

1 THE COURT: We're continuing
2 the matter on trial. As soon as
3 everybody is ready please have the jury
4 step in.

5 (Whereupon, the jury entered
6 the courtroom at 3:30 PM).

7 THE COURT: Good afternoon,
8 ladies and gentlemen. Thank you again
9 very much. We're ready to continue.

10 Mr. Cort, please call your
11 next witness.

12 MR. CORT: The People call
13 William McCann.

14 WILLIAM MC CANN, having been called on
15 behalf of the People at the trial having
16 been first duly sworn, testified as
17 follows:

18 COURT OFFICER: In a loud,
19 clear voice state your name, spell your
20 last name and give your county of
21 residence.

22 THE WITNESS: William J.
23 McCann. M-c-C-a-n-n. Junior.
24 Schenectady County.

25 THE COURT: Thank you.

1 DIRECT EXAMINATION

2 BY: MR. CORT:

3 Q. Good afternoon, Mr. McCann.

4 A. Good afternoon.

5 Q. Where are you employed?

6 A. I'm employed by the New York State
7 Board of Elections as Special Deputy
8 Counsel for Enforcement.

9 Q. Where are the offices of the New
10 York State Board of Elections?

11 A. In Albany.

12 Q. What is your educational
13 background?

14 A. Received my undergraduate degree
15 from the University of Albany in 1986.
16 Master of Science in 1987 from the
17 University of Albany and graduated from
18 Albany Law School in 1991.

19 Q. You are a lawyer admitted to
20 practice?

21 A. I am, sir.

22 Q. How long have you been admitted to
23 the bar?

24 A. Since 1992 in the State of New
25 York.

Frank Rizzo
Senior Court Reporter

1 Q. What legal jobs did you have
2 before working at the New York State Board
3 of Elections?

4 A. Immediately following law school I
5 went to work for a firm in the county
6 where I grew up and I worked there for a
7 couple of years and went to work for a
8 firm in Sarasota Springs and then was
9 engaged in my own practice.

10 In 1986 I took a position
11 at the New York State Department of
12 Economic Development and was employed
13 there until the end of September in the
14 year 2000, and then I took a position that
15 I'm currently in with the New York State
16 Board of Elections on October 1st, 2000.

17 Q. What do you do as Special Deputy
18 Counsel at the New York State Board of
19 Elections?

20 A. The Enforcement Unit at the New
21 York State Board of Elections is comprised
22 of several subunits. We have an
23 Investigations Audit Unit. There is two
24 counsels, myself and the Deputy
25 Enforcement Counsel and we have a staff of

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1 18 people. The Enforcement Unit at the
2 Board is tasked with enforcing the
3 Election Law and in that capacity we have
4 oversight on campaign finance at the State
5 Board of Elections as well.

6 Q. What is the New York State Board
7 of Elections?

8 A. The New York State Board of
9 Elections is an administrative agency for
10 the State of New York that has general
11 oversight of elections in New York State.
12 There is a County Board of Elections, a
13 City Board of Elections. Those elections,
14 when you go to vote and go into a voting
15 machine that process is run by your county
16 Board of Elections, or New York City, the
17 City Board, they have certain ministerial
18 functions. They run the day to day
19 election. The New York State Board of
20 Elections has the overall sight of the
21 counties and the city.

22 Q. Is the State Board of Elections a
23 state agency?

24 A. Yes, sir.

25 Q. And the City Board is a city

1 agency?

2 A. Correct.

3 Q. What is the makeup of the Board of
4 Elections -- New York State Board of
5 Elections.

6 A. Sure. The New York State Board of
7 Elections is comprised of four
8 commissioners, two from each of the major
9 parties in the State of New York,
10 apparently that would be the democratic
11 party and the republican party.

12 Q. And is the -- who appoints the
13 Board?

14 A. They're appointed by the Governor
15 and at the recommendation of the
16 legislative leaders and also party
17 chairman of the state official parties.

18 Q. How many people are on the board?

19 A. There are four.

20 Q. Approximately how many people work
21 at the New York State Board of Elections?

22 A. Give or take about 60, 65 people.

23 Q. And what other functions, aside
24 from the Enforcement Unit, does the New
25 York State Board of Elections perform?

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Senior Court Reporter

1 A. Sure. We have a variety of units
2 at the State Board of Elections. An
3 Elections Operation Unit which handles the
4 function of elections. They also have
5 responsibility over voting equipment,
6 voting technology and new machines. We
7 also handle, depending on the
8 circumstances, petitions or ballot access.
9 When someone runs for office they need to
10 get on the ballot. Certain portions of
11 that are handled by the State Board of
12 Elections, depending on the petition in
13 question.

14 We also handle certain
15 aspects of voter registration. We also
16 handle motor voter, aspects of voter
17 registration through administrative
18 agencies. We also handle the National
19 Board of Legislation Act which is tied
20 into that and a variety of other federal
21 aspects of the Election Law
22 administratively.

23 Q. What law or laws is the New York
24 State Board of Elections charged with
25 enforcing?

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Senior Court Reporter

1 A. The Election Law of New York
2 State.

3 Q. Are you familiar with the New York
4 State Election Law?

5 A. Yes, I am.

6 Q. How did you become familiar with
7 the New York State Election Law?

8 A. I have been employed for the last
9 nine and a half years and by my day to day
10 practice as deputy counsel I have become
11 familiar with the law.

12 Q. Have you received training in
13 regard to the Election Law?

14 A. Just in my daily activities and
15 working with the other attorneys.

16 Q. Have you ever published or written
17 any articles about the New York State
18 Election Law?

19 A. I participated in a book that is
20 called Ethics in the State Government,
21 It's a Two-way Street. I was one of the
22 attorneys at the State Board of Elections
23 that wrote an article on campaign finance
24 and I also worked with the State Board of
25 Elections in preparation of its campaign

Frank Rizzo
Senior Court Reporter

1 finance handling.

2 Q. Have you ever lectured on or
3 taught any courses on the New York
4 Election Law?

5 A. Yes, I have. The New York State
6 Election conducts a series of campaign
7 seminars throughout the state and during
8 my time with the State Board of Elections
9 I conducted a large number of those, over
10 50. I have been invited to lecture at
11 Albany Law School on the Election Law and
12 campaign finance and I have given
13 continued education classes, which are
14 classes given to fellow attorneys about
15 Election Law.

16 Q. Have you ever testified in the
17 grand jury before concerning New York
18 State Election Law?

19 A. Yes.

20 Q. How many times?

21 A. Three times.

22 Q. Have you ever testified in courts
23 and other tribunals concerning the
24 Election Law?

25 A. Yes.

1 Q. How many times?

2 A. Twice.

3 Q. On the qualifications you just
4 testified about were you qualified as an
5 expert in the New York State Election Law?

6 A. I was.

7 Q. How many times?

8 A. Five times.

9 Q. Both in the grand jury and before
10 a court?

11 A. Yes, sir.

12 MR. CORT: I now move to have
13 Mr. McCann qualified as an expert in the
14 New York State Election Law.

15 MR. HAFETZ: No objection.

16 MR. NEWMAN: No objection.

17 THE COURT: He'll be so deemed.
18 I'll just remind the jury, I'm sure it
19 is obvious, the charges in the
20 indictment are not Election Law
21 violations but obviously the Election
22 Law is part of the background of the
23 issues here and I will permit the
24 witness to testify about the Election
25 Law as it relates to the events of this

1 case.

2 Please go ahead.

3 Q. Are you familiar with Article 14 of
4 the New York State Election Law?

5 A. Yes.

6 Q. What is Article 14?

7 A. Article 14 is that portion of the
8 Election Law that deals specifically with
9 campaign finance.

10 Q. What is the purpose of Article 14?

11 A. It encompasses every aspect of
12 campaign finance and goes towards the key
13 purposes of campaign finance which are
14 disclosure.

15 The public has a right to
16 know the monies that are being raised and
17 spent with regard to an election. The
18 public has the right to know who is making
19 contributions and what monies are being
20 spent on an election. And not only does
21 the public have a right to know that but
22 also candidates in an election have a
23 right to know what their opposition is
24 doing relative to the money in the
25 election. And that goes to the state

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1 interest in --

2 Q. I'll get into that more later.

3 Let me ask you, aside from
4 disclosure is there another aspect of
5 Article 14?

6 A. Sure. There is also contribution
7 limits is another part of campaign
8 finance. The law establishes limits on
9 those who are seeking or holding office.

10 Q. Does Article 14 set forth certain
11 definitions?

12 A. It does.

13 Q. And under the Election Law what is
14 a political committee?

15 A. A political committee can be one
16 person, but typically it's a group of
17 people that get together to support or
18 oppose a candidate for public office or
19 party office in support or opposition of a
20 ballot proposition, something you go in
21 and read and vote on. It is also a
22 committee established pursuant to the
23 election to represent an official party in
24 the state.

25 Q. Under the Election Law what is a

1 contribution?

2 A. A contribution, generally
3 speaking, is a gift of money or anything
4 of value. It can also be a loan to the
5 extent it is not repaid by Election Day
6 subject to a contribution limit. It could
7 be something of value. So some might
8 understand if you get a cash contribution
9 or a check, if someone gives you a good or
10 a service that has a value, we call that
11 an income contribution.

12 Q. And does a contribution -- what's
13 roughly the definition of a contribution?

14 A. It's a gift of money or anything
15 of value made in connection with an
16 election to support or oppose a candidate
17 for office or to a political committee.

18 Q. What is in connection with?

19 A. Well, again, contribution would be
20 going to a candidate or a candidate's
21 political committee or some other
22 political committee to help support that
23 candidate's election, or in the case of a
24 party committee, the party's activities.

25 So, again, it depends

1 whether you have a candidate or whether
2 you're talking about a political committee
3 and what type of political committee
4 you're talking about.

5 Q. Under the Election Law what is a
6 contributor?

7 A. It could be a person or an entity
8 or another political committee that makes
9 a contribution to a candidate or another
10 political committee.

11 Q. What is a primary election?

12 A. A primary election is an election
13 where each political party determines
14 who's going to represent that party
15 against all the other parties in the
16 general election.

17 Q. And what is a general election?

18 A. A general election is where the
19 representatives of all the parties who are
20 on the ballots face off to determine who
21 will ultimately hold the seat in question.

22 Q. What is the difference of these
23 two types of elections under the Election
24 Law?

25 A. Well, again, it's the purpose. One

1 is what we call the nomination. It is
2 where the party determines who is going to
3 wave the flag to represent that party
4 against the candidate from the other
5 party. So that would be the Primary
6 Election and then so the General Election
7 would be where all the candidates face off
8 against each other, whoever wins that they
9 get to hold the office.

10 Q. Does the New York State Election
11 Law provide for contribution limits to
12 candidates and political committees?

13 A. It does.

14 Q. Are you familiar with the policy
15 purpose behind setting contribution limits
16 in a campaign?

17 A. I am.

18 Q. What is the policy purpose behind
19 said contributions?

20 A. There are several, but the primary
21 one is that the government has an interest
22 in limiting the amount of influence that
23 people have through money on those who are
24 seeking or holding office.

25 The government interest is

1 on -- to question or to stop corruption
2 or the appearance of corruption or undue
3 influence on people who are running for
4 office or holding office.

5 The law establishes a limit
6 on how much can be given to a particular
7 candidate or to a political committee.

8 Q. Does it also -- is one of their
9 purposes also to make sure no one has too
10 much influence on a specific election?

11 A. Well, again, the limit applies to
12 all contributors, and there are very few
13 exceptions to that, but essentially if
14 you're looking at a limit it's based on a
15 formula. So depending whether you're
16 talking for a primary election or a
17 general election you determine what the
18 office is and generally that is done
19 geographically.

20 So, obviously, if you're
21 running for a city council seat that is
22 different than someone who is running for
23 Governor. The governor is someone who will
24 represent the whole state and someone for
25 city council would be for a political

1 subdivision or a smaller unit.

2 The way the formula works
3 is generally you take a nickel times all
4 the active registered voters. In the case
5 of the primary it is enrolled voters. The
6 people in that party you multiply them by
7 a nickel and you come up with a limit.

8 For the general election it
9 is all the registered voters in a
10 particular jurisdiction. Depending by the
11 size of the office, how large it is, and
12 how many citizens are within the district
13 you would then determine what the size of
14 the contribution was, but at the end of
15 the day one contributor, generally
16 speaking whether it is myself or somebody
17 else here, their limit would be the same
18 as my limit.

19 Q. And is the purpose to limit a
20 large contributor on an election?

21 A. Yes. It goes back to the
22 government's interest in limiting the
23 amount of the contribution someone can
24 have seeking office and it places that
25 specific limit so each person can give up

Frank Rizzo
Senior Court Reporter

1 to that amount and no more than that.

2 Q. What was the limit for the
3 September, 2008 Primary Election
4 contribution for the New York County
5 Surrogate Court?

6 A. If I remember correctly it was
7 somewhere in the neighborhood of 33
8 thousand dollars.

9 Q. Would anything refresh your
10 recollection?

11 A. You have a document that might
12 show me that.

13 Q. Does that refresh your recollection?

14 A. It does.

15 Q. What was the limit for the September,
16 2008 Primary Election for Surrogate Court?

17 A. Depending on the party, starting
18 on the left --

19 Q. For the democratic party?

20 A. For the democratic party the
21 individual contribution limit for the
22 primary was 33 thousand 122 dollars.

23 Q. How was it determined?

24 A. It's based upon the formula. What
25 you do, you take the number of enrolled

1 voters in the political party, the active
2 enrolled voters, and you multiply by a
3 nickel and you get a number. Depending on
4 the size of the office if that number adds
5 up less than a thousand you automatically
6 get a thousand, otherwise it is the number
7 that comes out.

8 Q. Is there any limit as to how much
9 a candidate can contribute to his or her
10 own campaign?

11 A. No, there is no limit for a
12 candidate.

13 Q. What is the policy purpose by not
14 having such limits?

15 A. The government's interest in
16 having a contribution limit is to limit
17 the amount of influence that someone can
18 have on someone that is seeking or holding
19 office.

20 The government, as was held
21 by the Supreme Court, does not have an
22 interest because you're not looking to
23 stop undue influence on the candidate from
24 their own money, it's their money. So
25 consequently there is no limit on a

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Senior Court Reporter

1 candidate's own money in an election.

2 By way of example, in New
3 York City if Michael Bloomberg, as the
4 Mayor, chooses to spend unlimited
5 resources because it is his money he
6 absolutely can.

7 Q. What provision of law permits
8 candidates to contribute an unlimited
9 amount to their own campaign?

10 A. Again, it comes out of a United
11 States Supreme Court decision entitled
12 Buckley versus Valeo, and it also comes
13 specifically out of the Article 14.

14 Q. Are there other circumstances when
15 limits don't apply?

16 A. Sure. The contribution limit
17 doesn't apply to a candidate's spouse.
18 There's a slight modification for the
19 limit when you're applying to the family
20 of the candidate and also if you're
21 talking about a party committee or
22 constituted committee --

23 Q. We're not talking about a party
24 committee.

25 A. There are exceptions. The idea

1 being if a political party wants to
2 support its own candidate there is no
3 limit on the amount of money that party
4 can give to the candidate or spend on the
5 candidate.

6 Generally speaking, the
7 only people who do not have a limit on how
8 much money can be spent or contributed to
9 the campaign are the candidate and the
10 candidate's spouse.

11 Q. Do the limits apply even if the
12 contributor is a close friend or
13 confidant?

14 A. Yes.

15 Q. Who is responsible for insuring
16 that election limits are not exceeded?

17 A. Well, it depends. If you're
18 talking about the individual -- the
19 candidate or the candidate's committee
20 they have their own set limits so they
21 would be responsible for determining
22 whether or not an individual contributor
23 exceeded the limit. And when it comes to
24 individuals they have their own obligation
25 to determine whether or not they exceeded

1 a limit that might be applicable to
2 themselves.

3 Q. Are political committees permitted
4 to obtain loans of money?

5 A. Yes.

6 Q. Under the Election Law who is
7 permitted to loan money to political
8 committees?

9 A. A bank, an entity or a person.

10 Q. So those loans can come from
11 individuals?

12 A. Absolutely.

13 Q. Are there other restrictions on
14 loans made by individuals to candidates or
15 their committees relating to
16 contributions?

17 A. Yes.

18 Q. Under the Election Law are loans
19 made by an individual to a political
20 committee or candidate subject to
21 contribution limits and related provisions
22 of the Election Law?

23 A. They are.

24 Q. In what way?

25 A. Well, Article 14 in the definition

1 of a political contribution specifically
2 references that loans, and references the
3 definition of contributions of loans right
4 to the contribution provisions which is
5 Article 14-114 Sub 6, and what it says is
6 contributions or loans that are made to a
7 candidate or a political committee, to the
8 effect they're not repaid as of the
9 applicable Election Day, are deemed
10 contributions for limit purposes.

11 So what you would need to
12 do is you would determine as of the
13 applicable election how much money in
14 outstanding loans were owed and then apply
15 the contribution limit. If the amount of
16 the outstanding loan, when added to any
17 actual contributions given, are equal to
18 or less than the contribution limit then
19 there's no problem.

20 If as of the applicable
21 Election Day the amount of the
22 contributions added to the amount of the
23 outstanding loan exceeds the contribution
24 limit in any way, you now have a violation
25 of the contribution limit for limit

Frank Rizzo
Senior Court Reporter

1 purposes. You'll always owe the money.
2 It doesn't make the loan go away, but it
3 specifically says that contribution can be
4 a loan to the extent provided for in
5 Article 14-114, the provisions about
6 loans, and it says specifically the extent
7 of the loan that is outstanding as of the
8 day of Election is deemed a contribution
9 for these purposes, and it goes so far to
10 say whether it's a loan or even it applies
11 to the cosigner and there are very
12 important reasons for that.

13 As I mentioned earlier the
14 law sets specific contribution limits on
15 the amount that someone can give or an
16 entity can give to a candidate or to a
17 political committee.

18 The law specifically ties
19 into the definition of a contribution, the
20 issue of the loan and the amount
21 outstanding as of Election Day, because
22 the idea is you can not circumvent and go
23 around the contribution limits by calling
24 something a loan. If it is a loan as of
25 Election Day to the extent it is over the

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Senior Court Reporter

1 limit it's deemed a violation of the limit
2 because you're only entitled to have so
3 much money.

4 Remember, the purpose is
5 the amount of influence that someone can
6 have on a person seeking or holding
7 office. To say you can just take a loan
8 and have it be above the limit but say
9 that it is not a contribution or not have
10 it subject to the limit would just defeat
11 the whole purpose of having a contribution
12 in the first place, because you can just
13 say it is a loan.

14 So the law specifically
15 says in Article 14 that the amount of a
16 loan that is outstanding as of the
17 Election Day, to the extent that it is
18 over, is deemed -- that would be a
19 violation. It becomes a contribution for
20 limit purposes.

21 Q. When you say Election Day, that
22 Election Day could be a Primary Election?

23 A. Primary Election, General
24 Election, Special Election. It just
25 depends on the election.

1 Q. What is the penalty for knowingly
2 and willfully accepting an over the
3 limit --

4 MR. NEWMAN: Objection.

5 THE COURT: Well, I'm permit
6 that under the Election Law.

7 Q. Under the Election Law what is the
8 penalty for knowingly and willfully
9 accepting an over contribution for limit
10 purposes?

11 A. It would be a crime.

12 Q. Under the Election Law is a
13 candidate himself or herself permitted to
14 loan money to their own campaign?

15 A. Yes, absolutely.

16 Q. Is there a limit as to how much an
17 individual candidate can loan to his or
18 her own campaign?

19 A. No.

20 Q. What is the consequence if a loan
21 from a candidate is never repaid by his or
22 her own Campaign Committee?

23 A. Again, the purpose of a
24 contribution limit is to limit the amount
25 of influence that an individual or an

1 entity can have on someone who is seeking
2 or holding office. Just like the
3 candidate has no restrictions on how much
4 money they can give to their own campaign,
5 it is irrelevant as to how much when it
6 comes to a loan they make to their
7 campaign. To the extent that a loan to a
8 candidate is outstanding at an applicable
9 Election Day it is irrelevant because
10 there is no government interest in the
11 limit. What would happen long term,
12 depending on what the status of the
13 outstanding obligation was, the political
14 committee could determine administratively
15 if it had the outstanding loan it would
16 have to be dealt with one-way or the
17 other, but as far as the limits are
18 concerned it would not have any
19 application.

20 Q. When you say the government
21 interest is that also here to level the
22 playing field?

23 A. There is no level playing field
24 issue when it comes to the candidate's own
25 money. The candidate has an unfettered

Frank Rizzo
Senior Court Reporter

1 right to spend his or her money. There is
2 no limit when it comes to a candidate's
3 own money.

4 Q. Would the failure of the
5 candidate's Political Committee to repay a
6 loan from a candidate be considered an
7 over contribution?

8 A. No.

9 Q. Why not?

10 A. There is no limit to the
11 candidate.

12 Q. You said that part of the Election
13 Law Section -- Article 14 concerns
14 disclosure provisions?

15 A. Yes, sir.

16 Q. Do political committees operating
17 on behalf of candidates, do they have to
18 abide by certain disclosure issues?

19 A. Yes.

20 CONTINUED ON NEXT PAGE
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1 Q. Can you describe briefly what that
2 is?

3 A. Again, as I mentioned in the
4 beginning, campaign finance serves a lot of
5 purposes. Two of the biggest ones are
6 disclosure, that the public has a right to
7 know who is raising or spending money, or what
8 money is being spent in an election. And
9 secondarily, the Government, because of this
10 right, has a right to establish limits.

11 Disclosures allow two
12 things to occur. Firstly, they allow the
13 public and candidate to see what money is
14 being raised and spent in an election.

15 And number two, it allows a
16 Board of Elections to determine whether or not
17 there have been, you know, committees and
18 candidates have met the required limits what
19 they are disclosing.

20 Q. Do you mean abided by the proper
21 limits?

22 A. Yeah, that is how you would
23 determine through the disclosure.

24 Q. Where are financial disclosure
25 reports filed?

Randy Berkowitz
Senior Court Reporter

1 A. It depends on the office. Generally
2 speaking, for your statewide offices like
3 Government or Lieutenant Governor, Attorney
4 General, those type of offices, for the New
5 York State Legislature and for the State
6 Supreme Court Judge and some party offices,
7 those candidates and political committees are
8 obligated to file their disclosures at the New
9 York State Board of Elections.

10 For all other offices or
11 local offices, they are obligated to file them
12 with their county Board of Elections, or in
13 the case for a candidate in the office of the
14 City of New York, with the New York City Board
15 of Elections.

16 And under a modification of
17 the law in 2006, anyone of those local
18 committees, if they raise or spend or expect
19 to raise or spend over a thousand dollars, not
20 only would they file locally, but they would
21 also file at the State Board of Elections.

22 Q. What about for the 2008 New York
23 County Surrogate's Court race, where would the
24 finance disclosure records be required to be
25 filed?

Randy Berkowitz
Senior Court Reporter

1 A. As that office is located in the
2 City of New York, we would deem that a local
3 office first and foremost. They would be
4 obligated to make their disclosures with the
5 New York City Board of Elections.

6 If the candidate or
7 committee in question raised or spent or
8 expected to raise or spend over a thousand
9 dollars in a particular year, in that election
10 cycle, they would also have to make their
11 filing at the New York State Board of
12 Elections.

13 Q. What is the first step in the
14 disclosure process?

15 A. I guess it would depend on whether
16 you are talking about a candidate or a
17 political committee.

18 Q. Well, let's talk about the
19 registration process.

20 A. Okay. Well, for a political
21 committee, a political committee before it can
22 raise and spend money, has to register with
23 the appropriate Board of Elections by telling
24 them who the treasurer is going to be, the
25 name of the committee, the candidate to be

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Senior Court Reporter

1 supported or opposed, depending on the type of
2 the committee. The depository, meaning where
3 the finances or the bank account for the
4 committee is going to be housed.

5 It could also have
6 information on other signatories who are
7 authorized to sign checks on behalf of the
8 committee. And before a committee can raise
9 and spend money, it has to file or register
10 with the appropriate Board of Elections.

11 Q. After the registration process is
12 completed, are there other disclosure reports
13 that are filed?

14 A. Well, campaign finance disclosures.
15 For each election, there are three disclosure
16 reports that must be filed for a primary
17 election.

18 There is a 32 day
19 pre-primary, 11 day pre-primary, and 10 day
20 post primary report. And then for the general
21 election, there would be a 32 day pre general,
22 11 day pre general, and 27 day post general.

23 Q. Do the exact dates the reports are
24 required to be filed change for every
25 election?

1 A. What you do is you take the date of
2 the election and you would back up the
3 requisite number of days to determine what the
4 actual day was, but those, those reporting
5 periods are established by statute and
6 regulation.

7 Q. Does the Board of Elections publish
8 a filing calendar for each election cycle
9 setting forth the date that the disclosure
10 statements have to be filed?

11 A. It does.

12 Q. Let me show you what is marked as
13 People's Exhibit 40.

14 (Handed to witness).

15 Q. Do you recognize it?

16 A. I do.

17 Q. What is it?

18 A. This is the 2008 filing calendar for
19 campaign financial disclosures.

20 Q. Is this the filing calendar that
21 controls for the 2008 Surrogate's Court race
22 in New York County?

23 A. It is.

24 Q. Is this published by the New York
25 State Board of Elections?

1 A. It is.

2 MR. CORT: I now move this into
3 evidence.

4 MR. HAFETZ: No objection.

5 MR. NEWMAN: No objection.

6 THE COURT: It will be so marked
7 as Exhibit 40. We will mark it later.

8 Q. Can you project that. Cull out the
9 top of the form.

10 What is the difference
11 between cutoff date and file date?

12 A. For each report, if you notice on
13 the left, we will take the 32 day pre-primary
14 for instance. That report is due on August 8,
15 2008 for that particular election.

16 The law allows for a filer
17 to have in essence four days which to compile
18 all the information to prepare the report so
19 they can file it on the due date.

20 If you didn't have the
21 cutoff day, what it would mean is a filer
22 would have to assemble all the information up
23 through and including in that case August 8th
24 and file it timely with the Board of
25 Elections, so that is really impractical.

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1 What the law says is that
2 we will give you a four day cutoff period so
3 you have that time to prepare a report and
4 make the filing.

5 Q. What is a 24 hour notice?

6 A. Well, 24 hour notice is a disclosure
7 that occurs during a very specific period of
8 time. It is from the cutoff date for an 11
9 day pre election report up to Election Day.
10 And there is an important purpose for it.

11 As I mentioned earlier, one
12 of the key principles of campaign finance is
13 to have an informed electorate, the public has
14 a right to know.

15 So, let's say for instance,
16 I'm a candidate for office, and I'm out in the
17 public opposing a big issue in the town.

18 Let's say landfills. No
19 one likes landfills, and I publicly say if
20 elected, I oppose the landfill. You might be
21 interested to know if I received a check from
22 the big developer for the landfill.

23 I'm a smart guy, so if I
24 didn't have 24 hour notice, what I'll do is
25 I'll wait until after the cutoff day for the

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1 11 day pre election report, and then I'll take
2 the contribution and you will not find out
3 until I file my post election report. By that
4 time, the election is over. If I win great,
5 if I lose, so be it.

6 24 hour notice, what it
7 requires is that for any loan or contribution
8 in excess of a thousand dollars received from
9 the date of the cutoff up to Election Day, you
10 must disclose that within 24 hours. You
11 cannot wait until the post election report to
12 let the electorate or your opposition know.

13 Q. In general, what kind of information
14 must be disclosed in financial disclosure
15 reports?

16 A. The simplest way to put it, is any
17 money raised or spent in relation or
18 connection with an election must be disclosed.

19 Q. Have you ever heard of a person
20 named Nora Anderson?

21 A. I have.

22 Q. Do you know whether Anderson
23 authorized a political committee to act on her
24 behalf to fulfill her obligations to make
25 financial disclosures concerning her campaign

Randy Berkowitz
Senior Court Reporter

1 for the 2008 New York County surrogate race?

2 A. I do.

3 Q. Why would a candidate form a
4 political committee?

5 A. Under the Election Law and
6 specifically 14 dash 104, the burden to
7 disclose campaign financial disclosures rests
8 first and foremost with the candidate.

9 The law allows a candidate
10 to, because candidates want to do what
11 candidates do, they want to go out and attend
12 functions and events, you know, rallies, they
13 want to run for the office. They do not
14 really want to spend time doing the books, so
15 to speak. And so, the law allows a candidate
16 to authorize a political committee to take
17 care of the obligation to disclose all the
18 receipts and expenditures for the campaign.

19 Q. Under the Election Law, if a
20 candidate chooses to have a political
21 committee file disclosure statements, can the
22 candidate raise or spend money themselves?

23 A. Sure.

24 Q. How much of the candidate's activity
25 in raising or spending money must be reported

1 in that case where they have a political
2 committee, but they still decide to raise or
3 spend money themselves?

4 A. If it -- it can take place in one of
5 two ways. If a candidate authorizes a
6 political committee to act on the candidate's
7 behalf, then the candidate can either raise or
8 have activity outside the committee that the
9 candidate would then disclose.

10 Or in most instances, the
11 candidate files a specific form that says all
12 of the reporting will be done through my
13 committee, and therefore, I'm not going to do
14 it, it will all be done by my committee. It
15 is a question of what the candidate chose to
16 do.

17 Q. So, why, if a candidate has
18 authorized a committee, why must that
19 candidate report their own activity in raising
20 or spending money?

21 A. Well, the candidate, because it is
22 their campaign, they are an agent of their
23 campaign. In essence, the obligations on the
24 candidate to disclose.

25 If the candidate then says

1 I'm going to have a committee do it, the
2 candidate is still running for office. The
3 candidate can raise and spend money. Now,
4 what they have told, if they file the
5 requisite form, they have now said all the
6 activity, including my own, will be disclosed
7 by the political committee, they in essence
8 become an agent of the political committee.

9 Q. Describe what you mean by agent of
10 the political committee?

11 A. They have obligations to the
12 campaign and political committee under the
13 Election Law. For instance, it spells out
14 specifically how accounting works for a
15 campaign.

16 So, the law puts specific
17 obligations on candidates and treasurers
18 relative to the finances, and then also spells
19 out what information has to be disclosed and
20 when. And the law also tells how that
21 information gets disclosed and what
22 specifically the obligations are of the
23 candidate and of any agents to the committee
24 to disclose the financial activity of the
25 campaign.

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1 Q. Are you familiar with the name
2 Anderson for Surrogate campaign committee?

3 A. I am.

4 Q. In your capacity as an employee of
5 the New York State Board of Elections, do you
6 have access to the official records of the New
7 York State Board of Elections?

8 A. I do.

9 Q. How are the disclosure reports filed
10 with the New York State Board of Elections?

11 A. For the most part, committees and
12 filers file them electronically, although they
13 can file on paper in certain circumstances.

14 Q. How did the Anderson For Surrogate
15 political committee file its financial
16 disclosure reports?

17 A. Electronically.

18 Q. Let me show you what has been marked
19 as People's Exhibit Seven through 15.

20 (Handed to witness).

21 Q. I'm handing you up what is in
22 Evidence as Seven through -- actually Seven
23 through 18.

24 A. Okay.

25 Q. Have you reviewed those documents

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1 before in my office?

2 A. I have.

3 Q. Have you compared them with the
4 documents that are on file with the New York
5 State Board of Elections?

6 A. I have.

7 Q. Are these reports that are in front
8 of you, the same or different than the reports
9 that the Anderson For Surrogate committee
10 filed with the New York State Board of
11 Elections?

12 A. They appear to be the same.

13 Q. Are there slight differences?

14 A. Well, these bear the date stamp of
15 the New York City Board of Elections. But in
16 sum and substance of what is reported on these
17 forms, they appear to be the same information
18 that is on file at the New York State Board of
19 Elections.

20 Q. You can project People's Exhibit
21 Seven please. Before -- you can keep that
22 up. Let me show you People's Exhibit 71 for
23 identification.

24 (Handed to witness).

25 Q. Do you recognize it?

1 A. I do.

2 Q. Is that an official, a fair and
3 accurate copy of an official record of the
4 state Board of Elections?

5 A. It is.

6 MR. CORT: I now move that into
7 evidence.

8 THE COURT: Any objection?

9 MR. NEWMAN: No objection.

10 THE COURT: We will mark it 71 in
11 Evidence when we get a moment.

12 Q. Let's just project that. If you can
13 highlight the contents of the letter. It says
14 gentlemen, I enclose forms CF 02, CF 03, and
15 CF 16 with respect to my campaign for
16 surrogate of New York County. Very truly
17 yours, Nora S Anderson. Are those the
18 registration statements, registration
19 documents?

20 A. Correct.

21 Q. Now let's, if you can project
22 People's Exhibit Seven. You can take a look,
23 you have it in front of you.

24 A. I do.

25 Q. What is People's Seven in evidence?

1 A. This is a form entitled State of New
2 York State Board of Elections committee
3 designation of treasurer and depository known
4 as a CF 02.

5 Q. What is the purpose of this
6 document?

7 A. This serves multiple purposes, but
8 it is the form that a committee uses to
9 register.

10 THE COURT: Just one moment
11 please. Go ahead.

12 Q. I was asking you the policy purpose
13 and you were about to tell the jury.

14 A. This is the form that a committee
15 would use to register with the applicable
16 Board of Elections.

17 Q. On this document, who is listed as
18 treasurer?

19 A. Janise Dawson.

20 Q. Under the Election Law, what are the
21 responsibilities of a treasurer?

22 A. The treasurer is the person who is
23 responsible for maintaining the finance
24 records of the committee and for making the
25 financial disclosures for the committee as

1 well.

2 Q. There is, on the bottom of a
3 document, who is listed as a person other than
4 the treasurer authorized to sign checks?

5 A. Seth Rubenstein.

6 Q. What is the policy purpose behind
7 requiring the campaign committee to disclose
8 authorized signatories?

9 A. Well, the only person on the
10 Election Law that is authorized to sign checks
11 on behalf of a committee is the treasurer.

12 Other individuals can be
13 authorized to sign checks and engage in
14 financial aspects of the campaign, but they
15 have to list, be listed on the CF 02 and sign
16 their name to the form as well.

17 Q. Take a look at People's Exhibit
18 Eight. If you can take out, cull out the
19 top. What is People's Exhibit Eight?

20 A. This is a CF 03, a committee
21 statement of authorization or
22 non-authorization by candidates.

23 Q. What does this document do?

24 A. This document informs the Board
25 whether or not the committee in question in

1 the case of a candidate committee has been
2 specifically authorized by that candidate to
3 aid or take part in their election.

4 Q. Take a look at People's Exhibit
5 Nine.

6 A. Okay.

7 Q. When was -- what is the purpose,
8 this is a candidate committee authorization
9 and non-expenditure statement?

10 A. Correct.

11 Q. What is it known as CF what?

12 A. CF 16.

13 Q. What is the purpose of the CF 16?

14 A. As I mentioned earlier, the
15 obligation to make campaign financial
16 disclosures rests with a candidate, unless the
17 candidate authorizes a committee to make the
18 disclosures and notifies the Board of
19 Elections of that fact.

20 This form is the form that
21 a candidate uses to let the Board know that
22 all the financial activity of the campaign
23 will be reported by the committee that is
24 listed.

25 Q. Can you pull out number two. Where

1 it says I have made no campaign expenditures
2 relating to my candidacy, nor do I intend to
3 make any such expenditures, except through the
4 following authorized political committee which
5 will file on my behalf, what does that mean?

6 A. Well again, the obligation is on the
7 candidate. And the candidate under the law is
8 allowed to have a committee fulfill that
9 function.

10 So, what this means is that
11 the candidate, any activity, any financial
12 activity of the candidate will be disclosed by
13 the committee, and that all the financial
14 activity of the candidate, they are saying I'm
15 going to have that disclosed by my committee.

16 Q. Take a look at People's -- did the
17 Anderson For Surrogate political committee
18 file disclosure reports with the New York
19 State Board of Elections after filing the
20 previous three registration forms we just
21 discussed?

22 A. It did.

23 Q. Taking a look at People's Exhibit 10
24 in evidence, what is that form?

25 A. I don't know if I have it.

1 Q. It is in the binder.

2 A. I'm sorry. This is a July 2008
3 periodic report for Anderson For Surrogate.

4 Q. What time period does this cover?

5 A. In the instance of Anderson For
6 Surrogate, it would cover the period -- well,
7 the committee registration document which is
8 the CF 02 that I have in front of me is
9 received by the New York City Board of
10 Elections on April 8th, so the July periodic
11 after a political committee registers, it
12 would file any requisite election report, so
13 depending on whether or not it was involved in
14 an election, it would have to file those three
15 election reports, but there are also reports
16 called periodic records and they come in
17 January and July.

18 Since the July periodic
19 comes before primary and general election
20 report, and since this committee registered
21 before July, this would be the first report
22 that would have all the transactions of the
23 committee from the date of its beginning up to
24 the cutoff date for this report, which would
25 be July 11th.

1 Q. Let me direct your attention to page
2 two of this report, of the printed report.
3 So, it would be page three of the report, but
4 page two which has a two on the top right-hand
5 side.

6 A. Okay.

7 Q. Do you see a 25 thousand dollar
8 contribution made or reported on April 1, 2008
9 from Seth Rubenstein?

10 A. I do.

11 Q. During this, the disclosure period,
12 what was the total amount of contributions
13 that were received, how do we determine that?

14 A. Well, on electronic report you can
15 go to the summary page and look to see the
16 aggregation of the contributions, or you can
17 do it on a schedule by schedule basis.

18 Q. So, looking at this on the schedule
19 by schedule basis for individual
20 contributions, what was the total amount and
21 where are you finding it for this period?

22 A. Schedule A there are four
23 contribution schedules. Schedule A which is
24 the schedule used to report contributions from
25 individuals, partnerships, from the candidate

1 and the candidate's spouse, also from family
2 members.

3 On schedule A it has a
4 total of 82,049 dollars, that is on page three
5 of the report on schedule A.

6 Schedule B which is the
7 schedule used by filer to disclose any
8 corporate contributions which is page four of
9 the document, reflects a total of 87 hundred
10 dollars from corporations.

11 Schedule C, which is other
12 monetary contributions, reflects 700 dollars.

13 And so, as far as this
14 report is concerned, you would add up A, B,
15 and C and that would give you the aggregation
16 of the contributions received, and on the
17 summary page it says that is 91 thousand, 449
18 dollars.

19 Q. On page one, going back to page one,
20 do you see a contribution, near the middle of
21 the page from -- actually two contributions
22 from Janise Dawson?

23 A. Correct.

24 Q. How much is reported?

25 A. There is one contribution dated June

1 12th in the amount of 1,100 dollars. And on
2 May 29th in the amount of 5000 dollars.

3 Q. Let me direct your attention to
4 schedule I which would be on page, on page
5 11.

6 A. Okay.

7 Q. What is schedule I?

8 A. That is the schedule where you
9 report loans received during the reporting
10 period.

11 Q. What is reported there?

12 A. Dated April 18, 2008 from Seth
13 Rubenstein, a loan in the amount of 225
14 thousand dollars.

15 Q. Let me show you People's Exhibits 75
16 and 76 for identification. Let me pass this
17 up to you.

18 I'll mark monetary
19 contribution 75 and loans received 76.

20 (Handed to witness).

21 Q. Do you recognize these?

22 A. I do.

23 Q. What are they?

24 A. They are pages from a New York State
25 Board of Elections campaign finance handbook.

1 Q. Are those the instructions for how
2 to fill out, are those the instructions?

3 A. Page 75 is marked, but page 76 from
4 the particular handbook is a set of
5 instructions for schedule A which is schedule
6 use for monetary contributions from individual
7 and partnerships as well as monies received
8 from the candidate, the candidate's spouse.

9 MR. NEWMAN: Reading from a
10 document not in Evidence.

11 THE COURT: The questions are
12 asked for foundational purposes. The
13 document is not in Evidence yet. What is
14 your question?

15 Q. Are those the instructions for how
16 to fill out on the schedule concerning, for 75
17 contributions, and for 76 loans?

18 A. Yes.

19 Q. Are they fair and accurate copies of
20 the actual instructions?

21 A. Yes.

22 MR. CORT: I now move those into
23 evidence.

24 MR. HAFETZ: No objection.

25 THE COURT: We will mark them 75

1 and 76 when we get a moment, in evidence.

2 Q. As to the 225 thousand dollar loan
3 that was made by Seth Rubenstein reported on
4 April 18th. When would, according to New York
5 State Election Law, when would that 225
6 thousand dollar loan be deemed a contribution
7 for limit purposes?

8 A. It would be the first election that
9 was applicable.

10 Q. Which one was it in this case?

11 A. The primary election.

12 Q. Was that on September 9th?

13 A. Yes.

14 Q. What are you referring to, you are
15 looking at something?

16 A. The 2008 filing calendar, it has the
17 primary election date listed.

18 Q. What number in evidence is that?

19 A. It says People's Exhibit 40 on the
20 bottom.

21 Q. Let me show you what is in Evidence
22 as People's Exhibit 11 and 12. What are 11
23 and 12?

24 A. 11 appears to be the 32 day
25 pre-primary report for Anderson For Surrogate,

1 and 12 is an amended 32 day pre-primary for
2 Anderson For Surrogate.

3 Q. So, let me ask you about the amended
4 statement. What did the committee report as
5 its -- the total contributions to the
6 committee during that period, the 32 day
7 pre-primary and where do you find it?

8 A. That would be on the original report
9 or amended report?

10 Q. As to the amended?

11 A. As I mentioned earlier, you can do
12 it on a schedule by schedule basis and add
13 them up, or you can go to the summary page
14 which appears to be page eight, contributions
15 on this copy, it is blurry, I cannot make it
16 out.

17 Q. Can you look on the summary of
18 receipts on the next page.

19 A. It appears to be 21 thousand, 185
20 dollars.

21 Q. And what were the total, the total
22 expenditures during that period?

23 A. Sixty-one thousand, 98 dollars and
24 64 cents.

25 Q. Is the 225 thousand dollar loan

1 extended by Seth Rubenstein still outstanding
2 at the time this report was filed?

3 A. Yes.

4 Q. How do you know that?

5 A. One of the schedules is an
6 information schedule. It is schedule N, and
7 this is the schedule where a committee carries
8 forward any outstanding liabilities that were
9 previously reported until such time as they
10 are paid.

11 Q. That is on page seven of People's
12 Exhibit 12?

13 A. Correct.

14 Q. How much is outstanding?

15 A. 225 thousand dollars.

16 Q. Taking a look at People's Exhibit
17 13. What were the total receipts for this
18 filing which was the 11 day pre-primary?

19 A. Total contributions listed are 107
20 thousand, 170 dollars.

21 Q. What were the total expenditures?

22 A. 62,663 dollars and six cents.

23 Q. Where are you seeing that?

24 A. That is on the summary page, page
25 eight.

1 Q. During this reporting period, does
2 the campaign committee report any
3 contributions from the candidate and where are
4 you finding that?

5 A. Well, you would look on schedule A,
6 and it is reflecting a contribution dated
7 August 20, 2008 from Nora Anderson in the
8 amount of 100 thousand dollars.

9 Q. So, other than the contribution to
10 the candidate, the campaign received 7,170
11 dollars during that time period?

12 MR. NEWMAN: I object to the form
13 of that question. I think Mr. Cort may want
14 to revisit it as to the way he said it.

15 THE COURT: You said to the
16 candidate, I'm not sure that is what you
17 meant. But the total contributions were 107
18 thousand. Of that, 100,000 was from the
19 candidate?

20 A. Correct.

21 Q. Thank you. Taking a look at this
22 disclosure report, I'm specifically talking
23 about schedule A where the hundred thousand
24 dollars from -- the hundred thousand dollars
25 is reported from the candidate. Is there any

1 way for the Board of Elections looking at the
2 report to determine the true source of the
3 money that was reported as being contributed
4 by the candidate?

5 MR. NEWMAN: Objection to the form
6 of that question.

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

9 Q. Does the Board of Elections, does it
10 require the campaign committee to, with the
11 disclosure reports, file, show the -- file the
12 actual checks?

13 A. Does the Board of Elections require
14 that filers provide copies of the checks for
15 each transaction?

16 Q. Yes.

17 A. No.

18 Q. Was any part of the 225 thousand
19 dollar loan repaid during this time period?

20 A. No.

21 Q. You had mentioned 24 hour notice a
22 little earlier in your testimony. Remind the
23 jury when during the primary campaign these
24 notices must be filed?

25 A. 24 hour notices, which are again for

1 any contribution or loan received by the filer
2 in excess of a thousand dollars from the
3 cutoff day of the 11 day pre election report
4 up to Election Day, they must be disclosed
5 within 24 hours.

6 Q. So, People's Exhibit 13 is the 11
7 day pre-primary?

8 A. Yes, sir.

9 Q. So anything, anything over a
10 thousand dollars after the cutoff date for the
11 11 day pre-primary must be disclosed in a 24
12 hour notice?

13 A. Any loan or contribution.

14 Q. Take a look at People's Exhibit 14
15 in evidence. What is that?

16 A. This appears to be a facsimile or a
17 fax to the New York State Board of Elections
18 and to the New York City Board of Elections
19 disclosing a 24 hour notice.

20 Q. The writer of this letter references
21 Election Law section 14 dash 108 sub two, what
22 is that?

23 A. 14 dash 108 is a provision of the
24 Election Law that deals with disclosures and
25 certain information that must be filed.

Randy Berkowitz
Senior Court Reporter

1 Q. Let me show you what is in evidence
2 as People's Exhibit 15. What is that?

3 A. This is a 10 day post-primary report
4 for Anderson For Surrogate.

5 Q. What time period does that cover?

6 A. This would cover the day after the
7 cutoff date for the 11 day pre-primary up to
8 the cutoff date for the 10 day post-primary.

9 Q. Take a look at page 11, the summary
10 page.

11 How much money was
12 contributed to the Anderson For Surrogate
13 committee during this time period?

14 A. 15 thousand, 530 dollars.

15 Q. Were any loans reported as having
16 been received during this time period, and I
17 refer you to page seven, schedule I?

18 A. Dated August 26, 2008 from Nora
19 Anderson, a loan in the amount of 170 thousand
20 dollars.

21 Q. And the total expenditures during
22 this time period?

23 A. 293,997 dollars and 35 cents.

24 Q. Let me show you schedule K which is
25 on page nine. What does that show?

1 A. Schedule K is the schedule where a
2 filer reports if any liabilities or loans that
3 were outstanding were forgiven. And this
4 reflects one transaction dated September 8,
5 2008, Seth Rubenstein, a loan in the amount of
6 5,900 dollars as being forgiven.

7 Q. Under the Election Law, does the
8 Board of Elections rely on what is reported by
9 the campaign committee to enforce the Election
10 Law?

11 A. It does.

12 Q. Can you describe that?

13 THE COURT: Mr. Cort, I'm going to
14 ask you to pick a good point to stop.

15 MR. CORT: You know, this probably
16 is not a bad time.

17 THE COURT: All right. Sir, you
18 may step down, we will need you again.

19 (Witness exit courtroom).

20 THE COURT: Counsel, step up a
21 moment.

22 (Conversation held off the
23 record).

24 THE COURT: Ladies and gentlemen,
25 again, we all thank you very much for your

1 attention, for your patience, for your
2 promptness.

3 We will try to get started
4 tomorrow morning as close to 9:30 as we
5 possibly can and accomplish as much as we
6 can, and remain on our schedule, we are
7 doing pretty well.

8 I'll remind you that you heard
9 much more of the evidence at this point, but
10 we are not done.

11 You must continue to keep an
12 opened mind. You must not discuss the case
13 at all amongst yourselves or with anybody
14 else.

15 You must not speak to any of
16 the participants in the trial at all, even
17 to say hello.

18 If anyone should attempt to
19 discuss the matter in your presence or to
20 influence you or any other juror in any way,
21 please just report that to a court officer
22 without discussing the matter with anyone
23 else.

24 You may leave your notebooks,
25 and if you have exhibits, on the chairs.

Randy Berkowitz
Senior Court Reporter

1 Have a good evening. Be here by 9:30
2 tomorrow morning. Thank you very much.

3 (Jury exits courtroom).

4 THE COURT: Are there other
5 matters that we need to address for the
6 record?

7 MR. HAFETZ: Judge, one matter
8 with regard -- you want to do this on the
9 record?

10 THE COURT: I'm asking if it
11 needs to be on the record?

12 MR. HAFETZ: It does not.

13 THE COURT: Would you just step
14 up.

15 (Conversation held off the
16 record.)

17 THE COURT: All right, the trial
18 is in recess until tomorrow.

19 (Whereupon the trial is
20 adjourned to March 24, 2010.)
21
22
23
24
25

1 MR. CORT: May inquire, your
2 Honor?

3 THE COURT: Please.

4 MR. CORT: Thank you.

5 DIRECT EXAMINATION

6 BY: MR. CORT: (Continued).

7 Q. Mr. Morris, could you just project
8 75 and can you pass up People's Exhibit 75
9 to the witness and probably 76 as well.

10 I'm showing you People's
11 exhibits 75 and 76 in evidence.

12 What is People's --
13 People's 75 is projected. Can you tell
14 the jury what it is?

15 A. It is a page of instructions from
16 the New York State Campaign Finance
17 handbook for Schedule A.

18 Q. And just as to the -- let me just
19 see -- first, can you highlight, Mr.
20 Morris, number three at the top.

21 Mr. McCann, what is number
22 three asking?

23 A. Provide the complete name and
24 address of the contributor.

25 Q. Where in the instructions do you

1 see where it says that?

2 A. Well, on the top for each number
3 indicated in the appropriate section at
4 the bottom under the instructions it has
5 the instruction for that number. So in the
6 case of the name and address, number
7 three, you go to number three and it says
8 provide the complete name and address of
9 the contributor.

10 Q. Now let me pass up that binder to
11 you,. Mr. McCann, I'm going to pass up
12 that binder which contains People's 13,
13 which is the 11 day pre-primary. Take a
14 look at page two which is page one of the
15 printed disclosure statement. This is
16 People's Exhibit 13 in evidence. Taking a
17 look at that first line where it says --
18 under where it says contribution code
19 C-A-N.

20 A. Yes.

21 Q. Mr. Morris, can you pull out the
22 date -- a little bit more, the date and
23 the-- can you read that line of People's
24 Exhibit 13?

25 A. Yes. It says date, August 20th,

1 2008. Name, Nora Anderson. Address, 123
2 West 93rd, New York, New York, 10025.
3 Check number 3313, 100 thousand dollars.

4 Q. Mr. Morris, you're missing half of
5 the page. Is what is pulled out what you
6 just read?

7 A. Correct.

8 Q. What does that disclosure
9 indicate?

10 A. That the Committee received a
11 contribution of 100 thousands dollars from
12 the candidate Nora Anderson.

13 Q. Let me show you People's Exhibit
14 76, that's the instructions. It's in
15 evidence and that's for loans.

16 Mr. Morris, could you pull out
17 that top part.

18 Mr. McCann, on the top part --
19 under lender name is that given a number?

20 A. Correct. Two.

21 Q. And underneath -- and near the
22 bottom what are the instructions as to how
23 to fill out number two?

24 A. It says provide the complete name
25 and address of the lender, grantor or

1 co-signer.

2 Q. Now please turn to Schedule I.
3 Sorry. Let me show you People's Exhibit 15
4 which is the ten day post primary report.
5 Please turn to page I which is page seven
6 of the printed disclosure report.

7 Mr. Morris, can you pull out
8 where it says date, name and the text
9 under date and name. That whole thing.

10 As much always you can, can
11 you read that line where it says, right
12 under the date and name, address heading.

13 A. Sure. August 26th, 2008 Nora
14 Anderson, 123 West 39rd Street, New York,
15 10025, 170 thousand dollars.

16 Q. And what does that indicate to the
17 Board of Elections?

18 A. That Nora Anderson loaned the
19 Committee 170 thousand dollars in personal
20 funds.

21 Q. In order to determine if there has
22 been a violation of contribution limits
23 does the Board of Election reply on the
24 truth of what is recorded?

25 A. Yes.

1 Q. Are you familiar with the section
2 of the election law entitled campaign
3 contribution to be under true name of the
4 contributor?

5 A. Section 14-120 of the Election
6 Law.

7 Q. In sum and substance, what does
8 that -- one moment. Can we just approach?

9 (Sidebar conference at the
10 bench which was off the record and out
11 of the hearing of the jury).

12 MR. CORT: May approach the
13 witness?

14 THE COURT: Yes.

15 Q. Sir, did I just show you the Section
16 14-120, campaign contribution be under
17 true name of the contributor.

18 A. Yes.

19 Q. Are you familiar with that
20 section?

21 A. I am.

22 Q. In sum and substance what does
23 that Section of the Election Law provide?

24 A. It puts an obligation on behalf of
25 candidates and political committees and

1 their agents to -- when dealing with
2 contributions and receipts to the
3 candidate or the Committee to provide the
4 actual source of the funds.

5 Q. What do you mean the actual
6 source?

7 A. As I had mentioned yesterday,
8 campaign finance has several critical
9 components. One is disclosure. So you
10 have an informed electorate, people have a
11 right to know what money is being raised
12 and spent on elections.

13 And number two, the
14 campaign finance law place strict
15 contributions on what a candidate or
16 political committee can receive from
17 sources in order for the public and
18 electorate to be properly informed, and
19 for the Board of Elections to determine
20 whether or not the limits have been
21 maintained and not violated. The Board
22 needs to know the true name of the
23 contributor. It all has to work in
24 concert. If you don't have the true name
25 you don't know if a violation has

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1 potentially occurred.

2 Q. Have you heard the term
3 intermediary?

4 A. Yes.

5 Q. What is an intermediary?

6 A. Where someone sent a contribution
7 on behalf of a campaign or political
8 committee and delivers that to the
9 appropriate recipient.

10 Q. Under the Election Law are
11 candidates permitted to act as
12 intermediaries to accept campaign
13 contributions?

14 A. Yes.

15 Q. If one does act as an
16 intermediary, how must the contribution be
17 recorded?

18 A. Assuming the candidate is not
19 filing their own reports they would have
20 an obligation under the Election Law to
21 turn over that contribution to the
22 treasurer so the treasurer could disclose
23 it.

24 Q. And who would be reported as the
25 contributor? Who must be reported as the

1 contributor?

2 A. The contributor, whoever made the
3 contribution that the candidate was
4 delivering.

5 Q. So the candidate would not be --
6 would the candidate be the contributor?

7 A. No.

8 Q. Why not?

9 A. Again, if the-- the purpose of the
10 true name of the contributor is to know
11 where the funds came, who is actually
12 making the contribution. So, if an
13 individual or an entity is making a
14 contribution and giving it to the
15 candidate, the candidate is not making
16 their own filings, they're an agent of the
17 committee, the Election Law puts an
18 affirmative obligation on the candidate to
19 turn that contribution over to the
20 treasurer and to inform the treasurer who
21 the contributor is.

22 Q. What do you mean the candidate is
23 an agent of the Committee?

24 A. Well, again the obligation to
25 disclose campaign finances rests in the

1 case of a candidate on the candidate
2 unless the candidate wishes to have a
3 committee fulfill that function. In that
4 case, as was the case, the candidate filed
5 a CF-16 Form, which is the form by which
6 the candidate informs the Board of
7 Elections and the public that all the
8 campaign finance activity would be going
9 through the Committee. When that happens
10 the candidate, it is still the candidate's
11 campaign, they're running for office, it
12 does not mean they can't raise and spend
13 money, it just means their finances, any
14 financial activity they engage in they
15 have an affirmative obligation under the
16 law to turn that information over to the
17 treasurer so that the treasurer could make
18 the disclosure.

19 All those provisions work
20 in concert with one another. And so, if
21 the candidate receives a contribution
22 under 14-102, the provisions of the law
23 provide that the Committee keep a detailed
24 account of all the receipts, transactions,
25 liabilities, loans, et cetera, has to

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1 maintain those records, and then 14-118
2 sets out a specific obligation whereby any
3 receipts of the campaign must be deposited
4 in the designated depository. As I
5 mentioned yesterday --

6 Q. Okay. I think you explained it.
7 Thank you.

8 A. Okay.

9 Q. Let me show you what is in
10 evidence as People's Exhibit 5.

11 Take a look at the left--
12 take a look at the left or the yellow side
13 under the 100 thousand dollar part, Mr.
14 McCann.

15 A. Okay.

16 Q. Assuming that Seth Rubenstein gave
17 Nora Anderson a check for 100 thousand
18 dollars in connection with her election,
19 and assume that Nora Anderson deposited
20 that check into her personal bank account
21 the same day, and that she then gave a 100
22 thousand dollar check to her Campaign
23 Committee. Assuming all those facts who is
24 the contributor of the 100 thousand
25 dollars?

1 A. Seth Rubenstein.

2 Q. When did the contribution occur?

3 A. It would have been on the date of
4 the receipt. It would have been August
5 the 12th.

6 Q. What is the basis for your opinion
7 that the contribution actually occurred on
8 August 12th?

9 A. The Election Law states that when
10 it comes to a contribution you're
11 obligated to report the date of receipt.
12 In this case, when Mr. Rubenstein gave the
13 check for a hundred thousand dollars to
14 the candidate, the candidate, as agent of
15 the Campaign Committee, would have
16 received it. That would have been the day
17 of the receipt when she actually got it.

18 Q. What were the-- what were Seth
19 Rubenstein's and the candidate's
20 obligations as to that 100 thousand
21 dollars?

22 A. Seth Rubenstein is an agent of the
23 Committee and Nora Anderson is an agent of
24 the Committee. Mr. Rubenstein was a
25 signatory on the Committee Registration

1 Form CF-2 as an authorized signatory on
2 the bank account for the Committee, and as
3 such he's clearly an agent of the
4 Committee and the candidate by filing the
5 CF-16, stating that all the disclosures of
6 the campaign would be made by the
7 Committee, is also an agent of the
8 Committee and the campaign, and so they
9 would both have obligations relative to
10 the contribution.

11 Q. If the contribution occurred on
12 August 12th, what occurred on August 19th,
13 when Nora Anderson deposited the money
14 into the Anderson for Surrogate account?

15 A. Well, the August -- the 12th
16 transaction, based upon what you told me,
17 is that she deposited the check into her
18 personal account and then subsequently
19 deposited the check, or provided a check
20 to the Committee from her own account.

21 Q. So the contribution occurred on
22 August 12th?

23 A. The contribution occurred on
24 August the 12th. Under the Election Law
25 the--.

1 THE COURT: I'm sorry. What is
2 the question before the witness now?

3 MR. CORT: I'll withdraw it.

4 Q. Taking a look at the right side of
5 the diagram.

6 A. Okay.

7 Q. Where it says 150 thousand
8 dollars?

9 A. Okay.

10 Q. Assume Seth Rubenstein lent Nora
11 Anderson 150 thousand dollars in
12 connection with her election by making a
13 transfer from his brokerage account into
14 Nora Anderson's brokerage account all on
15 the same day, and assume that Nora
16 Anderson then wired transferred that 100
17 thousand dollars into her campaign
18 committee all on that same day. Assuming
19 that hypothetical who is the lender of the
20 150 thousand dollars?

21 MR. HAFETZ: Judge, I just want
22 to make sure this is clear, it is just
23 his opinion.

24 THE COURT: The witness'
25 testimony is giving an opinion of the

1 hypothetical Mr. Cort just gave.

2 Q. I'm sorry. I said a hundred I meant
3 150 thousand dollars all throughout that
4 transaction.

5 A. It would be a loan from Mr.
6 Rubenstein to the campaign.

7 Q. When does the reported loan occur?

8 A. On August 26th.

9 Q. What is the basis of your opinion
10 saying that Seth Rubenstein was the lender
11 and the loan occurred on the 26th?

12 A. Well, Election Law 14-102 for a
13 political committee requires that the
14 treasurer maintain a detailed bound
15 account of all the transactions,
16 contributions, receipts, loans and
17 liabilities. If Mr. Rubenstein made a 150
18 thousand dollar loan to Ms. Anderson in
19 connection with the campaign then that
20 would be a loan to the campaign, and as
21 such he would be the loaner.

22 Q. Going back to the 100 thousand
23 dollars briefly. How should that have
24 been reported?

25 A. That contribution from Mr.

1 Rubenstein would be correctly reported as
2 a contribution from him and reported as
3 having been received on August the 12th.

4 Q. If this contribution was reported
5 as being from Nora Anderson, in your
6 expert opinion, would that be a false
7 statement?

8 MR. NEWMAN: Objection.

9 MR. HAFETZ: Objection.

10 THE COURT: Sustained to the
11 form of the question.

12 Would that be in compliance
13 with the Election Law as you understand
14 it?

15 I've pre rephrased the
16 question.

17 Would that be in compliance
18 with the Election Law as you understand
19 it?

20 A. No.

21 Q. And going back to the right side, if
22 this loan had been -- was reported as
23 being from Nora Anderson, in your expert
24 opinion would that be in compliance with
25 the Election Law?

1 A. No.

2 Q. Just give me one moment. I think
3 that may be it.

4 And what are the basis of
5 those two opinions?

6 A. Again, the Election Law put an
7 affirmative obligation on behalf of the
8 agents of the Committee and the candidate
9 to maintain those records, and also under
10 14-122 of the Election Law there is an
11 affirmative obligation on behalf of agents
12 and the candidate's political committee to
13 turn over all receipts, contributions,
14 evidence of liabilities, et cetera, within
15 14 days of the date of the transaction
16 and/or upon three days, if demanded by the
17 treasurer.

18 So all those provisions work
19 in concert. The obligation to maintain the
20 records, the obligation to have -- to
21 turn over the receipts of all the
22 transactions to the treasurer so that the
23 treasurer can then disclose them.

24 Q. Why did you indicate Seth
25 Rubenstein as an agent of the campaign?

1 A. He's certainly an agent of the
2 campaign because he's a registered
3 signatory on behalf of the registration
4 documents of the Committee. That indicates
5 that he's involved in all the financial
6 transactions of the campaign. That he has
7 an obligation under the Election Law, he's
8 affirmatively stated I'm involved in the
9 financial activities of the campaign on
10 the registration documents.

11 MR. CORT: No further
12 questions.

13 THE COURT: Mr. Hafetz, do you
14 want to begin you're cross-examination?

15 MR. HAFETZ: Can we take a
16 short break.

17 THE COURT: All right. Ladies
18 and gentlemen, I am sorry, it was a
19 little choppy getting here. We'll take a
20 brief recess. As soon as everybody is
21 ready we will continue. Please keep your
22 exhibits and notes book on the chair. In
23 the meantime do not discuss anything
24 about the case. You may step out.

25 (Whereupon the jury left the

1 courtroom at 10:45 AM).

2 THE COURT: Step down, sir.

3 THE WITNESS: Thank you, your
4 Honor.

5 (Whereupon, a recess was
6 taken).

7 THE COURT: We're in recess for
8 about 10 minutes.

9 CONTINUED ON NEXT PAGE

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