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THE

ROUGH DRAFT PURPOSES ONLY. NOT TO BE USED AS  
OFFICIAL TRANSCRIPT AS IT MAY CONTAIN UNTRANSLATES  
AND MISTRANSLATES WHICH WILL BE CORRECTED IN THE  
FINAL VERSION.

April 6, 2010

SUSAN BYSIEWICZ

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Bethany A. Carrier, LSR.

23

Brandon Smith Reporting Service

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(860) 549-1850

25

Brandon Smith Reporting

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1

(The deposition commenced at 09:51 AM.)

2

3

THE VIDEOGRAPHER: Date today is April

4

6th, 2010. We're going on the record at 9:51 a.m..

5

The case is Bysiewicz versus DiNardo, the Connecticut

6

Democratic Party and the Connecticut Office of the

7

Secretary of State filed in the Superior Court of

8

Hartford. The name of the witness is Susan Bysiewicz,

9

and this is volume 3. This deposition is being held

10 at Gersten and give colored and roam, 214 Main Street,  
11 Hartford Connecticut. My name is Jacob Brandon from  
12 Brandon Smith Reporting & Video. The court reporter  
13 is Bethany Carrier from Brandon Smith Reporting and  
14 video. Counsel will now state their appearances for  
15 the record please after which the court reporter will  
16 swear in the witness.

17 MR. HORTON: Wesley Horton for the  
18 plaintiff.

19 MR. ZINN-ROWTHORN: Perry Zinn-Rowthorn  
20 for the Office of the Secretary of State.

21 MR. GERSTEN: My name is Eliot Gersten.  
22 I represent the republican party. I have a  
23 representative here named Ben Proto, one of the  
24 attorneys with the republican party. We've been told  
25 by Mr. Reynolds we can proceed without him. He

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1 represents the democratic party. Are we having Mr.  
2 Martino come today?

3 MR. HORTON: I don't believe so.

4 THE WITNESS: I don't believe so.

5 MR. GERSTEN: Okay. And the only other  
6 thing I can think of for the record is that are we not  
7 having the second videographer.

8 MR. HORTON: Yes, the answer to that  
9 question is we are not having him today. And I just  
10 want to make one other preliminary point that this is  
11 the third day of the deposition of my client. I have  
12 my partner attorney Krisch preparing a motion for  
13 protective order that there be no further deposition  
14 if it is not ended by 1:00 today and I plan to present  
15 that motion to the judge at 2:00 but if the deposition  
16 is over by 1:00, I will not present the motion.

17 MR. GERSTEN: Okay. Could you swear  
18 the witness in, please.

19

20 ( Witness sworn.)

21

22 BY MR. GERSTEN:

23 Q Ms. Bysiewicz, I'm going to show you what I  
24 received today from the secretary of state's office  
25 lawyer and ask after the court reporter has marked it

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4

1 if you can take a look at that for just a moment.

2

3 (Defendant's Exhibit 20: Marked for  
4 identification.) brief.

5 BY MR. GERSTEN:

6 Q Mrs. Bysiewicz, are you able to identify for  
7 us what's been marked as Exhibit 20?

8 A Yes. It's the amicus brief to the Second  
9 Circuit.

10 Q Okay. And this is the brief that we  
11 discussed that you said you participated in drafting?

12 A My lawyers, volunteer lawyers David mark care  
13 yes, sir and Bill Bloss drafted it and I reviewed it.

14 Q Okay. How much time did you spend reviewing  
15 it?

16 A I don't remember.

17 Q Okay. And do you recall making any changes  
18 to the brief when you read it?

19 A I recall making some changes.

20 Q Okay. As you look through this document,  
21 which is about two months old, could you identify what  
22 changes you recall making, please?

23 A I don't recall. I made various drafting --  
24 drafting and editing changes, as this was going through  
25 several drafts.

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1 Q Okay. But as you sit here today you're not  
2 able to identify any portions of this that you  
3 participated in working on; is that correct?

4           A     I can't point to you specific edits that I  
5     made because I don't -- I didn't -- I can't tell you  
6     which.

7           Q     When you made your edits is it something you  
8     made on a hard copy and sent to the lawyers or did you  
9     make them on a copy that was sent to you through  
10    e-mail?

11          A     I believe I made edits on a hard copy.

12          Q     Okay.  And you did it on more than one  
13    copy?

14          A     I don't remember.  I believe there were  
15    several drafts.

16          Q     And you looked through the several drafts and  
17    you continued to contribute to the editing of it as the  
18    drafting the document was done; is that correct?

19          A     Uh-huh.  Yes.

20          Q     And is it your testimony today that you --  
21    well let me ask you this way:  Did you transmit your  
22    comments on a hard copy to the lawyers?

23          A     I believe they were verbal on a conference  
24    call.

25          Q     Okay.  And do you recall how you received

1 this document, any of the drafts? Was it through  
2 e-mail as an attachment?

3 A I believe it was through e-mail.

4 Q Okay. And the other thing is that you  
5 weren't sure if you had actually signed this brief when  
6 it was filed but I don't see your signature anywhere on  
7 this. And so I'm presuming that your --

8 A No, it was David Makerwicz, apparently.

9 Q Now, the next question I have for you is you  
10 are aware that we are going to court today, aren't  
11 you?

12 A Yes.

13 Q And you're aware that we're going to court  
14 today on a motion for protective order?

15 A Yes.

16 Q And this is a motion for protective order  
17 that's being filed on your behalf?

18 A Yes.

19 Q Okay. What is the reason that you have to  
20 seek a protective order to seal all the transcripts in  
21 this case?

22 MR. HORTON: I object. That's  
23 attorney-client privilege.

24 MR. GERSTEN: Okay I'll ask my question  
25 differently.

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7

1 BY MR. GERSTEN:

2 Q Ma'am, could you describe what the basis is  
3 that you know of, and you understand, for filing the  
4 motion for protective order?

5 MR. HORTON: Objection. The reason she  
6 knows of is attorney-client privilege.

7 MR. GERSTEN: That doesn't matter.

8 BY MR. GERSTEN:

9 Q What is your understanding as to the basis  
10 you have to file this motion for protective order?

11 MR. HORTON: Don't answer the question.  
12 Attorney-client privilege.

13 MR. GERSTEN: And the answer.

14 MR. HORTON: Attorney-client  
15 privilege.

16 MR. GERSTEN: Okay.

17 BY MR. GERSTEN:

18 Q Did you read the motion, ma'am?

19 A No.

20 Q Okay. You're an attorney?

21 A Yes.

22 Q Okay. Do you have any understanding as to  
23 why you are seeking a motion for protective order in  
24 this case?

25 MR. HORTON: Objection. Don't answer

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1 the question.

2 MR. GERSTEN: She's allowed to answer  
3 the question yes or no.

4 MR. HORTON: Well, all right. Fine.  
5 You can answer that question.

6 A And the question is.

7 BY MR. GERSTEN:

8 Q Do you know of any basis that you have for  
9 seeking relieve in the court today on a protective  
10 order?

11 A Yes.

12 Q Okay. And what is your understanding of the  
13 basis you have to seek a protective order?

14 MR. HORTON: Objection. Don't answer  
15 the question. Attorney-client privilege.

16 MR. GERSTEN: I'm not asking you for  
17 what your attorney told you, ma'am. I'm asking what  
18 is your understanding.

19 MR. HORTON: Objection. Don't answer  
20 the question to the extent it has to do with your  
21 discussions with me.

22 MR. GERSTEN: Right.

23 BY MR. GERSTEN:

24 Q I don't want to know what Mr. Horton told you  
25 but I do want to know why you -- what is your

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1 understanding for seeking a protective order?

2 MR. HORTON: Don't answer the question  
3 to the extent it has to do with your reliance on  
4 discussions with me and the question did not carve out  
5 any other area.

6 BY MR. GERSTEN:

7 Q Go ahead, ma'am?

8 MR. HORTON: Don't answer the  
9 question.

10 MR. GERSTEN: I'm not asking for the  
11 content of the conversations with you and Mr. Horton.

12 This is a lawsuit that you filed and certainly you've  
13 discussed your lawsuit with us, correct.

14 A With you.

15 Q Yes. On the record here?

16 A Yes.

17 Q Okay. Now there's been a motion filed in  
18 this case. Are you aware of that?

19 A Yes.

20 Q And are you aware of the basis that you are  
21 seeking as the plaintiff to obtain a protective order  
22 in this case, and I'm not interested in knowing what  
23 Mr. Horton told you?

24 MR. HORTON: You may answer the  
25 question to the extent it says what the motion says.

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10

1 Otherwise don't answer the question. If you know.

2 A The motion is to seek a protective order.

3 Q Okay. And do you have a reason to understand  
4 why you're seeking a protective order?

5 MR. HORTON: Objection. Don't answer  
6 the question.

7 BY MR. GERSTEN:

8 Q Is the only basis you have to know why you're  
9 seeking a protective order based upon the discussion  
10 you had with with Mr. Horton?

11 A Yes.

12 Q So other than discussions with Mr. Horton,  
13 you don't know why you're seeking this protective  
14 order; is that correct?

15 A Could you repeat the question.

16 MR. GERSTEN: Would you go ahead, Beth?

17

18 (The testimony was read.)

19

20 MR. HORTON: I'm going to object to  
21 that question. It's -- and don't answer the question  
22 because the answer to that question is bound up with  
23 your discussions with me. It's the attorney-client  
24 privilege.

25 BY MR. GERSTEN:

1           Q    Ma'am, outside of discussions with your  
2 attorney, is it your testimony you have no idea or  
3 understanding why you are seeking a motion for  
4 protective order if Mr. Horton hasn't told you  
5 reasons?

6                   MR. HORTON: I object to the question.  
7 Don't answer it.

8 BY MR. GERSTEN:

9           Q    Is that right?

10                   MR. HORTON: And if any more questions  
11 like this I'm going to add harassment I can ask the  
12 judge at 2:00 to order her to answer the question.

13                   MR. GERSTEN: Oh, I am, Wes, because as  
14 you know there is no memorandum filed. You kind of  
15 got us all guessing for what the basis is for this

16 motion.

17 MR. HORTON: Ask me after we have a  
18 break and I'll be glad to tell you.

19 MR. GERSTEN: Let's take a break.

20 THE VIDEOGRAPHER: Off the record  
21 10:01.

22

23 (Recess: 10:01 am to 10:04 am.)

24

25 THE VIDEOGRAPHER: On the record,

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12

1 10:04.

2 BY MR. GERSTEN:

3 Q Ms. Bysiewicz, I understand your lawyer's not  
4 going to let you answer any questions regarding the  
5 basis for the motion that you filed today; is that  
6 correct?

7           A     That's correct.

8           Q     And do you, as the -- do you, as the  
9     plaintiff, or as the secretary of state, believe that  
10    the public has an interest in reviewing the transcripts  
11    in this case?

12                   MR. HORTON: I object. Don't answer  
13    the question.

14                   MR. GERSTEN: What's the basis for  
15    that? Is that a privilege question?

16                   MR. HORTON: This is.

17                   MR. GERSTEN: Is that privileged? If  
18    it's not privilege, don't tell her not to answer the  
19    question. Are you claiming privilege?

20                   MR. HORTON: I'm thinking.

21                   MR. HORTON: Could you have the  
22    question read back, please?

23

24                                 (The testimony was read.)

25

1                   MR. HORTON: You may answer the  
2 question.

3           A     If the question is when the public has the  
4 right to know, and I believe that is the subject of the  
5 discussion that you will be having about the protective  
6 order.

7 BY MR. GERSTEN:

8           Q     Okay. I'm sorry, I'm not sure I got an  
9 answer to my question. Could I have it read back,  
10 please?

11

12                   (The testimony was read.)

13

14           A     As the plaintiff, that is -- that will be the  
15 subject of the discussion that you have with the judge  
16 later this afternoon.

17 BY MR. GERSTEN:

18           Q     Okay. And as the plaintiff, what is your  
19 position?

20           A     My position will be the position of my  
21 attorney as the plaintiff.

22           Q     As the plaintiff, you're indicating that you  
23 have no position as to whether the public has a right  
24 to review these transcripts in this case; is that  
25 correct?

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1           A     As the plaintiff, I am waiting for my  
2 attorney to further advise me on this subject because  
3 it is my understanding that my attorney is still  
4 working on this issue.

5           Q     So as the plaintiff, you have no position as  
6 of this point in time?

7           A     I am waiting for advice of counsel.

8           Q     Okay. So without advice of counsel, as the  
9 plaintiff, you have no opinion as to whether the public  
10 has a right to review these transcripts?

11           A     I am waiting for my counsel's advice.

12           Q     I'm afraid my question called for a yes or a  
13 no answer. Can I have it read back to the witness,  
14 please, because I think she misunderstood the question?

15

16                               (The testimony was read.)

17

18           A     I don't know.

19 BY MR. GERSTEN:

20           Q     Now, in your position as secretary of state,  
21 do you have a position as to whether the public has a  
22 right to review these transcripts of Susan Bysiewicz's  
23 testimony?

24           A     Right now I am here in my role as a  
25 plaintiff.

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1 Q You're also the secretary of state today,  
2 aren't you?

3 A Yes, I am.

4 Q And you've told us all about what you do as  
5 secretary of state for a few days here, correct?

6 A Yes.

7 Q Okay. And you haven't resigned from your  
8 position in order to run for secretary of state -- in  
9 order to run for attorney general, correct?

10 A No.

11 Q So as you sit here today, in your capacity as  
12 secretary of state, does the secretary of state believe  
13 that the public has a right to see the transcripts of  
14 Susan Bysiewicz, the plaintiff in this case?

15 MR. HORTON: I object to the form of  
16 the question because she's not the secretary of state  
17 for this case because she's been recused, counsel.

18 BY MR. GERSTEN:

19 Q Go ahead, ma'am?

20 MR. HORTON: I object to the form of  
21 the question.

22 MR. GERSTEN: Okay. Form's -- I don't  
23 have to pond respond to it, I think you're wrong,

24 answer the question, please, ma'am.

25 A Generally I am in favor of the public's right

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16

1 to know and to review information and the question that  
2 you will be discussing with the judge has to do -- has  
3 to do with when the public may know.

4 Q Okay. So as the secretary of state, do you  
5 have a position as to when the public may have an  
6 opportunity to review the transcripts in this case?

7 A Not at the moment.

8 Q Okay. So that as of right now, speaking with  
9 your secretary of state hat on, are you indicating that  
10 this is an exception to your general rule that the  
11 public has a right to know?

12 A I am not.

13 Q But as a plaintiff, you are drawing an  
14 exception to the public's right to know about the

15 testimony about -- of the secretary of state?

16 A As a plaintiff I am awaiting my advice --  
17 advice from counsel.

18 Q Okay. Great. Thank you very kindly.

19 ?

20 MR. GERSTEN: John I'm sorry to bother  
21 you but she made copies of these documents that I  
22 wrote on and I need the clean ones which I think are  
23 over there in one of those notebooks, please.

24 BY MR. GERSTEN:

25 Q Sorry about that, Ms. Bysiewicz.

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1 Now, in the course of your supervision of  
2 attorneys at your office, could you tell me, do you  
3 engage in any kind of annual reviews of the performance  
4 of the attorney's work?

5 A My deputy does reviews, I believe.

6 Q Okay. And the deputy you are referring to is  
7 whom?

8 A Leslie Mara.

9 Q Okay. And do you conduct any reviews of the  
10 quality of the professional work provided by the  
11 attorneys who work for you?

12 A I do, because I review materials and  
13 collaborate with them. So to the extent I have  
14 comments or suggestions, I pass those along.

15 Q Okay. Outside of what you claim you provide  
16 in the way of professional comments, do you review any  
17 of your attorneys work product and give them a review  
18 at any time?

19 A I review work that they produce and give  
20 comments at that time.

21 Q Okay. Do you give comments to them as to the  
22 level of quality of work their performing?

23 A To the extent that that's in the comments,  
24 yes.

25 Q Okay. Outside of your comments on documents

1 then, you do not conduct a review of their professional  
2 work, correct?

3 A What review are you speaking of.

4 Q Annual reviews, quarterly reviews, periodic  
5 reviews?

6 A Those are done by my deputy.

7 Q Now, when you call it your deputy, that would  
8 be Leslie Mara currently since 2006?

9 A Correct.

10 Q All right. And prior to the time she came on  
11 board, is it your testimony that Maria Greenslade did  
12 the annual reviews of the performance of the lawyers  
13 who you supervised?

14 A Yes.

15 Q Okay. Now, in terms of your supervision, do  
16 you have a weekly meeting with all the lawyers in the  
17 office and conduct what's -- find out what's going on  
18 in the office?

19           A     We have policy meetings and I have frequent  
20 telephone calls with my attorneys depending on what is  
21 happening on a particular day and what questions come  
22 up.

23           Q     Okay. So the policy meeting we went through  
24 in the calendar yesterday?

25           A     Some of them, yes, some of them include our

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19

1 civil service attorneys, some of them don't.

2           Q     So not everyone of the policy meetings that  
3 we reviewed yesterday would involve the kind of policy  
4 meeting you just referred to in your testimony,  
5 correct?

6           A     Correct.

7           Q     Outside of those policy meetings, do you have  
8 a regular meeting with members of your staff that you

9 supervise as attorneys?

10 A We do not.

11 Q Now, ma'am, do you remember being at a  
12 Milford democratic town committee on February 23rd,  
13 2010?

14 A Yes.

15 Q Okay. Do you remember you stood up and spoke  
16 in front of people?

17 A Yes.

18 Q Okay. And do you remember getting up there  
19 and indicating to that group of people that you worked  
20 side by side with the special litigation unit of the  
21 attorney general's office on an almost daily basis?

22 A I don't recall saying that specifically.

23 Q Okay. Do you recall how you referred to your  
24 connection to the special litigation unit at the  
25 attorney general's office on that day?

1 A No, not specifically.

2 Q Did you indicate -- do you recall indicating  
3 to that August body in Milford that you work side by  
4 side with the special litigation unit of the attorney  
5 general's office ( August body.)

6 A Yes.

7 Q Did you indicate in that meeting that you're  
8 the client under those circumstances?

9 A No.

10 Q Didn't you create the impression that you've  
11 been practicing law because you work side by side with  
12 the special litigation unit of the attorney general's  
13 office?

14 A I'm sorry, say that again.

15 Q I'll restate that. Wasn't it your intent to  
16 indicate that you in fact are a practicing lawyer  
17 active in litigation because you work side by side with  
18 members of the attorney general's special litigation  
19 unit?

20 A It was my intention to note that we work  
21 regularly with the attorney general's office.

22 Q Okay. And you were very specific weren't you

23 talking about the special litigation unit?

24 A Yes, because we work with them frequently.

25 Q Okay. When you say you work with them

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1 frequently, you're the client as we established  
2 earlier, you're not the lawyer in that role, are you?

3 A Our office is the client and I am a lawyer.

4 Q And you are a lawyer within the client,  
5 correct? That's what we had to -- I thought we already  
6 got past this but if we're going to go back over it,  
7 that's okay. Didn't you testify you were the client  
8 when the special litigation unit work on your behalf?

9 A Yes.

10 Q Okay. And did you tell the people in Milford  
11 that you were the client when you worked with the  
12 special litigation unit or were you intending to let

13       them know that that's your view of your lawyering?

14               A     Are there several questions in that?  Could  
15       you perhaps.

16                       MR. HORTON:  Object to the form of the  
17       question.

18                       MR. GERSTEN:  Good point.  Good  
19       objection, Ms. Bysiewicz.

20               Q     Ms. Bysiewicz, did you intend to leave the  
21       impression with the Milford town committee that you act  
22       as an attorney when you work with the special  
23       litigation unit of the attorney general's office on  
24       February 23rd?

25               A     Can you please repeat that question.

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1                       MR. GERSTEN:  Beth, please?

2

3                       (The testimony was read.)

4

5 A Yes.

6 BY MR. GERSTEN:

7 Q And when you say yes, was -- when you  
8 testified under oath here, you were pretty candid and  
9 indicated that your office was the client under those  
10 circumstances, correct?

11 A Correct, but I never stopped being a  
12 lawyer.

13 Q It looks like from your calendar that the  
14 policy meetings that you discussed, which took place  
15 over an 11 year period, took place about ten times a  
16 year. Would that be about right to you?

17 A I couldn't say.

18 Q Okay. Well, how about last week? When's the  
19 last time you had a policy meeting in the last ten  
20 days?

21 A I'm not sure.

22 Q Looking at exhibit -- what number is that,  
23 ma'am? Okay. 19, I think. Wes, you didn't take one  
24 of the exhibits and stick it away, did you?

25 MR. HORTON: I did not.

1 MR. GERSTEN: Just kidding with you.

2 No. Its okay.

3 BY MR. GERSTEN:

4 Q Ma'am, asking to you take a look at page 5 67  
5 of Exhibit 18. And I'm going to try to do this with  
6 you. Look at the last week of March there. Can you  
7 tell us what you did on Friday, what is that the 29th?

8

9 (Derrick Donnelly entered the room.)

10

11 BY MR. GERSTEN:

12 Q See in the upper top corner there?

13 A Wait a minute. Which --

14 Q What I'm asking to you do just so we're  
15 specific here, I'm looking at Friday, the 26th. Is  
16 that the day you indicated that you took off, not --

17 it's not on your calendar ma'am I'm just looking at the  
18 calendar for reference sake. So I was referring to  
19 March 26th, 2010, which is a Friday.

20 A Yes.

21 Q Is that the day that you indicated yesterday  
22 that you took off for fundraising purposes?

23 A Part of the day I also testified at a  
24 judiciary hearing, I believe, on that day as well.

25 Q Okay. So you left the judiciary hearing in

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24

1 the morning, then you went to make your phone calls for  
2 fundraising purposes later in the day?

3 A I took a vacation day and during my vacation  
4 day I testified at the legislature.

5 MR. HORTON: Excuse me, Eliot, we have  
6 a new attendee to mention for the record. Derrick  
7 Donnelly for the democratic party.

8 MR. GERSTEN: Okay.

9 BY MR. GERSTEN:

10 Q Now, ma'am, how about the day before on the  
11 25th, what activities did you engage in that day that  
12 you claim constitute the active practice at the bar?

13 A I believe I took that as a vacation day as  
14 well.

15 Q Okay. How about the 24th of March could you  
16 describe the activities that took place that you recall  
17 that you believe support your claim that you engage in  
18 the active practice of law at the bar?

19 A I would have to look at that diary page and  
20 this calendar is from the 8th of March, so it wouldn't  
21 necessarily include any activities for that day.

22 Q So without looking at your diary that day  
23 that we went through yesterday, you're indicating that  
24 you can't identify any activities that you recall you  
25 engaged in that support your claim that you engage in

1 the active practice of law; is that correct?

2 A I can't remember.

3 Q Okay. How about the day before? Tuesday,  
4 the 23rd of March?

5 A Without seeing the calendar, I can't  
6 remember.

7 Q Okay. How about the day before that, are you  
8 able to tell us what you engaged in as the active  
9 practice of law before the bar -- at the bar, rather?

10 A Without my calendar, I couldn't tell you.

11 Q Okay. So yesterday we went through the  
12 number of samples of your calendar and in that you said  
13 your calendar doesn't reflect all of your activities,  
14 correct?

15 A Correct.

16 Q And today you're indicating that without the  
17 calendar, you can't recall what you did on a particular  
18 day; is that correct?

19 A That's right.

20 Q Okay.

21 MR. GERSTEN: John you got any of those  
22 so I can start? Thank you.

23 BY MR. GERSTEN:

24 Q Ma'am, I'm going to show you what we'll mark  
25 as Exhibit 21?

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26

1

2 (Defendant's Exhibit 21: Marked for  
3 identification.) letter July 24,  
4 2002.

5 MR. HORTON: Do you have a copy for  
6 me.

7 MR. GERSTEN: You certainly can.

8 BY MR. GERSTEN:

9 Q Ma'am, you recognize this letter?

10 A Yes.

11 Q Got your signature on it?

12 A Yes.

13 Q Okay. And this is one of the documents that  
14 you pointed to us at and said that this supports your  
15 position that you are engaged in the practice of law,  
16 isn't it?

17 A Yes.

18 Q Okay. For the record, this is SOTS 2041.  
19 And ma'am, in this situation you were requesting an  
20 opinion from the office of the attorney general,  
21 correct?

22 A Yes.

23

24 (Off-the-record discussion.)

25

Brandon Smith Reporting

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1 MR. ZINN-ROWTHORN: Eliot can I just

2 ask -- I don't have a copy of it but can I look at  
3 it.

4 MR. GERSTEN: Sure.

5 BY MR. GERSTEN:

6 Q Ma'am, I'm going to show you another document  
7 and have it marked as Exhibit 22, I think?

8

9 (Defendant's Exhibit 22: Marked for  
10 identification.) letter April 15,  
11 2003.

12 MR. GERSTEN: And this is SOTS 1462.

13 BY MR. GERSTEN:

14 Q Ma'am, this is an August 15th letter that  
15 you -- August 15th, 2003 letter that you pointed out to  
16 us supports your claim that you are engaged in the  
17 active practice of law, isn't it?

18 A Both things.

19 Q When you say both things, it's two pages,  
20 right?

21 A Okay. I thought we were talking about two  
22 different exhibits, 21 and 22.

23 Q Correct. 22 is the one I'm now focusing  
24 on?

25 A Yes.

Brandon Smith Reporting

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1 Q Okay. And in this document that you provided  
2 to us or you referred to us, this is a document signed  
3 by Ted Bromley?

4 A Yes.

5 Q And does Ted Bromley identify himself in some  
6 way?

7 MR. GERSTEN: I'll get these to you.

8 A I believe he identifies himself as staff  
9 attorney in this document.

10 Q Okay.

11 MR. HORTON: Excuse me do you have any  
12 extra copies of --

13 MR. GERSTEN: No. That's part of my  
14 problem.

15 MR. HORTON: May I have it just for a

16 second so they can see it?

17 MR. GERSTEN: It's more important that  
18 the witness gets to see it.

19 MR. ZINN-ROWTHORN: That's all right.  
20 I'll ask for it if I think I need it. Thanks.

21 BY MR. GERSTEN:

22 Q Now, in this document, ma'am, Mr. Bromley  
23 identifies himself as the attorney for the secretary of  
24 state, correct?

25 A Yes.

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1 Q Okay. And this document is one in which he  
2 drafted and had the attorney general's assistance in  
3 drafting, didn't he?

4 A I don't know that he had the attorney  
5 general's assistance in drafting it.

6 Q Okay. Well, let's talk about who assisted  
7 Mr. Bromley in drafting this letter. Is it your  
8 testimony today that this is a document that you  
9 drafted?

10 A No.

11 Q Okay. Is this a document that you claim that  
12 Mr. Bromley provided to you for review?

13 A I'm aware of the issues that are discussed in  
14 this letter.

15 Q So am I because I read them. But my question  
16 is: Did you review this letter before it went out? Is  
17 that your testimony?

18 A I may have. This was written in 2003.

19 Q Okay. Absent -- now that you've looked at  
20 this letter, nothing in this letter refreshes your  
21 recollection as to whether you reviewed it prior to Mr.  
22 Bromley sending this letter out; isn't that correct,  
23 ma'am?

24 A That's correct. But I certainly was aware of  
25 all the -- aware of the issues that are discussed in

1 the letter.

2 Q Okay. Well you were a named defendant in the  
3 case of Campbell versus Bysiewicz?

4 A Correct.

5 Q So you were aware of the issue, correct?

6 A Yes.

7 Q But the attorney general's office represented  
8 you as the Defendant in that case, correct?

9 A Yes.

10 Q You didn't enter an appearance?

11 A No.

12 Q In fact, did Mr. Bromley?

13 A Sometimes he testifies in particular cases.

14 I don't recall if he did in that one.

15 Q Okay. Sometimes he's given the delegation to  
16 testify in a particular case, not you, correct?

17 A Correct.

18 Q Okay. So another thing that Mr. Bromley does  
19 that you don't do is that he will actually testify in a

20 case on behalf of the Office of the Secretary of State,

21 correct?

22 A On occasion.

23 Q Now, Ms. Bysiewicz, I'm going to show you

24 what we're now going to mark as Exhibit 23?

25

Brandon Smith Reporting

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1 (Defendant's Exhibit 23: Marked for

2 identification.) letter April 3,

3 2007.

4 BY MR. GERSTEN:

5 Q Ma'am, this is --

6 MR. HORTON: Can I see it, please, if

7 you don't have a copy?

8 BY MR. GERSTEN:

9 Q Ma'am, this is a letter that's been provided

10 to us by your lawyers as a document that supports your  
11 position that you are engaged in the active practice of  
12 law at the bar of this state. This is an April 3rd  
13 letter, it wasn't Bates stamped when it came in but I'm  
14 now going to refer to it as Bysiewicz 105 for the  
15 purposes of the questioning here. That's your  
16 signature on this document, right?

17 A Yes.

18 Q Okay. And again, there's no reference here  
19 to you're an attorney, right?

20 A No.

21 Q And when you read -- when you signed this  
22 letter, did you read it before you signed it?

23 A Yes.

24 Q And is this a letter you actually drafted  
25 yourself as opposed to having someone else draft it for

1 you?

2 A This was drafted in conjunction with Val  
3 Ramos and Leslie Mara, all of us had discussions with  
4 Mr. Flynn.

5 Q Okay. Did you draft this letter or did  
6 someone else draft this letter?

7 A We worked on it together.

8 Q Okay. So it was three people wrote this one  
9 page together?

10 A You know, this was in 2007, so I am assuming  
11 that I worked with my director tore of constituent  
12 services and my deputy on this.

13 Q You have no specific recollection of such  
14 activity, do you? You're making an assumption?

15 A I'm not. I'm reminded of this and I do think  
16 that I absolutely reviewed this, I spoke to Mr. Flynn,  
17 and, you know, review had it.

18 Q Okay this is a document you provided to us  
19 that says this supports my position that I am actively  
20 engaged in the practice of law at the bar of this  
21 state, correct?

22 A Yes.

23 Q Good. And if I read this letter, it appears

24 that you are indicating that you're seeking advice from  
25 the attorney general's office in order to respond to

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1 Mr. Flynn, correct?

2 A Yes.

3 Q Okay. And it says here that until I receive  
4 a legal opinion from the attorney general's office, I  
5 can't really comment to you, correct?

6 A That's what it says, yes.

7 Q Okay. So the reason why you believe this  
8 supports your position that you're engaged in the  
9 active practice of law is what, ma'am?

10 A That we were attempting to resolve a legal  
11 issue, we were helping Mr. Flynn resolve a legal issue.  
12 He was engaged in an argument, as I recall, with some  
13 business partners over this partnership that is

14 referenced in the letter.

15 Q And what you gave me assistant about is you  
16 can't really help him out at all, correct?

17 A Well, I would have to see the attorney  
18 general's opinion that we were -- and the advice that  
19 we received because I can't recall on this particular  
20 case what ended up happening with Mr. Flynn.

21 Q Okay. Absent that document, you don't know  
22 what advice you gave this gentleman, do you?

23 A After this letter, no, because as I mentioned  
24 to you, we do -- we prepare several four or five  
25 constituent letters a year.

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1 Q And this constituent was basically told, I  
2 can't do anything without the advice of my lawyer to  
3 tell you what to do, correct?

4 A Correct.

5 Q Good. And this is a typical letter you send  
6 out to constituents who are looking for your advice,  
7 correct that you consider to be in the active practice  
8 of law?

9 A I don't know that this is typical. This  
10 problem is unique to Mr. Flynn.

11 Q Okay. Well, is this the kind of response you  
12 typically give out to constituents who are seeking a  
13 legal opinion from you?

14 A This is certainly different than elections  
15 opinions that we give to -- on particular elections  
16 issues.

17 Q Okay. Now, on the election issues, is it  
18 your testimony that every single opinion that's issued  
19 by your office on election issues is reviewed by you?

20 A Not everyone, but some are.

21 Q Okay. When you say some, as you sit here  
22 today, last year how many opinions were issued on  
23 elections issues from your office?

24 A I don't -- I don't know the number.

25 Q Okay. Do you know if there were more than

1 two?

2 A I don't know.

3 Q Okay.

4 A The number.

5 Q Do you know if there were more than ten?

6 A I couldn't say.

7 Q Do you know if there were more than 100?

8 A I couldn't say.

9 Q Okay. What would you have to look to to  
10 refresh your recollection as to how many opinions on  
11 election issues were issued by your office over the  
12 past six months?

13 A I'd have to look at all of those documents.

14 Q Okay. And when you say I'd have to look at  
15 all of those documents, what are you referring to?  
16 What documents, ma'am?

17 A Whatever opinions that might have been

18 produced.

19 Q Okay. Are there documents that you would  
20 say, would you go to your office and say, hey, guys, I  
21 need to see all the opinions we issued in the past six  
22 months on election issues. Is that what you would  
23 do?

24 A If that were the question, yes.

25 Q Okay. Who would you ask that question to?

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1 A I would ask Ted Bromley, he's the head of our  
2 elections division.

3 Q Okay. So then you would expect Ted to come  
4 back and say Madam Secretary, our office issued a  
5 number of opinions over the past six months and you  
6 would ask them could I see copies of these, am I  
7 correct?

8 A If that were the question, yes.

9 Q Okay. And as you sit here today, you cannot  
10 recall any specific number of opinions that were issued  
11 over the past six months from your elections office?

12 A I can't recall anything specific.

13 Q Okay. Can you recall any opinions on  
14 elections issues that were issued by your office in the  
15 past six months in which you personally played a part  
16 in drafting?

17 A I can't recall one right now.

18 Q Okay. When you say I can't recall one, can  
19 you recall any?

20 A Absolutely.

21 Q In the past six months?

22 A Oh, I was just saying you said can you recall  
23 any and I was going to say the ban on lever voting  
24 machines in the state was one of our major ones.

25 Q Okay. So that's one opinion that you worked

1 on?

2 A Yes.

3 Q Okay. In 11 years of serving as our esteemed  
4 secretary of state, could you please identify any other  
5 opinions issued by your office in which you personally  
6 reviewed before it was issued?

7 A Yes. There is one to Mr. Mike Telesca of the  
8 Connecticut independent party.

9 Q Okay.

10 A Is another example.

11 Q Right. And I think you provided us with a  
12 sample?

13 A Yes.

14 Q Right. So that's a second one.

15 A Yes.

16 Q Okay. And you provided us a copy of the  
17 first one, too. Do you recall that, the voting one?

18 A Yes.

19 Q So we have the Telesca one and we have the  
20 lever one. Is two opinions in an 11 year career at the  
21 secretary of state that you claim you reviewed before

22 they were issued; is that correct?

23 A Yes. And there were other opinions that our  
24 office did with respect to the reform party is another  
25 one.

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1 Q Okay. So that's three. And the reform party  
2 one is one which you provided us with an example of,  
3 correct?

4 A Yes.

5 Q In your 11 year history serving as the  
6 secretary of state, is it your best recollection that  
7 there are -- those three opinions issued by your office  
8 that you participated in prior to the time they were  
9 actually issued to the public?

10 A I believe so. Those are some examples.  
11 There may be others.

12 Q Okay. We're trying to find out, ma'am, are

13 there others? Those are the three you provided to us  
14 over an 11 year period. There are any others that you  
15 can recall that you participated in prior to their  
16 review -- prior to their issuance, rather?

17 A Those are the specific ones that I recall at  
18 the moment.

19 Q Okay. So if that's correct, we have three  
20 examples of your work product that you are pointing us  
21 to that were issued by your office, am I correct?

22 A Those are several.

23 Q Those are three when you refer to them as  
24 several I just want to make sure we have three,  
25 correct?

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1 A Those are examples, yes.

2 Q When you say those are examples, ma'am, I'm

3 asking to find out how many are in the pool that those  
4 exemplify that you participated in that you can claim  
5 some ownership of in an 11 year career?

6 A Those are several.

7 Q Those are three. Are there any others  
8 besides those three that you recall?

9 A There could be. Those are the ones I recall  
10 at the moment.

11 Q Okay. And when you say there could be, you  
12 recognize you're the plaintiff in this case, correct?

13 A Yes.

14 Q And you were asked to get work that  
15 demonstrates plaintiff that you engaged in the active  
16 practice of law, correct?

17 A Yes.

18 Q And you selected these three documents that  
19 you say support your case, correct?

20 A Yes.

21 Q And you didn't choose to select any more,  
22 correct?

23 A There are -- there are other documents that  
24 we selected in addition to those.

25 Q Okay. As it relates to opinions issued by

1 your office in your 11 year career as the secretary of  
2 state, you selected three and you can't select any  
3 others as you sit here today, correct?

4 A What do you mean I can't select any others.

5 Q You can't recall any others that you  
6 participated in besides those three in 11 years; is  
7 that correct?

8 A There is other work product that we have  
9 submitted to you.

10 Q I'm sorry I was unclear and I apologize for  
11 that. I am relating only to, ma'am, the opinions  
12 issued by your office. In an 11 year career as our  
13 secretary of state, given the opportunity to provide  
14 proof in support of your active practice of law, you've  
15 provided us with three documents that you say support  
16 your case, correct?

17 A Correct.

18 Q And as you sit here today, you can't recall  
19 any others relating to opinions issued by your  
20 office?

21 A Those are the three we selected as examples.

22 Q Well when you say --

23 A Because as you know, time is of the  
24 essence.

25 Q What does that mean, ma'am?

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1 A Only that we are hoping to get a decision  
2 from the judge soon.

3 Q So you decided I don't have to give a full  
4 disclosure I only have to pick out examples?

5 A Oh, no, I didn't mean to suggest that.

6 Q Okay. I didn't think so. Just trying to

7 make sure you're clear.

8           So ma'am, as you sit here today, besides  
9 these three examples that you -- that you say show my  
10 work product, that's what you provided them for,  
11 right?

12           A     Correct.

13           Q     There are no other examples of your work  
14 product that you can recall during the 11 year tenure  
15 you served as our secretary of state; isn't that  
16 correct?

17           A     There are no other examples? I'm sure there  
18 are. Whether our office produced them, I don't know  
19 the answer to that.

20           Q     Well, it's not your office's job to produce  
21 them, is it? We're talking about you're the plaintiff,  
22 correct?

23           A     Yes.

24           Q     Okay. And as of right now, what you've  
25 indicated is that there are three examples of opinions

1 from my office that I take responsibility for and I  
2 can't think of any others, correct?

3 A Yes.

4 Q Ma'am, I'm going to show you another document  
5 that was produced in discovery here which we've labeled  
6 as buys wise 190 and 191. They different come to us  
7 Bates stamped. I'm going to have this marked as an  
8 exhibit.

9

10 (Defendant's Exhibit 24: Marked for  
11 identification.) e-mail February 5,  
12 2009.

13 A I'm having difficulty reading this.

14 Q You can imagine my concern. I did, too.  
15 This was a document that was produced in this fashion  
16 from your discovery, so I'm just trying to find out if  
17 you can read it. I was able to read parts of it.

18 A Yes, I believe this constituent wrote to us  
19 regarding a piece of federal legislation.

20 Q And this is an e-mail that you authored?

21           A     It was authored by Val Ramos and I reviewed  
22 it for signature.

23           Q     Now the part of it I can read says, thank you  
24 for writing to me on February 1st with your views with  
25 the freedom of choice act, FOCA. Something introduced

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1     in 1989 the FOCA would codify Row V Wade's protections  
2     and guarantee the right to choose for future  
3     generations of women. Because this is federal  
4     legislation, I encourage you to contact and then you  
5     give him a number of people to talk to, correct?

6           A     Right. Federal legislators, yes.

7           Q     Okay. And this is a document that you  
8     drafted?

9           A     Val Ramos drafted it and I approved it.

10          Q     And in this document that you supplied to us

11 as support for your position that you engage in the  
12 active practice of law at the bar, you've indicated to  
13 this constituent that she -- he, she, Mr. Whatever his  
14 name is, should go elsewhere for advice on this, right,  
15 because it's concerning federal legislation?

16 A It concerns federal legislation and to have a  
17 significant input -- impact on that legislation you  
18 would want to contact your federal legislators.

19 Q Okay. So similar to the letter that you  
20 wrote to the -- Mr. Flynn, where you said I've got to  
21 get answers from other places, this letter indicates  
22 that you were telling this particular constituent you  
23 got to go elsewhere too, correct?

24 A We were directing him to the appropriate  
25 federal legislators since his question was with respect

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1 to federal legislation.

2 Q And this is a document you indicated to us  
3 supports your claim that you in performing your  
4 function as secretary of state, are practicing law on  
5 an active basis every day, right?

6 A Yes.

7 Q Ma'am let me show you a document that's been  
8 premarked as Bysiewicz 203 and 204. And we'll mark  
9 this one as 25?

10

11 (Defendant's Exhibit 25: Marked for  
12 identification.) letter November 30,  
13 2009.

14 BY MR. GERSTEN:

15 Q Now, ma'am, this is a document you signed,  
16 correct?

17 A Yes.

18 Q And when you signed it, you -- is this  
19 actually your signature or is this an auto writer?

20 A That's an auto writer, but I did review this.  
21 I review my constituent letters.

22 Q Okay. And this is a document that you  
23 provided to us in support of your claim that this shows  
24 I am engaged in the active practice of law when I am

25 secretary of state, correct?

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1 A Yes.

2 Q Good. And in this document I think you've  
3 revised this particular person that he's got to go  
4 elsewhere to get remedies for what he's looking for,  
5 correct?

6 A Yes, because the secretary of the state's  
7 office is not the venue or the office that investigates  
8 violations of civil or religious rights and we directed  
9 them to the appropriate person and that would be very  
10 similar to what a private lawyer might do for a private  
11 client in the general practice of law.

12 Q Okay. Let's talk about that. What private  
13 lawyer are you reserves to would write a letter like  
14 this that says, here's the advice that I'm going to

15 give you about where to go to pursue your complaint?

16 A Private lawyer would be someone who would  
17 take the case if this constituent had wanted to pursue  
18 it.

19 Q Okay. So you're not saying that a private  
20 lawyer would write a letter like this indicating you  
21 got to go see senator Dodd or senator Lieberman for  
22 assistance, correct?

23 A No. But private lawyers certainly ask on a  
24 regular basis congressmen or senators for assistance in  
25 cases.

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1 Q And ma'am, I noticed this letter again  
2 doesn't reflect when you wrote to Reverend Mehdi that  
3 you actually have a law degree as you're writing him  
4 this letter, does it?

5 A No.

6 Q And did you write this letter?

7 A I collaborated with Val Ramos, who is my  
8 director of constituent services.

9 Q Okay. And do you actually remember that?

10 A Remember this letter?

11 Q Yes?

12 A Yes.

13 Q Okay. And this is one of the letters that  
14 you submitted to us early on in the case that you claim  
15 support your position, correct?

16 A Yes.

17 Q I'm going to show you another two page  
18 document marked 205 and 206.

19

20 (Defendant's Exhibit 26: Marked for  
21 identification.) e-mail December 17,  
22 2009.

23 BY MR. GERSTEN:

24 Q This is another document you supplied to us  
25 that you say supports your claim that you are engaged

1 in the practice of law strike that -- active practice  
2 of law before the bar of this state, correct?

3 A Yes.

4 Q And this is an e-mail that was done December  
5 17th, 2009.

6 A Yes.

7 Q Do you remember writing this document?

8 A I remember working with Val Ramos on this  
9 because I look at constituent requests that we get and  
10 this is a topic that we frequently get with respect to  
11 recall and senator Joe Lieberman. We've got a number  
12 of constituent questions regarding recall.

13 Q So thinks basically a template of what you  
14 write to people who ask you to recall Joe Lieberman?

15 A It depends on the question because there is  
16 a -- we have in the past in the state legislature  
17 considered recall provisions and this letter, though,  
18 is discussing the issue of whether a United States

19 senator can be recalled. And we are going through some  
20 of the provisions of the United States constitution.

21 Q And this is a document that you claim  
22 supports your position that you are engaged in the  
23 active practice of law before -- at the bar of this  
24 state, correct?

25 A Yes.

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1 Q How many e-mails like this one do you send  
2 out regarding the recall of Joe Lieberman?

3 A I would have to check in my office, but I can  
4 recall many telephone calls and letters with respect to  
5 this issue.

6 Q And it says here, once again, that you can't  
7 really help this individual out because your office  
8 can't really do much to recall a U.S. senator,  
9 correct?

10           A     Correct.

11           Q     Okay.    So out of the four or five pieces of  
12   correspondence we've looked to today that you claim  
13   support your position that you are engaged in the  
14   active practice of law, can we agree, ma'am, that in  
15   each one of these you indicated to the recipient that  
16   there wasn't much you could do to help out their  
17   problem, they had to go elsewhere?

18           A     It directs them to the appropriate place and  
19   these letters also talk about provisions in federal --  
20   in federal law.   And at some in state law.

21           Q     And would you agree you refer them to places  
22   other than yourself because you can't assist these  
23   people?

24           A     In addition to providing the information in  
25   the letter, yes.

1 Q Thank you. Now then, ma'am, ?

2 Now, you provided us with what you claim is  
3 the -- you recall reviewing -- do you remember Exhibit  
4 2 and all the documents you produced in discovery in  
5 this case?

6 A Exhibit 2?

7 Q Yes. Exhibit 2 to the deposition, remember  
8 Mr. Horton's notebook I can get it for you if you'd  
9 like?

10 A Yes.

11 Q And in that -- in that you provided us with a  
12 number of pieces of documents relating to your  
13 testifying in front of the legislature?

14 A Yes.

15 Q Correct? In fact, you provided us with  
16 approximately 30 separate occasions in which you claim  
17 you were providing testimony in front of a legislature;  
18 is that correct?

19 A Yes.

20 Q And that's what you claim to be evidence of  
21 you performing activities which are related to your  
22 claim that you practice law on a regular basis,

23 correct?

24 A Absolutely.

25 Q Okay. Now, when you testify in front of the

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1 legislature, do you do that as a part of -- as a  
2 function of your capacity as the secretary of state?

3 A Absolutely.

4 Q Okay. And you're providing the legislature  
5 with your view and opinion on matters of public policy,  
6 correct?

7 A Yes.

8 Q And you would agree with me, ma'am, that  
9 people who are not lawyers provide similar positions in  
10 front of the legislature on matters of public policy,  
11 correct?

12 A Yes.

13 Q But the difference between you testifying one

14 way or the other on matters of public policy is that  
15 you have a law degree, correct?

16 A Yes.

17 Q Okay. And because you have a law degree and  
18 you've had the secretary of state's office pay your  
19 occupational -- pay your client security fund, you  
20 maintain you are a member of the bar who is actively  
21 practicing law, don't you?

22 A Yes. Wait, I'm sorry. Is that two  
23 questions?

24 MR. HORTON: Would you read it back,  
25 please?

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1

2

(The testimony was read.)

3

4 MR. HORTON: Maybe I think it's one  
5 question but maybe you can rephrase it.

6 MR. GERSTEN: I'll do my best. I  
7 thought she answered it fine.

8 BY MR. GERSTEN:

9 Q Did you not understand the question, ma'am?

10 A It was a long question.

11 Q Okay. Did you not understand it because I'll  
12 try to rephrase it if you understood it it's okay?

13 A I'm wondering. Sorry.

14 Q Okay. Is it your testimony today that  
15 because you had your occupational -- strike that.

16 Is it your testimony today that because your  
17 client security fund payments were made on your behalf  
18 during your time period you've been secretary of state,  
19 you are a member of the bar in good standing of the  
20 state of Connecticut?

21 A I don't think -- yes.

22 Q Okay. And because of your status as a  
23 member of the bar in good standing, your position is  
24 that your testimony in front of the legislature on  
25 matters of public policy qualifies as satisfying the

1 requirement contained in the Connecticut statute that  
2 you engage in the active practice of law; is that  
3 correct?

4 A Yes.

5 Q Okay. Now, when you testified in front of  
6 the legislature, did you prepare your testimony all by  
7 yourself?

8 A I prepared it with the assistance of my  
9 deputy, my elections attorneys, if it were -- if it is  
10 matter of election law, that is a matter of commercial  
11 recording or business law, Seth Klaskin may have been  
12 of assistance and also my legislative liaison, one of  
13 those legislative Lee as sons over the years has been  
14 an attorney, that is Lou Button, otherwise Marissa  
15 Morello, the testimony that we prepare on behalf of our  
16 office is a collaborative effort.

17 Q So that whether it was you testifying or

18 anyone else testifying, it's all being done on behalf  
19 of the Office of the Secretary of State, isn't it?

20 A Yes.

21 Q And if it is being done of behalf of the  
22 secretary of state and it's done by someone like Ted  
23 Bromley, he's identified as an attorney when he speaks,  
24 isn't he?

25 A Yes.

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1 Q And once again, I think we've established  
2 that you don't identify yourself as an attorney when  
3 you speak on behalf of the secretary of state's office,  
4 do you?

5 A No.

6 Q Ms. Bysiewicz, I'm going to show you two  
7 documents, Bysiewicz 213 and Bysiewicz 114. These are

8 not part of the same document but I'm going to mark  
9 them as part of an exhibit -- as one exhibit. Okay?

10

11 (Defendant's Exhibit 27: Marked for  
12 identification.) letter January 26,  
13 2010.

14 BY MR. GERSTEN:

15 Q And why don't you have a moment to look at  
16 both of those, ma'am. Is that your signature on both  
17 of these documents?

18 A This is the electronic or the automatic  
19 signature and that's my personal signature.

20 Q Okay. So Bysiewicz 213, which is part of  
21 this exhibit, is your signature. The document that has  
22 Bysiewicz 114 is not your signature?

23 A That is our automatic signature.

24 Q Okay. And when the document is sent through  
25 the automatic signature, do you read it beforehand?

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1 A Oh, yes.

2 Q Why do you use the automatic signature then  
3 if you've read the document?

4 A I review all the testimony that is submitted  
5 and I don't know what the top of this document is, but  
6 I review everything prior to signature, whether it's  
7 automatic or not.

8 MR. HORTON: Excuse me, are you  
9 referring to 11 4 just for the signature.

10 MR. GERSTEN: Yes.

11 MR. HORTON: Okay.

12 BY MR. GERSTEN:

13 Q Is there a particular reason why, ma'am, if  
14 you've reviewed the document, you use an automatic  
15 signature on the document?

16 A It could be that that had to be submitted and  
17 I may not have been at the Capitol at the moment to  
18 sign it.

19 Q Okay.

20 MR. HORTON: You better staple this,  
21 Eliot. You better staple it.

22 MR. GERSTEN: Good idea. Great idea,

23 Wes. Thanks.

24 BY MR. GERSTEN:

25 Q Now, ma'am I know you've indicated you can't

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1 tell what you did the last week of March without  
2 looking at your calendar, correct?

3 A Yes.

4 Q Okay. Now, I know you've been at the  
5 depositions here so you weren't in the office  
6 yesterday, correct?

7 A I believe I went to the office prior to  
8 coming to the deposition.

9 Q Okay. What did you do at the office prior to  
10 coming to the deposition yesterday?

11 A I reviewed messages. I talked to my deputy

12 and dealt with any issues that might have come up in  
13 the several hours that I was there.

14 Q Okay. And what sort of issues came up?

15 A Well, for instance, one example of an issue  
16 that came up, I believe, over the last week that my  
17 deputy and I discussed and Ted Bromley discussed was an  
18 issue with respect to recount procedures brought to our  
19 attention by the first selectman of the town of  
20 Suffield, his name is Tom Frenaye he had been through a  
21 recount in his election last year and he sent us a  
22 rather extensive letter with suggestions for  
23 streamlining and improving recount procedures.

24 Q Okay. What else did you discuss yesterday?

25 A I don't know. I have frequent conversations

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1 with my deputy.

2 Q Now, ma'am, when you call deputy is that the

3 Leslie Mara lady again?

4 A Yes.

5 Q And yesterday, did you actually engage in a  
6 conversation with Ted Bromley?

7 A I don't -- I'm not sure. The conversation  
8 that I was referencing with respect to Mr. Frenaye was  
9 several days ago and Mr. Bromley was part of the  
10 conversation along with my deputy.

11 Q Right. I'm just talking about trying to see  
12 what you do during the day as recently as yesterday  
13 because you've been unable to tell us what you can do  
14 without looking at a calendar, and now I'm just trying  
15 to see if your memory is good enough to tell us what  
16 you did yesterday in the short time you were in the  
17 office before you came to the deposition. So when I  
18 asked but Mr. Bromley, I'm asking very specifically,  
19 did you speak to Mr. Bromley yesterday before your  
20 deposition?

21 A I don't believe so.

22 Q Ma'am, would I be correct that the only  
23 person you spoke to from your office yesterday was your  
24 deputy Leslie Mara?

25 A I spoke with Tammy Marzik. I spoke with Dave

1 Killain, but remember I was here between 10:00 and 5:30  
2 or so.

3 Q I do. And I appreciate that. I think it was  
4 sometime around 12:00.

5 ?

6 A Sorry. 12:00.

7 MR. HORTON: That's correct.

8 BY MR. GERSTEN:

9 Q So you arrived at the office, you spoke to  
10 Leslie Mara, you spoke to Dave Killain, he's the driver  
11 guy?

12 A He's not a driver, but yes, my assistant, I  
13 spoke to Tammy Marzik, who is my scheduler, I spoke to  
14 Val Ramos, who is my constituent services director.

15 Q Okay. Now --

16           A     And I may have also spoken to my chief of  
17 staff, Michelle Gilman.

18           Q     Okay. Now, yesterday in the time period  
19 before you came to the deposition, are you testifying  
20 that what you -- did you engage in the active practice  
21 of law when you had your conversations with Mr.  
22 Killain?

23           A     No.

24           Q     Yesterday, prior to the deposition, are you  
25 testifying that you engaged in the active practice of

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1 law when you spoke to Tammy Marzik?

2           A     No.

3           Q     Yesterday, when you and Michelle Gilman had  
4 your discussion, what did you two discuss?

5           A     The status of a constituent request, I  
6 believe.

7 Q And what was the nature of the constituent  
8 request?

9 A She I think was working on an F O I  
10 request.

11 Q Okay. Did you and Michelle Gilman talk about  
12 anything else except for the F O I request from a  
13 constituent?

14 A No.

15 Q And what did you and Leslie Mara discuss  
16 yesterday prior to the deposition?

17 A Various office issues.

18 Q In particular?

19 MR. HORTON: Excuse me, since I don't  
20 know whether any of these are privileged or not,  
21 please consult with me if like it's a personnel matter  
22 or something. Or a health issue or something. I  
23 mean, I don't know. I don't know whether to assert a  
24 privilege if there is one. Maybe there isn't one.

25 BY MR. GERSTEN:

1 Q And what did you and Ms. Mara discuss  
2 regarding the various office issues?

3 A One of the things we discussed was a  
4 follow-up to Mr. Frenaye's request or discussions with  
5 respect to the recount procedures and the -- and also  
6 the registrar of voters conference, because in that  
7 venue, which is happening shortly, we're doing our  
8 annual registrar of voters conference. One of the  
9 topics that we will be discussing is recanvass and  
10 recount procedures.

11 Q And lastly, you said you had a discussion  
12 with Val. What did you and Val discuss yesterday  
13 morning?

14 A We just -- I see him every day and if he has  
15 a particular constituent issue, we talk about it and  
16 yesterday I can't recall what that might be.

17 Q Okay. Now --

18 A We do speak every day.

19 Q The elections division staff, that's who

20 you're relying on primarily to say that when I issue  
21 opinions, this constitutes evidence of my active  
22 practice of law, correct?

23 A Yes.

24 Q Okay. Do you know a fellow named Tom  
25 Ferguson?

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1 A Yes.

2 Q Was he a director of the elections division  
3 while employed -- employed by you as secretary of  
4 state?

5 A Yes.

6 Q And did he issue opinions in connection with  
7 his job?

8 A I'm not certain whether he did, but Mike  
9 Kozik, who is our elections attorney, certainly did.

10 Q Okay. Well, Mr. Ferguson is listed on what

11 we were told from the secretary of state as the  
12 director of the elections division staff?

13 A And he was and then Mr. Co sick was his  
14 successor.

15 Q Before we get to Mr. Kozik I'm asking about  
16 Mr. Ferguson. Did -- while -- did you supervise Mr.  
17 Ferguson?

18 A Yes.

19 Q Work closely with him?

20 A Yes.

21 Q Talk with him all the time?

22 A On a regular basis when he was in our  
23 agency.

24 Q Okay. Well, likes like he was director for  
25 four years in your agency. Does that sound right?

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1 A Yes.

2 Q And as the director of the elections division  
3 staff, did he issue opinions regarding elections while  
4 he was working under your supervision?

5 A Yes, he gave election opinions verbally to  
6 town clerks, to registrar, to candidates, to party  
7 officials who made inquiries.

8 Q And did he review these with you all the  
9 time?

10 A His verbal advice, no.

11 Q Okay?

12 A Issues, we discussed issues that came up.

13 Q Did he review with you the responses he was  
14 making in connection with these issues as they came  
15 up?

16 A He could have directly or my deputy Maria  
17 Greenslade would also be supervising him and bringing  
18 particular issues to my attention as well.

19 Q Okay. I thought that you were supervising  
20 the people in the elections division staff?

21 A Yes.

22 Q Okay. But now you're indicating that your  
23 deputy did the supervision?

24 A She does as well.

25 Q Okay. Now, did Mr. Ferguson issue any

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1 written opinions while he was director of the elections  
2 staff?

3 A I'm not sure.

4 Q Okay. Was Mr. Ferguson issuing legal  
5 opinions when he provided this verbal advice to  
6 people?

7 A He was giving advice, as our nonlawyer  
8 election officers do when they give advice about  
9 compliance with election law.

10 MR. GERSTEN: Can I have my question  
11 read back, please because I think she misunderstood my  
12 question?

13

14 (The testimony was read.)

15

16           A     I'm not sure he can give a legal opinion if  
17 he's not a lawyer.

18 BY MR. GERSTEN:

19           Q     Okay. As you sit here today having been his  
20 supervisor for four years, was Mr. Ferguson issuing  
21 legal opinions while he was the director of the  
22 elections division staff?

23                     MR. HORTON: I object. Isn't that the  
24 same question?

25                     MR. GERSTEN: I didn't get the answer

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1     that's why I'm asking.

2 BY MR. GERSTEN:

3           Q     Go ahead, ma'am?

4           A     Can I have the question again.

5 MR. GERSTEN: May you Beth?

6

7 (The testimony was read.)

8

9 A I don't think he could be giving legal  
10 opinions since he was not a lawyer. He certainly could  
11 give advice about administration of elections and  
12 compliance with election law, but he was not a lawyer.  
13 Others in his division gave election opinions.

14 BY MR. GERSTEN:

15 Q So you're indicating that because -- strike  
16 that.

17 Are you indicating that Mr. Ferguson gave  
18 opinions to people who called up with questions about  
19 election law?

20 A I'm not indicating that he gave opinions.  
21 I'm indicating that he gave people advice about --

22 Q Okay.

23 A The administration of elections and  
24 compliance with our law.

25 Q Okay. And when you say he gave you -- gave

1 advice, is that different than the kind of advice you  
2 give when people call you up and ask you questions  
3 about election law and administration and compliance?

4 A Yes, because I'm a lawyer and he isn't.

5 Q Okay. Do you know if Mr. Ferguson --

6 MR. HORTON: Eliot.

7 MR. GERSTEN: Okay.

8 BY MR. GERSTEN:

9 Q Do you know if Mr. Ferguson indicated while  
10 he was employed by you and under your supervision that  
11 he could not give an opinion on topics because he was  
12 not a lawyer?

13 MR. HORTON: I object. You mean a  
14 legal opinion?

15 A He could certainly give advice.

16 BY MR. GERSTEN:

17 Q Okay. And because -- if I understand your  
18 testimony correctly today, you're indicating that if he

19 gave advice, it's not a legal opinion, but when you  
20 give advice it's a legal opinion because he's not a  
21 lawyer; is that correct?

22 A Yes.

23 Q Okay?

24 MR. GERSTEN: Good time to break.

25 THE VIDEOGRAPHER: Off the record,

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1 11:17.

2

3 (Recess: 11:17 AM to. 11:28 AM.)

4

5 THE VIDEOGRAPHER: Beginning of tape 2.

6 On the record 11:28.

7 BY MR. GERSTEN:

8 Q Madam Secretary, I'm going to show you two

9 more documents that just arrived produced by the  
10 secretary of state's office and ask if you can take a  
11 look at them and then tell us what they are. And mark  
12 them as separate exhibits, please. Just let me mark  
13 them.

14

15 (Defendant's Exhibit 28 marked for  
16 identification ( 2009 constituent services report.

17 (Defendant's Exhibit 29: Marked for  
18 identification.) 2007 constituent  
19 services report.

20 BY MR. GERSTEN:

21 Q Madam Secretary, could you tell us what  
22 exhibit --

23 A I have 28 and 29.

24 Q 28 is, ma'am?

25 A 28 is the 2009 constituent services report

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1 prepared by Val Ramos, who is our director of  
2 constituent services.

3 Q And this is what you referred to yesterday in  
4 your testimony, correct?

5 A Yes.

6 Q Okay. And could you tell us what the next  
7 exhibit is, ma'am?

8 A That would be the January 2008 report  
9 covering our -- it was dated January 2008 and it covers  
10 our 2007 constituent services report.

11 Q And again, that was a topic of what you  
12 discussed yesterday in your testimony?

13 A Yes.

14 Q Okay. Now, ma'am, just for the record so  
15 we're clear, you also mentioned that you thought Leslie  
16 Mara kept notes. Do you recall that in your  
17 testimony?

18 A Yes.

19 Q Okay. We've made a request of the secretary  
20 of state's office and we've been told that no such  
21 notes exist; isn't that correct, Mr. Attorney  
22 general?

23 MR. ZINN-ROWTHORN: Well, that's  
24 partially correct. Our initial inquiry has yielded  
25 the response that is not been able to get any notes so

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1 we're going to produce an additional follow up.

2 MR. GERSTEN: I thought that we got a  
3 confirmation this morning that nobody could find  
4 any.

5 MR. ZINN-ROWTHORN: That's the current  
6 status. There is a little additional digging going  
7 on.

8 MR. GERSTEN: No problem.

9 BY MR. GERSTEN:

10 Q Now, ma'am, going back to Mr. Ferguson for  
11 just a moment. What was Mr. Ferguson's job as director  
12 of the elections division staff?

13           A     To work with registrar and town clerks and to  
14 manage our elections division, which consists of  
15 attorneys, election officers and staff people.

16           Q     So he was supervising attorneys?

17           A     Yes.

18           Q     And did he supervise attorneys in the same  
19 fashion as you've described yourself as supervising  
20 attorneys?

21           A     I suppose in some respects, yes.

22           Q     Okay. He had a direct report with these  
23 attorneys, didn't he? Strike that. These attorneys  
24 worked directly under him, correct?

25           A     Yes.

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1           Q     These attorneys don't work directly under  
2 you, do they?

3           A     Oh no, they absolutely do.

4 Q Okay. Do they direct report to you or do  
5 they go through your chief of staff?

6 A They report to me on particular issues and to  
7 my deputy.

8 Q Okay. When's the -- okay: We'll come back  
9 to that. You made a mention on more than one occasion  
10 today that Mr. Ferguson was not a lawyer?

11 A Correct.

12 Q Is it your testimony today that the  
13 difference between the advice he gave to people who  
14 called in and asked for help in connection with  
15 election issues and the advice you give to people who  
16 call in for advice on election issues is that he is not  
17 a lawyer and can't give a legal opinion but you can  
18 because you're a lawyer?

19 A Correct.

20 Q Okay. Now, did Mr. Ferguson, while he worked  
21 for you, advise people that he's not a lawyer?

22 A I'm not sure. I'm sure he didn't hold  
23 himself out to be a lawyer. He wasn't one.

24 Q Okay.

25 Q And we can agree ma'am did you in your

1 correspondence, right?

2 A Correct.

3 Q Now, what was the substance of what Mr.  
4 Ferguson provided advice on that was different --  
5 strike that.

6 What was the nature of the advice Mr.  
7 Ferguson provided to people that was different than the  
8 nature of the advice that you give to people calling  
9 into your office for help?

10 A He advises -- he advised people when he was  
11 in the employ of our office on compliance with election  
12 laws.

13 Q Same as you?

14 A Yes.

15 Q Okay. What else?

16 A I'm sure he also provided guidance on

17 administration of elections to election officials.

18 Q Same as you?

19 A Correct.

20 Q Anything else?

21 A I think those were two major things that he  
22 did.

23 Q Okay. And what did he provide advice -- what  
24 was the nature of what he provided advice on that's  
25 different than the advice that you provide to people?

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1 A It's the same advice. I'm a lawyer,  
2 however.

3 Q Okay. Now, it looks like here you got  
4 Michael Kozik, who became a managing attorney, after  
5 Mr. Ferguson, correct?

6 A Correct.

7 Q What's the difference between a managing

8 attorney and a director?

9 A Mr. Kozik is an attorney.

10 Q Okay. So you thought it was important to  
11 identify him as an attorney in the title that he had?

12 A Yes.

13 Q Now, how often -- Mr. Kozik it looks like  
14 worked for you for five years?

15 A Yes.

16 Q Okay. How often would you and Mr. Kozik meet  
17 face-to-face during the five years that he worked for  
18 you as managing attorney of the elections division  
19 staff?

20 A It depended on the particular time of year.  
21 He often would come to -- would come to our office and  
22 I say that because I work at the Capitol generally, my  
23 office is at the State Capitol, his office was at 30  
24 trinity street across the street. He would come to our  
25 office to discuss testimony, to discuss election

1 issues. Most frequently testimony when we were  
2 commenting on election legislation that our office was  
3 putting forward or commenting on pieces of legislation  
4 that affected our office that were put forward by  
5 others.

6 Q All right. And that's why his name would  
7 show up in your appointment book, correct?

8 A It could.

9 Q And that's why his name would show up in your  
10 appointment book more often during the legislative  
11 session portions of the calendar year than  
12 nonlegislative sessions of the calendar year,  
13 correct?

14 A His name might show up in my calendar and  
15 might not, but I can tell you that he frequently  
16 accompanied me to legislative hearings and meetings.

17 Q Right. And he would be identified as the  
18 attorney who works for the secretary of state,  
19 correct?

20 A Correct.

21 Q And -- now, outside of those legislative  
22 sessions, how often would you and Mr. Kozik sit down  
23 and talk about what he or his staff were working on if  
24 it did not have something to do with the legislative  
25 session?

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1 A We would speak frequently about whatever  
2 issues that were raised by town clerks who had  
3 questions, registrar of voters who had questions,  
4 candidates who had questions and other issues about  
5 litigation that was brought up -- that was brought  
6 against our office.

7 Q And outside of what you claim to have  
8 telephone calls about, how often would you and Mr.  
9 Kozik meet face-to-face to review the issues he was  
10 dealing with as the elections division staff?

11 A I'm not sure, but we had frequent telephone

12 conversations often. And he wasn't very good at  
13 telephone conferences but I often said okay, we have to  
14 call town clerks -- a particular town clerk, can we get  
15 them on the phone, can we get this particular  
16 constituent on the telephone so that the three of us  
17 can discuss an issue or often my deputies, either Maria  
18 Greenslade or Leslie Mara would be on the phone as  
19 well.

20 Q Okay. And that would be discussing same  
21 kinds of things that Mr. Ferguson did while Mr.  
22 Ferguson was working as a director of that staff,  
23 correct?

24 A Correct.

25 Q Now, Mr. Bromley, he's been there since 2001.

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2 A Yes.

3 Q Okay. How often do you and Mr. Bromley meet  
4 face-to-face?

5 A We certainly meet when I have -- when I am  
6 preparing for testimony for press conferences on  
7 election issues or speaking about particular  
8 constituent issues involving particularly on elections  
9 topics.

10 Q And maybe I wasn't clear. How often do you  
11 and Mr. Bromley -- strike that.

12 In the past six months, how often have you  
13 and Mr. Bromley had a face-to-face meeting?

14 A In the past six months. I couldn't speculate  
15 as to the number, but frequently.

16 Q Okay. Is it more than ten times?

17 A I'm not sure.

18 Q Is it less than ten times?

19 MR. HORTON: You mean over six  
20 months.

21 BY MR. GERSTEN:

22 Q Over the past six months?

23 A Oh, sure.

24 Q Okay. So your testimony is today you and Mr.

25 Bromley have met over ten times over the pay rate of

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1 the past six months face-to-face?

2 A Yes, and I am counting times when we were

3 STENOMARK at he legislative meeting or a press

4 conference or --

5 Q Okay. So you have an attorney accompany you

6 when you go to legislature, correct?

7 A Yes.

8 Q And you have an attorney accompany you when

9 you go to press conferences?

10 A If it's on an election topic, yes.

11 Q Great?

12 A My deputy is often at those press conferences

13 and so it Ted Bromley and Mike co sick was as well.

14 Q Okay. Now, Mr. Button, how often -- strike

15 that. And Mr. Button -- how often do you and Mr.

16 Button have a face-to-face meeting?

17 A Frequently, because he often accompanies me  
18 to -- he is our legislative liaison, so we review  
19 testimony that's prepared. We review pieces of  
20 legislation that he might want to bring to my attention  
21 that are being considered that affects our office and  
22 he will accompany me when we go to testify for the  
23 legislature and he also accompanies me when I meet with  
24 legislators to discuss legislation put forward by our  
25 office.

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1 Q Okay. In the past six months, ma'am, how  
2 often have you and Mr. Button met face-to-face?

3 A Frequently.

4 Q Frequently isn't an answer. How many  
5 times?

6           A     I can't speculate about the number, but  
7 often.

8           Q     Okay. So you don't know how many times you  
9 have met with him but you describe it as often?

10          A     Yes.

11          Q     Okay.

12          A     Mr. Button also will bring over documents,  
13 writs, or bond documents or other things that I am  
14 required to sign as secretary of the state. And so he  
15 comes over to our capital office to do that as well.

16          Q     Okay.

17          A     So I see him on those occasions and those  
18 occasions are not noted on the calendar.

19          Q     Correct. And how often do you and Mr.  
20 Bromley review written opinions that are being issued  
21 by him from your office?

22          A     As needed.

23          Q     Okay. In the past six months, how often have  
24 you and Mr. Bromley sat down and reviewed an opinion  
25 that was being issued by the secretary of state's

1 office?

2 A I don't know.

3 Q Have you ever in the past six months sat down  
4 with him and talked about an opinion that's being  
5 issued from the secretary of state's office?

6 A I'm not sure we've done that in the past six  
7 months.

8 Q Okay. How about you and Mr. Button, how  
9 often have you and Mr. Button sat down and reviewed an  
10 opinion that's being issued from the secretary of  
11 state's office?

12 A We haven't reviewed an opinion issued by our  
13 office, but both Mr. Bromley and Mr. Button have been  
14 with me and reviewed testimony and attended legislative  
15 hearings.

16 Q That's one part of your claim is that your  
17 legislative work constitutes the active practice of  
18 law, correct?

19 A Absolutely.

20 Q Okay. I'm going to go to another one because  
21 as I understood it you've said when opinions are done  
22 by my office, that counts as the active practice of  
23 law?

24 A Yes.

25 Q And now what I'm asking is that -- dealing

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1 with only that part of your claim, not about the  
2 legislature, so please put that to the side. Is that  
3 understood?

4 A Yes.

5 Q Okay. Am I correct, ma'am, you cannot recall  
6 an occasion in which Mr. Bromley or Mr. Button sat down  
7 with you over the past six months and reviewed a  
8 written opinion coming out of the secretary of state's  
9 office?

10 A Correct.

11 Q Okay. And are you aware as to whether Mr.  
12 Bromley or Mr. Button have issued any written opinions  
13 from your office over the past six months?

14 A I'm not sure.

15 Q Okay. How about in the past year, do you  
16 know if either one of them have issued an opinion on an  
17 election law issue from your office?

18 A I'm not sure.

19 Q Okay. And when I call it an opinion, ma'am,  
20 I'm going to call it a letter, too, because you've  
21 described letters containing opinions. Is that  
22 clear?

23 A Yes.

24 Q Okay. Are you aware of any letters Mr.  
25 Bromley or Mr. Button have issued from the elections

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1 office of your department relating to elections law  
2 issues?

3 A There are some contained in the materials  
4 that our office sent to you.

5 Q Okay. I'm not sure I know what you're  
6 talking about, but let's just ask this question this  
7 way, ma'am: Have you sat down with Mr. Bromley or with  
8 Mr. Button over the past year and reviewed a letter or  
9 document representing a position of the secretary of  
10 state's office in response to an elections law issue  
11 over the past year?

12 A I may have.

13 Q Okay. As you sit here today can you recall  
14 one occasion?

15 A I can't recall a specific occasion.

16 Q Okay. How about in the past five years can  
17 you recall a specific occasion?

18 A Yes. The ban on lever voting machines as an  
19 example.

20 Q Okay.

21 A The Mike Telesca independent party issue is  
22 another example.

23 Q Okay. So in the past five years those are

24 the two examples you can bring up?

25 Q The reform party letter is an example written

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1 by Mary Young. Also this issue with respect to

2 circulators that are --

3 Q What year is that in 2003?

4 A Correct.

5 Q Remember my question was in the past five

6 years?

7 A Sorry. I didn't know we were on that.

8 Q No problem?

9 A Time frame.

10 Q No problem. I want to make sure we stay

11 focused on the question.

12 Since Mary Young's letter of 2003, I'm trying

13 to -- we can't recall any occasions in the past year

14 and now I'm trying to get occasions that took place in  
15 five years and I don't really want to go back as far as  
16 2003 because I didn't think it was fair to the witness.

17 Can you describe any occasion in which you  
18 participated with Ted Bromley or Lou Button in drafting  
19 a response to a request for advice on an election law  
20 issue?

21 A Yes. As I mentioned, Mr. Frenaye from the  
22 first selectman from Suffield, within the last week or  
23 so has asked various questions with respect to our  
24 state's recanvass and recount procedures.

25 Q Okay. Has there been a writing responding to

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1 his inquiry?

2 A We've had a conversation and it is my  
3 understanding from Leslie today that Ted is in the  
4 process and actually I spoke with Ted today and he told

5 me he is in the process of responding to them.

6 Q Okay. So we have one. Any others?

7 A That's the one that comes immediately to  
8 mind.

9 Q Okay. Now, ma'am, do you maintain a website  
10 regarding your practice of law?

11 A A website? A personal website?

12 Q Do you maintain a website indicating that you  
13 provide services to the public regarding your legal  
14 services you offer?

15 A We maintain the --

16 Q I'm sorry my question wasn't clear.

17 Do you, Susan Bysiewicz, the plaintiff in  
18 this case, maintain a website relating to the offering  
19 of legal services to the public?

20 MR. HORTON: Susan Bysiewicz as a

21 private person you mean is that what you mean.

22 A The secretary of the state's office maintains  
23 a very extensive website with information about our  
24 election services, our commercial recording division  
25 and our legislative and records services.

1 Q Okay. How about if I ask my question this  
2 way: Does attorney Susan Bysiewicz provide a website  
3 indicating she provides legal services to the public?

4 A As an individual, I do not have a website,  
5 other than my attorney general campaign website.

6 Q Okay. Does attorney Susan Bysiewicz have a  
7 website indicating that she provides legal services to  
8 the public?

9 A No.

10 Q Thank you.

11 Q And does attorney Susan Bysiewicz use west  
12 law?

13 A For what purpose?

14 Q Any purpose.

15 A I believe our lawyers have access to west law  
16 in our office.

17 Q Okay. I'm certain my question wasn't clear

18 and I apologize for that.

19 MR. GERSTEN: Could I have it read back  
20 to the witness, please?

21

22 (The testimony was read.)

23

24 A I have on occasion over the course of my  
25 career use west law, yes.

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1 Q When is the last time attorney Susan

2 Bysiewicz used west law?

3 A I can't recall.

4 Q Do you recall your pass code? Strike that.

5 Do you have a pass code?

6 A Not at the secretary of the state's office.

7 Q Okay. Does attorney Susan Bysiewicz have a

8 password enabling her to use the west law?

9 A No.

10 Q Does attorney Susan Bysiewicz use Lexus?

11 A I have used Lexus as a lawyer.

12 Q Okay. And do you have a password enabling  
13 you to use Lexus?

14 A Not at the moment.

15 Q Okay. When is the last time you used your  
16 password for use of Lexus?

17 A Well, for instance I had one at Aetna.

18 Q Okay. That's 25 years ago -- no, 20 years  
19 ago, right?

20 A No.

21 Q Whatever. It's over ten years ago, right?

22 A No, less than -- well, it's -- well,  
23 whatever. Whenever I was at Aetna, which was in the  
24 '90s.

25 Q So the last time you used your Lexus password

1 was when you were employed by the Aetna?

2 A Yes.

3 Q Okay. So what would I understand your  
4 testimony correctly now that attorney Susan Bysiewicz  
5 as secretary of state has not used west law or Lexus in  
6 the past ten years?

7 A Not personally.

8 Q Okay. And when you say not personally, is  
9 there any other way that attorney Susan Bysiewicz can  
10 use west law or Lexus?

11 A No, but if I need legal research, my  
12 attorneys can do that.

13 Q I see. So you don't do the legal research  
14 yourself, you have people do it for you?

15 A I on occasion do legal research.

16 Q Okay. When you do legal research on those  
17 occasions, you don't use west law and you don't use  
18 Lexus; is that correct?

19 A Generally I'm looking at election statutes  
20 and the research that is in our office.

21 Q Okay. And those election statutes would be

22 the same ones that are in the statute book, correct?

23 A Correct.

24 Q Okay. And you go to one of the red books and

25 you look in a red book about the election statutes?

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1 A Yes or the blue election statutes which are  
2 in my office.

3 Q Okay. Great.

4 Now, when's the last time you recall  
5 accessing a case on the judicial website using your  
6 personal juris number?

7 A I can't recall.

8 Q Okay. Now, ma'am, we've talked about your  
9 providing services to people and you're familiar with  
10 the database your office created to keep track of  
11 people, correct?

12 A Yes.

13 Q Okay. Could you describe why that database  
14 was created by your office?

15 A Yes. In 2007 or 2006 perhaps when my chief  
16 of staff Michelle Gilman was hired, she was very  
17 distressed to see that we did not have a tracking  
18 system for constituent requests and issues and she had  
19 worked for a Congress man and a senator and thought  
20 that instead of putting constituent requests into excel  
21 spreadsheets, that it would be better to have a  
22 tracking system to make sure that our constituent  
23 requests were being properly handled.

24 Q Okay. So who would enter information into  
25 this database to keep track of it?

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1 A She would. Our constituent services  
2 director. Other -- other members of my executive staff

3 would.

4 Q Okay. Would that include this fellow here  
5 Val?

6 A Yes.

7 Q Okay. And does the database that you had  
8 establish contain the names of those people you  
9 consider to be recipients of your service in the  
10 practice of law?

11 A It contains the names of many constituents,  
12 yes.

13 Q Okay.

14 MR. GERSTEN: Can I have my question  
15 read back. I'm not sure she answered the question  
16 right?

17

18 (The testimony was read.)

19

20 A Yes.

21 BY MR. GERSTEN:

22 Q So this database comprised a part of what you  
23 consider today to be your active practice of law while  
24 you've been employed at the secretary of state's  
25 office?

1           A     It would be a tool, yes.

2           Q     Are you considering the database to be work  
3 product of an attorney?

4           A     Yes, because we have used the database to  
5 send out information and advice about how to comply  
6 with federal and state election law.

7           Q     Have you used the database to send out  
8 Christmas cards?

9           A     No.

10          Q     Okay.  What -- you do send out Christmas  
11 cards every year, right?

12          A     Not every year.

13          Q     Do you send out Christmas cards on a regular  
14 basis?

15          A     Not from our state office.

16          Q     Okay.  Where do you send them from, ma'am?

17           A     From, if I have a campaign, they would be  
18     from my campaign or they may have been sent out by me  
19     personally.

20           Q     Okay.  And have you used this database to  
21     send out Christmas cards in the most recent holiday  
22     season from your campaign?

23           A     No.

24           Q     Are you indicating that this database  
25     contains attorney-client privileged information?

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1           A     No.  It's a public database.

2           Q     Are you able to distinguish between people  
3     who received legal advice from you versus people who  
4     didn't receive legal advice from you from this  
5     database?

6           A     To the extent a constituent wrote to us and

7 these are reports regarding those about an election law  
8 question, then we could track the response that the  
9 individual received.

10 Q And under what circumstances do you add names  
11 to this database?

12 A As an example, when a person directs a  
13 request to our office, they send us an e-mail, they  
14 write us a letter.

15 Q And under what circumstances do you change  
16 information on the database?

17 A Well, for instance I don't change any  
18 information in the database personally. Mr. Ramos as  
19 an example, if he were to write a constituent a letter  
20 to respond to their inquiry, the database would contain  
21 a copy of their e-mail or letter and the response that  
22 they received.

23 Q Okay. And under what circumstances are names  
24 deleted from the database?

25 A For instance, if someone passes away.

1 Q Any other circumstance?

2 A Not sure.

3 Q Are you aware as to whether there's been  
4 information deleted from that database in the past 60  
5 days?

6 A It is a database that undergoes daily changes  
7 because it is used by the people in our office who make  
8 use of it.

9 Q Okay. Now, you're aware there are notations  
10 in this database concerning people's religions,  
11 correct?

12 A Yes.

13 Q Okay. And how does your office go about  
14 using the information about people's religion as a part  
15 of performing services?

16 A Well, for instance, I have received  
17 constituent calls from -- and invitations to speak at  
18 events from rabbis and ministers for that matter, but  
19 rabbis. That would be an example.

20 Q So are you indicating that all -- you're

21 aware that many of the notations -- there's some 2000  
22 that appear to have the label Jewish on them, aren't  
23 there?

24 A 2000? I'm not aware of what the number is,  
25 but we've had constituents who identify themselves as

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1 rabbi or identify themselves with a particular  
2 religious organization. So the name of the  
3 organization may be noted in our database.

4 Q Okay. And if there's no notation that  
5 they're a rabbi and there's no notation after religious  
6 organization, is there any other reason why people  
7 would be in your database as being labeled as Jewish as  
8 the information is used by the secretary of state's  
9 office?

10 A They may have, for instance, told me that

11 they were Jewish invited me to an event at a synagogue  
12 or an ADL event or that kind of thing.

13 Q Sure. You're not testifying that everyone  
14 who belongs to ADL is Jewish?

15 A No.

16 Q So what is the purpose of the secretary of  
17 state's office inserting a label that someone is Jewish  
18 on this database, besides identifying them as a  
19 rabbi?

20 A Because we had been asked, and I believe it  
21 was in 2003 to host an event at the Capitol called  
22 Jewish heritage day. And so I did that in my official  
23 capacity as secretary of the state.

24 Q Okay. And is that a function you perform  
25 that you claim evidences your practicing law?

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1 A No.

2 Q Now, I'm afraid I didn't quite understand the  
3 connection between you're labelling someone as Jewish?  
4 Your database and this invitation to this affair you  
5 sponsored. What's the connection? Only Jews were  
6 invited?

7 A No, absolutely not, events at the Capitol are  
8 open to anyone but a constituent asked me to host it  
9 and I did.

10 Q So what is the purpose of describing someone  
11 as being Jewish in your database maintained by the  
12 secretary of state?

13 A We also have other ethnic designations as  
14 well because I am also asked to work with various  
15 organizations as I am a co host of immigrant day and  
16 there are Jewish organizations and other organizations  
17 that are co hosts of that event, which is a state  
18 event, which many elected officials and members of the  
19 public attend.

20 MR. GERSTEN: Could I have my question  
21 read back I'm afraid the witness didn't understood it?

22

23 (The testimony was read.)

24

25

MR. HORTON: Before you answer, Eliot,

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1 she's admitted that this is not -- she's not claiming  
2 this for the practice of law and it's after 12:00.

3 MR. GERSTEN: Well, what she admitted  
4 that is the ceremony she sponsored --

5 MR. HORTON: Go ahead.

6 MR. GERSTEN: Thanks.

7 BY MR. GERSTEN:

8 Q Do you understand the question, ma'am?

9 A I'm sorry. I lost the question.

10

11 (The testimony was read.)

12

13 A To invite them to various events and to  
14 continue partnerships that we have been involved in

15 various activities at the Capitol.

16 Q Now, you also made notes in this database as  
17 to people who are friends of George Jepson and Bill  
18 Curry, correct?

19 A I believe there was one instance where  
20 someone identified themselves as a friend of George and  
21 one instance as a friend of -- or as a relative of Bill  
22 Curry, as I recall.

23 Q And why is that information maintained in the  
24 secretary of state's office database?

25 A It was put in as an entry on those particular

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1 people's records.

2 Q And why is it maintained at the secretary of  
3 state's office?

4 A I'm not certain.

5 Q Okay. Have you asked for that kind of

6 information to be deleted?

7 A When it came to my attention and Mr.  
8 Lenders -- when I read Mr. Lender's article, I looked  
9 at Ms. Smithers record and it was in there and I  
10 realized that that was extraneous and removed it.

11 Q Have there been -- and when did you do  
12 that?

13 A I don't know. Sometime after the article was  
14 published.

15 Q Okay. Now, after the article was published,  
16 besides that particular individual's information being  
17 deemed -- did you use the words irrelevant?

18 A Didn't seem to be necessary.

19 Q Okay. How many other individuals did you  
20 determine had information that wasn't necessary?

21 A I'm not sure.

22 Q There were more than five?

23 A I don't know.

24 Q Did you go through an exercise of reviewing  
25 that list and instructing someone to eliminate the

1 descriptions that were contained in the database at the  
2 secretary of state's office?

3 A No.

4 Q But you are aware of one instance where you  
5 had someone's information modified?

6 A Yes.

7 Q Okay. Was there more than one person's --  
8 strike that.

9 I take it, ma'am, you didn't do the  
10 modification yourself, you asked somebody to do it?

11 A I might have. My deputy might have. And  
12 also we regularly review information in the database  
13 and I'll give you an example. We are now preparing to  
14 be a co host of polish day, which our office has been  
15 co sponsoring since I took office and we have just  
16 reviewed the names in our database of polish Americans  
17 for accuracy and to make sure that those people are  
18 still alive or should be invited to the event.

19 Q Okay. And how many names have you removed as  
20 a result of the John Lender article describing some  
21 information that you didn't think was necessary to the  
22 database?

23 A I believe a few entries.

24 Q Okay.

25 A It's all that his article mentioned.

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1 Q Okay. So you're indicating today that the  
2 only ones that you reviewed and modified were the ones  
3 that John Lender mentioned?

4 A No.

5 Q There were others, weren't there?

6 A As I said, this is a database that is used by  
7 people in my office, in addition to myself and it is  
8 used on a regular basis. So other --

9 Q Okay. Do you actually enter information into

10 this database yourself personally?

11 A I do not.

12 Q Okay. And do you -- are you receiving that  
13 you actually go into this database and delete material  
14 yourself personally?

15 A I do not.

16 Q Okay. Who does that for you?

17 A If I wanted to remove a person, for instance  
18 if someone passes away, I would have my assistant Tammy  
19 Marzik delete that person.

20 Q Okay. And how about if you wanted to have  
21 something changed because you read about it in the John  
22 Lender article, who would you ask to make the change?  
23 Strike that. Who did you ask to make the change?

24 A On that occasion, I believe it was Tammy  
25 Marzik.

1 Q Okay. And when you say on that occasion, she  
2 removed a number of names and modified a number of  
3 occasions -- a number of individuals's information in N  
4 your database, didn't she?

5 A I am aware of that particular instance.

6 Q And when you say instance, are you referring  
7 to that just one name or that occasion?

8 A That one name.

9 Q Okay.

10 A But my chief of staff, Michelle Gilman, is in  
11 charge of the database.

12 Q Would Michelle do things without your  
13 approval?

14 A She may do things without my knowledge and  
15 other of my executive staff maybe corresponding with  
16 constituents or making changes to the database that I  
17 would not be aware of.

18 Q Okay. So if someone went through and made  
19 changes to this database, it was either done at your  
20 request pursuant to the lender article. And are you  
21 aware of Michelle making changes to the database to  
22 eliminate other names that were in the database prior

23 to John Lender's FOIA request?

24 A Oh, no, I'm just telling you that our  
25 database is used on a daily basis by many people. And

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1 so changes are made on a daily basis to it as people  
2 use it.

3 Q And your election campaign people obtained a  
4 copy of the database, signature they?

5 A They did.

6 Q And how did they learn about the existence of  
7 the database?

8 A It is a public database.

9 Q And how did they learn of the existence of  
10 this public database?

11 A My chief of staff and I were aware of its  
12 existence.

13 Q Okay. So did you tell people at your

14 elections staff to make a FOIA request for this public  
15 record?

16 A No. Jason Doucette wrote a letter to the --  
17 to our office. He is -- had served as my campaign  
18 treasurer and wrote a written request.

19 Q So did you tell Jason or did Michelle, your  
20 chief of staff advise Jason to make a FOIA request for  
21 a copy of this public record from your office?

22 A Yes.

23 Q Okay. When did you do that?

24 A Oh, I didn't tell -- let me just amend that  
25 and say that we met at a campaign meeting, discussed it

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1 and met with several lawyers who advised us as to the  
2 proper way to obtain that list.

3 Q Who are those lawyers?

4 A Robert Martino and I believe Dave Merkwicz.

5 Q So one of them said make a FOIA request to  
6 your campaign staff once you divulged the existence of  
7 this database to them?

8 A Yes.

9 Q Do you know why your campaign wanted to have  
10 a copy of this database maintained by the secretary of  
11 state's office for identification of constituent  
12 services?

13 A Because it contains my personal contacts with  
14 constituents.

15 Q Does your husband have a copy of the  
16 database?

17 A I don't believe so.

18 Q Do you know why the database lists political  
19 affiliations?

20 A Because we are the chief elections officers  
21 for the -- the chief elections office for the state and  
22 therefore we use that information in various state  
23 functions. For instance, we list elected officials of  
24 all parties in our blue book. We have over -- in our  
25 blue book just as an example we publish the names of

1 republican state central committee members and  
2 democratic state committee members and a republican and  
3 democratic town chairs, as well as the names of and  
4 party affiliations of the many elected officials in the  
5 169 towns.

6 Q Do you know why the database does not list  
7 any republican party affiliations?

8 A Oh, it absolutely does.

9 Q Okay.

10 A And I believe that the database has  
11 approximately 11,000 democratic elected officials and  
12 approximately 8,000 represent cans. And then there is  
13 a number that is large that have no party affiliation.  
14 So the lion's share of the people do not have party  
15 affiliations but because of the nature of our work at  
16 the secretary of the state's office we do keep track of  
17 election -- of party affiliations.

18 Q I may be a little bit lost and I apologize.  
19 Given the nature of your work at the secretary of  
20 state's office, and particularly your work that you  
21 claim you do functioning in that job and practicing  
22 law, what was the purpose of listing the religious  
23 affiliation?

24 A As a statewide elected official, I frequently  
25 partner with organizations, Jewish organizations and

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1 people who are affiliated with those organizations just  
2 as I partner with Latino organizations, African  
3 American organizations, Greek American, polish  
4 American, and other organizations.

5 Q And are you indicating that the database  
6 lists people who are African American or Hispanic?

7 A Yes, because they have been -- are partners

8 in for instance the [TRA] cot to subsequent [TA]  
9 campaign to register Latinos to vote and we had a  
10 committee to do that in the last presidents AI election  
11 and we have worked with the NAACP on many occasions to  
12 voter registration and out reach.

13 Q And would you agree, ma'am, the database  
14 lists nationalities who are polish and Greek?

15 A Yes.

16 Q And this all has to do somehow to your  
17 engaging in the act of the practice of law in the bar  
18 of this state?

19 A No.

20 Q Okay. Have you asked the attorney general  
21 whether it's appropriate or lawful to identify people  
22 in your database maintained by the secretary of state  
23 by religion and nationality?

24 A I have not.

25 Q And I was looking at that recusal letter that

1 you gave us yesterday. You wrote that recusal letter  
2 after you had already filed this lawsuit, correct?

3 A Yes.

4 Q Well, at that time you had already taken a  
5 public position that any decisions on this matter were  
6 going to have to be made by the Court, correct?

7 A Which matter?

8 Q Your lawsuit.

9 A Any decisions on what matters?

10 Q Well, just like your letter said any  
11 decisions relating to the candidacy for -- of people  
12 running for attorney general, when I refer to matter,  
13 I'm referring to the matter you referred to in your  
14 recusal letter. Do you recall that? If you don't we  
15 got it here somewhere. But it was your letter.

16 A I recall the letter.

17 Q Okay. By the time you wrote the letter, you  
18 had already filed your lawsuit?

19 A I believe so.

20 Q So what were the decisions you were leaving  
21 up to Mr. Bromley if you were convinced that this was

22 something that should be left to the courts to  
23 decide?

24 A Presumably the Court will make a decision on  
25 my eligibility well in advance of the time that our

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1 office has to place candidates for attorney general on  
2 the ballot.

3 Q So what was the point of you recusing  
4 yourself from making decisions in connection with this  
5 particular case and delegating that to Mr. Bromley if  
6 you were leaving this decision to the courts?

7 A The Court will make a determination on the  
8 meaning of the ten year statute so that Mr. Bromley can  
9 make the appropriate determination as to whom to place  
10 on the ballot for the November 2010 election.

11 Q Now, I thought you indicated previously that

12 there is no basis for the secretary of state's office  
13 to act right now to not place a name of a candidate  
14 who's running for attorney general on the ballot; isn't  
15 that correct? Remember early on in this deposition I  
16 asked you questions about that and you indicated there  
17 is nothing?

18 A I indicated there was a substantial question  
19 out in the public realm with respect to the  
20 interpretation of the ten year statute. And that is  
21 why I brought the matter to the court.

22 Q Agreed. Now, is there anything that stops  
23 the secretary of state's office and I guess we're going  
24 to talk about Mr. Bromley at the moment, from placing  
25 your name on the ballot to run for attorney general as

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1 we sit here right now today?

2 MR. HORTON: I object. First of all

3 it's 12:20 and you went overall this last week. You  
4 may answer the question.

5 A I'm not aware of anything at the moment.

6 BY MR. GERSTEN:

7 Q Okay. Now, is there a -- any particular harm  
8 that you think has accrued to you as the plaintiff as a  
9 result of this so-called uncertainty about your  
10 candidacy?

11 A Yes.

12 Q Okay. Have you not been able to raise  
13 money?

14 A We've been able to raise money.

15 Q Okay. So you're not being harmed in your  
16 fundraising ability?

17 A No.

18 Q Okay. Have you been receiving commitments  
19 from people who say they want to become a delegate at  
20 the convention and will in turn endorse you?

21 A Yes. There are some who are waiting until  
22 the court case before they make one.

23 Q Who?

24 A Several individuals have indicated that they  
25 would like to see what happens with the Court case.

1 Q Okay. How many is several?

2 A I'm not sure.

3 Q Now, how many candidates -- excuse me, how  
4 many delegates are there to the democrat convention?

5 A Approximately 1800.

6 Q Would you say that there have been more than  
7 half who have indicated to you that they're not going  
8 to give you a commitment because they want to see what  
9 judge she would done or the courts are going to do, the  
10 900 people?

11 A The delegates have just recently been  
12 selected, I believe that process went up through the  
13 end of March. So I certainly haven't had the  
14 opportunity to talk to hundreds of those people.

15 Q Okay.

16 A I couldn't give you a number.

17 Q Okay. So I'm trying to understand the number  
18 when you call it several because we have to try to  
19 quantify things to understand your claim. How many  
20 delegates have indicated to you Madam Secretary that  
21 you're not going to get their commitment because they  
22 have uncertainty about whether you're a qualified  
23 candidate?

24 A I have spoken to people and I can't speculate  
25 as to the quantity who would like to wait to see what

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1 the Court will do.

2 Q And I don't want you to speculate. I want to  
3 know the facts, ma'am: How many people who are  
4 delegates have indicated to you they're ungoing to give  
5 you a commitment because they're not certain you are a  
6 qualified candidate?

7 A Some. I just can't tell thank you number.

8 Q Some isn't a number we can agree on that,  
9 correct?

10 A Correct. I can't give you a number.

11 Q Is it more than 100?

12 A I couldn't tell you.

13 Q Is it more than 50?

14 A I couldn't tell you.

15 Q Well, how many people have you talked to?

16 A I talk to a lot of people every day.

17 Q How many people have you talked to about  
18 whether or not they will give you a commitment for your  
19 candidacy at the democratic contention?

20 A A lot. I just can't tell you how many.

21 Q Okay. I can't understand what a lot means.  
22 Could you quantify a number for us, please?

23 A I can't.

24 Q Okay. So as you sit here today the best you  
25 can do as an attorney running for the attorney

1 general's position is to simply use the words a lot,  
2 correct?

3 A I can't speculate about the number.

4 Q Okay. Well, what do you consider a lot to  
5 be? How many in number?

6 A I can't tell you.

7 Q Is it more than five?

8 A I can't give you a number.

9 Q And are you refusing to give me a number or  
10 you're incapable of placing a number on what you  
11 consider to be a lot of people?

12 A I do not have a number to give you.

13 Q Okay. Give us some names of people who have  
14 told you they're not going to support your candidacy or  
15 they can't commit to you because you may not qualify as  
16 a candidate?

17 MR. HORTON: I object to this question  
18 and don't answer it. That's harassment. And it's  
19 also -- it's just harassment.

20 MR. GERSTEN: It's the subject matter  
21 jurisdiction of this case, Wes, and I'm entitled to  
22 get an answer better than a lot. And I don't have too  
23 much to go, so we can argue about it, but if you're  
24 going to tell this judge that you don't want her  
25 answering that question, that's fine with me, because

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1 we're going to be there and I'll take it up then and  
2 you can tell this judge why she didn't give us the  
3 names of anybody who told her that her candidacy is  
4 not going to be endorsed because a they have a  
5 question to raise STENOMARK because otherwise we have  
6 to just accept the word of this person instead of  
7 being able to go to people and say, Is this true?  
8 You're going to stand on that objection? STENOMARK.

9 MR. HORTON: It's harassment. I direct  
10 you not to answer the question.

11 MR. GERSTEN: Can we get that marked  
12 because I'm going to need that portion of the  
13 transcript for the hearing at 2:00.

14 MR. HORTON: Could I have a minute with  
15 my client?

16 MR. GERSTEN: I think that's  
17 harassment. Go ahead.

18 THE VIDEOGRAPHER: Off the record  
19 12:26.

20

21 (Recess: 12:26 pm to 12:28 PM.)

22

23 THE VIDEOGRAPHER: On the record 12:28.

24 BY MR. GERSTEN:

25 Q Ms. Bysiewicz, your attorney indicates that

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1 you are unwilling to respond to the question of  
2 identifying any individuals who have indicated to you  
3 that they are unwilling to commit to you due to the  
4 uncertainty of your candidacy to become attorney  
5 general; is that correct?

6 A That's his advice.

7 Q Okay. And you're claim Mr. Horton is that  
8 that is harassment?

9 MR. HORTON: Yes. It's harassment in  
10 light of the previous questions that have been asked  
11 here.

12 MR. GERSTEN: All right. Just so I'm  
13 clear on the record, Mr. Horton, since the complaint  
14 alleges that there is uncertainty, et cetera, it seems  
15 to me this is a fundamental elements of your cause of  
16 action and I'm going to -- in light of your objection,  
17 making sure I make a motion to the court that you're  
18 not allowed to introduce any evidence on that topic.  
19 Because if you're going to stop me from testing the  
20 credibility of your witness --

21 MR. HORTON: Go ahead.

22 MR. GERSTEN: Okay.

23 BY MR. GERSTEN:

24 Q Madam Secretary, you indicated that this  
25 uncertainty about your ability to become a candidate

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1 for attorney general has not impaired your ability to  
2 raise funds necessary to run for this campaign,  
3 correct?

4 A Yes.

5 Q And isn't there some kind of reporting period  
6 coming up shortly?

7 A Yes. I'm not certain of the date. Perhaps  
8 the middle of the month.

9 Q Okay. And as of today, would you be able to  
10 identify how much money you have raised in connection  
11 with this fundraising that hasn't been impaired?

12 A No, because our report hasn't been  
13 prepared.

14 Q Okay. How often do you check the report

15 yourself?

16 A I don't, but we'll speak to my treasurer  
17 prior to its being filed.

18 Q Okay. And how many hours a week do you spend  
19 in the past three months raising funds for your  
20 campaign personally?

21 A I couldn't say.

22 Q Okay. What would you need to be able to  
23 determine how much time you spend raising funds for  
24 your campaign?

25 A I don't know.

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1 Q Okay. Are you indicating that you couldn't  
2 say because you don't remember?

3 A I don't remember.

4 Q Okay. Are there any documents that you keep

5 reflecting your efforts in fundraising?

6 A What sort of documents are you referring  
7 to.

8 Q Any documents.

9 A We have documents in our campaign office.

10 Q And what are these documents called?

11 A I'm not sure, but we certainly keep track of  
12 our commitments.

13 Q Okay. And do you keep track of people over  
14 the past three months where you've spent time talking  
15 to people asking them for a financial commitment to  
16 your campaign?

17 A Yes.

18 Q And do you do that by use of a document?

19 A We have --

20 Q I'm sorry ma'am I'm just talking about you,  
21 not we?

22 A Yes.

23 Q Do you use a document?

24 A Yes.

25 Q What document do you use to keep track of

1 what efforts you've engaged in in your fundraising over  
2 the past three months?

3 A We have campaign documents.

4 Q Okay. And what document do you use to note  
5 your fundraising efforts you do personally?

6 A Sheets that reflect our commitments.

7 Q Okay. And what kind of information is  
8 contained on the sheet generically?

9 A The name of a contributor.

10 Q Okay. Does it indicate the date that you  
11 contacted the contributor?

12 A Yes.

13 Q Okay. Does it indicate the time that you  
14 talked to the contributor?

15 A No.

16 Q Does it indicate how long you talked to the  
17 contributor?

18 A No.

19 Q Is there a sheet used for each contributor or  
20 do you use a yellow pad and note several names on a  
21 sheet?

22 A There might be a particular sheet or could be  
23 just a piece of paper.

24 Q Okay. How do you do it?

25 A It depends.

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1 Q Depends on what?

2 A You know, for instance, -- it just depends  
3 on the call.

4 Q Let's talk about last Friday when you took  
5 the whole day off from work and spend the whole day  
6 fundraising, correct?

7 A Yes.

8 Q Did you mark down your efforts that you

9 engaged in fundraising on your day off from the  
10 secretary of state's office?

11 A What do you mean by that.

12 Q Is there something you didn't understand? Is  
13 there something about my question you didn't  
14 understand, ma'am?

15 A Could you repeat the question, please.

16 MR. GERSTEN: Could you do that for me,  
17 please?

18

19 (The testimony was read.)

20

21 A I took a vacation day, if that's what you  
22 mean.

23 Q Right. And on your vacation day I think you  
24 already testified that rather than to practice law --  
25 let me restate that. When you do your fundraising are

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1 you considering that to be activity you engage in in  
2 the practice of law?

3 A No.

4 Q Even though you're doing that as an  
5 attorney?

6 A That's not in the -- in the definition of a  
7 practice -- excuse me can I have the question again?

8

9 (The testimony was read.)

10

11 A No.

12 Q And when you do your fundraising, do you  
13 engage in discussions with people about public policy  
14 issues?

15 A On occasion they -- a person might ask about  
16 particular -- my stand on a particular issue.

17 Q Okay. And when you take that stand on a  
18 particular issue, is that a discussion you have about  
19 public policy?

20 A Yes.

21 Q Okay. And what you're saying is that when  
22 you have those discussions in fundraising with people

23 and you have a discussion with them about public  
24 policy, that's not considered the practice of law when  
25 you're doing it from that capacity, am I correct?

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1 A Correct.

2 Q Even though you have your law degree and  
3 you're admitted to the practice of law in the state of  
4 Connecticut, there's now an activity we've identified  
5 that you don't think symbolizes the active practice of  
6 law, correct?

7 A Correct.

8 Q Okay. So when you engage in those activities  
9 as a fundraiser while being a Duke law school graduate  
10 and being an active member of the state bar, you don't  
11 consider those activities to qualify you to satisfy the  
12 statute which requires you to engage in the active

13 practice of law for ten years at the bar, correct?

14 A Which activities are you speaking of.

15 Q Your fundraising activities in which you  
16 discuss public policy?

17 A No.

18 Q Is there a particular reason why you don't,  
19 ma'am?

20 A Fundraising is a political activity, it is  
21 not advocating for public policy, which I do in my role  
22 as secretary of the state.

23 Q Fundraising is political?

24 A Well, it's nonstate business.

25 Q Nonstate business. So it's when you engage

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1 in nonstate business that you are able to distinguish  
2 between when you are engaged in the active practice of  
3 law which qualifies you to run for attorney general,

4 versus those activities which don't qualify you and  
5 that would be your nonstate business, correct?

6 Terrible question.

7 A Yes. You can't to try that again? I lost  
8 you.

9 Q Sure. Is it your position that when Susan  
10 Bysiewicz, Duke law graduate, active member of the  
11 Connecticut bar engages in nonstate business discussing  
12 public policy, she is not engaged in the active  
13 practice of law to qualify her to run for attorney  
14 general under our statute, correct?

15 A That's correct.

16 Q Even though -- let me state it this way:  
17 When you engage in nonstate business, --

18 A It doesn't mean that I may be asked legal  
19 questions when I am outside of the secretary of the  
20 state's office and I never stop being a lawyer.

21 Q Well, whether you ever stop being a lawyer  
22 isn't the question. The question is whether you've  
23 engaged in the active practice of law while you've been  
24 an attorney and a member -- appear at the bar of the  
25 state, correct?

1           A     Correct.  And I do, as a candidate, advocate  
2 for public policy and changes to our state law.

3           Q     Okay.  Are you indicating that as a candidate  
4 when you do that advocacy, you are not engaged in the  
5 active practice of law at the bar of our state?

6           A     As a candidate, I am a public citizen arguing  
7 for reform of our laws and that would be active  
8 practice of law.

9           Q     Okay.  So is it your position then that as a  
10 candidate you are engaged in the active practice of  
11 law?

12          A     I advocate for public policy changes as a  
13 candidate.

14          Q     Is the answer to my question -- strike that.  
15 I'm sorry could I have the answer to my question read  
16 back, please?

17

18 (The testimony was read.)

19

20 BY MR. GERSTEN:

21 Q My question called for a yes or no, ma'am?

22 A I think the answer is yes.

23 Q Okay. And you'll agree that when you are

24 engaged as a candidate, you're engaged in nonstate

25 business?

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1 A May I have a moment with my counsel, please?

2 Q Not while there is a question pending.

3 A Oh, I'm sorry.

4 Q Of course you can after that.

5 A The question?

6

7 (The testimony was read.)

8

9 A Yes.

10 BY MR. GERSTEN:

11 Q Okay. Would you like to have a moment with  
12 your lawyer?

13 A Yes, I would.

14 THE VIDEOGRAPHER: Off the record.

15 12:41.

16

17 (Recess: 12:41 PM to 12:45 PM.)

18

19 THE VIDEOGRAPHER: On the record 12:45.

20 BY MR. GERSTEN:

21 Q We're back on? Thanks, Jake. I understand  
22 your lawyer tells me now I'm no longer harassing you  
23 he's going to let you answer my question about  
24 identifying someone who has indicated to you, or  
25 people, or individuals, we don't know the answer?

1           A    I have one name that I can give you right at  
2 the moment.

3           Q    Okay. Who is that?

4           A    Yvette Jacaruso of Norwich.

5           Q    Okay. And what did Yvette say to you?

6           A    That she wanted to be sure that a court found  
7 me eligible before she would say whether she would  
8 support me at the convention.

9           Q    Okay. When did she tell you this?

10          A    Sometime over the last month.

11          Q    Okay?

12          A    Probably over the past couple weeks.

13          Q    Okay. Was that in a telephone call or  
14 face-to-face?

15          A    Telephone call.

16          Q    Were you looking for money when you talked to  
17 her?

18          A    No.

19          Q    Where were you when you were talking to her  
20 about this topic?

21           A     It was -- I believe it was in the evening and  
22 I was speaking to her by cell phone.

23           Q     Okay. And what cell phone were you using  
24 when you were having that conversation with this -- was  
25 she a delegate at that time?

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1           A     Yes.

2           Q     Okay. So it was after your lawsuit was  
3 filed?

4           A     Yes.

5           Q     Okay.

6           A     My personal cell phone.

7           Q     Okay. Now, besides this one individual who's  
8 given you this statement, can you identify anyone  
9 else?

10          A     There may be others. I just can't give you a  
11 name -- another name at this point.

12 Q Okay.

13 A But there have been others.

14 Q When you filed this lawsuit, had anyone  
15 indicated to you they were unwilling to commit to you  
16 because of uncertainty of your eligibility to become  
17 attorney general?

18 A Nancy DeNardo indicated that it was a -- an  
19 issue for her as the head of the democratic party.

20 Q Okay. Did she say she wouldn't commit to you  
21 as a result?

22 A She didn't say that. She said she was  
23 concerned about someone raising an objection at the  
24 convention that I would not be eligible to run and  
25 therefore that would be problematic and that was why

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1 she was considered bringing a lawsuit on behalf of

2 the democratic party.

3 Q And there's rules at the democratic  
4 convention that deal with issues like the one you're  
5 talking that Mrs. DeNardo brought to your attention,  
6 correct?

7 A Yes.

8 Q Okay. And there's a whole process by which  
9 the democratic party vets issues internally to get  
10 issues like that resolved amongst themselves,  
11 correct?

12 A Yes.

13 Q In fact, you've actually commented -- you  
14 provided us with an opinion that you provided to your  
15 lawyers in discovery here that indicates the party  
16 disputes are supposed to be taken care of by the party,  
17 correct?

18 A Yes.

19 Q And this question you're raising here is a  
20 dispute that is it Ms. DeNardo, Mrs. DeNardo?

21 A Ms. DeNardo.

22 Q Indicated to you might come up, she wasn't  
23 sure, correct?

24 A Yes. And she also indicated that she was,

25 because of the uncertainty, was considering bringing a

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1 lawsuit on behalf of the democratic party of  
2 Connecticut.

3 Q And as we sit here today, almost six or seven  
4 weeks after you filed your lawsuit, it's pretty clear  
5 the democratic party hasn't brought such a lawsuit,  
6 correct?

7 A Correct, because I chose to do it.

8 Q Okay. So outside of that statement and this  
9 lady from Norwich that you've brought up to our  
10 attention today, has anyone indicated to you, Madam  
11 Secretary, that they are unwilling to give you a  
12 commitment because of an uncertainty of your position  
13 to run for attorney general?

14 A Yes. And I -- but I don't have the names to  
15 give you at the moment.

16 Q And while you've written -- strike that.  
17 While you've provided us with correspondence from your  
18 office that indicates intra party disputes are supposed  
19 to be taken care of by the party without interference  
20 from the Court's, correct?

21 A Correct.

22 Q You consider this to be an exception to that  
23 rule, don't you?

24 A Our --

25 Q It called for a yes or no. Do you consider

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1 it to be an exception?

2 A No.

3 Q Well, if you've given advice to people who  
4 ask you questions about disputes within the party and  
5 you've indicated to those people that those disputes

6 should be resolved at the party level, what makes this  
7 dispute different than the ones you've opined on  
8 previously?

9 A This is not a dispute. This is a request for  
10 a declaratory ruling on an issue where there is a  
11 substantial question.

12 Q And so far you've identified one delegate who  
13 told you they had a question, correct?

14 A Correct.

15 Q And aren't we all here simply accommodating  
16 your personal quest to get this answer issued because  
17 nobody else has raised it, correct?

18 MR. HORTON: Objection you've asked  
19 this question two days -- last week.

20 BY MR. GERSTEN:

21 Q Correct, ma'am?

22 A I am here because I would like the answer,  
23 yes, sir.

24 Q And house of you, who's asking everybody to  
25 get this done on an accelerated basis and put aside

1 their schedules so we can get this question answered  
2 for you, there's no one else who stepped up and said, I  
3 have a question too that you can identify right now,  
4 can you?

5 A There are others, I just can't provide you  
6 with the names. And may I also just clarify on your  
7 question with respect to my activities as a candidate I  
8 just want to be very clear and clarify that I do not  
9 believe that when I am asked as a candidate about my  
10 positions on public policy that that constitutes the  
11 active practice of law.

12 Q And why is that, ma'am?

13 A Because I believe that my -- in my official  
14 role as secretary of the state when I advocate for  
15 changes to our election laws, that that does constitute  
16 the active practice of law.

17 Q As a candidate do you make any similar  
18 advocacy?

19 A I do.

20 Q What is the difference between the advocacy  
21 you claim you do as secretary of state and the advocacy  
22 you do as a candidate that you're drawing a distinction  
23 on in terms of your active practice of law?

24 A Because that -- the advocacy that I do as  
25 secretary of the state is done before the state

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1 legislature that is the appropriate body to hear such  
2 testimony to receive draft legislation.

3 Q Now, when you --

4 A And regulations.

5 Q When you appear in front of people like the  
6 people in -- down state there on February 25th, didn't  
7 you make reference as a candidate to what you had gone  
8 to the state legislature and sought to advocate changes  
9 in the law?

10 A Yes.

11 Q Okay.

12 MR. GERSTEN: I think I'm almost done.

13 Take a two minute break and just check with my

14 client.

15 MR. HORTON: Certainly.

16 THE VIDEOGRAPHER: Off the record

17 12:54.

18

19 (Recess: 12:54 PM to 01:00 PM.)

20

21 THE VIDEOGRAPHER: This is the

22 beginning of tape number 3. On the record 1:01.

23 BY MR. GERSTEN:

24 Q Madam Secretary thank you for the indulgence

25 I'm going to try to be real brief. Yesterday you

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1 talked about voting tabulating that you do do you  
2 recall that?

3 A Tabulating.

4 Q Tabulating votes or something like that. You  
5 were referring to a way that voting machines had to be  
6 converted and things like that to accommodate --

7 A Oh, yes the conversion of our lever voting  
8 machines to optical scan voting machines.

9 Q And I just want to show you and we don't need  
10 to make it an exhibit statute 9 dash 238 and ask if  
11 this is the basis under which you act?

12 A This is a section in the state statutes that  
13 has to do with voting machines.

14 Q Is this the portion that you were referring  
15 to yesterday that you act -- that you gain your  
16 authority to deal with these voting machines that you  
17 spoke at length about yesterday?

18 A This is one of them. Also the Help America  
19 Vote Act is one of them.

20 Q Okay. And one of them I'm going to show you  
21 9 dash 241 and I want to make sure that we know the  
22 authority by which the secretary of state acts. Is  
23 that what you were referring to?

24 A Yes.

25 Q Good. How, we also now have the identity of

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1 one delegate who wasn't the delegate at the time you  
2 filed your lawsuit, correct, this lady from Norwich  
3 that we talked about?

4 A Yes.

5 Q Okay. Is it your testimony that the question  
6 you've raised in this lawsuit requires an answer  
7 because it adversely affects your ability to do  
8 fundraising?

9 A No, it raises a question about whether I can  
10 run for and serve as attorney general.

11 Q Okay. But it has not had an adverse affect  
12 on your ability to raise funds in support of your  
13 candidacy, is that your testimony?

14 A Yes.

15 Q I think it was a compound question I want to  
16 make sure I was clear. Have you suffered an an adverse  
17 impact in your ability to raise funds for your  
18 candidacy as a result of your question whether you can  
19 be eligible to serve as attorney general?

20 A No.

21 Q Thank you.

22 MR. GERSTEN: That's it. Thanks.

23 Nothing further. Madam Secretary thank you for all  
24 your time and patience dealing with me.

25 THE VIDEOGRAPHER: Off the record 1:05.

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2 ( Concluded at 01:05 PM.)

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