or affirms and there are two things she  
2 swears or affirms. Can you read out loud the  
3 two things in this form CF 16 that she swears  
4 or affirms?

5 A. One, I am a candidate for election  
6 to the office as stated above. Two, I have  
7 made no campaign expenditures relating to my  
8 candidacy, nor do I intend to make any such  
9 expenditures except through the following  
10 authorized political committee which will file  
11 on my behalf.

12 Q. And so, am I correct if the  
13 candidate files as Nora Anderson did this  
14 statement stating she has not nor will not  
15 make expenditures for the campaign, then the  
16 candidate is relieved of the filing, any  
17 filing obligation and the committee has the  
18 file obligation, correct?

19 A. Correct.

20 Q. Now, I believe you testified  
21 yesterday that once a candidate files a CF 16  
22 form, then the candidate is stating or  
23 promising rather, all monies, all of her  
24 financial activities rather will be filed or  
25 included in the committee's disclosure

1 reports, correct?

2 A. Yes sir.

3 Q. Can we see the CF 16 form on the  
4 screen again please. But there is nothing in  
5 the CF 16 form that says what you testified  
6 yesterday, correct sir, that if the candidate  
7 files a CF 16, the committee will then be  
8 filing and reporting all of the candidate's  
9 financial activities, am I correct sir,  
10 nothing in there that says that?

11 A. Exactly that, no.

12 Q. It does not say anything close to  
13 it, does it? There is no statement in the CF  
14 16 that is signed by a candidate stating that  
15 the committee will take over all reporting of  
16 all of the financial activities, correct?

17 A. It does not state that.

18 Q. What you mean by financial  
19 activities is you mean if the candidate raises  
20 money or spends money, correct, is that what  
21 you mean by financial activity?

22 A. Correct.

23 Q. It is your testimony if the CF 16 is  
24 filed, the committee takes over the  
25 responsibility of filing and reporting all

1 monies the candidate raises or expends, all  
2 financial activity, correct?

3 A. Correct. Do you by chance have the  
4 instructions for this form or what the  
5 handbook says about it?

6 Q. That is a good point. Why don't we  
7 take a look at the instructions in the  
8 Rubenstein exhibit that I just put into  
9 evidence, the handbook for the year 2007, and  
10 we can turn to page 28 and put that on the  
11 screen please.

12 Before we show that on the  
13 screen, let me ask you a question,  
14 Mr. McCann. I believe what you are  
15 testifying, am I correct, is the handbook  
16 includes the CF 16 form, am I right?

17 A. It has a sample of all the forms.

18 Q. Then the handbook also includes a  
19 page on instructions for filling out the CF 16  
20 form, am I correct?

21 A. It does.

22 Q. And that is what you just asked  
23 about. You said let's refer to the  
24 instructions for the CF 16, that is what you  
25 were referring to sir?

1 A. Yes sir.

2 Q. Can we show that page on the  
3 screen. Can we show the top of page, this is  
4 page 28, Rubenstein D in evidence, the  
5 handbook of the Board of Elections for the  
6 year 2007.

7 Can we look at the very top  
8 so we capture what it says. Blow up the top  
9 instructions for completing form 16, there is  
10 your instructions, and could you point out  
11 sir, would you be kind enough to point out  
12 where on that instruction page for form CF 16  
13 does it say that if a 16 is filed by the  
14 candidate, the committee is now assuming the  
15 obligation of reporting monies raised or spent  
16 by the candidate?

17 A. Well, the instructions state in the  
18 first paragraph, this statement must be used  
19 by any candidate for public office or party  
20 position who has not expended funds and does  
21 not intend to expend funds in connection with  
22 his or her election, except through a duly  
23 authorized political committee.

24 The duly authorized  
25 political committee in this instance, shall

1 fulfill all of the campaign financial  
2 reporting requirements for the candidate.

3           It goes on to say if the  
4 committee named does not register, bracket CF  
5 02, the candidate will be responsible for  
6 reporting all financial activity for the  
7 campaign.

8           A candidate filing this  
9 statement, whose authorized committee has  
10 registered, shall not be required to file  
11 campaign financial reports, CF 01 unless the  
12 candidate shall make campaign related  
13 expenditures outside of his or her authorized  
14 committees.

15           Note, if you are a  
16 candidate with or without an authorized  
17 committee and you have made or plan on making  
18 any expenditures on your own, you do not file  
19 this form.

20           Instead, you are required  
21 to file a CF 01 on the required filing date.  
22 If you have an authorized committee, these  
23 filings would be in addition to those made by  
24 the committee.

25

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1 Q. So, Mr. McCann, in all of this  
2 verbiage, where is there a statement that  
3 says in plain English that if the  
4 candidate files a CF-16 Form, the  
5 Committee has the obligation of reporting  
6 monies raised by the candidate?

7 Would you be kind enough to  
8 point that out, where it says that in this  
9 document, sir?

10 A. It doesn't say that precisely.

11 Q. Thank you. Okay. I believe you  
12 said the Board of Elections prepared a  
13 handbook for the year 2008; am I correct?

14 A. Yes, sir.

15 Q. I show you the handbook of 2008  
16 which has been marked for identification  
17 as Rubenstein Exhibit LL, I believe.

18 Is this the handbook  
19 promulgated by the New York State Board of  
20 Elections for the year 2008, sir?

21 A. It appears to be.

22 MR. HAFETZ: Offer it into  
23 evidence, your Honor.

24 MR. CORT: No objection.

25 THE COURT: It will be so

1 marked. You said double L; is that  
2 correct?

3 MR. HAFETZ: Double L.

4 THE COURT: Double L in  
5 evidence.

6 Q. This handbook, am I correct, sir, if  
7 you would turn to page 66 contains a CF-16  
8 From; am I right?

9 A. Yes, sir.

10 Q. And can we show page 66 on the  
11 screen, just blowup the top half first and  
12 can we look at the bottom half.

13 And this form, CF-16 for the  
14 year 2008 has the identical language to  
15 the form we just looked at, the one filed  
16 by Nora Anderson; am I correct, sir?

17 A. Yes, sir.

18 Q. And the language, if we look under  
19 the swear or affirm -- can we just blowup  
20 that upper half of that lower half.

21 I am a candidate for  
22 election for the offices stated above. I  
23 have made no campaign expenditures related  
24 to my candidacy nor do I intend to make  
25 any such expenditures except for the

1 following authorized political committee  
2 which will file on by behalf.

3 That is the same language as  
4 in the one we just looked at, the one Nora  
5 Anderson filed?

6 A. Yes.

7 Q. Can we turn to the next page, page  
8 67 of the 2008 handbook and that page is  
9 the instructions for filling out the CF-16  
10 form; am I correct, sir?

11 A. Yes, sir.

12 Q. And can we just blowup the top  
13 half of that, Peter.

14 Instructions for completing  
15 form CF-16. This is from page 67 of the  
16 2008 handbook.

17 Can you tell me, sir, does  
18 it say on this page, the instruction page  
19 of the 2008 handbook for the candidates  
20 filling out the CF-16 Form, that the  
21 Committee assumes the obligation for  
22 reporting, disclosing monies raised by the  
23 candidate? Does it, sir?

24 A. Does it say that exactly, no.

25 Q. Does it say it, yes or no. Is

1 there language that says it?

2 A. No.

3 Q. So we have now looked at the CF-16  
4 Form filed by Nora Anderson.

5 We have looked at the  
6 instructions for that form. We have looked  
7 at the 2008 handbook, the CF-16 Form and  
8 the instructions for that and there is  
9 nothing in the CF-16s for those years or  
10 the instructions for filling it out which  
11 states that if the candidate files a CF-16  
12 the Committee has to report the monies  
13 raised by candidate, correct, sir?

14 A. On those two pages, yes.

15 Q. The page we just read, for 2008,  
16 67, states at the top it is the  
17 instructions; am I right, for filling out  
18 form CF-16; am I right?

19 A. Yes, it is an example of the  
20 instructions on the form.

21 Q. It doesn't say example, it says  
22 the instructions, that's what it says?

23 A. Right. It's in the handbook for  
24 that purpose to show it, yes.

25 Q. And did the Board of Elections

1 prepare a handbook for the year 2009, sir?

2 A. I believe so.

3 Q. I show you what's been marked in  
4 evidence as Defendant Rubenstein's Exhibit  
5 MM.

6 THE COURT: For identification.

7 Q. And is that the handbook promulgated  
8 by the Board of Elections for the year  
9 2009, sir?

10 A. It appears to be, yes.

11 MR. HAFETZ: Offer it into  
12 evidence, your Honor.

13 MR. CORT: Objection as to  
14 relevancy.

15 THE COURT: I'm not sure what  
16 the relevance is, Mr. Hafetz, is there  
17 something you can say about that?

18 MR. HAFETZ: Pardon me?

19 THE COURT: Why is the 2009  
20 handbook relevant?

21 MR. HAFETZ: May we approach  
22 the bench, your Honor.

23 THE COURT: Yes, please.

24 (Whereupon, the attorneys  
25 approached the sidebar for a discussion

1 out of the hearing of the jury and off  
2 the record).

3 THE COURT: Ladies and  
4 gentlemen, it is for you to decide what  
5 the significance of this is, but I think  
6 it is sufficiently related to what we  
7 are discussing today to be marked in  
8 evidence so I'll permit it as MM.

9 Q. May we show on the screen the-- there  
10 is a CF-16 form in the handbook for the  
11 year 2008, correct, sir?

12 A. Yes, sir.

13 Q. And may we show -- I'm showing on  
14 the screen the CF-16 Form, and that is  
15 page 66.

16 Can we blowup the bottom half  
17 of that. And we can just blowup the  
18 section I include, I swear affirm that, in  
19 the one and two, please.

20 So the language in the CF-16  
21 Form for the year 2009 has now changed the  
22 CF-16 Form that I showed you for the two  
23 prior years; am I correct?

24 A. Yes, sir.

25 Q. And will you read out loud what

1 the candidate who files a CF-16 in the  
2 year 2009 now swears or affirms, please.

3 A. One. I am a candidate for the  
4 office as stated above. And two, all  
5 financial activity related to my campaign,  
6 including my own, will be disclosed by an  
7 authorized committee, which will file on  
8 my behalf.

9 Q. This is the first time, sir, that  
10 this phrase, that the candidate swears  
11 that all financial activity related to my  
12 campaign, including my own, will be  
13 disclosed by the Committee; am I correct,  
14 the first time it appears on the CF-16  
15 Form, right?

16 A. Yes, sir.

17 Q. And can we now look at the  
18 instructions for filling out the form  
19 CF-16 in the 2009 handbook, and I believe  
20 that is on the next page, page 67 for 2009.

21 Can we just blowup just the top  
22 paragraph. There we go. Can we blow that  
23 up, please. This is the instruction page;  
24 am I correct, sir?

25 A. Yes.

1 Q. Filling out the CF-16 in the 2009  
2 handbook and it states; am I correct, in  
3 the first paragraph, Candidates for public  
4 office or party position may be required  
5 to file this form, file this form if you  
6 are a candidate with an authorized  
7 committee that will make all of the  
8 candidate's required campaign financial  
9 filings. These filings would include all  
10 the financial activity of the campaign,  
11 including the financial activity of the  
12 candidate.

13 That is the first time that  
14 those instructions appear on the  
15 instruction page for the CF-16, am I  
16 correct, sir?

17 A. Yes, sir.

18 Q. We looked at the instruction page  
19 for the CF-16 in the handbook for the year  
20 2007 and we looked at it for the  
21 instruction page for the CF-16 in the 2008  
22 handbook and neither of those stated that;  
23 am I correct, sir, on the instruction  
24 page, correct, sir?

25 A. Yes, sir.

1 Q. And what year did Nora Anderson  
2 file her CF-16, sir?

3 A. 2008.

4 Q. And by my calculation that is one  
5 year prior to 2009; am I right, sir?

6 A. Yes, sir.

7 Q. Now I believe that you testified  
8 that the candidate, the candidate Nora  
9 Anderson, when she ran for office in 2008,  
10 that as a candidate she became an agent of  
11 the campaign committee; am I correct?

12 A. Yes, sir.

13 Q. And so it's your testimony that as  
14 an agent of the Committee that if a check  
15 was given to her that she was just like  
16 the Committee; is that right, an agent of  
17 the Committee, the it's like giving it to  
18 the Committee, right, sir?

19 A. Yes, sir.

20 Q. Let's explore that. The  
21 Committee's filing obligations are set  
22 forth in Section 102, correct, sir?

23 A. It is one of the provisions that  
24 applies, correct.

25 Q. And is there anything in Section

1 102 that states that the candidate is the  
2 agent of the Committee, sir?

3 A. No.

4 Q. And am I correct that there is no  
5 statute, campaign finance statute, no  
6 statute of any kind that you know of, no  
7 regulation promulgated by the Board of  
8 Elections pursuant to its authority to  
9 promulgate regulations, or any Board of  
10 Election opinion which states that the  
11 candidate is the agent of the Committee,  
12 correct, sir?

13 A. Correct.

14 Q. And these are the governing  
15 provisions for The Board of Elections,  
16 right? You got a statute, you got  
17 regulations promulgated and they got the  
18 authority to issue opinions, correct?

19 A. Yes, sir.

20 Q. And none of them state what Bill  
21 McCann stated in his opinion, his opinion,  
22 that the candidate is an agent of the  
23 Committee, correct, sir?

24 A. Correct.

25 Q. Now take a look at the 2008 handbook,

1 which is in evidence as Defendant  
2 Rubenstein's Exhibit LL. Turn to page 13.  
3 We see -- you can put that up on the  
4 screen. Look at page 13. And if we look  
5 at the first paragraph, number two, the  
6 first two sentences.

7 That paragraph states, am I  
8 correct, sir, this is the 2008 handbook.

9 A candidate can choose to  
10 have an authorized committee which files  
11 the disclosure reports disclosing all  
12 receipts and expenditures of the campaign.  
13 In such an instance the candidate can  
14 raise or spend money themselves, but such  
15 activity of the candidate, paren (who  
16 becomes an agent of the Committee), close  
17 paren, must be reported through the  
18 authorized committee.

19 So the handbook for 2008 --  
20 by the way, the page we're reading is not  
21 on the instruction page; am I correct, for  
22 filling out form CF-16, correct? This is  
23 a different page?

24 A. Yes, sir.

25 Q. So in the 2008 handbook, what we

1 have just read is a statement that says,  
2 has the parenthesis phrase, the candidate,  
3 paren (who becomes an agent of the  
4 Committee), close paren. Correct, sir?

5 A. Yes, sir.

6 Q. That language is not in the 2007  
7 handbook, correct, sir?

8 A. I'd have to compare it but if  
9 you're telling me it is true, yes.

10 Q. You're free to peruse the book --  
11 you spent some time, by the way, preparing  
12 with Mr. Cort for your examination,  
13 correct, sir?

14 A. Yes, sir.

15 Q. And you seen the 2007 handbook  
16 previously, correct, sir?

17 A. I have.

18 Q. So let's just be correct. Am I  
19 correct, sir, that the 2007 handbook does  
20 not have that language which is in the  
21 2008 handbook which I've just read, a  
22 candidate, paren (who becomes an agent of  
23 the Committee), let's be clear; am I  
24 correct, that that is not in the 2007  
25 handbook?

1 THE COURT: Do you have a  
2 particular page to refer the witness to.

3 MR. HAFETZ: That's the  
4 problem. There's no page to refer to  
5 because it is not in there.

6 Maybe we can move on, .

7 Q. Mr. McCann, I suspect that we might  
8 be here after lunch so, if you find it --

9 A. The handbook is different.

10 Q. Pardon me?

11 A. The handbook is different.

12 Q. To your knowledge, certainly take  
13 the opportunity to look through it, that  
14 language is not in the 2007 handbook,  
15 correct, sir?

16 A. Correct.

17 Q. And can we show on the screen  
18 again the People's Exhibit, the Nora  
19 Anderson filing of the CF-16. I think  
20 that's People's Exhibit 9. 23 if we could  
21 just put that on the screen.

22 If you could just blowup the  
23 bottom part. And that document was filed  
24 on -- sworn to on what date? Is it  
25 April; am I correct? I can hand you a

1 copy?

2 A. No, I have it.

3 Q. April 1, 2008, correct, sir?

4 A. Yes.

5 Q. And that's the CF-16 filled out by  
6 the candidate, correct?

7 A. Yes, sir.

8 Q. Can we now show on the screen, Mr.  
9 Cort showed you yesterday, it's in  
10 evidence, as CF-- it's People's Exhibit  
11 Number 2, and this is the form that was  
12 filled out by the treasurer of the  
13 campaign, I believe. Just look at the top  
14 and blow that up.

15 This is the form for  
16 designation of treasurer, correct, sir?

17 A. Yes, sir.

18 Q. And you were shown that yesterday  
19 by Mr. Cort, correct?

20 A. Yes, sir.

21 Q. Can we look at the bottom half.  
22 Blow that up, please.

23 And that document was signed  
24 by Janise Dawson as the treasurer, am I  
25 correct? And that was signed on April 1

1 of 2008 also; am I correct?

2 A. Yes, sir.

3 Q. And then Mr. Cort showed you also,  
4 I believe People's Exhibit 8, which is the  
5 CF-3 Form. Just take a look at that for a  
6 minute. And this is the form for the  
7 authorization of the Committee, correct,  
8 sir?

9 A. Yes.

10 Q. Can we look at the bottom half?  
11 And that was signed by Janise Dawson and  
12 that's also on April 1 of 2008, correct,  
13 sir?

14 A. Yes, sir.

15 Q. And can we show on the screen  
16 Rubenstein Exhibit H, please. This is in  
17 evidence.

18 Just blowup the portion, the  
19 top one third. And this is a letter from  
20 the State Board of Elections to Janise  
21 Dawson dated April 3, 2008, correct, sir?

22 A. Yes, sir.

23 Q. And am I correct that this letter  
24 advises or says that you can download or  
25 obtain from the New York State Board of

1 Elections the handbook for guidance; am I  
2 correct, sir?

3 A. Yes, sir.

4 Q. So on April 1, 2008 it was filed  
5 with the State Board of Elections, the  
6 CF-16 Form by the candidate Nora Anderson,  
7 and there was filed a CF-2 Form by Janise  
8 Dawson in which she becomes the treasurer  
9 and the CF-3 Form in which a committee is  
10 designated, all filed and signed on April  
11 1, correct, sir?

12 A. Yes.

13 Q. And the Committee wrote that  
14 letter on April 3 in response to the  
15 filings on April 1?

16 A. The Board issued that letter.

17 Q. Now am I correct, Mr. McCann, that  
18 at this time, when these documents were  
19 filed, and when the letter was written,  
20 the April 3rd letter 2008 instructing to  
21 download -- not instructing, but advising  
22 a handbook could be downloaded for  
23 guidance, the 2008 handbook was not yet  
24 finalized and available on the website by  
25 the New York State Board of Elections,

1 correct, sir?

2 A. I don't recall.

3 MR. HAFETZ: I show the  
4 witness, your Honor, what's been marked  
5 for identification as Defendant  
6 Rubenstein's Exhibit PP.

7 Q. I ask you to take a look at  
8 Rubenstein Exhibit PP for identification,  
9 and am I correct, sir, that these are the  
10 minutes of the New York State Board of  
11 Elections, minutes dated April 16th, 2008,  
12 approved on May 14th, 2008, correct, sir?

13 A. Yes, sir.

14 Q. And you were present at the  
15 meeting, sir, as reflected in the  
16 document, correct, sir?

17 A. Yes, sir.

18 MR. HAFETZ: Offer it into  
19 evidence, your Honor.

20 MR. CORT: No objection.

21 THE COURT: All right. Then  
22 we'll mark this as double P in evidence.  
23 You may proceed.

24 Q. Can we put the first page of  
25 Rubenstein Exhibit PP on the screen,

1 please. Just blowup the first couple of  
2 lines.

3 And it states, correct,  
4 Minutes of the New York State Board of  
5 Elections, April 16, 2008, approved May  
6 14th, 2008, correct, sir?

7 A. Yes, sir.

8 Q. And can we blowup the first  
9 paragraph?

10 Am I correct the first  
11 paragraph states that this was a meeting  
12 of the Commissioners of the New York State  
13 Board of Elections and that amongst other  
14 persons present was William McCann,  
15 correct, sir?

16 A. Yes, sir.

17 Q. And can we go all the way down to  
18 the last paragraph, final paragraph of the  
19 page and blow that up, please.

20 Am I correct that the minutes  
21 of the Board of Elections for April 16,  
22 2008 in that paragraph states under a  
23 caption Campaign Finance, Elizabeth Hogan  
24 reported on several subjects, including  
25 the revision of the handbook. It's at the

1 printers and should be back next week?

2 A. Correct.

3 Q. And that is a reference to the  
4 2008 handbook, correct, sir?

5 A. Yes, sir.

6 Q. So at the time that the letter was  
7 written on April 3rd, 2008 advising Janise  
8 Dawson, the treasurer of the Committee, to  
9 look at the handbook on the website, the  
10 2008 handbook was not available on the  
11 website because it had not been completed,  
12 correct, sir?

13 A. I can't answer that question.

14 Q. Well, it states here, doesn't it,  
15 that the handbook is still being revised  
16 and should be back next week, correct,  
17 sir?

18 A. That would be the hard copy. I  
19 can't say with any certainty whether or  
20 not if it had been revised that it was  
21 placed on the website before it came back  
22 from the printer.

23 Q. Okay. You have no knowledge one  
24 way or the other; is that right?

25 A. That's true. I just don't know.

1 There is a chance it could have been up  
2 before it came back from the printer, or a  
3 chance that it wasn't. I just don't  
4 remember.

5 Q. You have no knowledge, do you,  
6 whether Janise Dawson ever saw the 2008  
7 handbook, do you, sir?

8 A. No.

9 Q. You have no knowledge whether the  
10 Anderson for Surrogate Committee ever had  
11 in its possession the 2008 handbook, do  
12 you, sir?

13 A. I do not.

14 Q. You have no knowledge whether Seth  
15 Rubenstein ever saw the 2008 handbook, do  
16 you sir? And you have no knowledge, sir,  
17 whether Nora Anderson ever saw the 2008  
18 handbook, correct, sir?

19 A. I do not.

20 Q. But the 2008 handbook is the  
21 handbook that had for the first time  
22 language, candidate, in paren, (agent of  
23 the Committee), correct, sir? That was  
24 your testimony this morning?

25 A. Yes, sir.

1 Q. Now, Mr. Cort asked you some  
2 questions yesterday, sir, with respect to  
3 the definition of contribution in the  
4 campaign finance statute. You recall those  
5 questions?

6 A. Yes, I do.

7 Q. And I believe he asked you  
8 specifically about Article 14. By the  
9 way, is the article that contains the  
10 sections of the Election Law dealing with  
11 campaign finance; am I correct?

12 A. Yes, sir.

13 Q. And I believe he asked you  
14 yesterday about Article 14, Section 100.9,  
15 and that is a definition section; am I  
16 correct, sir?

17 A. 14.109 is a definition of a  
18 contribution with not the definition  
19 section.

20 MR. HAFETZ: With the Court's  
21 permission -- for demonstrative  
22 purposes your Honor, may I show that  
23 paragraph on the screen?

24 THE COURT: Yes.

25 MR. HAFETZ: Show 100.9. You'll

1 find it in Rubenstein QQ for  
2 identification.

3 Let's just blowup the first  
4 part of it and we'll work our way down.

5 There's a table in the  
6 beginning and then we go to Section  
7 100.9. Scroll down. Let's just take  
8 where it starts with the 9 and we'll read  
9 down. Let's enlarge the first paragraph.

10 And that is the section you  
11 were referring to, the subsection; am I  
12 right?

13 A. That's the beginning of 100.1.

14 Q. It says quote, in  
15 quotes, "Contribution means". It goes on  
16 to say Subsection One says, any gift,  
17 subscription, outstanding loan, paren, (to  
18 the extent provided for in Section 14-114  
19 of this chapter), advance or deposit of  
20 money or of anything of value, made in  
21 connection with the nomination of election  
22 or election of any candidate or made to  
23 promote the success or defeat of a  
24 political party or principle, or of any  
25 ballot proposal. Correct?

Frank Rizzo  
Senior Court Reporter

1           A.     Yes.

2           Q.     And the next sub part of  
3     Subsection One, I guess is Subsection Two  
4     says, Any funds received by political  
5     committee from another political committee  
6     to the extent such funds do not constitute  
7     a transfer.

8                     And now can we go to 3.

9                     And 3 says; am I correct, Any  
10    payment by any person other than a  
11    candidate or a political committee,  
12    authorized by the candidate, made in  
13    connection with the nomination for  
14    election or election of any candidate, or  
15    any payment made to promote the success or  
16    defeat of a political party or principle,  
17    or of any ballot proposal including, but  
18    not limited, the compensation for the  
19    person's personal services of any  
20    individual which are rendered in  
21    connection with a candidate's election or  
22    nomination without charge; semi colon,  
23    provided however, that none of the  
24    foregoing shall be deemed a contribution  
25    if it is made, taken or performed by a

1 candidate, correct?

2 So that subsection states;  
3 am I correct, that none of the  
4 foregoing -- just go back to 9.1 at the  
5 top.

6 MR. CORT: Your Honor, can we  
7 just approach for one moment.

8 THE COURT: If necessary.

9 (Whereupon, the attorneys  
10 approached the sidebar for a discussion  
11 out of the hearing of the jury and off  
12 the record).

13 THE COURT: Ladies and  
14 gentlemen, I realize we're kind of  
15 approaching the lunch hour, but it is a  
16 little early. Is everybody okay for  
17 another couple of minutes? That's fine.  
18 Please go ahead.

19 Q. Under the definition of  
20 contributions, Sub 1 states, I'll read the  
21 whole thing again, but it includes, any  
22 gift, subscription, outstanding loan,  
23 correct? That's what it says?

24 And the next Section, Sub  
25 2, as part of the definition of

1 contribution, any funds received by a  
2 political committee from another political  
3 committee to the extent such funds do not  
4 constitute transfer.

5 And then Sub 3, also under the  
6 definition of a contribution, talks about  
7 any payment, and then goes on to discuss  
8 any payment. This is under the definition  
9 of contribution, and then it states,  
10 provided, however, that none of the  
11 foregoing shall be deemed a contribution  
12 if it is made, taken or performed by a  
13 candidate.

14 Am I correct, the language in  
15 Sub 3, the language under the definition  
16 of Section 9 is a provision in there  
17 stating that if taken by the candidate,  
18 does not constitute a contribution.

19 That's what the language says;  
20 am I right?

21 A. That is the language, yes.

22 Q. Excuse me?

23 A. That is the language, correct.

24 Q. Now if we can show on the screen  
25 from Rubenstein Exhibit LL, the 2008

1 handbook, we can go to page five.

2 And if we can blowup the  
3 portion. There we go. And just go down a  
4 little bit lower: That's fine. You can  
5 stop.

6 And this is from the handbook  
7 April of 2008 and page 5; am I correct,  
8 sir?

9 A. Yes.

10 Q. And this deals with definition of  
11 contribution, correct, sir?

12 A. Yes, sir.

13 Q. And in fact the language there in  
14 number one discusses any gift,  
15 subscription, outstanding loan, same terms  
16 from the definition section that we just  
17 saw 100.9, right, in Sub One under that,  
18 covers gift, subscription, outstanding  
19 loan, correct, sir?

20 A. Yes.

21 Q. And then we look at Section Two,  
22 Sub 2, it says any funds received by a  
23 political committee from another political  
24 committee and that mirrors what is what we  
25 just looked at under 100.9 for Sub 2; is

1 that correct, for definition of a  
2 contribution, correct?

3 A. Yes, sir.

4 Q. And then Sub 3 describes a  
5 payment. Any payment by any person other  
6 than a candidate, and that goes on to  
7 describe payment. Any payment or payment.  
8 And that mirrors the language in 100.9 Sub  
9 3; am I correct?

10 A. Yes, sir.

11 Q. And the next paragraph states; am  
12 I correct, Note. None of the foregoing is  
13 a contribution if it is made, taken or  
14 performed by, and the bullet says, a  
15 candidate or candidate's spouse. And where  
16 it says none of the foregoing is a  
17 contribution, if made, taken or performed  
18 by a candidate, that is a reference to the  
19 three above paragraphs, correct, sir?

20 A. Yes, sir.

21 Q. So that the 2008 handbook; am I  
22 correct, makes clear, that the definition  
23 of a contribution under the campaign  
24 finance statute does not include a gift or  
25 a loan taken by a candidate, correct, sir?

1 A. It does not say that.

2 Q. Can we show the top of the page  
3 again. The heading says Contribution,  
4 correct, sir?

5 A. Yes, sir.

6 Q. And number one under it says any  
7 gift, subscription, outstanding loan,  
8 correct, sir?

9 A. Yes, sir.

10 Q. All right. And I won't read the  
11 next two paragraphs but then under that  
12 the note, none of the foregoing is a  
13 contribution if made, taken or performed  
14 by a candidate.

15 You just said that the note,  
16 none of the foregoing applies to the above  
17 3 paragraphs; am I correct?

18 A. It does, yes, sir.

19 Q. Doesn't that say in plan language,  
20 English, that a gift or a loan taken by a  
21 candidate is not a contribution under the  
22 definition of contribution as set forth  
23 here in the handbook?

24 A. Yes.

25 Q. Can we put on the screen what is

1 in evidence as Defendant Rubenstein's MM.  
2 This is the handbook for the year 2009.  
3 And can we show page 23. And if we go up  
4 on the left-hand side starting with --  
5 that's it.

6 And in the 2009 handbook; am I  
7 correct, it is Section A on this page 23,  
8 says any contributions, definitions and  
9 certain exceptions, correct, sir?

10 A. Yes, sir.

11 Q. And the first bullet says a  
12 contribution is: colon, and the first  
13 bullet says, any gift, subscription,  
14 outstanding loan to the extent provided  
15 for in the New York State Election Law,  
16 Section 114, advance or deposit of money,  
17 or anything of value, any kind of  
18 contribution made in connection with the  
19 nomination for election, for example,  
20 (Primary), close paren, or (Election),  
21 Paren, for example, (General), close  
22 paren, of any candidate or made to promote  
23 the success or defeat of a political party  
24 or principle or any ballot proposal  
25 proposition.

1                   That's what it says in the  
2 first bullet, correct?

3           A.    Yes, sir.

4           Q.    And then there is a second bullet;  
5 am I correct, and that refers similar to  
6 the Subsection 2 of 100.9. Funds received  
7 by a political committee, correct, sir?

8           A.    Yes, sir.

9           Q.    And the next bullet that describes  
10 any payment by any person, and that  
11 mirrors the language in 100.9, the  
12 definition section of contribution,  
13 correct, sir?

14          A.    Yes, sir.

15          Q.    And can we go just below that. And  
16 then in bold right after that it states;  
17 am I right, sir, None of the foregoing is  
18 a contribution if it is made, taken or  
19 performed by a candidate or the  
20 candidate's spouse. Am I correct, sir?

21          A.    Yes.

22          Q.    And that refers to the above three  
23 bullets; am I right, sir?

24          A.    Yes.

25          Q.    And just to look at that first

1 bullet again, that first bullet talks  
2 about a gift or a loan; am I correct, sir?

3 A. Yes, sir.

4 Q. Under the definition of a  
5 contribution. So Section 100.9 of the  
6 Campaign Finance Law; am I correct, sir,  
7 which defines contribution, does not  
8 include, as a contribution, a gift taken  
9 by a candidate or a loan taken by a  
10 candidate in the statute and in the  
11 handbooks in 2008 and 2009 as they explain  
12 what a contribution is, correct, sir?

13 A. Pursuant to the language, yes.

14 Q. And if we could just put up on the  
15 screen the handbook for the year 2007,  
16 which is Rubenstein Exhibit -- I believe  
17 it's Rubenstein Exhibit D, your Honor.  
18 It's in evidence. And we can go to page  
19 3.

20 A. I'm sorry, which book are you  
21 looking at?

22 THE COURT: 207.

23 Q. And that page three deals with  
24 definition of a contribution; am I  
25 correct, sir?

1 A. Yes, sir.

2 Q. And it states in the section that  
3 is highlighted, None of the foregoing  
4 shall be deemed a contribution if it is  
5 made or performed by a candidate, correct,  
6 sir?

7 A. Yes, sir.

8 MR. HAFETZ: Judge, can we  
9 approach?

10 THE COURT: Yes.

11 (Attorneys approached the  
12 sidebar for a discussion out of the  
13 hearing of the jury and off the record).

14 THE COURT: Ladies and  
15 gentlemen, we'll be recessing. Mr.  
16 McCann you can step down now. We'll need  
17 you after lunch.

18 I do have a couple of other  
19 matters that I will take care of in your  
20 absence and then when we start again we  
21 will be clear to continue. So I will  
22 ask you in a moment to step out and  
23 return at 2:15. In the meantime, of  
24 course, please don't discuss the matter  
25 at all. Please don't speak to any

1 participants. Anyone should attempt to  
2 discuss the matter in your presence  
3 please report that to a Court Officer  
4 without discussing the situation with  
5 anyone else.

6 You can leave your notebooks  
7 on the chairs. Thank you very much.

8 Have a good lunch.

9 (Whereupon, the jury left the  
10 courtroom at 12:50 PM.

11 THE COURT: For the record, the  
12 witness on the stand will be directed to  
13 come back at 2:15. The other witness, we  
14 expect I will ask you to notify him to  
15 be here by three.

16 COURT OFFICER: All right.

17 THE COURT: Thank you very  
18 much. We're in recess.

19 (Whereupon the luncheon recess  
20 was taken).

1 (P.M session of 3-24-10.)

2 THE CLERK: Case on trial,  
3 Nora Anderson and Seth Rubenstein.

4 THE COURT: Would you please have  
5 the witness and the jury step in.

6 COURT OFFICER: Witness entering.  
7 ( Witness enters courtroom).

8 COURT OFFICER: Jury entering.  
9 ( Jury enters courtroom).

10 THE CLERK: Case on trial, People  
11 of the State of New York versus Nora  
12 Anderson and Seth Rubenstein. All parties  
13 are present.

14 THE COURT: Good afternoon, ladies  
15 and gentlemen, thank you again. We are  
16 ready to continue with the examination of  
17 Mr. McCann.

18 Mr. Hafetz, please  
19 continue.

20 CROSS EXAMINATION CONTINUED

21 BY MR. HAFETZ:

22 Q. Mr. McCann, you referred in your  
23 testimony this morning a number of times to  
24 section, Article 14 of the Campaign Finance  
25 Law section 120, and I believe you said under

1 that section contributions, about  
2 contributions being in the name of the source  
3 of the funds, is that correct?

4 A. Yes sir.

5 Q. Let's take a look at that section on  
6 the screen. If I may for demonstrative, your  
7 Honor.

8 THE COURT: Yes.

9 Q. Article 14 section 120. Can we blow  
10 up the heading in the first paragraph.

11 A. Would it be possible to have a copy  
12 of that to hold?

13 MR. HAFETZ: Sure.

14 ( Handed to witness).

15 Q. Take a minute to take a look at it.  
16 So, the section 14 dash 120 in its heading  
17 says campaign contribution to be under true  
18 name of contributor, correct?

19 A. Yes sir.

20 Q. And can you read out loud the text  
21 of paragraph one, sir.

22 A. No person shall in any name, except  
23 his own, directly or indirectly, make a  
24 payment or a promise of payment to a candidate  
25 or political committee or to any officer or

1 member thereof, or to any person acting under  
2 its authority or in its behalf or on behalf of  
3 any candidate. Nor, shall any such committee  
4 or any such person or candidate knowingly  
5 receive a payment or promise of payment, or  
6 enter or cause the same to be entered in the  
7 accounts or records of such committee in any  
8 name other than that of the person or persons  
9 by whom it is made.

10 Q. Am I correct, sir, that the text,  
11 the actual text of the statute subdivision one  
12 that you just read, does not mention the word  
13 contribution, am I correct?

14 A. Correct.

15 Q. And in fact, it referred, it uses  
16 the term payment, am I correct?

17 A. Right.

18 Q. And under section 100 point nine is  
19 a section which defined contributions, am I  
20 correct?

21 A. Yes.

22 Q. Can we put section 100 point nine on  
23 the screen please. Can you blow up the  
24 heading and the first three paragraphs.

25 A. Can I get a copy of that also,

1 please.

2 Q. Sure.

3 ( Handed to witness).

4 A. Thank you.

5 Q. So, that is section 100, correct,  
6 part of section 100?

7 A. Yes, sir.

8 Q. Section nine, if we can go to that  
9 it says contribution in quotes, correct?

10 A. Yes, sir.

11 Q. Then sub one under that, under the  
12 definition of contribution refers to gift,  
13 subscription, a loan, and some other terms, am  
14 I correct?

15 A. Yes.

16 Q. Am I correct, if you go down to sub  
17 paragraph three in a totally separate sub  
18 paragraph, that uses the term payment, am I  
19 correct?

20 A. It does.

21 Q. It does not say loan or gift, am I  
22 right?

23 A. Correct.

24 Q. It says payment, am I right?

25 A. It does.

1 Q. In fact, the terms gift or loan are  
2 in sub one, am I right?

3 A. They are, sir.

4 Q. Can we now go back to section 120  
5 please.

6 A. Right.

7 Q. Just blow up that first paragraph  
8 please. The word gift or loan is not in  
9 there, am I correct, sir?

10 A. Correct.

11 Q. In fact, the only word that was used  
12 from the definition of contribution in section  
13 100 point nine is that from sub three which is  
14 payment, am I correct?

15 A. I think the context of 14, 120.

16 Q. I'm not asking you about the  
17 context, I'm asking you about the wording of  
18 the statute.

19 A. Yes sir.

20 Q. The actual wording of the governing  
21 statute, does it mention the words gift or  
22 loan?

23 A. No, sir.

24 Q. Those were the words that are in sub  
25 one in section 100 point nine, am I correct?

1 A. Yes, sir.

2 Q. In fact, the actual words of the  
3 governing statute uses the term payment which  
4 is in a different subdivision of section 100  
5 point nine, am I correct, sir?

6 A. Yes, payment in sub three, yes.

7 MR. HAFETZ: No further questions.

8 THE COURT: Mr. Newman.

9 CROSS EXAMINATION

10 BY MR. NEWMAN:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. Did I understand you correctly  
14 yesterday when you told us you were in the  
15 enforcement unit of the Board of Elections,  
16 sir?

17 A. Yes, sir.

18 Q. And I assume that you are familiar,  
19 as a result of your stint with the Board of  
20 Elections, with the New York State Election  
21 Law, correct?

22 A. As long as stint is not in the  
23 perjorative I accept it as so.

24 Q. Nothing I say would be in the  
25 perjorative unless I say pay attention. This

1 is in the perjorative.

2 A. Okay.

3 Q. As a result of it, I'm sure you are  
4 also familiar with the power of the Board of  
5 Elections, are you not, sir?

6 A. Yes.

7 Q. Particularly with the power in  
8 connection with enforcement. You have to  
9 answer verbally.

10 A. Yes, I am.

11 Q. Sir, as part and parcel of that, you  
12 are familiar, and aware, are you not, sir, the  
13 Board of Elections has the power to demand  
14 from a committee, the books and records of the  
15 committee and has the right to look at them if  
16 they wish?

17 A. It does.

18 Q. In addition to that, if the  
19 committee does not relinquish them  
20 voluntarily, you know, do you not, that the  
21 Board of Elections has the power to subpoena  
22 those records?

23 A. It does.

24 Q. Now sir, with your permission, your  
25 Honor, an exhibit was offered by the

1 Government yesterday, Exhibit 75 was admitted  
2 into evidence. May I put it up?

3 THE COURT: Yes sir.

4 Q. Put up exhibit 75. It is my  
5 technical illiteracy.

6 THE COURT: You are  
7 un-stinting in your apologies.

8 Q. Are you able to see it, sir?

9 A. I really cannot see. If I could get  
10 the copy, that would be great.

11 Q. May I hand him a hard copy?

12 THE COURT: Yes, the officer will  
13 hand it.

14 Q. Let me know when you had a chance to  
15 look at it, sir?

16 A. Okay.

17 Q. In connection with it sir, if you  
18 recall yesterday, Mr. Cort asked you some  
19 questions about this or maybe it was this  
20 morning. I think this morning come to think  
21 of it.

22 A. Yes, sir.

23 Q. And he asked you, as far as the  
24 instructions are concerned on schedule A,  
25 could you highlight those please.

1                   You see, he asked you  
2 whether schedule A was used to report all  
3 monetary contributions from individuals, do  
4 you recall that, sir?

5           A.    Yes, sir.

6           Q.    Of course you told him yes.

7           A.    Yes.

8           Q.    But that was not the only thing that  
9 schedule A is used for, isn't that correct,  
10 sir?

11          A.    Correct.

12          Q.    In addition to that, it is used for  
13 funds received from the candidates, there is a  
14 place to report it on schedule A, isn't that  
15 right?

16          A.    Correct.

17          Q.    In this case, you understand that  
18 the committee received a one hundred thousand  
19 dollar check from Nora Anderson, right?

20          A.    That is what was disclosed.

21          Q.    And that was on schedule A?

22          A.    Correct.

23          Q.    And that was funds received from the  
24 candidate, right?

25          A.    According to the report, yes.

1 Q. And therefore, the appropriate place  
2 to record it would be schedule A where it was  
3 recorded, right?

4 A. Correct.

5 Q. Now sir, am I correct -- you can put  
6 it aside. Once a candidate elects to operate  
7 through the committee, so to speak, am I  
8 correct, sir, the duly authorized committee at  
9 that point when appointed shall fulfill all of  
10 the campaign financial reporting requirements  
11 for the candidate?

12 A. Correct.

13 Q. And you know that is contained as  
14 the instructions -- without going back and  
15 putting them up, in both the 2007 and 2008  
16 handbooks, you know that, don't you, sir?

17 A. That is correct.

18 Q. Am I correct also, sir, that in your  
19 experience in the 10 years that you have  
20 served, I took stint out, that you served with  
21 the Board of Elections, sir, am I correct most  
22 candidates have opted to go through the  
23 committee?

24 A. You are correct.

25 Q. And that is for some practical

1 reason, isn't that so?

2 A. It is.

3 Q. Among the practice reasons, is the  
4 campaign -- withdrawn. The candidate wants to  
5 be out busy campaigning?

6 A. Absolutely.

7 Q. They want to go press the flesh, so  
8 to speak, shake hands?

9 A. I hope so.

10 Q. Get themselves known in order to get  
11 votes, fair enough?

12 A. That is the goal.

13 Q. And they don't want to be sitting in  
14 an officer say balancing checkbooks and making  
15 entries who paid what and who gave them what?

16 A. Correct.

17 Q. And filling out forms filed with  
18 Board of Elections, they want to be out  
19 getting votes?

20 A. Yes, sir.

21 Q. As a result of this, once they have  
22 opted, so to speak, to go through the  
23 committee, the treasurer for the committee  
24 becomes an important person, doesn't it?

25 A. No question.

1 Q. And as a matter of fact, you told us  
2 earlier today that when you were asked to talk  
3 about intermediaries, you were talking about  
4 situations where the candidate does not file  
5 their own report, they would have an  
6 obligation under the Election Law, to turn  
7 over the information or any contribution they  
8 receive to the treasurer?

9 A. Correct.

10 Q. And all the information about it to  
11 the treasurer?

12 A. Correct.

13 Q. In addition to that, you told us  
14 earlier today at page 667 that the candidate  
15 and any agent I think you used a terminology,  
16 has an affirmative obligation under the  
17 Election Law to turn over information about  
18 the contributions to the treasurer?

19 A. Correct.

20 Q. That is to facilitate, if you will,  
21 that the treasurer then can report it  
22 appropriately?

23 A. Yes.

24 Q. And in addition to that, you told us  
25 today that the candidate, if they receive

1 money, they have an obligation to turn that  
2 information over to the treasurer so the  
3 treasurer can make the disclosure?

4 A. Correct.

5 Q. Now sir, before you took the witness  
6 stand here -- withdrawn. Am I also correct,  
7 sir, that within the committee it is the  
8 treasurer who takes on the responsibility of  
9 disclosing all receipts and expenditures for  
10 the committee?

11 A. On the actual reporting, report,  
12 yes.

13 Q. And the treasurer has an obligation  
14 to make these disclosures; is that right?

15 A. Correct.

16 Q. And since the treasurer has that  
17 obligation, if the candidate gets money from  
18 somebody, the treasurer has to know about  
19 that, right?

20 A. Assuming the candidate tells the  
21 truth.

22 Q. Sorry, sir?

23 A. Assuming the candidate informed the  
24 treasurer of that.

25 Q. And the treasurer, when we get down

1 to the bottom line, is the person responsible  
2 for making financial disclosures for the  
3 committee, is that true?

4 A. Yes sir.

5 Q. Now sir, as you sit here now, sir,  
6 do you know what the treasurer knew about  
7 these financial transactions?

8 A. No sir.

9 Q. Now, you met with Mr. Cort, did you?

10 A. I did.

11 Q. On how many occasions, sir?

12 A. Maybe three.

13 Q. And for how long each time?

14 A. About an hour or so.

15 Q. In addition to that, you had phone  
16 communications with Mr. Cort?

17 A. On occasion.

18 Q. How often -- withdrawn. How many of  
19 those did you have, if you can recall?

20 A. I don't recall specifically.

21 Q. Fair to say a number of them?

22 A. Yes sir.

23 Q. And you didn't keep time to see how  
24 long each lasted?

25 A. No sir.

1 Q. But nevertheless, he talked about  
2 the facts of this case to you?

3 A. He would provide me with information  
4 and ask questions.

5 Q. And as a matter of fact, he told you  
6 that you were going to be called here as an  
7 expert on the Election Law?

8 A. He did.

9 Q. Is it fair to say, sir, when you  
10 come in to testify as an expert, you should  
11 know the facts at the very least?

12 A. I can only respond to the  
13 information provided.

14 Q. In other words, in order to give an  
15 informed expert opinion, the more facts you  
16 know, the better position you are in to give  
17 that opinion, is that a fair statement?

18 A. Yes, sir.

19 Q. As you sit here now, sir, are you  
20 aware that the treasurer in this case, Janise  
21 Dawson, knew that Seth Rubenstein had given  
22 Nora Anderson a one hundred thousand dollar  
23 gift, did you know that?

24 A. No, sir.

25 Q. As you sit here now, do you know

1 that Nora Anderson then deposited that check  
2 in her account and gave the committee a one  
3 hundred thousand dollar check?

4 A. As a fact, no.

5 Q. Did you, do you know as you sit here  
6 now, that Janise Dawson knew, you knew that  
7 Janise Dawson based on the documents, you knew  
8 she was the treasurer of this committee?

9 A. Yes, sir.

10 Q. As you sit here now, did you know  
11 that Janise Dawson knew that Seth Rubenstein  
12 had borrowed 150 thousand dollars from his  
13 brokerage account?

14 A. No, sir.

15 Q. Did you know, as you sit here now,  
16 that that 150 thousand dollars was then  
17 transferred to an account of Nora Anderson in  
18 the same brokerage firm?

19 A. No, sir.

20 Q. Did you know that Janise Dawson knew  
21 that?

22 A. No, sir.

23 Q. Did you know that Janise Dawson knew  
24 then that Nora Anderson made a 170 thousand  
25 dollar loan to the committee?

1 A. Can you say that last one again.

2 Q. As you sit here now, did you know  
3 that Janise Dawson was aware of the fact that  
4 Nora Anderson, after she received the money  
5 from Seth Rubenstein in the form of a loan,  
6 made a loan herself to the committee, did you  
7 know Janise Dawson knew those facts?

8 A. I knew that a loan came from the  
9 candidate based upon the report that was  
10 submitted by the treasurer. So I would  
11 presume the treasurer knew what was in the  
12 report.

13 Q. Aside from the report, did you know  
14 that the treasurer knew all of the underlying  
15 facts of all of these transactions?

16 A. No.

17 Q. Did you know that she was aware of  
18 the fact that Seth Rubenstein was the man who  
19 gave Nora Anderson 100 thousand dollars?

20 A. No, sir.

21 Q. Did you know that Janise Dawson knew  
22 that Seth Rubenstein was the person who gave  
23 Nora Anderson a 150 thousand dollar loan?

24 A. No sir.

25 Q. Did you know that Janise Dawson, the

1 treasurer, knew that Nora Anderson took that  
2 150 thousand, added 20 thousand of her own,  
3 and made a 170 thousand dollar loan to the  
4 committee?

5 A. No, I just know what was reported.

6 Q. So, Mr. Cort never told you these  
7 underlying facts, did he, that in fact Janise  
8 Dawson knew all of the underlying facts  
9 concerning these transactions? Did Mr. Cort  
10 ever tell you that?

11 A. Mr. Cort provided me with  
12 hypotheticals.

13 Q. No sir. I asked you a question,  
14 capable of a yes or no answer. Did Mr. Cort  
15 tell you that Janise Dawson knew all the  
16 underlying facts as the treasurer concerning  
17 these transactions?

18 A. No, sir.

19 Q. Did you ask Mr. Cort what did the  
20 treasurer know at this point?

21 A. I don't believe so, no.

22 Q. Would it have been important for you  
23 to know what the treasurer knew or didn't  
24 know?

25 A. Sure.

1 Q. Would it have been important for you  
2 to know whether all of these underlying facts  
3 had been communicated to the treasurer?

4 A. Yeah.

5 MR. NEWMAN: May I have a  
6 moment, your Honor, to talk to my brain  
7 trust?

8 THE COURT: Certainly.

9 MR. NEWMAN: The advice I received  
10 I will follow, I'm sitting down.

11 THE COURT: I'll resist the  
12 temptation.

13 REDIRECT EXAMINATION

14 BY MR. CORT:

15 Q. Would the fact that Janise Dawson  
16 knew the underlying transactions, knew about  
17 the underlying transactions, would that have  
18 changed any of your answers you had given on  
19 direct examination?

20 A. I don't know how to respond to that  
21 question, because they were very specific  
22 responses, so --

23 Q. Would it have changed my last  
24 questions for you when I was showing you the  
25 chart, would it have changed when the

1 contribution occurred?

2 A. No, sir.

3 Q. Would it have changed who the  
4 contributor was?

5 A. No.

6 Q. And would it have changed -- let me  
7 look at my last question. Would it have  
8 changed anything about the contributor's and  
9 candidate's obligation as to the one hundred  
10 thousand dollars?

11 A. No sir. To add on that question,  
12 subsequent to my testimony this morning in  
13 response to the questions from the defense  
14 concerning the applicability of the section  
15 14, 109 sub three --

16 MR. NEWMAN: There is no question.

17 THE COURT: Please, just wait for  
18 a question.

19 Q. What were the candidate's and  
20 contributor's obligations as to the one  
21 hundred thousand dollars?

22 A. The hundred thousand dollars would  
23 be a contribution from Mr. Rubenstein to the  
24 committee and should have been reported as  
25 such.

1 Q. Taking a look at, if I could just  
2 have that projected. What I'm talking about  
3 is 14, 100 sub nine sub three if you can cull  
4 out the first three.

5 Mr. Hafetz had asked you  
6 about that subdivision three and the fact that  
7 none of the foregoing shall be deemed, it is  
8 in the middle of the section, it says none of  
9 the foregoing shall be deemed a contribution  
10 if it is made or taken or performed by a  
11 candidate or his spouse?

12 A. Correct.

13 Q. Does that relate to just subdivision  
14 three?

15 A. Yes, I believe I misspoke this  
16 morning when I was asked specifically the  
17 application of that provision of the law. And  
18 I apologize to the Court because I was tired  
19 and I have been up here for quite some time.

20 But, in going back and  
21 reading the statute in the context of each  
22 provision, the provided however language  
23 applies specifically just to three and not to  
24 subdivisions one and two.

25 Q. By the way, you and I have not

1 spoke; is that right, since before your  
2 testimony this morning?

3 A. Not in the least.

4 Q. I didn't even see you during the  
5 lunch hour; is that right?

6 A. No, sir.

7 Q. So, if you can pull out that first  
8 one, nine, sub one. So, is that limited by,  
9 when it refers to none of the foregoing shall  
10 be deemed a contribution that is made, taken,  
11 or performed by a candidate?

12 A. Correct, one stands alone as does  
13 two then three stand alone as well.

14 Q. So, the payment is the only thing  
15 that is limited by --

16 MR. NEWMAN: Objection to the form  
17 of the question as leading.

18 MR. CORT: I'm not -- is the  
19 payment --

20 THE COURT: I'll overrule the  
21 objection, go ahead.

22 A. Can I, sorry, can I have a copy of  
23 the statute?

24 THE COURT: Here is my copy.

25 Q. Is that, is the made, taken, or

1 performed by a candidate, does that limit the  
2 contribution in any way, the gift,  
3 subscription, or outstanding loan section in  
4 any way?

5 A. The language in sub three after the  
6 semicolon applies to the information in sub  
7 three, not into sub one. To do otherwise is  
8 incongruous with the Election Law.

9 Q. Now, Mr. Hafetz had showed you the  
10 disclosure report for, not the disclosure  
11 report, the campaign, the handbook of  
12 instructions for campaign financial disclosure  
13 for 2007, and that is Seth Rubenstein Exhibit  
14 D. Let me get you a page so you can find  
15 that. Go to page three.

16 A. Would I be able to have that.

17 Q. Yes, I'll get that for you in a  
18 moment. Page three, can you pull out the top,  
19 that is the 2007.

20 This 2007 report is the one  
21 that you weren't sure, no, let me withdraw  
22 that.

23 Just as to, I need to get  
24 you a copy. I'm handing you what is Defendant  
25 Rubenstein Exhibit D, I'll give it to you

1 temporarily, but I would like it back.

2 ( Handed to witness).

3 A. Correct.

4 Q. Is that limitation after the  
5 semicolon, is that in that 2007 handbook?

6 A. Yes, it is in sub three of the  
7 definition.

8 Q. I'm referring to on page three.

9 A. Correct.

10 Q. Is the taken there, the word taken

11 --

12 A. No, sir --

13 MR. CORT: Just one moment.

14 Q. That is the 2007 handbook; is that  
15 right?

16 A. Yes, sir.

17 Q. I'm going to take that back from  
18 you.

19 (Continued on next page by  
20 Frank Rizzo.)

21

22

23

24

25

1 Q. Just to talk about 14-120.

2 A. Yes, sir.

3 Q. Which is campaign contribution to  
4 be under true name of contributor?

5 A. Right.

6 Q. You had said that -- on  
7 cross-examination -- pull up 14-120,  
8 campaign contribution.

9 MR. CORT: I'm handing him the  
10 State of New York 2009 Election Law.

11 A. Yes, sir.

12 Q. You had on cross-examination, you had  
13 said both -- something about contributor  
14 and the word -- let me try to formulate a  
15 question.

16 Does that section refer to a  
17 contribution?

18 A. 14-120 is entitled Campaign  
19 Contribution to be under the true name of  
20 the contributor.

21 Q. And has it been interpreted more  
22 broadly than just payment?

23 MR. HAFETZ: Objection.

24 Interpreted by whom?

25 THE COURT: Sustained.

1 Q. Has the Board of Elections in its  
2 opinions interpret it to mean more than  
3 just opinion?

4 A. In a formal opinion, no.

5 Q. Let me show you a summary of--

6 MR. HAFETZ: Judge, can we  
7 approach the bench?

8 THE COURT: All right.

9 (Whereupon, the attorneys  
10 approached the sidebar for a discussion  
11 out of the hearing of the jury and off  
12 the record).

13 Q. Do you recall if The Board of  
14 Elections has ever issued an opinion  
15 regarding this section?

16 A. Board of Elections issues a lot of  
17 opinions. I can't recall specifically if  
18 there is one on this.

19 Q. Let me show this to you and see if  
20 it refreshes your recollection.

21 I'm going to put a post it  
22 right where I'm trying to point to.

23 THE COURT: This is to see  
24 whether it refreshes your recollection.  
25 We are not asking you to read it.

1 THE WITNESS: I understand. It  
2 refreshes my recollection as to one  
3 aspect of determining a contributor.

4 Q. What is that?

5 A. As to who you would deem to be a  
6 contributor.

7 MR. HAFETZ: I did not hear.

8 THE COURT: As to who you would  
9 deem to be a contributor?

10 A. Yes.

11 THE COURT: What is your  
12 recollection of the Board's opinion.

13 THE WITNESS: This is applying  
14 as to a previous position --

15 MR. NEWMAN: Your Honor, he is  
16 got the document in front of him.

17 THE COURT: The question is do  
18 you have some knowledge or don't you. We  
19 are not asking you to read something  
20 that is not in evidence.

21 THE WITNESS: I don't have a  
22 specific recollection.

23 Q. I'll take that back.

24 When Mr. Hafetz was asking you  
25 questions you talked about the context of

1 the word contributor. What did you mean  
2 by that.

3 MR. HAFETZ: Objection. I asked  
4 him the context of the actual -- I  
5 asked for the text of the actual  
6 language.

7 THE COURT: I think you are  
8 going to have to refer to a particular  
9 question. I'm not sure what you're  
10 asking.

11 Q. Is there a statute that refers to  
12 contribution?

13 A. 14-120?

14 Q. Yes.

15 A. Yes, it does.

16 Q. Where?

17 A. In the heading.

18 Q. And what about in the second  
19 subdivision?

20 A. In the second subdivision I don't  
21 know.

22 Q. Subdivision Two.

23 A. Yes, it does.

24 Q. Based on your understanding does  
25 this payment talk about, in 14-120 Sub

1 One, refer back to only the payment in the  
2 definition of contributor?

3 A. No, sir.

4 Q. And why not?

5 A. I think in the context of 14-120  
6 it's clear that they're talking about  
7 contributions. They're not limiting it to  
8 the word payment and have it only go back  
9 to the specific reference of payment in  
10 Section 14 Sub 109, otherwise you wouldn't  
11 have to call the section what it is.

12 Q. Just to -- if you could just put up  
13 that demonstrative regarding Smith.

14 Just to talk about LLC's for a  
15 moment. You had said that the legislature  
16 proposal regarding LLC's was unnecessary;  
17 is that right?

18 A. Correct.

19 Q. For what reason in your opinion  
20 was the legislative proposal regarding  
21 LLC's unnecessary?

22 A. Because the premise of 14-10 is  
23 that the contribution has to be in the  
24 true name of the contributor. The purpose  
25 of that section goes back to a fundamental

1 tenure of Election Law. The first is the  
2 disclosure. So you have informed the  
3 electorate as to who's contributing, et  
4 cetera. And secondly the government has a  
5 right to determine whether or not  
6 contribution limits have been met or  
7 exceeded. If you don't know who the true  
8 name of the contributor is, and if someone  
9 uses an LLC to hide a contribution, LLC's  
10 in and of themselves can give  
11 contributions, they give them, subject,  
12 according to the Board opinion, up to the  
13 limit of an individual, but it is still,  
14 at the end of the day, has to be its  
15 money.

16 The true name of the  
17 contributor provision applies to the LLC  
18 and to any other contributor. So if any  
19 contributor makes a contribution and  
20 provides it to the candidate and the  
21 Committee, and the Committee disposes it,  
22 the Committee would take that information  
23 on its face absent of some other  
24 information, so in the case of a candidate  
25 or a Committee taking a contribution from

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1 the LLC, they can take it, the LLC is  
2 entitled under the law to make its own  
3 contribution and have it reported as such.

4 If someone takes money, and I  
5 don't disagree with the defense there is  
6 abuse of an LLC to make contributions.  
7 Just because people use it doesn't make it  
8 improper.

9 Q. Let me ask you a question using  
10 this demonstrative.

11 A. Yes.

12 Q. If someone gave money to an LLC,  
13 someone put money into an LLC in  
14 connection with an election, let's say 30  
15 thousand dollars, and the LLC then gives  
16 the candidate 30 thousand dollars, who is  
17 the contributor?

18 A. It would be the person who --  
19 where the funds originated from.

20 Q. And how should it be reported?

21 A. Well, again, it's the perspective  
22 of who you're asking. If the Committee  
23 only knows it got a check from the LLC  
24 it's going to report it from the LLC.

25 At the end of the day,

1 14-120 means that you can't hide  
2 contributions. Where did the money come  
3 from? What's the true name of the  
4 contributor. If Bill McCann as an LLC, or  
5 even differently, I'm Bill McCann, I can  
6 make contributions to campaigns in a  
7 political committee subject to their  
8 limits and subject to my aggregate 150  
9 thousand dollar limit. If I setup an LLC  
10 for the sole purpose to take money out of  
11 my pocket so the LLC gets it that is the  
12 true name of the contributor --

13 Q. That's the true name or a  
14 violation?

15 A. That's why you have this  
16 provision. The provision says you have to  
17 expose the true name of the contributor.  
18 If I don't know who the true contributor  
19 is the government can't apply a limit. The  
20 public doesn't know where the money came  
21 from. If someone uses an LLC to subterfuge  
22 or undermine a contribution limit so you  
23 don't know where it came from, that will  
24 be a violation of the people who did it,  
25 not the people who got it, it is what

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1 people did and what people know. It's not  
2 their job to go to the LLC and say where  
3 did you get the money? They take it on  
4 their face. The government then relies on  
5 that information to administer the  
6 electoral process. The public relies on  
7 that information to determine who's  
8 influencing elections.

9 To go back to your question  
10 there are already provisions in the  
11 Election Law that cover the issue who's  
12 the contributor. And if you try to do  
13 something or you do something to not  
14 disclose where the money came from, I  
15 already have a provision, I don't need  
16 something to say what's illegal is already  
17 illegal.

18 Q. Let me give you another  
19 hypothetical.

20 If two individuals, A and  
21 B, are owners of a joint account, if  
22 individual A funds that joint account and  
23 is the sole source of the funds, and  
24 Individual A funds -- there's a hundred  
25 thousand dollars in the joint account.

1           A.     Okay.

2           Q.     And if that money -- and the  
3 hundred thousand was put in by A into the  
4 joint account in connection with an  
5 election.    Okay?

6                     However, individual B signs  
7 the check, who is the contributor?

8           A.     Well, the contributor -- well,  
9 depends from whose perspective.

10                    If I'm the recipient -- if  
11 I'm the Committee or a candidate and I get  
12 a check, it's a joint check, I get a check  
13 from a contributor and it says Jane and  
14 John Doe X dollars and it's signed by John  
15 Doe I'm going to accept that as a  
16 contributions from John Doe. I'm not  
17 going to go and say where did the money  
18 come from. But there are other ways-- the  
19 fact that John Doe, by the way, signed the  
20 check doesn't -- someone who is a member  
21 of a joint account can sign a check and  
22 not be the contributor.

23                    For instance, in the memo  
24 section you can write contribution from  
25 Jane Doe. Okay. The language in the

1 handbook, if I recall, says you take it as  
2 being the person who signed the check  
3 absent any other available information,  
4 meaning if you have reason to know that it  
5 is not the signer and it is someone else,  
6 if I wrote a contribution check and I'm on  
7 it and my wife is on it but it's me, the  
8 Committee will say it is from me.

9           If she signs the check then  
10 in the memo section it will say it is from  
11 me.

12           Again, there is more than  
13 one-way to have that information conveyed.  
14 But the recipient who gets the check,  
15 absent any other information, they can  
16 rely on the check, it's a joint check, who  
17 signed the check they would be the  
18 contributor absent any other available  
19 information.

20           Q.    If the Board of Elections were to  
21 go back and go deeper who would be the  
22 contributor?

23           A.    Assuming we had a reason to and  
24 undertook an investigation and ascertained  
25 that it would be where the money came

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1 from. In your example it would be person  
2 A.

3 Q. If you can project Defendant  
4 Rubenstein D. I'm referring to the 2007  
5 handbook of instructions. Page 22. Can you  
6 cull out number one.

7 Let me hand up to you -- let  
8 me hand that up to you. Can you cull out  
9 the title as well.

10 What does the first  
11 paragraph reading this statement must be  
12 filed by a candidate who has authorized a  
13 Committee to run their Committee and who  
14 will not raise or spend any monies except  
15 through the authorized Committee.

16 And then the second paragraph.  
17 What do those refer to?

18 A. Well, again, the obligations to  
19 disclose the finances of the campaign and  
20 all the monies raised and spent on the  
21 campaign resides first and foremost in the  
22 candidate, unless the candidate has an  
23 authorized political committee and  
24 authorized that Committee to make the  
25 disclosures.

1 Q. So if the candidate raised or  
2 spends money outside of their authorized  
3 Committee what is the candidate required  
4 to do?

5 A. Well, that's fine. They would  
6 make their own separate campaign financial  
7 disclosures in addition to those filed by  
8 the Committee. But it would also  
9 presuppose they didn't file the CF-16  
10 statement which says that they're not  
11 going to do that.

12 Q. And if they did, if they did file  
13 a CF-16 it would be reported through the  
14 Committee?

15 A. Absolutely.

16 MR. CORT: I think I'm going to  
17 sit down.

18 THE COURT: Mr. Hafetz.

19 MR. HAFETZ: Yes.

20 RECROSS EXAMINATION

21 BY: MR. HAFETZ:

22 Q. Mr. Cort just asked you about, on  
23 redirect examination, Section 100.9,  
24 definition section of contribution.

25 A. Yes, sir.

1 Q. Can we put that up on the screen?

2 A. Could I have a copy of that? I  
3 had a copy but I think the Court Officer  
4 took my file.

5 .  
6 THE COURT: You got it.

7 THE WITNESS: Thank you.

8 Q. If we could put that up in the  
9 meantime, 100.9. Thank you.

10 You have the section, Mr.  
11 McCann?

12 A. Yes, sir.

13 Q. And if we could look at the text  
14 of the statute. There's a Subdivision One,  
15 Two and Three, and am I correct the text  
16 states in there, in 100.9 Sub 3, the  
17 actual text states, that none of the  
18 foregoing shall be deemed a contribution  
19 if it is made, taken or performed by  
20 candidate. Correct?

21 A. The information in Sub Paragraph  
22 3, correct.

23 Q. You say the information. That's  
24 the text. That's the statute, correct?  
25 It's not Bill McCann's opinion, it's the

1 statute, right?

2 A. Well, it's the statute but I'm  
3 also an attorney at law --

4 THE COURT: Let's just start  
5 again. The only question was is whether  
6 that language was in Subdivision 3 of  
7 the statute.

8 THE WITNESS: Yes it is.

9 Q. You offered an opinion when Mr. Cort  
10 was asking you questions, correct, sir?

11 A. Yes.

12 Q. But your opinion is not inscribed  
13 in the statute, is it, sir?

14 A. Yes, it is.

15 Q. Your opinion is in there, Bill  
16 McCann's --

17 THE COURT: I think he means  
18 his opinion is based on the statute.

19 Q. But the language of the statute is  
20 what the statute says, provided none of  
21 the foregoing should mean a contribution  
22 if it is made, taken or performed,  
23 correct?

24 A. Yes, it is in Subsection 3.

25 Q. And the handbook, if we take a

1 look at page five, that is Rubenstein LL.  
2 We can put that up. Blowup the top one  
3 half up to the first bulletin.

4 And the handbook is prepared  
5 by the Board of Elections; am I correct,  
6 sir?

7 A. It is, sir.

8 Q. And you participate in preparing  
9 that; am I right, as a member of the  
10 staff?

11 A. I do, yes.

12 Q. And it is prepared with care; am I  
13 correct?

14 A. Yes, sir.

15 Q. And the language is important, am  
16 I correct?

17 A. Yes.

18 Q. And the placement of the language  
19 is important; am I correct?

20 A. It is.

21 Q. And this is put out to the public;  
22 am I correct?

23 A. Yes.

24 Q. And it is a guide for filing  
25 disclosure statements; am I correct?

1 A. Yes, it is.

2 Q. And is it not clear as day that at  
3 the bottom there, which says note, none of  
4 the foregoing is a contribution if it is  
5 made, taken or performed by a candidate or  
6 that candidate's spouse. That is separated  
7 out and follows along the first three  
8 paragraphs; am I correct?

9 A. You are correct.

10 Q. This is the way it is placed by  
11 the Board of Elections, right, sir?

12 A. Yes.

13 Q. And that is done with care and  
14 with deliberation and with determination  
15 by the Board of Elections; am I correct,  
16 sir?

17 A. It is.

18 Q. It does not say there that none of  
19 the foregoing was a contribution made or  
20 taken by a candidate, it doesn't say this  
21 just applies to the last subsection; is  
22 that correct sir?

23 A. The handbook is incorrect.

24 Q. What did you say, the handbook is  
25 incorrect?

1 A. It is.

2 Q. So the Board of Elections is  
3 putting out information for reliance by  
4 people who file disclosure statements;  
5 that's incorrect, right, sir?

6 A. Unfortunately, yes.

7 Q. And we have a prosecution which  
8 evolved by the king and queen of finance  
9 law; am I correct, sir?

10 MR. CORT: Objection.

11 THE COURT: Sustained.

12 Q. We take a look at the handbook for  
13 2009. That's Rubenstein MM, page 23.  
14 Blowup the left hand column and just the  
15 top of the right.

16 Let's do the left first.

17 Contributions. Definitions.  
18 It says the word definitions, doesn't it?

19 A. It does.

20 Q. And this is an official  
21 publication promulgated by the agency in  
22 New York State in charge of administering  
23 the campaign finance law, right, sir?

24 A. Yes, sir.

25 Q. Of which you are a member of the

1 staff, a high ranking member, right?

2 A. Yes, sir.

3 Q. And under the section in  
4 definitions it talks in Sub One about any  
5 gift or loan, correct, sir?

6 A. Yes, sir.

7 Q. And then it goes on to Sub Two and  
8 Sub three talks about payments, correct?

9 A. Yes, sir.

10 Q. And then can we go to the very  
11 next thing there. And then the very next  
12 thing, big as life in bold letters,  
13 separated out from those three paragraphs  
14 is the statement, None of the foregoing is  
15 a contribution if it is made, taken or  
16 performed by the candidate; am I correct,  
17 sir?

18 A. You are.

19 Q. So once again, two years running,  
20 the Board of Elections put out this same  
21 information, correct?

22 A. It did.

23 Q. And am I correct, sir, that during  
24 the meetings of the Board of Elections in  
25 2008 they would talk about the need to be

1 careful with the wording that they use  
2 because it was important for the public,  
3 because the public would rely upon this,  
4 right?

5 MR. CORT: Objection.

6 THE COURT: Well, was that  
7 discussion had?

8 THE WITNESS: I don't know if  
9 the Board had that discussion.

10 Q. But you know that that was the  
11 attitude with which they approached it?

12 THE COURT: Objection  
13 sustained.

14 Q. Did they approach the assignment with  
15 care and deliberation in terms of putting  
16 out these words, sir?

17 A. Yes, sir.

18 Q. They were not attempting to do a  
19 sloppy job?

20 A. No.

21 Q. They were choosing those words  
22 carefully, right, sir?

23 A. Yes.

24 Q. How many people on that Board of  
25 Elections? How many people on the staff?

1 A. About 65.

2 Q. How many attorneys?

3 A. Four in that capacity.

4 Q. Pardon me?

5 A. Four attorneys.

6 Q. And they got a look at the  
7 handbook, reviewed it?

8 MR. CORT: Objection.

9 THE COURT: You have personal  
10 knowledge of this?

11 THE WITNESS: Yes.

12 THE COURT: You can answer.

13 THE WITNESS: Two attorneys.

14 Q. Attorneys in charge of administering  
15 the Election Law, Campaign Finance Law and  
16 two years in a row this is the information  
17 they printed on their interpretation of  
18 what a contribution is, correct, sir?

19 A. Yes, sir.

20 Q. All right. Can we show Section 120  
21 on the screen, please.

22 Mr. Cort asked you some  
23 questions about Section 120. Can we blowup  
24 the-- in fact can we do the first and  
25 second paragraphs. Blowup paragraph two as

1 well.

2                   The heading of that statute  
3 says, Campaign contribution under true  
4 name, correct, sir?

5       A.    Yes, sir.

6       Q.    All right. And as you stated  
7 earlier, the first paragraph does not use  
8 the word contribution, am I right?

9       A.    Correct.

10      Q.    And this is the legislature,  
11 right? This is the law passed by New York  
12 State; am I right? This is the actual  
13 text of the statute that we're looking at,  
14 the governing statute?

15      A.    Yes.

16      Q.    Not even the Board of Elections,  
17 it is the legislature that passed the law?

18      A.    Yes.

19      Q.    And the word they used in the  
20 text, Paragraph One, does not say  
21 contribution, correct?

22      A.    Correct.

23      Q.    And Mr. Cort pointed out that in  
24 Paragraph Two the word contribution is  
25 used; am I right?

1           A.     Right.

2           Q.     So it appears the legislature knew  
3 how to use the word contribution in the  
4 text when they wanted to use the word  
5 contribution, correct?

6                     MR. CORT: Objection.

7                     THE COURT: I'll sustain the  
8 objection.

9           Q.     The word contribution appears in  
10 paragraph two but does not appear in  
11 paragraph one, correct, sir?

12          A.     Correct.

13          Q.     And paragraph one is the paragraph  
14 that you're relying or cited in talking  
15 about putting in the name of the source of  
16 the funds, correct?

17          A.     You have to read both provisions  
18 of the statute together: Subdivision two  
19 says notwithstanding subdivision one, a  
20 partnership may be considered a separate  
21 entity for the purpose of the section and  
22 as such may make contributions in the name  
23 of said partnership without attributing  
24 such partnership to the individual members  
25 of the partnership. Two ties specifically

1 with one. It is clear in my mind that  
2 14-120 Sub One applies to contributions  
3 and not just payments.

4 Q. Is Bill McCann's opinion published  
5 on this?

6 A. No, sir.

7 Q. Did you contact Janice Dawson in  
8 2008 and give her Bill McCann's opinion?

9 MR. CORT: Objection.

10 THE COURT: Sustained.

11 Q. And I believe Mr. Cort on redirect  
12 examination showed you a book with some  
13 paragraph citation and he asked about an  
14 opinion of the Board of Elections; am I  
15 correct, sir?

16 A. Yes, sir.

17 Q. He did not show you the opinion of  
18 the Board of Elections?

19 A. Sort of.

20 Q. He placed something before you?

21 A. I don't think I opined about the  
22 opinion or answered any questions about it.

23 THE COURT: Counsel, if the  
24 witness needs to be shown something to  
25 refresh his recollection that is not in

1 evidence, so questions about it are not  
2 proper.

3 Q. You took a look at it and did it  
4 refresh your recollection as to whether  
5 there is any opinion that you ever seen  
6 for the Board of Elections that defines  
7 the section as you say, sir?

8 A. No, sir.

9 Q. And this statute -- withdrawn.

10 Mr. Cort -- by the way can we  
11 just put on the screen the 2007 handbook  
12 which I believe is Rubenstein Exhibit D.  
13 And we can show page 36 on that point.

14 We can just blowup the top  
15 half for a minute and get the heading.

16 These are the instructions; am  
17 I correct, for filling out the schedule  
18 for the disclosure form for monetary  
19 contributions to the campaign; am I  
20 correct, sir?

21 A. Yes.

22 Q. And can we just go a little bit  
23 below that where it says Schedule A.  
24 Blowup that sentence.

25 It says, am I correct,

1 Schedule A is used to report all monetary  
2 contributions from individuals, relatives  
3 and partnerships. Funds received from  
4 candidates are also reported on this  
5 schedule. Correct, sir?

6 A. Yes, sir.

7 Q. And you are aware that the  
8 Committee received funds from Nora  
9 Anderson in the form of a 100 thousand  
10 dollar check and in the form of a 150  
11 thousand dollar loan, correct, sir?

12 A. Yes, sir.

13 Q. And that was reported on Schedule  
14 A as from Nora Anderson, correct, sir?

15 A. As to the 100 thousand.

16 Q. And the loan was reported as 150  
17 from Nora Anderson, correct?

18 A. Yes. But not on the Schedule A.

19 Q. And the instructions here say on  
20 this form funds received from candidates  
21 and their spouse are also reported on this  
22 schedule. Correct, sir?

23 A. Yes, sir.

24 Q. So Schedule A reported, in this  
25 case, the funds that were received from

1 Nora Anderson, correct, sir?

2 A. Yes.

3 Q. Okay. And under these  
4 instructions, I'm talking about these  
5 instructions here promulgated by the New  
6 York State Election Board in the handbook  
7 of 2007, page 36, this was the correct way  
8 to report those funds on Schedule A,  
9 correct, sir?

10 MR. CORT: Objection.

11 THE COURT: Can you answer the  
12 question?

13 THE WITNESS: No.

14 Q. You can't answer the question?

15 THE COURT: If the question  
16 was, is that the correct way to report  
17 funds that were contributed by the  
18 candidate that would be right?

19 A. Yes, that would be right.

20 Q. The actual words say Schedule A,  
21 quote, "Funds received from the candidates  
22 and spouses are also reported on the  
23 schedule". Correct?

24 A. Yes.

25 Q. And the funds from\* Nora Anderson

1 were reported on Schedule A as from Nora  
2 Anderson; am I correct?

3 A. Yes, sir.

4 Q. So that is a correct statement,  
5 correct, sir?

6 A. It's a statement that the  
7 Committee is saying that it got the funds  
8 from Nora Anderson. That would be correct.

9 Q. Funds received from Nora Anderson?

10 A. Yes.

11 Q. That's a correct statement, they  
12 received the funds from Nora Anderson,  
13 correct, sir?

14 A. The Committee did, yes.

15 Q. And the Committee is filing the  
16 disclosure report, correct? Yes or no.

17 A. Yes, sir.

18 Q. Now Mr. Cort asked you questions  
19 with regard to the LLC's and Section 120  
20 of the statute.

21 A. Yes, sir.

22 Q. And I believe -- am I correct,  
23 sir, that over the years the-- while you  
24 were with the New York State Board of  
25 Elections, the New York State Board of

1 Elections knew of and discussed  
2 continuously that there were loopholes in  
3 the campaign finance statute regarding  
4 LLC's?

5 MR. CORT: Objection.

6 THE COURT: I'll permit the  
7 question as to whether or not the Board  
8 discussed the use of LLC's proper or  
9 otherwise.

10 A. The problem I have is with the  
11 statement that it's a loophole.

12 THE COURT: That's why I  
13 rephrased the question.

14 Q. Well, did they discuss, the Board of  
15 Elections discuss, to your knowledge, the  
16 fact that there needed to be changes in  
17 the statute with respect to -- to cover  
18 situations -- just a moment.

19 The Board of Elections in the  
20 minutes did not use the word loopholes  
21 when they talked about LLC and problems  
22 with the statute?

23 A. I don't have a recollection.

24 MR. CORT: Your Honor, I object  
25 to this.

1 THE COURT: I'll wait for a  
2 question.

3 MR. HAFETZ: May I just have  
4 one minute.

5 THE COURT: Yes.

6 Q. Mr. McCann, do you recall a  
7 discussion in January of 2008 regarding  
8 the New York State Election Board  
9 discussing LLC loopholes and proposed  
10 legislation addressed to those loopholes?

11 A. No.

12 Q. You're not saying that no  
13 discussion took place about that, right?

14 A. I'm saying I can't recall.

15 Q. Again, there is no Board of  
16 Elections opinion that states, and we will  
17 just put the first slide on the board,  
18 please.

19 There is no Board of  
20 Elections opinion that says that this  
21 cannot be done, correct, sir?

22 THE COURT: I'm sorry. That  
23 what cannot be done?

24 Q. Joe Smith funds an LLC with 30  
25 thousand dollars and the LLC then gives 30

1 thousand dollars to the campaign committee  
2 and the disclosure statement lists the LLC  
3 as the contributor. There's no Board of  
4 Election opinion that says that that is an  
5 improper disclosure statement, correct,  
6 sir?

7 A. From whose standpoint.

8 Q. Pardon me?

9 A. From whose standpoint. The  
10 Board --

11 THE COURT: The question if an  
12 LLC contributes to a campaign and  
13 receives the money from an individual.  
14 I guess the first question is, is it  
15 within the rules of the committee for  
16 that contribution coming from the LLC.

17 MR. HAFETZ: No my question is,  
18 your Honor, is there any opinion that  
19 states that that practice of an  
20 individual funding an LLC and then the  
21 LLC then giving money to the campaign  
22 and the campaign committee disclosing  
23 that as a contribution from the LLC  
24 without listing the individual who  
25 funded the LLC, is there any opinion

1           that states that that's improper. Yes or  
2           no.

3           A.     No.

4           Q.     And I believe you testified on  
5           cross-examination that there was pervasive  
6           publicity in the newspapers about that  
7           practice going on, correct, sir, wasn't  
8           that your testimony?

9                         MR. CORT: Objection.

10                        THE COURT: I'm not sure he  
11           used that word but there was some  
12           discussion about that practice.

13                        THE WITNESS: Sure.

14           Q.     In fact you used the word pervasive,  
15           did you not Mr. McCann?

16           A.     I can't recall.

17           Q.     And with all of that publicity  
18           going on in all of those years and with  
19           the Board of Elections having a full  
20           opportunity to address that in an opinion  
21           to say it is improper did any opinion ever  
22           issue to say that that was improper?

23           A.     No, sir.

24           Q.     Mr. Cort asked you some questions  
25           with respect to joint accounts.

1                   May we show on the screen  
2 the 2008 handbook. That's Rubenstein's  
3 Exhibit LL, and can we look at page 37.  
4 The section joint contributions. Blowup  
5 that paragraph, please.

6                   This is from the 2007  
7 handbook, sir.

8           A.     Yes, sir.

9           Q.     And it states; am I correct, check  
10 drawn on joint account -- checks drawn on  
11 a joint account are assumed given by the  
12 signatory, paren, (the person who signed  
13 the check).

14                   Am I correct, sir?

15           A.     Yes, sir.

16           Q.     There is nothing about prohibiting  
17 someone from putting the funds into a  
18 joint account and someone else being the  
19 signatory, is there, sir?

20           A.     No.

21           Q.     And the proper way to report that,  
22 as stated in this handbook, that  
23 situation, where someone funds the joint  
24 account, the situation with a joint  
25 account, but the check is drawn by someone

1 who put no money in, the proper way to  
2 report that is in the name of the  
3 signatory, correct?

4 A. It says contribution is to be  
5 attributed to joint account members, and  
6 all the names in addition to the  
7 signatory, and the specific amount  
8 attributed to each contributor on the  
9 joint account must be indicated.

10 Q. Read the rest of the sentence.

11 A. It says reported in the check and  
12 the attached letter.

13 Q. However, the contribution is to be  
14 attributed to multiple joint account  
15 holders, then all of the names, in  
16 addition to the signatory, and the  
17 specific amount attributed to each  
18 contributor on the joint account must be  
19 indicated in the memo portion of the check  
20 and/or the attached letter.

21 A. Right.

22 Q. However, if the check does not say  
23 it is from all of them on the memo  
24 section, then it gets reported as coming  
25 from the signatory, correct, sir?

1 A. Yes, sir.

2 Q. Even though all of the money was  
3 put in there by someone else, correct,  
4 sir?

5 A. We're accepting the check on its  
6 face.

7 Q. And if you go back to -- we can  
8 look at handbook 2007, page 36 again, the  
9 middle of the page. I'm sorry, the heading  
10 again.

11 Monetary contributions,  
12 individual partnerships, Schedule A. The  
13 instructions for Schedule A. And if we  
14 look at the middle again of Schedule A,  
15 just that bold sentence, the bold letters,  
16 if you can highlight that and we can  
17 blowup it up.

18 These are the instructions,  
19 right? Schedule A is used to report all  
20 monetary contributions from individuals,  
21 relatives and partnerships. Funds received  
22 from candidates and their spouse are  
23 reported on the schedule.

24 So that an account that is  
25 funded buy one person, but the money is

1 drawn, the check is drawn in the name of a  
2 different person, the signatory, these are  
3 the instructions of the true and accurate  
4 and correct way to report this on the  
5 disclosure statement, correct.

6 MR. CORT: Objection.

7 THE COURT: I'll sustain it to  
8 the form of that question.

9 Q. The correct way to report that,  
10 pursuant to the instructions on the screen  
11 here, is in the name of the person giving  
12 the funds to the Committee, correct?

13 THE COURT: Can you answer it?

14 THE WITNESS: Who was the  
15 check from in the first place? I mean I  
16 don't know what check -- I'm trying to  
17 put myself -- and I want to ask you a  
18 question. I'm trying to put myself in  
19 the context of who and when. This says  
20 what it says. The other thing says what  
21 it says. If you get a check and it is  
22 more than one person on the check the  
23 presumption is the person who signs it,  
24 it is their money, and the person would  
25 list it as a contribution to them. If

1           you want to attribute to more than one  
2           person you have to tell us.

3           Q.     I'm not asking about -- is Bill  
4           McCann's assumptions enshrined in the  
5           statute?

6                         MR. CORT: Objection.

7                         THE COURT: Objection  
8           sustained. We have gone over this  
9           before. Unless you have another question  
10          we are just about done.

11          Q.     Does that assumption appear in what  
12          we read here on the instructions in  
13          filling out Section 5, sir?

14          A.     I don't think you are talking  
15          about same thing. That is my concern.

16                         THE COURT: The question is  
17          only based on what's on the screen  
18          there. Now --

19          A.     That says you have to report  
20          contributions from individuals, relatives  
21          and partnerships and funds received by the  
22          candidate and their spouse are reported on  
23          the schedule. You are asking me --.

24                         THE COURT: A check on a joint  
25          contribution, it is assumed the

1 contribution of the signatory?

2 A. Right.

3 THE COURT: That's the  
4 assumption?

5 A. Yes. I don't know what this has to  
6 do with that. They are two separate  
7 things. This has to do --

8 THE COURT: What's your next  
9 question?

10 Q. Mr. Cort asked you some questions  
11 with respect to whether the committee has  
12 an obligation -- withdrawn. That in a  
13 situation in which a candidate files a  
14 CF-16, whether the Committee has an  
15 obligation to report funds raised by the  
16 candidate. Do you recall those questions  
17 that he asked you?

18 A. Yes.

19 Q. Okay. And he showed you 2007  
20 handbook, correct, sir?

21 A. Yes.

22 Q. Is there anything in the 2007  
23 handbook that states that the committee  
24 has the obligation to report the  
25 candidate's financial activities? Does it

1 say that? Yes or no, sir.

2 A. I don't recall.

3 Q. Pardon me?

4 A. I can't recall specifically the  
5 whole 2007 handbook.

6 Q. You have had approximately -- how  
7 long ago was the indictment?

8 MR. CORT: Objection.

9 THE COURT: Objection  
10 sustained.

11 MR. CORT: This has been asked  
12 and answered.

13 THE COURT: I already sustained  
14 the objection. What do you want me to  
15 do?

16 MR. CORT: Sorry.

17 Q. Mr. Cort directed you to one page --  
18 that's a multi page document; am I  
19 correct, sir?

20 A. Yes, sir.

21 Q. He directed you to one page, page  
22 22. Can we show that on the screen,  
23 please.

24 And I believe he directed you  
25 to -- do you have the handbook, sir?

1 A. I do not.

2 Q. Okay. Can I hand the witness the  
3 2007 handbook?

4 I hand you the 2007 handbook,  
5 and could you please take a look at the  
6 page that Mr. Cort showed you, page 22,  
7 and am I correct, sir, that that page of  
8 the handbook does not state that the  
9 Committee has the obligation to report  
10 monies raised by the candidate? Am I  
11 correct, sir.

12 MR. CORT: Objection. It's in  
13 evidence. It says what it says.

14 THE COURT: At this point I'm  
15 not sure the question is useful without  
16 looking at the exhibit. I'll just hear  
17 the question at this point.

18 Q. Mr. Cort asked you a question. I'm  
19 asking you question on recross about the  
20 specific page and the specific question  
21 that was asked on redirect examination.  
22 Can we focus on that, sir? Does that page  
23 say that the Committee has the obligation  
24 to report monies raised by the candidate  
25 where the candidate has filed a CF-16?

1 THE COURT: I'll permit it.

2 THE WITNESS: On that  
3 particular page, no.

4 Q. Can you point to any page --  
5 withdrawn. On redirect examination did Mr.  
6 Cort point you to any page in the 2007  
7 handbook --

8 THE COURT: I'm sorry. You are  
9 asking him what Mr. Cort pointed him to.  
10 I'm sustaining the objection.

11 Q. Can you point to any page in the 2007  
12 handbook that says that sir? Yes or no.

13 A. I have to review the handbook.

14 Q. And you have had over a year to  
15 review this handbook?

16 THE COURT: Objection  
17 sustained.

18 MR. HAFETZ: No further  
19 questions.

20 MR. NEWMAN: Your Honor, can I  
21 approach for a moment, Judge?

22 THE COURT: All right.

23 (Whereupon, the attorneys  
24 approached the sidebar for a discussion  
25 out of the hearing of the jury and off

1 the record.

2 THE COURT: Ladies and  
3 gentlemen, we're going to take a brief  
4 recess. We do have a little bit more to  
5 do this afternoon so we'll try to keep  
6 this as brief as possible. Please don't  
7 discuss the matter in the meantime.  
8 Leave your notebooks on the chairs and  
9 you many step into the jury room.

10 (Whereupon, the jury left the  
11 courtroom at 4:00 PM).

12 CONTINUED ON NEXT PAGE  
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1 THE COURT: All right, let's have  
2 the witness.

3 ( Witness enters courtroom).

4 COURT OFFICER: Jury entering.

5 ( Jury enters courtroom).

6 THE COURT: All right, ladies and  
7 gentlemen, thank you again. We are going to  
8 complete the testimony of Mr. McCann.

9 Mr. Hafetz has a couple of  
10 more questions.

11 MR. HAFETZ: Very brief.

12 Q. Mr. Cort on redirect examination  
13 showed you the handbook for 2007 with regard  
14 to the page and definition of contribution,  
15 and he pointed out it did not have the word  
16 taken, am I correct?

17 A. Yes, sir.

18 Q. But the statute, can we put that up,  
19 which is 100 point nine subsection three, the  
20 statute has the word taken, am I correct?

21 A. You are.

22 Q. The statute governs, am I correct,  
23 over the handbook?

24 A. Yes, sir.

25 Q. No question about that?

1 A. No question.

2 Q. The 2008 handbook and the 2009  
3 handbook, the definition of contribution had  
4 the statutory word taken, am I correct, sir?

5 A. I believe so.

6 MR. HAFETZ: Nothing further.

7 THE COURT: Mr. Newman?

8 RECROSS EXAMINATION

9 BY MR. NEWMAN:

10 Q. In response to a question by Mr.  
11 Hafetz which said, and am I correct sir, that  
12 during the meeting of the Board of Elections  
13 in 2008, they would talk about the need to be  
14 careful with the wording that they used  
15 because it was important for the public  
16 because the public would rely upon this,  
17 right, and I believe your answer sir was I  
18 don't know if the Board had that discussion,  
19 do you recall that sir?

20 A. Yeah, the Board of Commissioners or  
21 the Board as people that work there, I could  
22 not tell you that the board actually stated  
23 that.

24 Q. But your answer was sir, and I don't  
25 know if the Board had that discussion. I

1 would like you to take a look at a document  
2 that I marked for identification as NA-HH, N A  
3 standing for Nora Anderson.

4 THE COURT: Yes.

5 Q. I direct your attention sir to --  
6 well, I would like you to look at the cover  
7 page sir and tell me if you recognize it.

8 ( Handed to witness).

9 Q. Before you do, let me ask you some  
10 preliminary questions. Are the meetings of  
11 the board, do you attend some of the meetings  
12 of the board?

13 A. I do.

14 Q. Are the meetings of the board  
15 recorded?

16 A. They are.

17 Q. Now, I would like you to take a look  
18 at NA-HH.

19 A. Where it is tabbed?

20 Q. No sir, just look at the cover sheet  
21 first.

22 A. Okay.

23 Q. Do you recognize it?

24 A. I recognize what it says.

25 Q. As a result of recognizing what it

1 says, can you tell us what it is?

2 A. It says that --

3 Q. No, you cannot read from it.

4 THE COURT: Is this a document  
5 that you have ever seen?

6 A. I never seen it.

7 Q. But -- withdrawn. You have seen  
8 minutes of the board before?

9 A. Yes.

10 Q. And do you recognize that to be a  
11 copy of minutes of the board? Glance through  
12 it.

13 A. This is not minutes of the Board of  
14 Elections.

15 Q. Do you recognize that as a  
16 transcript of a meeting?

17 A. It appears to be.

18 MR. NEWMAN: I offer it, your  
19 Honor.

20 MR. CORT: I object.

21 THE COURT: That is not a  
22 sufficient foundation for this. I'll  
23 sustain the objection.

24 Q. Now sir, did the Board have  
25 meetings?

1 A. When?

2 Q. In 2008?

3 A. It did.

4 Q. Did it have a meeting on March 26,  
5 2008?

6 A. I don't recall specifically the  
7 date.

8 Q. Did it have monthly meetings, how  
9 often did it have the meetings?

10 A. I cannot recall for 2008, but it did  
11 have meetings.

12 Q. Having looked at it however, do you  
13 recognize that to be the minutes of a meeting  
14 held by the Board?

15 A. This is not the minutes of the State  
16 Board of Elections of any meeting that it had.

17 Q. Are they the minutes of a meeting of  
18 the board?

19 A. They are not minutes as I would call  
20 minutes, minutes.

21 Q. Do you recognize the names that are  
22 depicted on the front of the cover?

23 A. On the first sheet, yes.

24 Q. Do you recognize those names to be  
25 either members or employees of the Board of

1 Elections?

2 A. Both.

3 Q. And is your name mentioned on it?

4 A. Yes, sir.

5 Q. Now, would you look through it sir,  
6 not the entire thing, just glance through the  
7 pages and see if it in any way stimulates your  
8 memory in fact it is minutes of a meeting of  
9 the board?

10 A. These are not minutes.

11 Q. What would you call them, sir?

12 A. It says it is a transcript.

13 Q. Let me take the word minutes out.

14 Do you recognize this to be a transcript of a  
15 meeting of the Board of Elections?

16 A. I can actually say I have never seen  
17 literally a set of transcripts of a board  
18 meeting at the state board. But this is what  
19 it says it is.

20 Q. Do you know, sir, whether the board  
21 makes available on the internet on the website  
22 the minutes of their meetings -- withdrawn. A  
23 transcript of their meetings?

24 A. I believe it does.

25 Q. Have you ever had occasion to take

1 off any of the minutes, withdrawn.

2 Transcripts of the meetings?

3 A. No, I have not.

4 Q. So, you never seen a document like  
5 this before?

6 A. No, sir.

7 THE COURT: Mr. Newman, if there  
8 is something you want to ask him, assuming  
9 you are asking if he was present for some  
10 statement, you can just ask.

11 Q. Would you look, sir, at the page  
12 with the post-it on it, sir.

13 A. Yes sir.

14 Q. And read it to yourself and let me  
15 know when you are finished.

16 A. Okay.

17 Q. Having read it, sir, does it refresh  
18 your recollection that in fact during a  
19 meeting of the board, they talked about the  
20 need to be correct with the wording and each  
21 word means something different?

22 MR. CORT: Objection.

23 THE COURT: I'll hear the rest of  
24 the question, but it sounds like the form is  
25 going to be a problem.

1 Q. Sir, does it refresh your  
2 recollection concerning a discussion held at  
3 the board?

4 A. No, it does not.

5 MR. NEWMAN: I have no further  
6 questions.

7 MR. CORT: No further questions.

8 THE COURT: Thank you, very much.  
9 Thank you very much, you may step down.

10 A. Thank you for your courtesy.

11 MR. CORT: May I just tell the  
12 witness--

13 THE COURT: Yes. While we are  
14 waiting for Mr. Newman to step back in, do  
15 you have another witness to call?

16 MR. CORT: I do.

17 THE COURT: We will get him  
18 started.

19 MR. CORT: The People call Michael  
20 Oliva.

21 ( Witness enters courtroom and  
22 is sworn in).

23 COURT OFFICER: Give your full  
24 name and county of residence.

25 A. Michael Oliva, New York County.