

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

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.

March 31, 2010

SUSAN BYSIEWICZ

CTNewsJunkie

19

20

21

22

23

Bethany A. Carrier, LSR.

24

Brandon Smith Reporting Service

25

(860) 549-1850

Brandon Smith Reporting

2

1

(Defendant's Exhibit 1: Marked for  
identification.) notice of deposition.

2

3

4

(The deposition commenced at 10:06 am.)

5

6

THE VIDEOGRAPHER: The date today is

7

March 31st, 2010. We're going on the record at 10:06

8

a.m. The case is Bysiewicz versus DiNardo, the

9

Connecticut Democratic Party, and the Connecticut

10 Office of the Secretary of State, filed in the  
11 Superior Court of Hartford. The name of the witness  
12 is Susan Bysiewicz. This deposition is being held at  
13 Gersten, Clifford & Rome, 214 Main Street, Hartford  
14 Connecticut. My name is Jacob Brandon from Brandon  
15 Smith Reporting & Video. The court reporter is  
16 Bethany Carrier from Brandon Smith Reporting & Video.  
17 Counsel will now state their appearances for the  
18 record please after which the court reporter will  
19 swear in the witness.

20 MR. GERSTEN: Thank you, Jake. My name  
21 is Eliot Gersten I'm here with my client Chris Healy  
22 and we have counsel for the party Jennifer O'Neill.  
23 That's my side of the table.

24 MR. HORTON: Would you indicate also  
25 the name of your client?

Brandon Smith Reporting

1 MR. GERSTEN: I did.

2 MR. GERSTEN: Republican party, I'm  
3 sorry, Chris Healy -- thanks, Wes -- Chris Healy here  
4 is the representative of the republican party.

5 MR. HORTON: Wesley Horton representing  
6 the plaintiff, Susan Bysiewicz.

7 MR. REYNOLDS: Kevin Reynolds  
8 representing the Connecticut Democratic Party. And  
9 representing the party is Allison Dodge, our executive  
10 director over in the corner.

11 MR. ZINN-ROWTHORN: Perry Zinn-Rowthorn  
12 from the Office of Attorney General on behalf of the  
13 Office of the Secretary of State.

14 MR. CLARK: And Assistant Attorney  
15 General Robert Clark also on behalf of the Office of  
16 the Secretary of State.

17 MR. HORTON: Before the deposition  
18 starts, I would like to state for the record that we  
19 accept the usual stipulations, except that my client  
20 wants to read and sign the deposition.

21 And in addition, we have our own  
22 videographer here today. Attorney Gersten, Attorney  
23 Krisch and I a conference call with Judge Sheldon

24 yesterday afternoon. The court permitted the plaintiff  
25 to bring her own stenographer, but said that Attorney

Brandon Smith Reporting

4

1 Gersten was the official one -- Gersten's was the  
2 official one and that ours should be careful not to  
3 interfere with his. I don't believe that will happen.

4 The Court also inquired of both parties  
5 whether they would be using the videotapes for any  
6 purpose other than the court proceedings, and both  
7 Attorney Horton and Attorney Gersten said no. That's  
8 all I want to state for the record. I don't know if  
9 you want to add anything to the conversation yesterday  
10 so it's on the record.

11 MR. GERSTEN: I'm not adding anything  
12 because it's not necessary for any reason. Okay. Are  
13 we all set?

14

15 ( Witness sworn.)

16

17 BY MR. GERSTEN:

18 Q Is it okay if I call you Madam Secretary? I  
19 don't really know the right title.

20 A Go right ahead. That's fine.

21 Q Okay. Great. Madam Secretary, my name is  
22 Eliot Gersten. I represent the intervening defendant  
23 in this case. I'm going to ask you a series of  
24 questions. I'm hoping you can give me the answers.  
25 Any time you have a problem with any of my questions,

Brandon Smith Reporting

5

1 feel free to speak up and say, I don't understand,  
2 otherwise I'm going to assume that you do, in fact,  
3 understand. Is that instruction understood by you  
4 now?

5 A Yes.

6 Q Great. Thanks. The next instruction I'm  
7 going to let you know about is any time you want to  
8 take a break, either indicate I've got to take a short  
9 break, go ahead, this is not an endurance contest. Ask  
10 for a cup of water, coffee, I'm not here to try to see  
11 how long one of us can last until we have to breakdown.  
12 Okay?

13 A Great.

14 Q Great. You're the plaintiff in this action.

15 A Yes.

16 Q Great. And you -- did you review any  
17 documents in preparation for your deposition today?

18 A I did.

19 Q Okay. Would you identify the documents you  
20 reviewed in preparation of your deposition today?

21 A They would be documents in a notebook given  
22 to me by my attorney.

23 Q Okay. And what was the contents of the  
24 documents that you looked at in preparation for your  
25 deposition today?

1           A     They would be documents that were given by  
2     the attorney general's office to my attorney. They are  
3     documents that I worked on or my office produced.  
4     Also, they were copies of my occupational tax forms,  
5     client security fund forms, my good standing  
6     certificate from the state of Connecticut and I think  
7     that's about it.

8           Q     Okay. When did you review these documents in  
9     preparation for your deposition?

10          A     Over the course of the last several days.

11          Q     Okay. And last several days is somewhat  
12     subjective. How many days are you talking about?

13          A     Friday, Saturday, Sunday, Monday and  
14     Tuesday.

15          Q     Great. And do you recall how much time you  
16     spent reviewing those documents?

17          A     I couldn't tell you precisely.

18          Q     Okay. How about estimating?

19          A     Several hours.

20 Q Okay. Again, several is somewhat subjective.

21 Is that more than three?

22 A Probably.

23 Q More than ten? How many hours would it be

24 then?

25 MR. HORTON: Did you say less than

Brandon Smith Reporting

7

1 ten.

2 MR. GERSTEN: I'm trying to understand

3 the definition of subjective.

4 A Probably more than three, possibly more than

5 ten. But I'm not certain.

6 BY MR. GERSTEN:

7 Q Okay.

8 A I didn't keep track.

9 Q Okay. Now, is this something that exists --

10 that you looked at in the context of one notebook, that

11 is -- I'm trying to get a handle on what we looked  
12 at -- excuse me, what you looked at.

13 A Yes, I looked at the trial preparation  
14 materials prepared by my attorney.

15 Q Okay. When you call them trial preparation  
16 materials, could you tell me what you're referring  
17 to?

18 A Documents that the attorney general's office  
19 got from our office. My occupational tax forms, my  
20 attorney registration forms, and my client security  
21 fund forms, my good standing certificate from the state  
22 of Connecticut.

23 Q Okay. That sounds like all the same  
24 materials that you just recited to me that you looked  
25 at in preparation?

Brandon Smith Reporting

1 A That's right.

2 Q And then you called it trial preparation  
3 materials. Is there something else besides what you  
4 just described?

5 A Not that I can think of.

6 Q Okay. And that is a neat book that was  
7 actually handed to you?

8 A Yes.

9 Q Okay. And where is that notebook as we sit  
10 right now?

11 A It's at my office.

12 Q Okay. And when you say it's at your office,  
13 what's the location of that office?

14 A That office would be at the State Capitol.

15 Q Okay. So if I said to you Madam Secretary,  
16 would you be able to produce the documents that you  
17 looked at in preparation for today's deposition, you  
18 could in fact go over to your office which is about  
19 four minutes away and pull out that materials and bring  
20 it back relatively quickly, am I correct?

21 A Yes. Absolutely.

22 Q Great.

23 MR. GERSTEN: Wes I'm going to make a  
24 request at the break that that be done.

Brandon Smith Reporting

1 file. And it's all -- it contains the documents that  
2 you've been given. I have it here and if you want it,  
3 I'll give it to you.

4 MR. GERSTEN: Okay. If it's a  
5 representation that everything that Madam Secretary  
6 looked at in preparation for today, I'll take that  
7 representation. I just want to get it marked as an  
8 exhibit so we kind of know what we're doing.

9 MR. HORTON: Yes. That's right. It's  
10 the documents that were turned over to you. The only  
11 other document we showed her was our --

12 MR. GERSTEN: Hang on a minute, Wes.

13 BY MR. GERSTEN:

14 Q Were there other documents that you looked at  
15 besides the documents that are in this notebook that

16 attorney Horton has indicated he has with him today as  
17 a copy?

18 A For preparation today?

19 Q Yes, ma'am.

20 A And what are you -- what specific documents  
21 would you be talking about?

22 Q That's a fair comment. Attorney Horton  
23 indicated just a moment ago, and again, I appreciate  
24 him trying to help but he's not the witness here --  
25 that there was other documents besides those in his

Brandon Smith Reporting

10

1 notebook that he --

2 MR. HORTON: I didn't say plural.

3 BY MR. GERSTEN:

4 Q Other document, okay. I'm just trying to  
5 find out what that other document is, ma'am. I can't  
6 identify it because I don't know what it is. But I'm

7 presuming, if he handed it to you to look at you know  
8 what that document is.

9 A I'm not sure what he's referring to. I know  
10 that I received a black binder, he has a copy of the  
11 same materials.

12 Q Okay?

13 A And that's what I looked at.

14 Q Okay. So that's -- can we produce the  
15 notebook so we just get it marked as an exhibit?

16 MR. HORTON: Absolutely.

17 MR. GERSTEN: And then I'll ask the  
18 question. Please. Watch the microphone, Wes.  
19 Believe me I stepped on many of them doing the same  
20 thing.

21 MR. HORTON: I'll go out and get a  
22 little room here.

23 MR. GERSTEN: Take your time.

24 MR. HORTON: I want to make sure there  
25 is nothing privileged in here. Here it is.

1 MR. GERSTEN: Great. Thanks, Wes.

2 Okay.

3 MR. HORTON: Hold on a second.

4 MR. HORTON: Eliot I'll be happy to  
5 clear up the miss store of the other document.

6 A I know now I'm realizing what you were  
7 referring to.

8 BY MR. GERSTEN:

9 Q Okay. Could you go ahead?

10 A I looked at a draft of a brief prepared by my  
11 attorneys.

12 Q I think that's a -- did you bring that  
13 document with you today?

14 A No.

15 Q Okay. Where is that document?

16 A It's in my briefcase.

17 Q And where is your briefcase?

18 A It's at the State Capitol.

19 Q And is it the same place as this notebook is  
20 located at?

21 A It is.

22 Q Okay. And that's another document that at  
23 the break I could say, you could get relatively  
24 quickly, am I correct?

25 A I could, but that would be privileged.

Brandon Smith Reporting

12

1 Q It might be. We can argue about that but  
2 we're going to have to get it properly identified  
3 before we can do that.

4 How many pages long is that, ma'am?

5 A Perhaps 20.

6 Q Okay. Did you read it?

7 A I did.

8 Q And when did you read it?

9 A Over the course of the past several days.

10 Q Okay.

11 MR. GERSTEN: Can I get this marked for

12 the moment, please, madam court reporter and then we  
13 will proceed to the next one. So I'm going to call  
14 this exhibit -- you know I apologize I should have  
15 made sure I get number one marked first, right? Okay.

16 BY MR. GERSTEN:

17 Q Madam Secretary, I'm going to show you --  
18 just so we can keep some order, a copy of the notice of  
19 deposition that was issued in this case so you have it.  
20 You've seen this before, correct?

21 A Yes.

22 Q Great. And we're marking that just so the  
23 record's clear has number 1. And now for Exhibit  
24 Number 2, if I can get Bethany to mark this notebook,  
25 we'll mark this as Exhibit Number 2.

Brandon Smith Reporting

13

1

2

(Defendant's Exhibit 2: Marked for

3 identification.) Bysiewicz deposition prep  
4 folder.

5 BY MR. GERSTEN:

6 Q And ma'am, Exhibit Number 2 has been  
7 represented to be an exact duplicate of the notebook  
8 that was delivered to you to prepare for this  
9 deposition. Do you agree with that? Would you like to  
10 take a look at it first?

11 A Yes.

12 Q Great. And would you agree that this is a  
13 copy of what you looked at?

14 A Yes. Appears to be the same thing.

15 Q In preparation for today? Good.

16 MR. GERSTEN: Anybody want to share it.

17 BY MR. GERSTEN:

18 Q And the 20 page document that you reviewed in  
19 preparation for your deposition today was what, a draft  
20 of a brief?

21 A Yes.

22 Q Okay. And do you recall anything that it  
23 said?

24 A I do.

25 Q Okay. In a general way, would you describe

1 what it said?

2 MR. HORTON: I object to that don't  
3 answer the question that's clearly privileged  
4 information.

5 MR. GERSTEN: Well, Wes, if she looked  
6 at it in preparation for the deposition today, if it  
7 was privileged, which I don't know that we can argue  
8 about, I'm just making sure we have a proper factual  
9 background.

10 BY MR. GERSTEN:

11 Q So ma'am, in a general way I'm going to ask  
12 you again to identify what its contents were that you  
13 read in preparation for deposition today?

14 MR. HORTON: I object and I direct you  
15 not to answer and Eliot my suggestion is since we know  
16 we have a judge available this morning, why don't we

17 go often, see if there are other things and then give  
18 him a call later on.

19 MR. GERSTEN: No problem. That's a  
20 wonderful suggestion. I'm just trying to make sure I  
21 got a proper predicate for it.

22 MR. HORTON: Right.

23 BY MR. GERSTEN:

24 Q Now, ma'am, how much time did you actually  
25 spend preparing for your deposition?

Brandon Smith Reporting

15

1 A Several hours.

2 Q Okay. And again, several isn't very  
3 quantitative. How much are you referring to?

4 A I spent some time with my attorney and some  
5 time --

6 Q Okay.

7 A -- Reading documents and I would say hours is

8 a good way. I can't tell you how many.

9 Q Now, how much time did you spend with your  
10 attorney?

11 A Probably a couple of hours.

12 Q Okay. And again, that can be somewhat  
13 subjective. Are we talking somewhere between two and  
14 three or more than that?

15 A I guess I'll find out when I get my bill.

16 Q Okay. But as you sit here today, you don't  
17 know?

18 A I couldn't say specifically, but I would say  
19 several hours.

20 Q Okay. And how much time did you spend  
21 reviewing the documents that you've made reference  
22 to?

23 MR. HORTON: Objection. That's already  
24 been asked. Wasn't that asked earlier?

25 MR. GERSTEN: Even if it were, Wes you

1 know that's not a proper objection.

2 MR. HORTON: Well, at some point if it  
3 continues being asked it's arrest harassment.

4 MR. GERSTEN: At some point you're  
5 right.

6 MR. HORTON: Ask the question.

7 MR. GERSTEN: At this point all it does  
8 is interrupt my flow. I'm getting there.

9 MR. HORTON: Go ahead.

10 MR. GERSTEN: With all due respect.

11 BY MR. GERSTEN:

12 Q So and how much time did you say you spent  
13 reviewing the documents in preparation for the  
14 deposition?

15 A I believe I said somewhere between three and  
16 ten hours.

17 Q Okay. And I'm just trying to get a handle on  
18 this --

19 A But again, I didn't keep track.

20 Q Okay. Well, when you say you don't keep  
21 track, do you have any kind of calendars that you keep

22 in terms of knowing where you're supposed to be at any  
23 particular time?

24 A I have my appointment schedule and you have  
25 copies of all of that.

Brandon Smith Reporting

17

1 Q Okay. And is there an appointment schedule  
2 when you met with your attorneys?

3 A No.

4 Q So meeting with your attorneys then would not  
5 be included on that appointment schedule?

6 A No.

7 Q Okay. Is there a reason for that?

8 A My appointment schedule has my public  
9 appointments on it and you can see that. And then I  
10 have a personal schedule.

11 Q Okay. So when you call it a personal  
12 schedule, do you keep track of the personal schedule

13 differently than you do your appointments in your  
14 capacity as the secretary of state?

15 A Yes.

16 Q Okay. And are there documents reflecting  
17 that personal schedule?

18 A No.

19 Q How do you go about keeping track of your  
20 personal schedule then when you referred to I have a  
21 personal schedule as contrasted to your calendar that  
22 you referred to earlier?

23 A Because my appointments with Wes are right  
24 here.

25 Q Okay. Are there other kinds of appointments

Brandon Smith Reporting

18

1 that are -- I'm going to point to your head but I'm  
2 presuming that you kept these things mentally as  
3 opposed to keeping track of them on a day-to-day basis

4 that are personal in nature that are not reflected in  
5 your office calendar?

6 A I have doctors appointments and other  
7 personal appointments that I would keep privately.

8 Q Okay. Any other kinds of appointments that  
9 you wouldn't record in your secretary of state out look  
10 calendar?

11 A Yes. Those would be my campaign events.

12 Q Okay. What's a campaign event?

13 A It might be a democratic town committee event  
14 to campaign for attorney general and those are kept at  
15 my campaign office.

16 Q Okay. And when you say those are kept at  
17 your campaign office, is there a separate calendar for  
18 that?

19 A There is.

20 Q Okay. What is that calendar called?

21 A My campaign calendar.

22 Q Okay. Who's the custodian of your campaign  
23 calendar?

24 A One of my campaign staff.

25 Q Okay. And when did you start keeping a

1 campaign calendar?

2 A In January of this year.

3 Q Okay. And when you say your campaign staff  
4 is there a particular person who's the custodian of  
5 that record?

6 A It would be Zack Van Lulling.

7 Q I'm sorry. The court reporter is going to  
8 need the spelling of that, I assure you.

9 A Let's say V-A-N L-U-L-L-I-N-G.

10 Q Thank you very kindly. And what is Zack's  
11 position?

12 A He is a campaign assistant.

13 Q Okay. And so if we asked Zack to produce  
14 your calendar, we would simply describe it as a  
15 campaign calendar and that would sufficiently identify  
16 it so he would know what we were talking about?

17 A Yes.

18 Q Great. And you know what I'm talking about  
19 when I ask that question, correct?

20 A Yes.

21 Q And that's not where you keep your -- that's  
22 where you keep your appointments for the purposes of  
23 your political engagements?

24 A Correct.

25 Q Okay. And I forgot to ask, where is Zack

Brandon Smith Reporting

20

1 located?

2 A He is in our campaign office in Rocky Hill.

3 Q And does the campaign office in Rocky Hill  
4 have an address?

5 A I believe it's 2263 Silas Deane Highway. I  
6 may be wrong about the street address, but it's on the  
7 Silas Deane Highway.

8 Q You mean the number address?

9 A Correct.

10 Q Okay. Great. And prior to coming here today  
11 for the purposes of your preparation he -- well let me  
12 ask my question differently I'm sorry about that. You  
13 met with your lawyers to prepare for your deposition?

14 A Uh-huh.

15 Q Did you have discussions with anyone else in  
16 connection with this deposition?

17 A My husband.

18 Q Okay. And his name?

19 A David Donaldson.

20 Q And when did you and your husband discuss the  
21 deposition?

22 A Over the course of the past several days.

23 Q Okay. What did you discuss?

24 MR. HORTON: I object to that question.

25 Don't answer it. That's privileged.

Brandon Smith Reporting

1 MR. GERSTEN: The privilege of that is  
2 what, Wes.

3 MR. HORTON: Husband wife privilege.

4 MR. GERSTEN: You're claiming the  
5 spousal privilege pertains to all discussions between  
6 husband and wife about this deposition I just want to  
7 make sure I got that.

8 MR. HORTON: Yes.

9 MR. GERSTEN: Great. So any questions  
10 that I ask about what her discussions were with her  
11 husband you're claiming are privileged.

12 MR. HORTON: Well, it's her privilege.  
13 Tell you what could we take a break.

14 MR. GERSTEN: Of course.

15 THE VIDEOGRAPHER: Off the record,  
16 10:28.

17  
18 (Recess: 10:28 am to 10:36 am.)

19  
20 THE VIDEOGRAPHER: On the record,  
21 10:36.

22 MR. HORTON: All right. I have spoken

23 to my client about the attorney-client privilege and  
24 she wishes to claim it. Therefore, I direct her not  
25 to answer the question.

Brandon Smith Reporting

22

1 MR. GERSTEN: Okay.

2 MR. HORTON: And we can obviously bring  
3 this -- be put in our bag to discuss with the judge.

4 MR. GERSTEN: No problem at all I just  
5 want to make sure we're clear you're claiming any and  
6 all conversations with your husband, ma'am are subject  
7 to a privilege claim you're making here today.

8 A Yes, sir.

9 Q Right. Okay. I forgot to give you one more  
10 instruction I apologize for that. I've got to be able  
11 to finish my question, even if you know what you think  
12 the question is, let me finish it because otherwise  
13 this poor lady's trying to take down my question and

14 your answer and we'll screw up the record. Okay. I  
15 forgot to tell you that. And you're supposed to be  
16 audible with answers, not nodding your head. Okay?

17 A Yes.

18 Q Thank you. I just want to go back for a  
19 minute. On this appointment book that you said you  
20 maintain at your campaign headquarters, it covers the  
21 time period from January 2010 until today?

22 A Yes.

23 Q Okay. Now, which appointment book would you  
24 place your coming to a deposition on?

25 A Neither.

Brandon Smith Reporting

23

1 Q Okay. That's all just kept in your head  
2 again?

3 A Yes.

4 Q Okay. And this appointment book is

5 something, if you called up your assistant at the  
6 campaign headquarters and said, can you bring over my  
7 appointment book, is that something you're able to do?  
8 Would that -- let me restate my question, terrible  
9 question. If you called up your assistant and said, I  
10 need a copy of my appointment book, would your  
11 assistant follow your directions and get that over to  
12 you?

13 A He could if I were to instruct him to do  
14 that.

15 Q Okay. So you're in control of that  
16 appointment book, aren't you?

17 A It is on a computer.

18 Q Okay. Other than it being on a computer, if  
19 someone wanted to get a copy of it and you said, give  
20 me a copy of my appointment book, that's something you  
21 would expect people who worked for your campaign would  
22 follow your direction; is that correct?

23 A If I asked them to do that, yes.

24 Q Okay. Great. And is there a particular  
25 reason why you did not produce the -- strike that. Is

1 there a particular reason why you did not identify that  
2 appointment book in your answers to interrogatories in  
3 this case?

4 A Because -- well, I'd have to look at what the  
5 interrogatory said.

6 MR. HORTON: Yes, which interrogatory  
7 are you talking about, counsel?

8 MR. GERSTEN: I'll get there.

9 BY MR. GERSTEN:

10 Q If you're saying you don't think it was asked  
11 for is that -- you just don't remember? I'll restate  
12 it it's a terrible question. My question is: Is there  
13 a particular reason why you did not identify the  
14 existence of that appointment book in answers to  
15 interrogatories?

16 MR. HORTON: I object as to form. I  
17 think you should identify an interrogatory that you  
18 think she didn't answer properly.

19 MR. GERSTEN: I haven't accused her of  
20 anything. I'm asking questions and all objections  
21 except as to form and you're saying that's a form  
22 question?

23 MR. HORTON: Yes. I'm not directing  
24 her not to answer.

25 MR. GERSTEN: Okay. Fair enough.

Brandon Smith Reporting

25

1 BY MR. GERSTEN:

2 Q Ma'am, there is a particular reason why you  
3 didn't identify the existence of this appointment book  
4 in any responses to interrogatories?

5 A There was an interrogatory I took it to mean  
6 my state calendar because obviously that would be a  
7 public document. My campaign calendar is not a public  
8 document.

9 Q So you made a distinction between public

10 documents and private documents in responding to the  
11 interrogatories in this case?

12 A I just answered the interrogatories  
13 truthfully.

14 Q Okay. I didn't ask you that. I'm sure you  
15 tried. My question to you is: Would it be correct to  
16 say that you do in fact maintain an appointment book at  
17 your campaign headquarters regarding your time spent on  
18 the campaign as you've just testified?

19 A I maintain a campaign schedule at my campaign  
20 headquarters.

21 Q Is that campaign schedule the appointment  
22 book that you referred to earlier in your testimony?

23 A Yes.

24 Q Okay. So you do, in fact, maintain an  
25 appointment book separate and apart from the

1 appointment book that was produced in this case from  
2 the secretary of state's office?

3 A Yes.

4 Q Great.

5 MR. GERSTEN: Yes, I'm going to claim  
6 that in response to question number 43, that document  
7 should have been produced.

8 MR. HORTON: Well, we can discuss  
9 that --

10 MR. GERSTEN: First of all it should  
11 have been identified and then secondly it should have  
12 been produced.

13 MR. HORTON: What number?

14 MR. GERSTEN: 43.

15 MR. HORTON: I suggest we put that on  
16 our list of things to discuss with the judge at the  
17 break.

18 MR. GERSTEN: Yes, I don't think it's  
19 discussing with the judge. It's a simple do you  
20 maintain an appointment book and if so, what time  
21 period does it cover? Clearly she's identified both  
22 things now as things she didn't identify earlier. I'm  
23 not accusing anybody of being a bad person.

24 MR. HORTON: No.

25 MR. GERSTEN: I'm just saying it should

Brandon Smith Reporting

27

1 have been identified and we're claiming it now and I'd  
2 like to get a copy of it.

3 MR. HORTON: Okay. Well, it's one  
4 thing to identify it, but if you're claiming a copy of  
5 it, I'm going to direct her not to produce it because  
6 I consider this harassment because it has absolutely  
7 nothing to do with this case and I think this is --  
8 this is something that, you know, the republican party  
9 wants just for their own political purposes. It has  
10 nothing to do with this lawsuit. And that's why I  
11 said earlier, so that we don't have to argue about  
12 it.

13 MR. GERSTEN: I'm not arguing about  
14 it.

15 MR. HORTON: Let's discuss with it the  
16 judge. We have two other things to discuss with the  
17 judge let's put this on the list. That's all. We  
18 know what it is.

19 MR. GERSTEN: Your speech is done.

20 MR. HORTON: Yes.

21 MR. GERSTEN: Okay. All I did was make  
22 the request. I didn't make a speech.

23 MR. HORTON: Okay. And the request is  
24 denied. Unless the judge orders me to do it.

25 MR. GERSTEN: Okay.

Brandon Smith Reporting

28

1 BY MR. GERSTEN:

2 Q Now, ma'am --

3 MR. HORTON: Before we go on, I want to  
4 make sure I'm keeping a proper list for the judge. I  
5 know the second thing.

6 MR. GERSTEN: This is taking up  
7 transcript time I don't mean to be disrespectful we  
8 can always deal with it later.

9 MR. HORTON: Okay.

10 MR. GERSTEN: Thank you.

11 BY MR. GERSTEN:

12 Q Okay. Now, other than having discussions  
13 with your husband regarding your deposition, did you  
14 have any discussions with anyone else besides counsel  
15 regarding coming today for your deposition?

16 A No.

17 Q So no one in the press, no one talked to you  
18 from the press about your deposition?

19 A No.

20 Q Being scheduled today? And no one from your  
21 campaign staff discussed your deposition being taken  
22 today?

23 A No.

24 Q Okay. Have you had discussions with anyone  
25 regarding your deposition, not just the deposition

1 today, but the prospects of deposition?

2 A What does that mean, prospects of deposition?

3 Q I'll restate my question, because it was  
4 probably terribly phrased. And I appreciate you  
5 clarifying it for me.

6 Besides your husband and your counsel, does  
7 anyone else know that you're coming to a deposition  
8 today because you told them?

9 A Tammy Marzik, who is an executive assistant  
10 in my office dropped me off here.

11 Q Okay. Anyone else?

12 A Well, my chief of staff, Michelle Gilman  
13 knows, because press were calling her today.

14 Q Okay. Anyone else?

15 A Outside of the media, I can't think of any.

16 Q Okay. And did you and Michelle discuss the  
17 deposition at all?

18 A No.

19 Q Okay. And you and Tammy didn't discuss the

20 deposition at all?

21 A No. Just the fact that it was here.

22 Q Okay. Fair enough. Now, I'm hoping we can  
23 agree on some things here in terms of some facts. On  
24 January 4th there was a press conference you attended  
25 regarding the Court's ruling on campaign financing. Do

Brandon Smith Reporting

30

1 you recall that?

2 A A press conference? January 4th. Where was  
3 it?

4 Q I don't know.

5 A I'm not --

6 Q Then I'll restate my question?

7 A I go to a lot of press conferences.

8 Q Do you recall a press conference in which you  
9 attended regarding a court ruling on the campaign  
10 finance laws in January of this year?

11 MR. HORTON: Objection. Are you  
12 referring to the U.S. supreme court decision is that  
13 what you're referring to?

14 MR. GERSTEN: I'm asking the witness.  
15 I don't know. I'm trying to find out what she did,  
16 not what I know.

17 A I recall going to a press conference  
18 regarding campaign finance reform. I cannot recall the  
19 date, but it was with the -- someone from common cause,  
20 and it was at the legislative office building and it  
21 was regarding the clean election program. That's the  
22 only campaign finance related press conference that I  
23 recall going to. But I couldn't tell you the date.

24 Q Okay. Was -- do you recall if that took  
25 place before or after you announced that you were going

Brandon Smith Reporting

1 to make a run for the candidacy for attorney general?

2 A It was clearly before, because I had pledged  
3 to participate it was before.

4 Q Good. And am I correct when I say before, it  
5 was after the Christmas holidays, would that be  
6 correct?

7 A What was after?

8 Q This press conference?

9 A I can't remember when it was.

10 Q Fair enough.

11 A And again, I don't know that we're talking  
12 about the same one.

13 Q Okay. No problem. On January 13th of 2010,  
14 that is the date that you announced your candidacy to  
15 become attorney general?

16 A Yes.

17 Q Okay. And at that time, did you make that  
18 announcement -- strike that.

19 At that time, you had indicated you had been  
20 formally running for governor; is that correct?

21 A I did not. I was never formally running for  
22 governor. I was exploring the run for governor.

23 Q Okay.

24 A Prior to that.

25 Q Was there a particular reason why you made a

Brandon Smith Reporting

32

1 decision to change from exploring to run for governor  
2 and instead determine that you wanted to run for  
3 attorney general?

4 A There was.

5 Q And could you explain what that reasoning  
6 was?

7 A Chris Dodd decided not to run for reelection  
8 to the United States Senate, Richard Blumenthal decided  
9 to run for the United States Senate, and there was then  
10 an opening after they both made their announcements for  
11 attorney general.

12 Q Is there any other reason?

13 A I always thought that the attorney general's  
14 job was the best in state government.

15 Q Okay. Any other reason?

16 A That would be the main one.

17 Q Okay. And what makes the attorney general's  
18 job the best in the state government?

19 A Have the opportunity to fight for people  
20 every day.

21 Q Now, on January 13th there was a posting on a  
22 website that questioned your qualifications for  
23 governor -- or for attorney general. Do you recall  
24 that?

25 A Which posting are you referring to?

Brandon Smith Reporting

33

1 Q I'm referring to one from a fellow named  
2 Ryan?

3 A Yes.

4 Q Okay. And you drafted a response to Ryan?

5 A I would assume we're talking about Ryan  
6 McKeen.

7 Q Okay. Don't ever have to assume anything.  
8 If you don't know who I'm talking about feel free to  
9 let me know?

10 A Would you be talking about Ryan McKeen.

11 Q I believe that's his name. Okay. And you in  
12 fact drafted a response to Mr. McKeen?

13 A I did.

14 Q And you were assisted in that response by two  
15 attorneys?

16 A I believe so.

17 Q Okay. And do you recall the names of those  
18 two attorneys?

19 A May I have a moment with my counsel, please?

20 Q Of course. Going off the record.

21 THE VIDEOGRAPHER: Off the record,  
22 10:50.

23

24 (Recess: 10:50 am to 10:56 am.)

25

1 THE VIDEOGRAPHER: On the record  
2 10:56.

3 MR. GERSTEN: Okay.

4 MR. HORTON: I would just like to --  
5 it's my understanding that this line of questions,  
6 Eliot, has to do with a confidential investigation  
7 where the documents are sealed at this point and that  
8 they're not -- and there's been no resolution and  
9 until that time that these are not supposed to be on  
10 the public record. Now, I'm hearing this for the  
11 first time from these questions from you, Eliot, and I  
12 think before we mark things for identification or do  
13 anything.

14 MR. GERSTEN: Okay.

15 MR. HORTON: More in this line we  
16 should talk to the judge.

17 MR. GERSTEN: All right. I'm going to  
18 continue down this line and you can tell me when I  
19 need to have a record and I want to make sure I get it  
20 so that when we have a talk with the judge I have a

21 proper record, you being the most imminent --  
22 preeminent appellate attorney in the world.

23 MR. HORTON: The point is.

24 MR. GERSTEN: Don't interrupt me I  
25 didn't interrupt you.

Brandon Smith Reporting

35

1 MR. HORTON: True.

2 MR. GERSTEN: Please I want to make  
3 sure I have a proper record so that when you go to the  
4 judge and say something I know what I'm talking about  
5 and I can say -- I want point to things. So with that  
6 in mind now that you've had a chance to confer with  
7 your client I'm going to ask some questions and see  
8 where we go.

9 MR. HORTON: Okay. I would prefer that  
10 you not mark documents for identification at this  
11 point.

12 MR. GERSTEN: Okay.

13 MR. HORTON: However, can you obviously  
14 identify the subject Martha you're talking about, so  
15 that we do have a record to discuss with the judge,  
16 whether these things should be on the record.

17 MR. GERSTEN: Okay.

18 BY MR. GERSTEN:

19 Q All right. Ma'am, our deposition was  
20 interrupted for a few moments while you had a chance to  
21 confer with counsel. I'm going to ask you some  
22 questions and see if you can answer me.

23 In a general way, ma'am, would you describe  
24 the documents that Mr. Horton is referring to?

25 MR. HORTON: The subject matter of the

Brandon Smith Reporting

36

1 documents. Without describing the documents  
2 themselves, describe what the subject matter is, just

3 so we can tell the judge -- have a basis for  
4 discussing the issue with the judge.

5 A I would be referring to a complaint that has  
6 been made against me, which is confidential in nature.

7 BY MR. GERSTEN:

8 Q And are you aware of the name of the author  
9 of the complaint that's been filed against you?

10 A Yes. It would be a Ms. Ruhe, who is a  
11 republican state central committee member from  
12 Wethersfield.

13 Q Does she have a first name?

14 A I believe it's Barbara.

15 Q And in a general way, are you familiar with  
16 the contents of her complaint?

17 A Yes.

18 Q Okay. You read it?

19 A Yes.

20 Q Okay. And are you familiar with the date of  
21 the complaint?

22 A Yes.

23 Q Okay?

24 A In a general way.

25 Q Okay. In a general way, then, what is your

1 best recollection as to the date of the complaint?

2 A I believe it was January 29th.

3 Q Okay. And do you know where the complaint  
4 was filed?

5 A Yes.

6 Q Could you identify where the complaint was  
7 filed?

8 A The office of state ethics.

9 Q Okay. And could you identify when you  
10 received notice of the complaint being filed?

11 A I believe it was shortly thereafter. I  
12 couldn't tell you the day.

13 Q Okay. Have you filed a response to the  
14 complaint?

15 A Yes.

16 Q Okay. Do you recall approximately when you

17 filed a response to the complaint?

18 A I don't recall the date, but after -- clearly  
19 after the complaint was filed.

20 Q Okay. Was it sometime in the past week that  
21 you filed a response?

22 A Without looking at my file, I could not tell  
23 you the date.

24 Q Okay. And when you say looking at my file,  
25 what is the file you're referring to?

Brandon Smith Reporting

38

1 A It would be my personal file with respect to  
2 that complaint.

3 Q And where is that -- where is that file that  
4 you maintain relative to that complaint maintained?

5 A At my home.

6 Q Okay. And do you keep that in a locked  
7 filing cabinet?

8 A No.

9 Q Okay. Were you assisted by counsel in  
10 drafting a response to that complaint?

11 A Yes.

12 Q Can you identify the name of any lawyer who  
13 gave you advice in responding to that complaint?

14 A Jim Connor.

15 Q And do you know the address of Mr. Connor?

16 A One State Street, Hartford.

17 Q Is he with a law firm?

18 A Updike, Kelly & Spellacy.

19 Q Now, you indicated that you thought this  
20 complaint was confidential?

21 A Yes.

22 Q What is the basis for your claim that the  
23 complaint is confidential?

24 A It says that on the top of the document.

25 Q Okay. Now, do you recall the nature of the

1 complaint that was filed?

2 MR. HORTON: I object to the question.

3 What do you mean by nature.

4 BY MR. GERSTEN:

5 Q Okay. In a general way, what was Ms. Ruhe's  
6 complaint against you concerning you?

7 MR. HORTON: I object to that question.  
8 Don't answer that question. That's the issue that we  
9 have to discuss with the judge whether it should be on  
10 the public record what the complaint is about.

11 MR. GERSTEN: Okay. Well,  
12 Ms. Bysiewicz, it was complaint about you running for  
13 a position that you weren't qualified for.

14 A Yes, actually.

15 Q Okay. Did your response to that complaint  
16 address the issue whether you were qualified to run for  
17 a position?

18 A Would you ask that question again.

19 Q Of course. You drafted a response with the  
20 assistance of counsel to the complaint?

21 A Correct.

22 Q Did you address the allegations in the  
23 complaint in your response?

24 MR. HORTON: That's just a yes or no  
25 question.

Brandon Smith Reporting

40

1 A Yes.

2 BY MR. GERSTEN:

3 Q Did you address the allegations in the  
4 complaint in a statement that was sworn under oath?

5 A I don't believe so but I would have to  
6 refresh my memory by looking at my response. I do not  
7 believe that it was notarized.

8 Q Does it say at the bottom of the document, my  
9 signature here verifies that the information I'm  
10 providing to you is true and accurate?

11 A I would have to look at the document to be  
12 sure.

13 Q Okay. When's the last time you looked at the  
14 document?

15 A Just prior to the time I filed it.

16 Q Okay. And did you draft the document or did  
17 your attorney draft it? Let me -- that's a terrible  
18 question. I apologize. Did you draft the response to  
19 that document or did your attorney draft the response  
20 to the document?

21 A We worked on it together.

22 Q Okay. Who did the first draft?

23 A He did.

24 Q Okay. Do you know how many drafts it went  
25 through?

Brandon Smith Reporting

41

1 A Several.

2 Q Okay. Do you recall the period of time that  
3 you engaged in this draftsman ship?

4 A Over a period of time. Over a period of  
5 time. Several days.

6 Q And is it your testimony today that the  
7 complaint and your response related to your candidacy  
8 to run for attorney general of the state of  
9 Connecticut?

10 A Yes.

11 Q And did it relate to your qualifications in  
12 satisfying any requirements to run for attorney  
13 general?

14 A I believe so.

15 Q Okay. And I'm claiming it should be  
16 produced. Would you be able to get a copy of that for  
17 us?

18 MR. HORTON: Would you be able to.

19 A No.

20 MR. HORTON: No. Would you be able  
21 to.

22 BY MR. GERSTEN:

23 Q You have physical possession of a file,  
24 ma'am, correct, that relates?

25 A Yes.

1 Q Both to the complaint as well as to the  
2 response, correct?

3 A Yes.

4 Q And if I ask you to produce that complaint  
5 and its response, would you be willing to do that?

6 MR. HORTON: I object. I direct her  
7 not to answer that question.

8 MR. GERSTEN: I first have to have her  
9 give a position then I can argue on it.

10 MR. HORTON: Fair enough. That's true.

11 BY MR. GERSTEN:

12 Q If I asked you to produce a copy of the  
13 complaint and a copy of your response and any drafts  
14 that went into the response, would you be going to  
15 produce that?

16 A No.

17 Q And would you indicate why you're not willing

18 to produce that?

19 A That is a confidential proceeding.

20 Q Okay. So you've made a statement in a  
21 confidential proceeding relating to your qualifications  
22 to run for the position of attorney general and you're  
23 not in a position to be willing to produce it, am I  
24 correct?

25 MR. HORTON: It's not -- I object to

Brandon Smith Reporting

43

1 the form of the question.

2 MR. GERSTEN: I'll restate my  
3 question.

4 BY MR. GERSTEN:

5 Q Am I correct, ma'am, that you have both a  
6 complaint and your response to the complaint relating  
7 to your qualifications to run for attorney general and  
8 you're not willing to produce it?

9 MR. HORTON: I object to the form of  
10 the question. The point is I am --

11 MR. GERSTEN: Wow. You can direct her  
12 not to answer but I have a right to get the question  
13 asked and I got a right to get an answer to it and if  
14 you don't like the form, correct the form or you could  
15 tell me what's wrong with the form and I will do my  
16 best to address that issue with you and try to fix the  
17 form. But if you're claiming -- we don't need  
18 speeches other than that. This is my transcript I'm  
19 paying for it. If you make speeches, you're going to  
20 pay for it with all due respect.

21 MR. HORTON: My position, I have  
22 directed her not to answer. You have made a  
23 sufficient record for us to -- my position is that  
24 these are documents that should not be produced,  
25 they're privileged documents because they're

1 confidential documents in an ongoing proceeding. You  
2 wanted to make a record so that it would be clear to  
3 the judge what's going on, you've made the record, I  
4 don't think it's necessary to do more.

5 BY MR. GERSTEN:

6 Q Ma'am, what is it that you consider to be  
7 confidential about your -- the complaint that was made  
8 and your response to the complaint dealing with your  
9 qualifications to become attorney general?

10 A The entire complaint and my response to it is  
11 what I consider to be confidential.

12 Q And why do you consider it to be  
13 confidential?

14 A Because that's what the State Ethics  
15 Commission considers it to be.

16 Q And where did you get the source of your  
17 information that the State Ethics Commission considers  
18 it to be confidential?

19 A From an Attorney Wasielewski, Mark  
20 Wasielewski, at the State Ethics Commission.

21 Q Okay. Did he tell you that?

22 A Yes.

23 Q He told you that personally?

24 A He did.

25 Q When did he tell you that?

Brandon Smith Reporting

45

1 A Shortly after I received a copy of the  
2 complaint and spoke with him.

3 Q And as I understand it, ma'am, you filed this  
4 lawsuit because you're looking for a clarification to  
5 determine if you, in fact, meet the statutory  
6 requirements to be eligible to run for attorney  
7 general; isn't that correct?

8 A Yes.

9 Q And the response you gave to me earlier with  
10 regard to this state ethics complaint relates to the  
11 same topic, doesn't it?

12 A It does.

13 Q And as you sit here today, are you willing

14 to -- are you going to tell us anything further about  
15 your response to the state ethics committee on this  
16 topic?

17 A No.

18 Q All right. Now, Mr. Horton, I think we have  
19 an adequate record. Thank you.

20 MR. HORTON: I agree.

21 BY MR. GERSTEN:

22 Q Ma'am, I asked you before if you were aided  
23 in a response to Ryan McKeen that you indicated you  
24 drafted -- that you drafted with the assistance of  
25 counsel. Do you recall that?

Brandon Smith Reporting

46

1 A Yes.

2 Q Was Ryan McKeen's -- do you recall what Ryan  
3 McKeen's question to you was?

4 A He didn't ask me a question.

5 Q Okay. Good point. Thank you.

6 What was it that Ryan McKeen posted relating  
7 to your qualifications to serve as attorney general, as  
8 you recall it?

9 A As I recall it, Ryan McKeen had a blog  
10 question as to whether I met the ten year requirement.

11 Q And, in fact, on January 15th you posted a  
12 response to Ryan McKeen, correct?

13 A I did.

14 Q And were you assisted by counsel in posting a  
15 response to Ryan McKeen on that topic?

16 A I talked to my volunteer lawyers about it,  
17 yes.

18 Q Okay. And who were your volunteer lawyers?

19 A Bob Martino is the one that comes immediately  
20 to mind.

21 Q Anyone else?

22 A That's the one that comes immediately to  
23 mind.

24 Q Fair enough. Now, Mr. Martino, he's with  
25 Updike, Kelly & Spellacy?

1 A He is.

2 Q And you're calling him a volunteer lawyer?

3 A Yes.

4 Q Okay. Great. Was Mr. Connor, who assisted  
5 you with the drafting of the response to the ethics  
6 question, he's -- I think you indicated he's with up  
7 dike Kelly?

8 A He is.

9 Q Is he a volunteer lawyer when he was  
10 rendering you the services of responding to the ethics  
11 complaint you just mentioned?

12 A Yes.

13 Q When you call these people volunteer lawyers,  
14 is there some kind of written -- well, let me ask my  
15 question differently. You and Mr. Horton entered into  
16 a written retainer agreement for the purposes of  
17 prosecuting this action, correct?

18 A Yes.

19 Q Okay. And in that Mr. Horton outlined the  
20 terms and conditions that he would work for you,  
21 correct?

22 A Yes.

23 Q Hourly rates, correct?

24 A Yes.

25 Q Gave you some idea what he thought he could

Brandon Smith Reporting

48

1 do for you?

2 A Yes.

3 Q Okay. Now, did you enter into a similar  
4 arrangement with Mr. Martino or Mr. Connor in the  
5 course of their voluntary tearing as lawyers?

6 A No.

7 Q And when you called them your volunteer  
8 lawyers, to whom are they volunteering?

9 A They are volunteering on my campaign.

10 Q So Mr. Connor is providing you services in  
11 responding to this ethics complaint as part of his  
12 volunteering of legal services to your campaign to  
13 become attorney general?

14 A Yes.

15 Q Okay. Now, is there a written letter between  
16 you and your volunteer lawyers similar to the one that  
17 you and Mr. Horton entered into for purposes of you  
18 prosecuting this case?

19 A No.

20 Q So are there any terms and conditions about  
21 the amount of time that will be spent by these  
22 volunteer lawyers assisting you in this campaign?

23 A No.

24 Q I'm going to show you now a copy of a -- call  
25 it Exhibit 3, please?

1 MR. GERSTEN: See if we can get the  
2 witness to identify it and after you do that because I  
3 forgot to make copies I'm going to take a one minute  
4 break and have copies made so we can distribute it. I  
5 apologize for that. If you can do that for me I'll  
6 take literally a one minute break.

7

8 (Defendant's Exhibit 3: Marked for  
9 identification.)

10

11 MR. GERSTEN: Don't even bother turning  
12 off the camera because it will be that quick if I can  
13 get this microphone off me.

14 BY MR. GERSTEN:

15 Q Madam Secretary, I'm going to show you what  
16 we had marked here as Exhibit 2. Distribute that. I'm  
17 sorry about the ministerial issue there. Can you  
18 identify this document, ma'am?

19 A Yes.

20 Q Okay. And is this the document you wrote  
21 posting a response to Ryan's blowing?

22 A Yes.

23 Q Great. And in it, it appears as though you

24 are addressing the topic of whether you are qualified  
25 to run for attorney general; is that correct?

Brandon Smith Reporting

50

1 A Yes.

2 Q And that's the same topic that you indicated  
3 you responded to in the ethics complaint, correct?

4 A In a general way.

5 Q Okay. And again, in a general way, it's the  
6 same topic as the topic of this lawsuit, isn't it?

7 A Yes.

8 Q Okay. Did you simply use this response and  
9 copy it and put it into your response -- strike that.  
10 Did you take what Exhibit 3 and simply submit this to  
11 the ethics people as your response to the ethics  
12 complaint?

13 A No.

14 Q You wrote a different one?

15 A Yes.

16 Q Okay. And in this T course of writing a  
17 different one, how long was your response to the ethics  
18 complaint?

19 A Several pages.

20 Q Okay. Looking at this particular Exhibit 3,  
21 ma'am, did you write the first draft of this  
22 document?

23 A Yes. Tanya Meck and I wrote it.

24 Q Did the attorneys contribute to any portions  
25 of this document?

Brandon Smith Reporting

51

1 A Not in the drafting.

2 Q Okay. I'm not sure I understand what you  
3 mean.

4 A Tanya Meck and I drafted this. Our volunteer  
5 lawyers, or Bob Martino, my volunteer lawyer, made a

6 suggestion, made suggestions, but Tanya Meck and I  
7 wrote it.

8 Q Okay. Now, as we look through the first  
9 paragraph of this document, could you tell me if the  
10 first paragraph is one in which you and Tanya wrote?

11 A Yes.

12 Q Okay. Did Mr. Martino or any other lawyer  
13 provide you with any edits to the first paragraph?

14 A I don't recall any edits. We just had a  
15 general discussion about the topic.

16 Q Okay. And I forgot to ask you and I  
17 apologize, Tanya Meck is whom?

18 A Tanya Meck is my former chief of staff and  
19 was a consultant on my campaign.

20 Q Okay. And when you say she's chief of staff,  
21 you're referring to her position at the secretary of  
22 state's office?

23 A Yes.

24 Q Okay. And she's no longer chief of staff?

25 A No.

1 Q And did she go from being chief of staff to  
2 going to your campaign office?

3 A No.

4 Q Okay. Could you just articulate for us what  
5 the chronology is that she became both?

6 A She left the secretary of the state's office  
7 years ago. She started her own consulting business.  
8 And I hired her as a consultant on my campaign.

9 Q Okay. And do you recall when you hired her  
10 as a consultant on your campaign?

11 A Sometime toward the end of last year.

12 Q Okay. And that would be when you were -- had  
13 this exploratory thing that you referred to?

14 A Correct.

15 Q All right.

16 A I'm -- exploratory thing would be referring  
17 to my exploratory committee?

18 Q Correct. Correct.

19 A Yes.

20 Q Thank you for the clarification.

21 Now, you said Mr. Martino didn't contribute

22 to the first paragraph, except in a general way?

23 A I am saying that Mr. Martino and I discussed

24 this topic in a general way.

25 Q Okay. How about the second paragraph?

Brandon Smith Reporting

53

1 A It would be the same with all paragraphs.

2 Q Okay. Did Mr. Martino supply you with any

3 editing in particular as you look at this?

4 A No.

5 Q Okay. So would it be fair to say that you  
6 drafted this, you ran it by your volunteer lawyer, he

7 took a look at it and said, great job, I don't have

8 anything to add, or did he provide a --

9 A Tanya and I drafted it after having general  
10 discussions with our campaign staff. That included Mr.

11 Martino.

12 Q Okay. Were there other people besides Mr.

13 Martino involved in this discussion about responding to

14 Mr. McKeen?

15 A I don't believe so.

16 Q Okay. Now, looking at this letter, if you

17 can go down to the one, two, three, fourth paragraph

18 where it starts with over the years.

19 A Yes.

20 Q Okay. You wrote that?

21 A With Tanya Meck.

22 Q Okay. It says here, over the years I have

23 made all filings and paid fees consistent with filing

24 and fees paid by other practicing attorneys in the

25 state. Do you see that?

Brandon Smith Reporting

1 A Yes.

2 Q Okay. Did you write that or did Tanya Meck  
3 write that?

4 A We both wrote it.

5 Q Okay. And it says here, including the client  
6 security fund payment and the attorney occupational tax  
7 return.

8 A Yes.

9 Q Again, you take ownership of that paragraph  
10 in its entirety, right?

11 A Yes.

12 Q That's yours. Now, ma'am, isn't it a fact  
13 that the secretary of state's office has made the  
14 payments into the client security fund as contrasted  
15 with you doing it personally on your behalf?

16 A Yes.

17 Q Did you tell Mr. McKeen in this paragraph  
18 that, fees were paid on my behalf by the state of  
19 Connecticut secretary of state's office?

20 A No.

21 Q Do you think that it would be accurate to  
22 inform Mr. McKeen that secretary of -- that the state  
23 of Connecticut paid fees pursuant to the requirements  
24 into the client security fund payment -- fund? That's

25 a terribly phrased question. I apologize for that.

Brandon Smith Reporting

55

1 Do you think it would be accurate to advise  
2 Mr. McKeen that payments to the client security fund  
3 were made on your behalf by the state of Connecticut?

4 MR. HORTON: Objection as to form. You  
5 mean now? Could you read the question back?

6 MR. GERSTEN: I'll restate my question.  
7 I'll go back if it was confusing. Any time I'm  
8 confusing, you let me know, ma'am. Okay?

9 BY MR. GERSTEN:

10 Q As of the date you wrote this letter, which I  
11 think is January 15th, I think we confirmed that  
12 earlier, would you agree?

13 A I don't see a date on this.

14 Q Do you have any recollection as to when you  
15 wrote this?

16 A Probably was about that time.

17 Q Ma'am, would it have been more accurate as of  
18 the time you wrote this letter to advise Mr. McKeen  
19 that rather than to say, I paid fees, that fees were  
20 actually paid on your behalf by the state of  
21 Connecticut?

22 A That's more specific.

23 Q Okay. My question is whether it would be  
24 more accurate.

25 A This sentence is very general. If you'd like

Brandon Smith Reporting

56

1 to get specific, that's more specific.

2 Q Okay. When I read this sentence, it appears  
3 to be pretty specific. Tell me where I'm missing  
4 something. I have paid -- if I take the operative  
5 words, over the years I have paid fees consistent with  
6 the filings and fees paid by other practicing

7 attorneys, including the security -- client security  
8 fund. Do you see that?

9 A I see it.

10 Q Okay. That's not accurate, is it? Those  
11 fees were paid on your behalf by the state of  
12 Connecticut; isn't that correct?

13 MR. HORTON: I object as to form. I  
14 think you're badgering the witness. She's told you  
15 that she thinks this is a good general answer as  
16 opposed to a more specific answer. I think that's her  
17 answer.

18 MR. GERSTEN: I'm prepared to take that  
19 one right now to this judge and ask him if he thinks  
20 I'm badgering the secretary of state.

21 MR. HORTON: I didn't direct her not to  
22 answer.

23 MR. GERSTEN: Okay. Then don't  
24 interpose objections that have no purpose for them.

25 BY MR. GERSTEN:

1 Q Ma'am, would it be more accurate if you had  
2 said, all fees had been paid on my behalf by the state  
3 of Connecticut, instead of saying, I paid fees,  
4 including fees to the security -- client security fund?  
5 Let me state my question a better way. Maybe it's  
6 confusing.

7 Which is more accurate as you sit here today  
8 under oath, for you to say, I paid fees that were  
9 required of me to the client security fund, or, fees  
10 were paid on my behalf by the state of Connecticut to  
11 the client security fund?

12 A It would be more accurate to say that the  
13 state of Connecticut has paid fees on my behalf to the  
14 client security fund.

15 Q And you chose not to use those words in this  
16 letter, correct?

17 A I did.

18 Q Okay. Now, --

19 A However, this sentence refers to the whole  
20 period that I have been an attorney.

21 Q Okay. So that if I read this sentence,  
22 you're indicating that what you were referring to as  
23 over the years, and your entire career that these fees  
24 were paid, correct?

25 A Correct.

Brandon Smith Reporting

58

1 Q And ma'am, when you worked at Robinson &  
2 Cole, who paid the fees to the client security fund  
3 while you were employed at Robinson & Cole?

4 A I believe that it existed then.

5 Q Okay. So we -- when you say you're talking  
6 about over the years, we can't be referring to that  
7 time period?

8 A I don't believe so. I'd have to check to see  
9 when the client security fund was established.

10 Q Okay. Well, you recall in discovery in this  
11 case you produced all sorts of records to us, you

12 remember that?

13 A I did.

14 Q And you produced all the records and proof of  
15 payment that you could find to show that I made  
16 payments, correct?

17 A Correct.

18 Q And you've -- in fact in that big old  
19 notebook we have marked as Exhibit 2, you included all  
20 the stuff that you provided to us in terms of the  
21 payments you made to the client security fund,  
22 correct?

23 A Correct.

24 Q And there was nothing there from you?

25 A Yes, there was. There was a \$55 check.

Brandon Smith Reporting

59

1 Q There was a \$55 check that you made out in  
2 2010 correct?

3 A Correct.

4 Q Other than that check for \$55 that you issued  
5 in 2010, there were no other checks that you provided  
6 to us that reflected payments to the client security  
7 fund from your personal checkbook, correct?

8 A No.

9 Q The answer is no?

10 A The answer is no.

11 Q And over the years that you have been  
12 enjoying your status as a member of the -- of strike  
13 that.

14 Over the years as you've been a public  
15 servant, you haven't made any payment to the Department  
16 of Revenue Services from your own checkbook, correct?

17 A I pay my taxes to the Department of Revenue  
18 Services, sir.

19 Q Okay. Well, let's just talk about what  
20 you're referring to in this letter, the occupation --  
21 the attorney occupational tax return. Do you see  
22 that?

23 A I see it.

24 Q You've made no payments to the attorney  
25 occupational tax return from your own checkbook,

1 correct?

2 A No. Could you repeat that question, please?

3 Q I'll try or I could have the court reporter  
4 redo it because I'm already moving on I've already  
5 forgot I have a short memory span. Would you rather  
6 have her reread it to you?

7 A Yep.

8 MR. GERSTEN: Great?

9

10 (The testimony was read.)

11

12 BY MR. GERSTEN:

13 Q While you were employed as a public  
14 servant?

15 A I just would like to take a look, because I  
16 might have made them when I was a legislator. So I

17 just -- because -- so could I check the --

18 Q Of course. Go right ahead. Could you give  
19 her that exhibit? Where that is exhibit book?  
20 Somebody. Please. Go right ahead, ma'am. Take a  
21 look.

22 MR. GERSTEN: How's my tie coming  
23 across?

24 A I just want to be sure because I know I paid  
25 it when I was at Aetna. And so -- because public

Brandon Smith Reporting

61

1 service counts -- it covers the --

2 MR. HORTON: There's one.

3 A Yes. I am looking at two of my checks that I  
4 personally wrote to the commissioner of revenue  
5 services. One dated December 17th, 1993 for \$450, and  
6 one dated January 12th, 1995 for \$450.

7 BY MR. GERSTEN:

8 Q All right. And are you indicating, ma'am,  
9 that you wrote those checks when you were a public  
10 servant?

11 A Yes, because I was a state legislator at the  
12 time.

13 Q All right. Well, in 1993, weren't you  
14 employed by Aetna?

15 A Yes.

16 Q And didn't you indicate that you were not  
17 exempt from making those payments because you weren't a  
18 public servant because Aetna was, in fact your employer  
19 and you were practicing law?

20 A Yes. But I was also a public servant as a  
21 state legislator.

22 Q Okay. We'll get to that. But as of that  
23 year when you made that payment when you filed your  
24 occupational tax return, you did not indicate that you  
25 were a public servant, you indicated you had a full

1 time employer Aetna and you were in the practice of  
2 law. And that's why you didn't claim an exemption,  
3 correct?

4 A Correct.

5 Q Good. Now, -- and you indicated that you  
6 made a check in would it be January of 1995?

7 A Yes.

8 Q Okay. And again, that would be covering the  
9 time period that you owed because in the previous year  
10 Aetna was your employer and you were in the practice of  
11 law during the year 1994, correct?

12 A Yes.

13 Q Right. So there's nothing that indicates  
14 that you thought you were exempt from making payments  
15 during that time period because you were a public  
16 servant, correct?

17 A Yes.

18 Q Now, in going back to the paragraph of the  
19 letter you wrote back here to Mr. McKeen. Anything  
20 else you need to check in methods records, ma'am, that  
21 you just had? Are you done with those?

22 A At the moment I'm fine.

23 Q Now, ma'am, would it be more accurate or less  
24 accurate for you to say to Mr. McKeen that over the  
25 years I paid fees to the occupational tax return, but I

Brandon Smith Reporting

63

1 didn't pay those fees when I considered myself to be a  
2 public servant?

3 MR. HORTON: Was that question clear?

4 A I think -- I think that this is accurate.

5 BY MR. GERSTEN:

6 Q Okay. Well, when you say it's accurate, in  
7 fact, what we can conclude here is that you didn't pay  
8 any fees to the client security fund at all, all the  
9 fees were paid on your behalf, correct, except for the  
10 this \$55 check?

11 A No.

12 Q That you wrote in June of 2010?

13 A I just paid fees and we just talked about  
14 those two checks in those two years and then I wrote  
15 that \$ -- I wrote two \$450 checks for which there are  
16 copies and I wrote the \$55 check.

17 Q I want to apologize I was obviously unclear  
18 in my question so I want to come back and be clear.  
19 Those two checks you're talking about were only checks  
20 written to the Department of Revenue Services,  
21 correct?

22 A Yes. Those two for \$450.

23 Q Right. And those two checks were relating to  
24 the occupational tax return that you're required to  
25 file as an attorney if you're not what you call a

Brandon Smith Reporting

64

1 public servant, correct?

2 A At that time, my full-time employment was  
3 with Aetna. I was also serving in the state

4 legislature.

5 Q But you didn't claim an exemption?

6 A No.

7 Q I'm sorry, you didn't claim an exemption on  
8 the basis that you were employed by the state of  
9 Connecticut at that time?

10 A No.

11 Q All right. So when you say over the years,  
12 are you talking about the two years that you paid the  
13 occupational tax return that you're just talking about  
14 right now?

15 A That was a general statement.

16 Q Okay. All right. Other than those two  
17 years, am I correct, ma'am, that you have not paid fees  
18 and filings strike that.

19 Over the years you have not paid fees  
20 consistent with fees paid by other practicing attorneys  
21 in the state, including the occupational tax return,  
22 other than those two checks we have here today; is that  
23 correct? Just for the tax return.

24 A Can you repeat that again? That was a long  
25 question.

1 Q Sure. It was. Any time you let me know.

2 Would it be correct, ma'am, that over the  
3 years you did not pay fees consistent with fees paid by  
4 other practicing attorneys in the state to the  
5 occupational tax return department, other than the two  
6 checks that you just referred us to today?

7 A I'm not sure I understand the question. And  
8 let me explain why. There are many other attorneys who  
9 practice law as public servants and they do not pay  
10 fees to the Department of Revenue Services.

11 Q Okay. I'm just talking about your sentence  
12 here and whether we are now clear that over the years  
13 you paid only two checks consisting of \$450 a piece to  
14 the occupational tax return department at the  
15 Department of Revenue Services; is that correct,  
16 ma'am?

17 A Yes.

18 Q And, in fact, you've paid no fees to the  
19 client security payment fund, other than the one check  
20 that you made reference to in January of 2010?

21 A .

22 MR. HORTON: I object. I'm sorry, go  
23 ahead. I was going to object as to the form. You  
24 mean out of her own checkbook?

25 MR. GERSTEN: Correct. Of course.

Brandon Smith Reporting

66

1 A Yes, because --

2 Q The state of Connecticut has paid that,  
3 correct?

4 A Correct.

5 Q Now, it also says here that I'm also  
6 registered on the state of Connecticut judicial website  
7 as an active attorney in the state. Did you see  
8 that?

9 A I see it.

10 Q Do you have an office registered within the  
11 state of Connecticut judicial website demonstrating --  
12 that shows where you're actively practicing law?

13 A That would be room 104 at the State  
14 Capitol.

15 Q Okay. Does your -- does the state of  
16 Connecticut judicial website indicate that it's at the  
17 State Capitol?

18 A I'm not sure.

19 Q Wouldn't it be fair to say, ma'am, that you  
20 registered no office on the state of Connecticut  
21 judicial website where you actively practice law?

22 A They may have. The Connecticut judicial  
23 department may have my home address.

24 Q Okay. And your testimony is that your home  
25 address is where you would list your office where you

1 actively practice law on the judicial website, is that  
2 your testimony? I'm trying to understand what you're  
3 saying?

4 A I'm trying to understand what you're  
5 saying.

6 Q Okay. I'll restate my question. Is it your  
7 testimony that you provided information to be posted on  
8 the state of Connecticut judicial website where you  
9 actively practice law and you've listed an office?

10 A My home is at 125 Clover Street and I receive  
11 mail there with respect to some attorney registrations  
12 for the state of New York, for the state of  
13 Connecticut. My office is at the Capitol.

14 Q I understand that. On your -- where you  
15 refer the reader here to the registration on the state  
16 of Connecticut judicial website, do you list an  
17 office?

18 A I'm not certain what address appears on the  
19 judicial website.

20 Q Okay.

21 MR. GERSTEN: Would it be good now to  
22 take the break to make you change? Okay. The court

23 reporter has indicated we have one minute for the tape  
24 so it's just as good to take a five minute break and  
25 let him do his thing that is okay Madam Secretary.

Brandon Smith Reporting

68

1 A Fine.

2 THE VIDEOGRAPHER: Off the record

3 11:43.

4

5 (Recess: 11:43 AM to 11:57 AM.)

6

7 THE VIDEOGRAPHER: The beginning of

8 tape number 2, on the record 11:57.

9 MR. GERSTEN: Okay.

10 Q Now, ma'am I just want to go back to this  
11 letter you wrote to attorney McKeen. It -- if you go  
12 back up to the paragraph above it -- oh, I'm sorry I  
13 have one other question. You've mentioned that you --

14 we have our -- you have the lawsuit in which you're  
15 litigating over the issue about your qualifications.  
16 You have this Connecticut ethics document that you  
17 indicate has something to do with your qualifications,  
18 we have Mr. McKeen's letter which deals with your  
19 qualifications. Have you written any other documents  
20 relating to the topic of your qualifications to serve  
21 as attorney general?

22 A Not that I'm aware.

23 Q Okay. So there is no other written documents  
24 than the three we've just identified?

25 A Not that I'm aware.

Brandon Smith Reporting

69

1 Q Okay. And when you say not that I'm aware,  
2 I'm a little concerned because this is an issue that's  
3 only arisen since January. And I want to make sure  
4 there's nothing else floating out there that we might

5 discover later that you said I don't remember. There's  
6 nothing else in writing that you can recall that you've  
7 drafted relating to the topic of your qualifications to  
8 serve?

9 A No.

10 Q Okay. Great. Now, other than documents that  
11 have been in writing, have you made any verbal  
12 statements regarding the topic of your qualifications  
13 to serve as attorney general?

14 A Yes.

15 Q Okay. Could you -- I'm not interested in the  
16 topic yet, except could you tell me -- could you  
17 identify those occasions?

18 A When I campaign for attorney general, I  
19 certainly discuss my legal background.

20 Q Okay. Great. Now, going to this document  
21 here, I just want to make sure we use your --  
22 understand your words. The next paragraph down says  
23 something, this makes me eligible for the office. Do  
24 you see that?

25 A Yes.

1 Q Okay. What is the this that you are  
2 referring to?

3 A This would be my service as secretary of the  
4 state, my years in private practice, and certainly my  
5 work as a legislator.

6 Q Now, I'm looking in here, in your document  
7 you wrote, and that's why I asked you what you were  
8 referring to -- where is your reference here as the  
9 legislative service that qualifies you as an attorney?  
10 That is up in that prior paragraph again? Is that what  
11 you're referring --

12 A I'm looking in the third.

13 Q Great?

14 A Paragraph there is a reference to my years in  
15 the legislature.

16 Q Okay. So you're indicating now that you  
17 consider your service as a state legislator to be part  
18 of your qualifications to make you eligible for the

19 Office of Attorney General, am I correct?

20 A Yes.

21 Q And if we go to the eight years in private  
22 practice in that same paragraph you just referred us  
23 to. You're talking about your two years at White &  
24 Case?

25 A Yes.

Brandon Smith Reporting

71

1 Q And are you talking about a full four year  
2 term at Robinson & Cole?

3 A Yes.

4 MR. HORTON: I'm sorry what do you  
5 mean?

6 MR. GERSTEN: I just.

7 MR. HORTON: I don't understand what  
8 that means.

9 BY MR. GERSTEN:

10 Q Are you indicating under oath that you spent  
11 a full four years at Robinson & Cole?

12 A I spent two -- approximately two years at  
13 White & Case, approximately four years at Robinson &  
14 Cole and approximately two years at the Aetna law  
15 department.

16 Q Okay. Approximate makes me think are you  
17 rounding off?

18 A I just don't have the exact dates at my  
19 fingertips.

20 Q I understand that. Would it be correct,  
21 ma'am, that you did not serve -- you did not work as an  
22 associate at Robinson & Cole for a full four years and  
23 you are rounding up?

24 A All I know are the years at the moment  
25 because I don't have anything in my possession that

1 shows me the exact dates.

2 Q I understand you don't have the exact dates  
3 but my question is: Isn't it correct you spent less  
4 than four years at Robinson & Cole but you've rounded  
5 it up because you spent three years and seven months  
6 there and you consider that to be --

7 A I don't have the exact dates so I couldn't  
8 say with certainty.

9 Q Okay. Would it surprise you to learn, ma'am,  
10 that the employment records at Robinson & Cole do not  
11 reflect that you worked there for four years?

12 A They would have the exact dates.

13 Q I understand. Am my question is: Would it  
14 surprise you that those records do not reflect that you  
15 worked there for four years?

16 A I'm certain that their records are  
17 accurate.

18 Q Okay. That's not my question. Would you be  
19 surprised to learn that their records that you say are  
20 accurate reflect that you did not work there for four  
21 years?

22 MR. HORTON: It's a yes or no question  
23 would you be surprised.

24 A I guess I can't say.

25 BY MR. GERSTEN:

Brandon Smith Reporting

73

1 Q You can't answer the question? It would be  
2 news to you to learn that the employment records at  
3 Robinson & Cole do not reflect that you worked at  
4 Robinson & Cole for a full four years, but, in fact,  
5 you worked there less than four years? That would be  
6 news to you?

7 A No.

8 Q Okay. And when you talk about your strong  
9 and diverse qualifications, which include eight years  
10 in private practice, are you referring to your strong  
11 and diverse legal qualifications there as satisfying  
12 the definition for eligibility as defined in the  
13 Connecticut statute that reflects that you have to have  
14 ten years of active practice at the bar of the state?

15           A     I am simply describing my legal background  
16 and the qualifications issue and what is meant by 3-124  
17 is the subject of this lawsuit.

18           Q     I'm afraid maybe my question wasn't clear.  
19 Where you refer Mr. McKeen to your eight years in  
20 private practice, are you referring him to your eight  
21 years in private practice as a means to demonstrate  
22 that you satisfy the terms of the Connecticut General  
23 Statute that require you to have ten years of active  
24 practice at the bar of the state?

25           A     No.

Brandon Smith Reporting

74

1           Q     Okay. And where you refer him to the 16  
2 years of public service, do you see that section  
3 here?

4           A     I do.

5           Q     Okay. Great. Are you referring to the 16

6 years as satisfying the statutory requirement that you  
7 have ten years of active practice at the bar of this  
8 state?

9 A I am simply saying that I was in the  
10 legislature for a period of time and as secretary of  
11 the state for a period of time, that would be 16 years  
12 in public service or perhaps a little more.

13 Q Okay?

14 MR. GERSTEN: Could I have my question  
15 read back to the witness because I'm afraid she didn't  
16 understand it.

17 A Yes. I'm not understanding your question.

18

19 (The testimony was read.)

20

21 A Yes.

22 BY MR. GERSTEN:

23 Q Okay. Now, you indicated in one of your  
24 answers earlier today that you worked at the Aetna and  
25 you were a state legislator, do you recall that?

1 A Yes.

2 Q Are you including that time period in this  
3 eight years and 16 years?

4 A Can you rephrase that question?

5 Q Of course I can?

6 A Go ahead.

7 Q Any time you don't understand, you let me  
8 know.

9 You indicated you spent time at the Aetna  
10 working as an attorney.

11 A Yes.

12 Q And you indicated that during that time  
13 period, you also served as a legislator?

14 A Yes.

15 Q Okay. Now, were you including your years at  
16 the Aetna when you indicated eight years in private  
17 practice?

18 A Yes.

19 Q Were you including your years that you

20 simultaneously served as a legislator at the same time  
21 that you worked as an attorney at the Aetna in your 16  
22 years of public service?

23 A Yes.

24 Q So ma'am, I'm just trying to understand  
25 something here. Are you double counting there in some

Brandon Smith Reporting

76

1 way?

2 A Yes.

3 Q Okay?

4 A Because I did private practice and public  
5 service at the same time.

6 Q Okay. You didn't indicate that to Mr.  
7 McKeen, did you, that you were double counting?

8 A This -- what I wrote to Mr. McKeen is a  
9 description of my background in the law and public  
10 service.

11 Q Okay. I'm afraid my question wasn't clear.  
12 Could you read back my question?

13

14 (The testimony was read.)

15

16 A No.

17 BY MR. GERSTEN:

18 Q Thank you. Now, it also indicates here that  
19 you have given Mr. McKeen a claim that says that active  
20 practice would mean only private practice. Do you see  
21 that?

22 A Where is that?

23 Q Okay. I'll read it to you and you can tell  
24 me if I've read it correctly. There is no legal basis  
25 to conclude that active practice at the bar of this

Brandon Smith Reporting

77

1 state excludes those attorneys who are practicing in

2 the public or corporate arenas. To interpret active  
3 practice to mean only private practice would be a  
4 mistake. Do you see that?

5 A Show me where we're talking about. Right  
6 here?

7 Q I'm talking right after your use of the word  
8 secretary of state right where your fingers are in that  
9 same paragraph?

10 A I see. Correct.

11 Q And by the way, did you make a similar  
12 response like this to the state ethics committee?

13 A I don't believe so.

14 Q Now, looking at your choice of words here  
15 where you say there is no legal basis to conclude,  
16 you're referring to some legal research you did to come  
17 to this conclusion?

18 A Yes.

19 Q What was the legal research you performed to  
20 come to the conclusion that you draw in this sentence?

21 A Which sentence?

22 Q The one that starts with there and ends with  
23 a term corporate arenas?

24 A There are cases which absolutely count

25 lawyering done in public service to be active practice

Brandon Smith Reporting

78

1 of the law.

2 Q Maybe my question wasn't clear.

3 MR. GERSTEN: Could I have you repeat  
4 it to the witness, please?

5

6 (The testimony was read.)

7

8 A I looked at cases that consider what the  
9 definition of active practice means.

10 BY MR. GERSTEN:

11 Q Okay. And when did you look at those  
12 cases?

13 A In January.

14 Q Okay. So you learned about Ryan's letter on  
15 January 13th, and you responded to Ryan on January

16 15th?

17 A Yes.

18 Q Correct? And now your testimony under oath  
19 is I looked at some cases in that time period that  
20 would lead me to have the conclusion that I'm drawing  
21 in this letter, correct?

22 A Yes.

23 Q Can you identify any case as you sit here two  
24 months later that you looked at during that time  
25 period?

Brandon Smith Reporting

79

1 MR. HORTON: I'm going to object. I  
2 think this is getting to the boarder of harassment of  
3 the witness. We're talking about a document that you  
4 have been examining her on for well -- at least an  
5 hour and I mean the way this is going, the  
6 deposition's going to take two or three days and I

7 think that this is improper examination. You're not  
8 examining her.

9 MR. GERSTEN: You call the judge then.  
10 I'm not taking this. You've said this now three  
11 times. You want to call the judge and you tell him  
12 that I'm harassing this witness. I've got witnesses  
13 here, I got a record and I'm telling you, stop it. Or  
14 call the judge and you you tell him that I'm engaging  
15 in that kind of behavior because I think you're  
16 harassing me and interrupting me with all respect so  
17 stop it or tell me I'm stopping this deposition and  
18 judge she would done actually has to sit in here and  
19 watch the questioning take place. These are her words  
20 in a topic on this lawsuit. It's fair game. It's  
21 relevant and it's going to lead to even more  
22 admissible evidence. So bottom line either take a  
23 position and I'm sorry I'm getting upset, but this  
24 deposition is taking some time and it's not my fault.  
25 And I apologize forth to the witness for losing my

1 cool.

2 MR. HORTON: Proceed.

3 MR. GERSTEN: Thank you. And now I  
4 lost my place. Could I have my last question read  
5 back?

6

7 (The testimony was read.)

8

9 BY MR. GERSTEN:

10 Q Please, ma'am.

11 MR. HORTON: Yes or no.

12 A Yes.

13 BY MR. GERSTEN:

14 Q Okay. What case did you look at between  
15 January 13th and January 15th that provided you with a  
16 basis to come to this conclusion?

17 MR. HORTON: May I have a minute with  
18 my client.

19 MR. GERSTEN: There is a question  
20 pending. You can, as soon as she answers the

21 question.

22 A The Perez case.

23 Q I'm sorry. I can't hear you.

24 A The Perez case.

25 Q P-e-r-e-z?

Brandon Smith Reporting

81

1 A I believe.

2 Q Okay. Do you recall the full name of the

3 case?

4 A No.

5 MR. GERSTEN: Do you want to take a

6 moment with your client?

7 MR. HORTON: I would. Thank you.

8 THE VIDEOGRAPHER: Off the record.

9 12:16.

10

11 (Recess: 12:16 pm to 12:18 pm.)

12

13 THE VIDEOGRAPHER: On the record

14 12:19.

15 MR. GERSTEN: Thank you so much.

16 MR. HORTON: I have nothing further.

17 BY MR. GERSTEN:

18 Q Madam Secretary, I should have double  
19 checked, after your break with your lawyer here, do you  
20 have any parts of your testimony you want to correct  
21 your change or anything else like that before we move  
22 on?

23 A No.

24 Q Okay. Good. Ma'am, do you recall what state  
25 decided this Perez case?

Brandon Smith Reporting

82

1 A Maryland.

2 Q Okay. And do you have any other recollection

3 about the name of the case besides calling it the Perez  
4 case from Maryland?

5 A No.

6 Q Now, other than the Perez case from Maryland,  
7 are you aware of any other legal research you looked at  
8 in terms of forming a basis for your conclusion that  
9 you wrote to Mr. McKeen?

10 A No.

11 Q So when you responded to Mr. McKeen, the only  
12 legal research you had performed was a review of this  
13 Perez case?

14 A That's the one that comes immediately to  
15 mind.

16 Q Well, now we're here to try to find out is  
17 there any others when you wrote -- when you wrote this  
18 letter on January 15th, what was the legal research you  
19 performed to come to the conclusion that you did?

20 A Reading the Perez case.

21 Q Okay. And nothing else?

22 A That's all that I can recall.

23 Q Okay. Did you keep a file?

24 A Yes.

25 Q Okay. And the file was maintained -- he?

1           A     Actually, may I ask, keep a file on what in  
2 particular?

3           Q     Fair enough. Did you keep a file on the  
4 legal research you performed between January 13th and  
5 January 15th in drafting your response to Ryan  
6 McKeen?

7           A     I have a file of legal research with respect  
8 to this issue.

9           Q     Okay. I'm sorry, maybe my question wasn't  
10 clear. Could you read it back to the witness so she  
11 could try to answer what I think my question was?

12

13                               (The testimony was read.)

14

15           A     I can't remember about this particular --  
16 responding to this. I do have a rather voluminous file

17 of legal research on this issue.

18 BY MR. GERSTEN:

19 Q Okay. And when you say this issue, the issue  
20 you're referring to is what?

21 A The ten year active practice requirement.

22 Q Okay. And when did you compile this file  
23 relating to this topic?

24 A After this ten year requirement became an  
25 issue.

Brandon Smith Reporting

84

1 Q And could you tell me what date this ten year  
2 issue became a topic for you to keep legal research  
3 on?

4 A After it became an issue in the media.

5 Q Okay. Would that be at the time Mr. McKeen  
6 wrote his post or before?

7 A Around the same time.

8 Q Okay. So is it your testimony under oath now  
9 that you've maintained a file that includes the work  
10 you did in responding to Mr. McKeen?

11 A This is something that Tanya Meck and I wrote  
12 together. I don't recall if I have a particular file  
13 on this subject, but generally, I have a file on the  
14 qualifications issue.

15 Q Okay. Let's try it more generally again.  
16 What is the file that you maintain strike that.

17 There is a title to the file you maintain?

18 A I have a file of materials given to me by my  
19 lawyer and by volunteer lawyers.

20 Q Okay. Outside of the materials given to  
21 you -- when you say my lawyer, you're talking about  
22 Horton?

23 A Yes.

24 Q Okay. Now, do you maintain a file on the  
25 topic that you use to write your letter to Mr.

1 McKeen?

2 A No.

3 Q Did you actually perform the research  
4 yourself to pull and locate this Perez case that you  
5 used to form your conclusion that you drew in your  
6 letter to Mr. McKeen?

7 A Can you ask that question again?

8 Q Of course. Did you personally conduct the  
9 research to find this Perez case you're referring to  
10 from Maryland as the basis for you to form your opinion  
11 that you concluded in this paragraph?

12 A Yes.

13 Q Okay. And do you recall how you went about  
14 locating that when you performed this legal research?

15 A I read the case.

16 Q Okay. Do you recall how you found the  
17 case?

18 A It was mentioned by one of my consultants.

19 Q Who mentioned it to you?

20 A Anna Bennett. She worked on an attorney  
21 general case in Maryland and I believe it was Mr.

22 Perez's case.

23 Q So is it your testimony she gave you the name  
24 of the case or she actually supplied you with the  
25 case?

Brandon Smith Reporting

86

1 A Well, she made me aware of it and I found  
2 it.

3 Q Okay. And what I'd like to know is when you  
4 say I found it, what did you go do too find it?

5 A I asked one of my friends to get it for me  
6 and then I read it.

7 Q Okay. So you didn't do the research  
8 yourself, you told somebody, I heard about this case,  
9 can you locate it for me and get it back to me?

10 A Yes.

11 Q Okay. Fair enough. That's all I was trying  
12 to get at.

13 A Yes.

14 Q Okay. And do you recall who that person was  
15 who got you the case?

16 A Yes, Dave Killain.

17 Q Is Dave Killain a lawyer?

18 A No.

19 Q Do you know how Mr. Killain went about  
20 locating this case?

21 A I believe on the Internet.

22 Q Fair enough. Now, as you sit here today  
23 recalling that Perez case, what did it stand for that  
24 you used it as the basis to claim that it would be a  
25 mistake to -- it would be -- that active practice at

Brandon Smith Reporting

87

1 the bar does not exclude those practicing the public or  
2 corporate arenas?

3 A That Mr. Perez was employed by the federal

4 government.

5 Q Okay. And so you're indicating here that  
6 because he was employed by the federal government under  
7 the Maryland statute, that did not exclude him from  
8 qualifying under that state's statutory terms,  
9 correct?

10 A Can you repeat that?

11 MR. GERSTEN: Sure. I'll have the  
12 court reporter do it for me.

13

14 (The testimony was read.)

15

16 A I'm not making any legal conclusions about  
17 Maryland law. It's just something that I looked at.

18 BY MR. GERSTEN:

19 Q Well, did you look to determine when you  
20 wrote Mr. McKeen whether the terms of the Maryland  
21 statute were the same as the Connecticut statute that  
22 you're trying to become qualified under?

23 A I believe they have a similar statute.

24 Q Did you look at the terms of the  
25 Connecticut -- strike that. Did you look at the terms

1 and wording of the Maryland statute and compare it to  
2 the terms and wording of the Connecticut statute?

3 A I looked at it.

4 Q And is it your testimony today as an attorney  
5 that the words of the Maryland statute are identical to  
6 the words of the Connecticut statute?

7 A I'd have to look at them again.

8 Q Okay. Why do you have to look at them  
9 again?

10 A It's been a while since I looked at the  
11 Maryland statute.

12 Q And when you wrote this letter, did you  
13 compare the wording of the Connecticut statute to the  
14 wording of the Maryland statute?

15 A I read about the Maryland statute. I've read  
16 the Connecticut statute.

17 Q I appreciate that, ma'am. What I'm asking

18 you is at the time that you wrote this letter to Mr.  
19 McKeen, did you conduct a comparison of the Maryland  
20 statute to the wording of the Connecticut statute?

21 A Yes.

22 Q Okay. And at the time you wrote this letter  
23 to Mr. McKeen, did you form a conclusion that the  
24 wording of the Maryland statute was identical to the  
25 wording of the Connecticut statute?

Brandon Smith Reporting

89

1 A I can't remember.

2 Q Okay. So is it your testimony today that if  
3 you looked at the wording of the Maryland statute today  
4 you'd be able to do a comparison yourself and maybe  
5 recall it?

6 A Maybe.

7 Q Okay. Is it your testimony today that if the  
8 wording of the Maryland statute is different than the

9 wording of the Connecticut statute, you would still  
10 rely on the Maryland statute to support your  
11 statement?

12 A Can you repeat that?

13 MR. GERSTEN: Go ahead Ms. Court  
14 reporter, Beth?

15

16 (The testimony was read.)

17

18 A I am now aware of very good authority for the  
19 position in this letter.

20 MR. GERSTEN: I'm sorry could I have my  
21 question read back. I don't think she understood it.

22

23 (The testimony was read.)

24

25 A The wording is different? I'm just unsure of

1 what you're getting at.

2 BY MR. GERSTEN:

3 Q Okay. Do you not understand my question, the  
4 words of my question?

5 A I don't.

6 Q Okay. Ma'am, I guess I'm sorry I'm so obtuse  
7 and I'm not being clear.

8 Would you state that if the wording of the  
9 Maryland statute in which Mr. Perez qualified,  
10 apparently, to run, were different than the wording of  
11 the Connecticut statute, you would still rely on the  
12 wording of the Maryland statute to make your  
13 conclusions?

14 A No.

15 Q Okay. Now, you mentioned in response to my  
16 question before you didn't understand it that you're  
17 now aware of very good authority to support the  
18 position that you took in this letter. Do you know  
19 what I'm referring to a moment ago?

20 A Yes.

21 Q What's the authority you're now aware of?

22 MR. HORTON: I object to that question.



14 A No.

15 Q In your response to the ethics complaint, did  
16 you mention this Maryland case that touches on the  
17 topic?

18 A .

19 MR. HORTON: Well --

20 A We already have an objection about the  
21 discussion of that.

22 MR. HORTON: Yes, could you repeat that  
23 question, please. I obviously didn't hear it  
24 properly.

25

Brandon Smith Reporting

92

1 (The testimony was read.)

2

3 MR. HORTON: You're right I missed  
4 that. No, I object. Don't answer that. That's part

5 of the issue we have right now. Sorry.

6 BY MR. GERSTEN:

7 Q Okay I'll state my question differently. In  
8 your answer to the ethics complaint, did you give them  
9 any cases or legal analysis in support of your  
10 position?

11 MR. HORTON: I object to that.

12 Let's --

13 MR. GERSTEN: I'm making a claim -- I  
14 want to make sure that I have everything I have to  
15 show to demonstrate that this claim that you're making  
16 now has no grounds. I'm entitled to the answer to the  
17 question. I'm not asking her for the details I just  
18 want to make sure that we have it there.

19 MR. HORTON: This is a yes or no  
20 question.

21 MR. GERSTEN: Yes or no question.

22 A And what was the question.

23 BY MR. GERSTEN:

24 Q Did you provide the ethics commission with  
25 any legal authority relating to the topic of your

1 qualifications to run for attorney general?

2 MR. HORTON: You may answer because  
3 that's yes or no.

4 A No.

5 BY MR. GERSTEN:

6 Q Now, if I go onto another portion of the your  
7 response to Mr. McKeen. You refer Mr. McKeen to a  
8 section of the practice book. Are you familiar with  
9 our practice book?

10 A Yes.

11 Q How often have you used the practice book in  
12 your daily practice of law?

13 A I don't use it. I'm not a litigator.

14 Q When you say you're not a litigator, you've  
15 never been in a deposition before, ma'am, right?

16 A Correct.

17 Q This is your first time as a witness?

18 A Yes.

19 Q And have you ever been a participant in a  
20 deposition like some of these other people are here,  
21 just watching one?

22 A No.

23 Q Okay. Never signed any pleadings in court?

24 A No.

25 Q Did you file a brief in some elections case

Brandon Smith Reporting

94

1 in the Second Circuit?

2 A Oh, yes.

3 Q And, in fact, that brief wasn't accepted by  
4 the Second Circuit, was it?

5 A No.

6 Q Your brief that you filed was filed in an  
7 untimely fashion, wasn't it?

8 A No.

9 Q Okay. Well the Second Circuit refused to

10 accept the pleading you filed, signature they?

11 A They are not required to accept amicus  
12 briefs.

13 MR. GERSTEN: Could I have my question  
14 read back, because I'm not sure she answered it?

15

16 (The testimony was read.)

17

18 A They did.

19 BY MR. GERSTEN:

20 Q And other than that pleading, ma'am, in your  
21 whether it's 23 or 24 years of being a lawyer, have you  
22 filed any other pleadings in court or maybe that's  
23 poorly phrased. I'm sorry. Have you ever attempted to  
24 file any other pleadings with the Court in that 24-year  
25 period?

Brandon Smith Reporting

1 A No.

2 Q So the only time that you attempted to file a  
3 pleading was, in fact, rejected by the Second Circuit  
4 court of appeals; is that correct?

5 MR. HORTON: You're considering an  
6 amicus curiae brief to be a pleading?

7 MR. GERSTEN: Yes.

8 A Yes.

9 BY MR. GERSTEN:

10 Q Let's call it a nonpleading. Let's just call  
11 it a submission to the court. You wrote that  
12 document -- or you signed that document, correct?

13 A I did.

14 Q We'll call it a brief as opposed to a  
15 pleading so Mr. Horton isn't concerned about form. Are  
16 we clear that that's what we're referring to, that it's  
17 a brief?

18 A What are we referring to?

19 Q Did you submit a brief that was rejected by  
20 the Second Circuit court of appeals?

21 A It was submitted on my behalf.

22 Q Did you sign it?

23 A I don't -- it was written by David Makerwicz

24 of Updike, Kelly & Spellacy.

25 Q Did you sign it?

Brandon Smith Reporting

96

1 A I don't believe so. I don't recall.

2 Q Okay. Was it signed on your behalf as  
3 secretary of state or as an individual?

4 A As an individual.

5 Q Okay. So are you indicating now that you  
6 don't recall signing it as an attorney?

7 A I don't remember. I would have to look at  
8 it.

9 Q Okay. Do you recall when your brief was  
10 submitted and rejected by Second Circuit court of  
11 appeals?

12 A End of December, beginning of January.

13 Q Okay. So just three or four months ago,  
14 right?

15 A Yes.

16 Q Was it submitted before or after you  
17 announced your candidacy for attorney general?

18 A Before.

19 Q And was it rejected by the Second Circuit  
20 court of appeals before or after you announced your  
21 candidacy for attorney general?

22 A Before.

23 Q So other than that brief, ma'am, that you  
24 said was written by what's this fellow's name,  
25 David --

Brandon Smith Reporting

97

1 A David Makerwicz.

2 Q Okay. And he's at Updike, Kelly & Spellacy,  
3 too?

4 A Yes.

5 Q He's with the same law firm that Martino is

6 doing all this volunteer work?

7 A Yes.

8 Q Okay. When he submitted that brief on your  
9 behalf he submitted that as an individual you said --  
10 you were an individual?

11 A Yes.

12 Q Okay. Did you pay him to submit that brief  
13 on your behalf?

14 A No.

15 Q So he was volunteering to write a brief that  
16 wasn't rejected -- that was rejected by the Second  
17 Circuit court of appeals?

18 A Yes.

19 Q Do you recall as you sit here today whether  
20 that brief had any indication on it that this lawyer  
21 from up dike Kelly and Spellacy wrote it?

22 A I don't have it in front of me.

23 Q Okay. Other than that brief that was  
24 rejected by the Second Circuit court of appeals in  
25 January of 2010, are you familiar with any other

1 document -- I'll restate that.

2           Although you said Mr. Whatever his name.

3           A     Makerwicz.

4           Q     I'll butcher that several times. Mr.

5 Makerwicz wrote on your behalf, have you had any other

6 briefs written on your behalf and submitted to any

7 court as an individual?

8           A     As an individual? I don't believe so.

9           Q     Okay.

10          A     Aside from this case.

11          Q     Okay. Fair enough. Now, that brief that Mr.

12 Makerwicz wrote, did you participate in writing it,

13 too?

14          A     I reviewed it.

15          Q     Okay. When you say you reviewed it, did you

16 make any edits or contributions to it?

17          A     Yes.

18          Q     Okay. How many drafts did it go through, if

19 you recall?

20 A Several, as I recall.

21 Q Okay. So we can call you a collaborator, if  
22 you will, in that document?

23 A Yes.

24 Q Other than that document that you  
25 collaborated in and was rejected by the Second Circuit,

Brandon Smith Reporting

99

1 were there any other attempts you've made in the past  
2 24 years to participate in a brief that was submitted  
3 to any court?

4 A I worked on pro bono cases as a lawyer at  
5 White & Case.

6 Q Okay. White & Case, that's a big New York  
7 law firm, isn't it?

8 A It is.

9 Q Like 500 lawyers?

10 A Perhaps more.

11 Q Outside of that work when you worked at that  
12 big time New York law firm, working on briefs, have you  
13 collaborated on any other briefs besides the one that  
14 was rejected recently at the Second Circuit?

15 A As an individual?

16 Q As an individual.

17 A No.

18 Q So no depositions, no pleadings, and two  
19 briefs in 24 years, correct?

20 A As an individual.

21 Q As an individual. Am I correct? Have I  
22 summarized it properly?

23 A Yes, except that my attorney general lawyers  
24 represent the office of the secretary of the state on a  
25 variety of litigation matters that have involved our

Brandon Smith Reporting

100

1 office as a defendant.

2 Q Okay. We're going to come back to that. I  
3 just want to make sure my summary was correct. Other  
4 than the brief that was rejected and this pro bono work  
5 you did at this New York law firm, you don't recall any  
6 other briefs you collaborated on that were submitted to  
7 the court over 24 years?

8 A Correct. I'm a corporate lawyer, not a  
9 litigator.

10 Q Okay. I'm going to come back to that, too.

11 A Yep.

12 Q Have you actually ever been in court  
13 yourself?

14 A Yes.

15 Q Okay. And when you're at court, did you  
16 stand at the counsel table?

17 A I've been to court to be sworn in to the New  
18 York bar and the Connecticut bar and to observe  
19 proceedings.

20 Q Okay?

21 Q Okay.

22 A And I've been to small claims court.

23 Q How did you enjoy that experience?

24 A Lovely.

25 Q Did you represent yourself in small claims?

Brandon Smith Reporting

101

1 A Yes.

2 Q How many times have you been to small claims  
3 court?

4 A Once.

5 Q Okay.

6 A And I did win.

7 Q And when you observed proceedings in court,  
8 as you've just mentioned, were you the one who stood up  
9 in court and addressed the judge or the jury?

10 A No.

11 Q Were you sitting at the counsel table and  
12 introduced to anyone as the lawyer for the case?

13 A No.

14 Q Did you sit in back of the bar of the court  
15 or did you sit in front of the bar at counsel table?

16 A In the public portion of the courtroom.

17 Q And that would be the part that's not at  
18 counsel table, correct?

19 A Correct.

20 Q That would be the part in back of the bar,  
21 correct?

22 A Yes.

23 Q And how many times did you come to court to  
24 observe the proceedings in court and you sat in the  
25 public section?

Brandon Smith Reporting

102

1 A Just a few.

2 Q Can you name the most recent?

3 A I believe in law school I went to an argument  
4 at the Connecticut Supreme Court.

5 Q Okay. Any other occasions? And I don't mean  
6 to sound flippant, but I don't think -- that's the most

7 recent one you can recall? That would be what,  
8 somewhere 25 years ago, if my math is right?

9 A Yes.

10 Q Was that in your first year of law school?

11 A I can't remember. Probably.

12 Q Well, it was in law school, right?

13 A Yes.

14 Q And you went to UConn law school?

15 A I did.

16 Q Right?

17 A For my first year.

18 Q So you don't recall going to watch the  
19 proceedings at the Connecticut Supreme Court while you  
20 were at your Duke Law School, correct?

21 A It probably was when I was a first year.

22 Q So other than that occasion to watch what  
23 takes place in court you have no more recent  
24 recollection about what takes place in court, by  
25 personal observation and being in the public section?

1 A Yes.

2 Q So you've never actually been introduced to a  
3 judge or jury as the attorney -- as an attorney at all,  
4 have you?

5 A Can you repeat that question?

6 Q Sure. Have you ever been inside a courthouse  
7 at all?

8 A Yes.

9 Q Okay. And have you ever been inside a  
10 courthouse at any time and been introduced as an  
11 attorney in the case?

12 A In a case pending before that court?

13 Q Yes, ma'am.

14 A No.

15 Q Have you ever been inside of a courthouse and  
16 been introduced as an attorney outside of your  
17 admittance to the bar?

18 A Yes.

19 Q Okay. And when was that?

20 A When I visit district courts to do

21 naturalization ceremonies.

22 Q Okay. And when's the last time that you  
23 visited -- that would be the district court of  
24 Connecticut?

25 A Yes.

Brandon Smith Reporting

104

1 Q And that would be the federal district  
2 court?

3 A Yes.

4 Q And in the federal district court, when was  
5 the last time you participated in naturalization  
6 ceremony where you were introduced as an attorney?

7 A Well, I was introduced as the secretary of  
8 the state and I am an attorney, sir.

9 Q Okay. But when you were introduced as  
10 secretary of state, does your introduction as secretary  
11 of state include a title that says attorney?

12 A No.

13 Q So outside of the naturalizations, have you  
14 been introduced as an attorney while you were standing  
15 in a courthouse at any time in the past 26 years?

16 A With respect to a pending case in court, no.

17 Q Okay. And when you say with respect to a  
18 pending case in court, how about with any case?

19 A I was just -- I visit courthouses as a public  
20 official and therefore I'm sure along the way someone  
21 has said, this is attorney Bysiewicz.

22 Q Can you recall the most recent time that took  
23 place?

24 A Not a specific recollection.

25 Q Did it take place in any time you can recall

Brandon Smith Reporting

105

1 in the past six months?

2 A No.

3 Q In the past five years?

4 A I can't remember.

5 Q Okay. And by the way, ma'am, is this the  
6 first time -- this is the first time you've been  
7 deposed I think we said. Have you ever been a witness  
8 in a case before?

9 A No.

10 Q Okay. Have you ever participated in a  
11 preparation for a deposition before?

12 A No.

13 Q Have you ever participated in preparing  
14 discovery or anything else like that before?

15 A No.

16 Q Okay. Have you ever even in your capacity as  
17 secretary of state and your work with the attorney  
18 generals as you mentioned have you ever been in a room  
19 and you talk about here are things like the occupying  
20 statement should sound like, have you ever been a prep  
21 session for trial?

22 A No.

23 Q Have you ever been in a prep session about a  
24 closing argument in a case when the attorney generals  
25 are in the room?

1           A     No.

2           Q     Have you participated in any work with the  
3 attorney generals in representing the secretary of  
4 state's office where you sat down and said, hey, we  
5 have some witnesses we got to prepare and work towards  
6 preparation of -- trial preparation, have you done  
7 that, too?

8           A     Preparation of witnesses?

9           Q     Right. Have you ever sat in a room with the  
10 attorney generals office and sat down and said, we've  
11 got to --

12          A     No.

13          Q     Okay. Have you ever sat down with the  
14 lawyers while they were representing the secretary of  
15 state and said, here's some ideas I have for a  
16 pleading, can you put this into the brief or the

17 pleading or the motion or anything, have you done  
18 that?

19 A No.

20 Q And am I correct, ma'am, the secretary of  
21 state doesn't file appearances on behalf of the state  
22 of Connecticut in any way, does it, in any court?

23 A No.

24 Q And am I correct all litigation is directed  
25 to the attorney general's office to represent the

Brandon Smith Reporting

107

1 interests of the state of Connecticut, correct?

2 A Yes.

3 Q In fact, when you refer to earlier litigation  
4 that the attorney generals were involved with, they  
5 were your lawyers, weren't they?

6 A Yes.

7 Q You were the client, weren't you?

8 A Yes.

9 Q You're not counting work you did as a client  
10 towards practicing law, are you?

11 A No.

12 Q Okay. Now, just as an aside because I saw it  
13 in here, do you know a fellow named Elliott Prescott?

14 A Yes.

15 Q And how do you know Eliot?

16 A He was, I believe at the attorney general's  
17 office, he is a friend of my sister and  
18 brother-in-law.

19 Q Okay. And was there a particular -- you had  
20 a meeting with Eliot press cot in November of 2009, do  
21 you recall that?

22 A No.

23 Q Do you know why your appointment book  
24 reflects having a meeting with Eliot process in  
25 November of 2009?

1 A I don't remember.

2 Q Okay. And he's a friend of whom?

3 A My sister Gail and -- Gail Bysiewicz and Ross  
4 Garber.

5 Q I get it. Ross Garber the lawyer?

6 A Yes, that one.

7 Q Okay. Got it.

8 MR. HORTON: Presumably your client has  
9 heard of him.

10 MR. GERSTEN: I never presume anything  
11 on my clients.

12 BY MR. GERSTEN:

13 Q Okay. Now, what did you do when you wrote  
14 this letter to Mr. McKeen in terms of finding the  
15 portion of the practice book that you referred to in  
16 here?

17 A I had volunteer lawyers who were working with  
18 me on my campaign who had pointed out this particular  
19 portion of the practice book.

20 Q So you didn't go look at the practice book  
21 yourself?

22 A No. I relied on research they did.

23 Q Okay. Now, where it talks here in the  
24 relevant section of this paragraph you wrote here, did  
25 you actually go and read the practice book yourself

Brandon Smith Reporting

109

1 before you inserted it in here, this paragraph in  
2 here?

3 A I read this section from the book.

4 Q You went and got a copy of the practice  
5 book?

6 A I had a copy of the page.

7 Q Okay. So somebody supplied you with a copy  
8 of the page?

9 A Correct.

10 Q Said take a look at this?

11 A Yes.

12 Q I think it fits and you kind of --

13 A Yes.

14 Q Cut and pasted it and put knit there?

15 A Yes.

16 Q Okay. And which volunteer lawyers of yours  
17 did that one for you?

18 A Bob Martino.

19 Q And when you say I read the page, did you  
20 take a look at the entire section or did you just take  
21 a look at Section (a)(2) that you quote in here?

22 A I believe that section.

23 Q Now, when you engaged -- when you were  
24 referring to this section in which you state in my  
25 service as secretary of state you're practicing law,

Brandon Smith Reporting

110

1 can you identify who the client is that you are  
2 practicing law strike that. In the course of  
3 practicing law just like you were the client for the

4 attorney general, did you have a client while you've  
5 been practicing law as a secretary of state?

6 A I have many clients.

7 Q Okay. Do you enter into retainer agreements  
8 with those clients?

9 A No.

10 Q Okay. Do you have any terms of engagement  
11 with those clients?

12 A No. I have constituents.

13 Q You have constituents. Are constituents  
14 different than clients?

15 A I guess they are.

16 Q When you -- you guess they are, can you  
17 articulate the basis for your guess?

18 A I am a public servant and I give legal advice  
19 on a regular basis to election officials, to members of  
20 the public and others.

21 Q Okay. Are they constituents or are they  
22 clients?

23 A They're constituents.

24 Q Okay. So have you provided any legal advice  
25 to clients while you have been occupying the Office of

1 the Secretary of State?

2 A To private clients?

3 Q I'm going to start with the word client  
4 because you said I guess there's a distinction between  
5 constituents and clients. I'm just trying to  
6 understand the distinction you're guessing at here?

7 A I provided advice to constituents.

8 Q Okay. Have you provided any advice to any  
9 clients while you've been occupying the Office of the  
10 Secretary of State?

11 A What do you mean by clients?

12 Q Do you understand the term client?

13 A I want to make sure we're on the same page.

14 Q Okay. Do you understand the term client?

15 A I do.

16 Q Okay. What is your understanding of the word  
17 client when used in the context of providing legal

18 services?

19           A     If it's in a private sector setting, that  
20 would be the person or the entity that is requesting  
21 advice or counsel or legal services.

22           Q     Okay. Is there any other context to use it  
23 in? Let me restate -- I'm certainly sorry I'm going to  
24 interrupt you. Could you read back her answer because  
25 I'm not sure I understood it and I apologize for that.

Brandon Smith Reporting

112

1 I'm just a little slow today?

2

3                               (The testimony was read.)

4

5 BY MR. GERSTEN:

6           Q     What if it's not in the public service --  
7 strike that -- private, what is the term private when  
8 you're providing legal services?

9 A In the public sector or the private sector?

10 Q Any sector.

11 A I'm sorry, repeat the question, please.

12 Q Okay. Maybe I'll try this a different way.

13 When the attorney generals are involved in  
14 representing you as the secretary of state, I think  
15 you've already said you're the client in that  
16 context?

17 A Yes.

18 Q Okay. Is that public or is that private?

19 A Public.

20 Q Okay. Now, how would you go about defining  
21 the term client in the public sector, then?

22 A I provide advice with respect to elections  
23 with constituents who are election officials as an  
24 example, and they are, in essence, clients of our  
25 office. The registrar of the voters, the town clerks.

1 They rely on us for advice about compliance with state  
2 and federal election law.

3 Q Okay. And how would you define the word  
4 client in that context, please.

5 A Those would be, as an example, election  
6 officials who come to our office seeking advice about  
7 how to comply with election law.

8 Q Okay. Any other -- that's an example. I'm  
9 still trying to get to the definition. What is a  
10 client to whom you provide legal advice in the public  
11 sector, as you understand it, just like -- let me try  
12 it again differently. When the attorney general here  
13 comes to you or you go to the attorney general and you  
14 say, I have a question. Is the advice that the  
15 attorney general gives you confidential?

16 A Yes.

17 Q Okay. Is the advice that you said you  
18 provide to these constituents confidential?

19 A I'm not sure.

20 Q Okay. Since you've been an attorney -- since  
21 you've been the secretary of state, how many times do  
22 you recall providing advice in a confidential setting

23 to any of your constituents in a way that's comparable  
24 to the way that you said I receive advice  
25 confidentially from the attorney general's office when

Brandon Smith Reporting

114

1 you're the client?

2 A Our advice isn't confidential in the sense  
3 that when we are asked to provide written legal  
4 opinions, we provide those and those are public and you  
5 have examples of some of them.

6 Q Right. And what I'm asking for is name the  
7 last time -- name any time you've provided confidential  
8 advice strike that advice that was confidential to a  
9 client of your office in a way that was similar or  
10 comparable to the way that you receive advice from the  
11 attorney general's office when you're the client?

12 A I guess it's different. It's not  
13 confidential, it's there he is no secret as to how to

14 comply with election law; however, it can be  
15 complicated to comply with state and federal election  
16 law and that is the service that I provide as do my  
17 attorneys to our election officials.

18 Q Okay. And -- okay. So it's fair to say,  
19 then, ma'am, you're drawing a distinction between the  
20 way that the attorney general provides his advice to  
21 your office when you're the client and the way that you  
22 provide advice to people when you think you're serving  
23 their legal needs, correct? That's one distinction?

24 A That is one distinction, because you asked  
25 about a litigation setting.

Brandon Smith Reporting

115

1 Q Okay.

2 A And the examples that I have been talking  
3 about are to avoid litigation.

4 Q Okay. Do you ever receive advice from the --

5 as the secretary of state as the client from the  
6 attorney general's office on how to avoid litigation?

7 A I suppose we have.

8 Q Sure. So one difference is the  
9 confidentiality. Do you have any kind of retainer  
10 letters with any of these people that you provide your  
11 legal services to?

12 A No.

13 Q It's all a function of your performance as  
14 secretary of state, isn't it?

15 A Yes. It's a requirement in state statute.

16 Q Now, in any of the documents that you  
17 reviewed in preparation for your deposition today in  
18 which -- I'll restate that.

19 Did you see any of these documents that you  
20 provide legal services to people in any of the  
21 documents that you reviewed in preparation for your  
22 deposition today?

23 A .

24 MR. HORTON: I'm sorry.

25 A I'm sorry, I don't understand that.

1 MR. HORTON: Yes I didn't either.

2 MR. GERSTEN: Fair enough.

3 BY MR. GERSTEN:

4 Q You've just described some performances of  
5 legal services that you claim you do from your office  
6 and you're providing of advice to people on how to  
7 comply with elections law. Do you recall that?

8 A Yes.

9 Q Have you looked at any documents in  
10 preparation for your deposition today that would  
11 reflect your providing of legal services to the people  
12 that you just described a moment ago?

13 A Certainly.

14 Q Okay. In Exhibit 2, for example there is a  
15 bunch of these documents that come out of the secretary  
16 of state's office, right?

17 A Uh-huh.

18 Q Correct?

19 A Yes.

20 Q Now, -- and you looked at these just over  
21 the past few days I think you said?

22 A Yes.

23 Q Can you name any one of these documents that  
24 identify Susan Bysiewicz as an attorney in any of these  
25 documents?

Brandon Smith Reporting

117

1 MR. HORTON: I'm sorry you mean the  
2 word attorney.

3 MR. GERSTEN: Word --

4 BY MR. GERSTEN:

5 Q I'll use the word attorney, attorney at law,  
6 how about attorney at law esquire, I don't even know  
7 what do they call female attorneys esquirees, I forgot,  
8 any identification of you as an attorney?

9 A No.

10 MR. HORTON: You got a glow from your  
11 client.

12 MS. O'NEILL: Esquirette.

13 MR. GERSTEN: Esquirette.

14 BY MR. GERSTEN:

15 Q Would it be fair to say, ma'am, over the  
16 documents you looked at over the past few days if one  
17 were to go through them there is no way to know Susan  
18 Bysiewicz is an --

19 MR. HORTON: Sorry.

20 BY MR. GERSTEN:

21 Q I would be correct, ma'am, that there is  
22 nothing in any of those documents that you produced in  
23 discovery that identify you as rendering opinions to  
24 your constituents because you're an attorney?  
25

1 (Off-the-record discussion.)

2

3 MR. GERSTEN: Can I have the last  
4 question and answer read back?

5

6 (The testimony was read.)

7

8 MR. GERSTEN: I'll restate my question  
9 because of all the noise.

10 BY MR. GERSTEN:

11 Q Ma'am there is nothing in any of the  
12 documents that come from your office that you produced  
13 today or that you produced over the past couple of days  
14 or that you read over the past few days that identify  
15 you as an attorney to someone reading that letter, do  
16 they?

17 A No.

18 Q Is there a particular reason why none of the  
19 documents have identified you as an attorney?

20 A I'm not aware of one.

21 Q Okay. And you'll agree with me, ma'am, that  
22 you had -- you're not the first secretary of state of  
23 this grand state, right?

24 A Right.

25 Q And you're familiar with Ella Grasso being

Brandon Smith Reporting

119

1 secretary of state, right?

2 A Yes.

3 Q And she never identified herself as an  
4 attorney?

5 A She wasn't an attorney.

6 Q Right. And she issued opinions to  
7 constituents?

8 A Yes.

9 Q Regarding compliance and litigation  
10 avoidance, et cetera, correct?

11 A Yes.

12 Q And Miles Rappaport was a predecessor of  
13 yours too, right?

14 A Yes.

15 Q And there was nothing in his correspondence  
16 strike that. And he would let people know how to  
17 comply with election laws and do litigation avoidance,  
18 right?

19 A Yes.

20 Q And do you know of any instance where he  
21 indicated he was acting as an attorney?

22 A No.

23 Q Okay. So what you each have in common there,  
24 all three of you, Barbara Kennelly she was there too  
25 right?

Brandon Smith Reporting

120

1 A Yes.

2 Q She wasn't a lawyer?

3 A No.

4 Q And she was telling her constituents that  
5 they could rely on the advice that she gave them on how

6 to avoid litigation and how to comply with election  
7 laws, right?

8 A Yes.

9 Q So I think that's four. I don't know if  
10 there are more, but that's the ones I -- Pauline  
11 Kezer?

12 A Yes.

13 Q She was a secretary of state, too?

14 A Yes.

15 Q Okay. And she would advise clients on how to  
16 avoid litigation and how to comply with election  
17 laws?

18 A Yes.

19 Q Okay. Now, that means that all five of you  
20 demonstrated services that constituents could rely on  
21 on how to avoid litigation and how to comply with  
22 election laws, correct?

23 A Yes.

24 Q And not one of you -- what you all have in  
25 common is that not one of you told somebody receiving

1 that advice that they were a lawyer, correct?

2 A Yes.

3 MR. GERSTEN: It's just coming to me  
4 that it's 1:11. It's probably a good time to take  
5 some kind of a lunch break.

6 MR. HORTON: Yes. Could we give  
7 somebody in your office some money and bring some ham  
8 sandwiches in so we could --

9 MR. GERSTEN: Well, it's Passover. I'm  
10 certainly not going to eat ham sandwiches on Passover.  
11 Let's go off the record.

12 THE VIDEOGRAPHER: Off the record at  
13 1:11.

14

15 (Recess: 1:12 pm to 2:07 pm.)

16

17 (Defendant's Exhibit 4: Marked for  
18 identification.) case Abrams versus  
19 Lamone.

20 THE VIDEOGRAPHER: Beginning of tape  
21 number 3. On the record, 2:07.

22 BY MR. GERSTEN:

23 Q Ms. Bysiewicz, you had an opportunity to take  
24 a break during the lunch break, correct?

25 A Yes.

Brandon Smith Reporting

122

1 Q Had a chance to talk to your attorney at  
2 all?

3 A Yes.

4 Q Any portions of your testimony from this  
5 morning session that you'd like to have the opportunity  
6 to correct or modify or alter or change?

7 A No.

8 Q Good. Okay. Now, during the break I went  
9 out and I grabbed this thing and I'm going to show you  
10 Exhibit 4. And I'm going to ask you if this is a copy

11 of the Perez case that you made reference to earlier.  
12 And I'll represent to you that it's not a complete set  
13 but it's the head notes.

14 A I believe so. There were several I owe yes,  
15 I believe this is it.

16 Q That's great. Now if you could turn to page  
17 4, please. And do you see the portion where they quote  
18 the statute?

19 A This.

20 Q Right?

21 A Yes.

22 Q Okay. Now, in looking at that statute, and I  
23 know you said to me you'd rather compare it before you  
24 made a comment, we can agree that's not the same  
25 language that's used in the Connecticut statute, can't

Brandon Smith Reporting

123

1 we?

2 A Yes.

3 Q So you're not indicating that when you told  
4 Mr. Ryan -- whatever his name is -- McKeen that there's  
5 press sent that covers me here, that this statute is  
6 the same as the Connecticut statute now that you've had  
7 a chance to refresh your recollection, right?

8 A It's different.

9 Q Okay. Thank you for that concession.

10 Now, what was it you said to me you had this  
11 guy, what was the name, Dave Killain?

12 A Yup.

13 Q You had him go out and pull this case for  
14 you?

15 A Yes.

16 Q Okay. And Dave Killain is a lawyer?

17 A No.

18 Q Okay. What does he do?

19 A He works in our office.

20 Q Oh, at the secretary of state?

21 A Uh-huh.

22 Q He's the Dave Killain I see in your calendars  
23 who picks you up and drives you places?

24 A Correct.

25 Q So you had a state employee go and find you

Brandon Smith Reporting

124

1 legal research so you could respond to Mr. McKeen; is  
2 that correct?

3 A He did this on his own time.

4 Q Okay. When you say he did this on his own  
5 time, where was he sitting when he did this?

6 A In his home.

7 Q Okay. And where were you?

8 A I don't know. I wasn't certainly in his  
9 home.

10 Q Okay. Well, where were you when you asked  
11 him to get you this?

12 A In the car.

13 Q Okay. And so you recall the conversation, if  
14 you were in the car?

15 A Yes.

16 Q Were you in the car with him?

17 A Yes.

18 Q Okay. So he was driving you someplace?

19 A Yes.

20 Q Okay. So if we look at your calendars, your  
21 calendars would reflect Dave driving that day and we  
22 could actually probably pinpoint that January 14th date  
23 is Dave as driving?

24 A I don't know what date it was.

25 Q Okay. Well, let me show you a copy of what

Brandon Smith Reporting

125

1 the Defendant secretary of state -- and we'll produce  
2 this as 5. And let me just show you 5 and I'm using  
3 Bates stamp number secretary of state 00059.

4

5 (Defendant's Exhibit 5: Marked for  
6 identification.) January calendar.

7

8 BY MR. GERSTEN:

9 Q Ms. Bysiewicz, I'll represent to you this --  
10 and I'll have more copies?

11 MR. HORTON: Do you have an extra  
12 copy.

13 MR. GERSTEN: Either I can make it. I  
14 didn't know where I was going. I apologize.

15 BY MR. GERSTEN:

16 Q Madam Secretary, this is a copy of what we  
17 were told is your calendar for that week. And I think  
18 we can agree that Ryan did his posting on January  
19 13th?

20 A Uh-huh.

21 Q You did your response on January 15th.

22 A Right.

23 Q Okay. Now, on that calendar there doesn't  
24 appear to be any reflection of you spending any time on  
25 this particular topic?

1 A On what particular topic?

2 Q Responding to Ryan.

3 A Right.

4 Q And there doesn't appear to be any meeting  
5 with Tanya to discuss how to respond to Ryan,  
6 correct?

7 A Right.

8 Q And there's no evidence in that document that  
9 reflects your conversations with these volunteer  
10 lawyers who helped you respond to Ryan?

11 A Right. Because this would be my state's  
12 schedule.

13 Q Okay. So in other words, the information I'm  
14 talking about now would be reflected on some other  
15 calendar?

16 A No.

17 Q Okay. Is the time you spent on this topic  
18 responding to Ryan reflected on any kind of day book,  
19 appointment book, anything?

20 A I don't believe so.

21 Q Okay. And where -- now that you have your  
22 calendar, where were you and Dave driving to or from  
23 that you discussed this Perez case?

24 A It would have probably have been in the  
25 evening because he, on occasion, brings me to campaign

Brandon Smith Reporting

127

1 events in the evening.

2 Q Okay. So he picks you up in the morning and  
3 then takes you -- picks you up at the Capitol to take  
4 to you campaign events, is that how this works?

5 A He, on occasion, will drive me to the capital  
6 and if we are going to a campaign event, it would be  
7 in -- he would pick me up wherever I am.

8 Q Okay. And then he drives you to a campaign  
9 event?

10 A Yes, on his own time.

11 Q When you say it's on his own time, how do you

12 distinguish that?

13 A Because he fills out the time sheet.

14 Q Okay.

15 A With the state.

16 Q All right. So he has time sheets that he  
17 fills out every day?

18 A Yes.

19 Q And you're indicating that when he -- when he  
20 picks you up in the morning and takes you to your  
21 office at the Capitol, that's included in his time  
22 sheet?

23 A I don't know if his day starts when he gets  
24 to the capital or if it starts when he gets to my home.  
25 I'm not certain about that.

Brandon Smith Reporting

128

1 Q Okay.

2 A But he keeps a time sheet for state

3 purposes.

4 Q Okay. And then he keeps a time sheet when  
5 he's ending the day for state purposes?

6 A Correct.

7 Q Have you seen his time sheets?

8 A He keeps them and gives them to our deputy.

9 Q And when you say gives them to our deputy,  
10 who are you referring to?

11 A Leslie Mara.

12 Q So is it your testimony that the best that  
13 you can recall in looking at your calendar that day,  
14 that Mr. Killain and you discussed the need to get the  
15 Perez case sometime outside of normal office hours?

16 A Oh, yes, absolutely.

17 Q Okay. And as you sit here today, you don't  
18 know exactly when that was?

19 A No. And I'm -- I believe it was in this time  
20 period but I can't be certain.

21 Q Well, what other time period could it be in  
22 because the Ryan letter is the 13th and your response  
23 is the 15th. And you testified previously that oh,  
24 yes, I got the Perez --

25 A I believe so.

1 Q Okay.

2 A I believe so. It could have happened after.  
3 I'm not certain.

4 Q Okay.

5 A Now that I'm looking, I don't know. I think  
6 it was in this period but I'm not certain.

7 Q Okay. What would you have to look to in  
8 order to be certain?

9 A I don't know.

10 Q So there's no document that you could look to  
11 that would refresh your recollection better than the  
12 calendar you're looking at right now?

13 A Right. I mean, I -- I don't know.

14 Q Okay. So you recognize that other than the  
15 documents we have to rely on your testimony to know  
16 whether or not you're being accurate, correct? You

17 understand that? You do understand that absent you're  
18 being able to rely on a document, we have to rely on  
19 your best recollection of events?

20 A I think so, but again, I'm not -- I'm not  
21 certain when I looked at the case, as I look at this.  
22 I think it was in preparation for this. Could have  
23 been after. I looked at a lot of cases during the  
24 month of January.

25 Q I understand that but I was asking you --

Brandon Smith Reporting

130

1 remember earlier this morning I asked you what were you  
2 talking about when you wrote to Mr. McKeen, and you  
3 said oh, the Perez case?

4 A That was the thing that came to mind.

5 Q As you sit here now and you're looking at  
6 your calendar and you're looking at the Perez case is  
7 there a reason for you to be less certain?

8 A I'm just less certain as I consider this.

9 Q And what is it as you consider this are you  
10 becoming less certain -- what causes you to be less  
11 certain?

12 A I'm just not certain about the date that I  
13 read the Perez case. That was the thing when I was  
14 looking at the concept, that was the thing that came  
15 immediately to mind. It is possible that I read the  
16 Perez case after this.

17 Q After you wrote your response?

18 A Correct.

19 Q Okay.

20 A It is possible.

21 Q Okay.

22 A Now that I'm --

23 Q That's why we do this, ma'am.

24 A Yep.

25 Q So if it were not the Perez case, would the

1 different wording of the statute that you looked to  
2 when you wrote your response to Mr. McKeen, what else  
3 were you relying on when you wrote your response to Mr.  
4 McKeen? What case?

5 A Just the general idea that public service  
6 lawyering would count.

7 Q Okay. When you say just the idea, that's  
8 your idea?

9 A Yes.

10 Q Okay. Outside of your idea, was there any  
11 authority that you relied on at the time that you  
12 wrote -- let me restate that.

13 When you wrote Mr. McKeen, did you say, I  
14 have this idea or did you make it look like there's  
15 plenty of case law to support my position?

16 A There is the practice book citation.

17 Q Again we're talking about a prior paragraph.  
18 And when you point me to the Perez case, not the  
19 practice book section, up above it where you talked  
20 about there's -- where you told us there's case law  
21 that supports me.

22 A Uh-huh.  
23 Q Do you recall that?  
24 A Yes.  
25 Q Okay. And I'm just trying to learn from you

Brandon Smith Reporting

132

1 if you had any authority to support your idea when you  
2 represented certain things to Mr. McKeen?

3 A I'm sorry and you're asking which authority?

4 Q Correct.

5 A As I said.

6 Q You've done a very good job of letting us  
7 know now that it may not have been the Perez case. And  
8 that you may have been -- you may have misspoken. So  
9 if it wasn't the Perez case that you were referring to  
10 earlier, what else is there?

11 A The practice book section that we talked  
12 about.

13 Q Okay. So I guess I'm being confusing and I  
14 apologize. Where you said there is no legal basis to  
15 conclude that active practice at the bar of the state  
16 excludes those attorneys who are practicing in public  
17 or corporate arenas and you earlier referred us to the  
18 Perez case, are you saying now you were mistaken? Is  
19 there anything else besides Perez? You weren't  
20 relying -- you didn't tell us I was relying on the  
21 practice book for that, you were pretty specific the  
22 Perez case?

23 A And that was the case that comes immediately  
24 to mind as I mentioned over the course of the month of  
25 January, and February, I've been looking at a lot of

Brandon Smith Reporting

133

1 cases on this subject.

2 Q You have. Okay. Name another case?

3 A There are cases mentioned in the attorney

4 general's opinion, for instance.

5 Q Okay. So you read those cases?

6 A I read about those cases. I've also had  
7 lawyers who have provided me with particular cases as  
8 well.

9 Q Okay. So outside of what you've learned from  
10 lawyers and Mr. Blumenthal's opinion, Madam Secretary,  
11 as you sit here today you can't recall a single  
12 authority you relied onto support your idea as set  
13 forth in your attorney McKeen letter, am I correct?

14 A Can you ask that again.

15 MR. GERSTEN: Can you go ahead?

16

17 (The testimony was read.)

18

19 A Can't recall a single.

20 BY MR. GERSTEN:

21 Q Case. Authority.

22 A At the time I wrote this?

23 Q Yes, ma'am.

24 A No.

25 Q Now, you'll agree that the Maryland statute

1 does not talk about active practice at the bar of this  
2 state, correct?

3 A Right.

4 Q Now, you've indicated that you're focusing on  
5 the words active practice in your letter to Mr. McKeen  
6 here, correct?

7 A Right.

8 Q What do the words at the bar of this state  
9 mean to you?

10 A Admitted to the bar of the state of  
11 Connecticut.

12 Q And do you have any authority to support that  
13 position? That's a terrible question. I'm sorry.

14 You'll agree that it doesn't say active  
15 practice to the bar of this state, correct?

16 A Well, no, I'm looking it says active practice  
17 at the bar.

18 Q All right. And your statement is at the bar  
19 means admitted to practice?

20 A Well, isn't that the subject of this lawsuit?

21 Q Is that your position, ma'am, that at the bar  
22 means admitted to practice?

23 A It could mean that.

24 Q Is that your position, ma'am, that at the bar  
25 means admitted to practice as used in this Connecticut

Brandon Smith Reporting

135

1 statute?

2 A It could be.

3 Q Okay. Maybe my question wasn't clear and I'm  
4 going to ask you to repeat it to the witness because I  
5 think she's misunderstood it and thought I was asking  
6 her to speculate.

7 THE COURT REPORTER: Is this the  
8 question I read earlier?

9 MR. GERSTEN: You know, maybe I can  
10 rephrase.

11 BY MR. GERSTEN:

12 Q Ma'am, is it your position that the meaning  
13 of the words at the bar of this state as used in the  
14 Connecticut statute means admitted to practice?

15 A Yes.

16 Q Does it mean anything else as far as you  
17 know?

18 A You mean at the bar of this state?

19 Q Yes, ma'am, as used in this statute. And if  
20 I'm not being clear I'm talking about the Connecticut  
21 General Statute which defines how a person is eligible  
22 to run for the office you seek. And in the context of  
23 that statute, what I'm asking you is the meaning of the  
24 words at the bar of this state and you've indicated,  
25 that just means admitted to practice?

Brandon Smith Reporting

1                   MR. HORTON: I object. Excuse me. I  
2 object to that remark. That was uncalled for. This  
3 is a legal question and she is taking a legitimate  
4 legal position.

5                   MR. GERSTEN: Okay.

6                   MR. HORTON: You sort of, you know,  
7 brushed her off.

8                   MR. GERSTEN: I'm not brushing her off.  
9 It's very serious.

10                  MR. HORTON: Right.

11                  MR. GERSTEN: This is her career there  
12 is nothing to brush off.

13                  MR. HORTON: Thank you.

14 BY MR. GERSTEN:

15           Q     As used in the Connecticut General Statute,  
16 ma'am, are you indicating that the words, at the bar of  
17 this state, mean admitted to practice and that's what  
18 it means?

19           A     It could mean that because in 18 97 when the  
20 legislature passed the requirements, the ten year  
21 requirement to be attorney general at the bar of this  
22 state, active practice at the bar of this state meant

23 simply that you are not retired from the practice of  
24 law.

25 Q Okay. Now, you indicated that it could be.

Brandon Smith Reporting

137

1 What I'm asking now is, is that your position as  
2 opposed to using the words could be? I'll restate my  
3 question.

4 Could you agree with me, ma'am, that could be  
5 has some speculation to it?

6 A Yes.

7 Q My question is absent your speculation, is  
8 that your position of the meaning of the words at the  
9 bar of this state?

10 A That is one meaning.

11 Q Okay. Is there another meaning?

12 A It could mean that an attorney who is a  
13 litigator practices before courts. I'm not sure what

14 you're getting at with your question.

15 Q Okay. Are there any other meanings of the  
16 word at the bar of this state as used by the  
17 Connecticut General Statute?

18 A I'm not sure.

19 Q Okay. Now, would you agree with me, ma'am,  
20 that if your interpretation of a possible way to read  
21 this would mean that you have to be a litigator  
22 that's --

23 A I'm not saying that is my position, sir.

24 Q I understand. I understand that. In fact  
25 you disagree with that, don't you?

Brandon Smith Reporting

138

1 A I do.

2 Q But you have indicated that one way to read  
3 this is to indicate that at the bar of this state would  
4 mean that you would have to be a litigator, correct?

5 A One way, yes. Again, I disagree.

6 Q I understand you disagree. And if it were to  
7 be interpreted that you would have to be a litigator in  
8 order to qualify as active practice of the bar of this  
9 state, that would disqualify you wouldn't it?

10 MR. HORTON: No we have a  
11 constitutional argument here.

12 BY MR. GERSTEN:

13 Q Aside from the constitutional argument, just  
14 reading the statute, ma'am, would you qualify as a  
15 litigator? Terrible question let me ask it this way.

16 You've never been to court, correct?

17 A No.

18 Q Never asked questions of a witness in a  
19 deposition, correct?

20 A I've never asked questions of a witness.

21 Q Never asked questions as you told us  
22 before --

23 A Except in small claims court.

24 Q Okay. Excepting your experience in small  
25 claims court you've never asked questions of a witness

1 in a courtroom?

2 A No.

3 Q Never did any pleadings except for the one  
4 that got bounced recently, right?

5 A No.

6 Q Would you say that against that background,  
7 if the meaning of the word at the bar of this state  
8 means that you have to be a litigator, that you qualify  
9 as a litigator?

10 A That is not my interpretation.

11 Q I understand that. My question is, if that  
12 is the meaning of the words that you have to be a  
13 litigator just as you contemplate it could be, would  
14 you qualify as a litigator?

15 A That's a hypothetical question.

16 Q Well, let's apply the definition that you say  
17 could be adopted. Do you qualify as a litigator?

18 A I am not a litigator.

19 Q Do you qualify as a litigator?

20 A I am not a litigator.

21 Q Maybe there's a problem with my -- I thought  
22 it called for a yes or no answer. Would I be correct,  
23 ma'am, you would not qualify with the experience as a  
24 litigator if that is the meaning of the word that's  
25 adopted by the Court?

Brandon Smith Reporting

140

1 A Only a court can say. You and I are  
2 speculating.

3 Q Well, we're not really speculating are we you  
4 have all this experience as a lawyer, right?

5 A Yes.

6 Q You have 25 years of lawyering?

7 A Yes.

8 Q And that requires some use of some -- your  
9 Duke law degree, right?

10 A Yes.

11 Q Your White & Case experience, correct?

12 A Yes.

13 Q Your Robinson & Cole experience?

14 A Yes.

15 Q Your Aetna experience, correct?

16 A Yes.

17 Q That's a lot of lawyer work, isn't it?

18 That's a lot of use of legal training and analysis,

19 isn't it?

20 A Yes.

21 Q Okay. Using that legal analysis and

22 training, you could easily opine that you don't qualify

23 as a litigator and it's not necessarily speculating is

24 it?

25 MR. HORTON: Could I object to the form

Brandon Smith Reporting

1 of the question. I think you two are using qualify in  
2 different words. I mean, she is qualified in the  
3 sense she can go into court tomorrow morning. I  
4 think -- I don't know I think maybe she's using  
5 qualified in a different sense from you Eliot.

6 MR. GERSTEN: Fair enough.

7 BY MR. GERSTEN:

8 Q You know the word eligible?

9 A Yes.

10 Q What's the word eligible mean to you?

11 A That if we're talking about eligible as it is  
12 involved in this lawsuit, it means whether I may run  
13 for attorney general.

14 Q Okay?

15 A And serve in that position.

16 Q All right. And could we agree, ma'am, that  
17 if someone with some really good credentials from Duke  
18 and working at White & Case and Robinson & Cole and the  
19 Aetna would have legal training to draw a conclusion on  
20 the meaning of some particular words, correct?

21 A Yes.

22 Q And you'll agree that one reasonable way to  
23 interpret the words at the bar of this state is as

24 you've already said, it could be to mean that you had  
25 to be a litigator, correct?

Brandon Smith Reporting

142

1 A Yes.

2 Q And if the words at the bar of this state  
3 were what makes you eligible to become a candidate or I  
4 guess an election as attorney general, you would not be  
5 eligible, correct, if that meaning is adopted?

6 A If that meaning is adopted.

7 MR. HORTON: Putting aside the  
8 constitutional argument, please.

9 MR. GERSTEN: I'm putting aside the  
10 constitutional -- I'm not smart enough for the  
11 constitutional argument I'm just dealing with little  
12 things I'm a little guy.

13 BY MR. GERSTEN:

14 Q So the answer to the question is yes, you

15 would not be eligible?

16 A If that were the case.

17 Q Okay. Now, did we get all that without  
18 the -- with the objection? Court reporter court  
19 reporter yes?

20 MR. GERSTEN: Okay. Thank you.

21 BY MR. GERSTEN:

22 Q So if that were the case, when you wrote to  
23 Mr. McKeen, what you came to be your daily and active  
24 role in counseling businesses, voters, candidates,  
25 election officials on their rights and duties would not

Brandon Smith Reporting

143

1 qualify you to use your word, to be eligible as  
2 attorney general, would it?

3 A Could you repeat that again?

4 Q Certainly. In using your words, when you  
5 told Mr. McKeen that you're active and daily role in

6 counseling businesses, voters, candidates and election  
7 officials on their rights and duties, easily qualifies  
8 me to be eligible as attorney general, that would not  
9 be correct, would it?

10 MR. HORTON:

11 A I disagree.

12 MR. HORTON: Excuse me, so I don't keep  
13 objecting I assume all these questions assume the  
14 qualification of the constitutional argument.

15 MR. GERSTEN: I told you Wes, it's four  
16 syllables, it's more than I can deal with.

17 MR. HORTON: Fine.

18 BY MR. GERSTEN:

19 Q So outside of this constitutional argument,  
20 your activities that you claim you engage in as  
21 secretary of state do not make you eligible to satisfy  
22 the requirements of the statute if it's interpreted to  
23 mean that you're supposed to be a litigator; is that  
24 correct, ma'am?

25 A If a court were to interpret it in that way,

1 that could be the case.

2 Q When you say that could be the case, you  
3 would not be found eligible, correct?

4 A Yes.

5 Q Thank you.

6 MR. HORTON: It's true. If you have to  
7 be a litigator, you're not a litigator.

8 MR. GERSTEN: Okay. We're done with  
9 this, I think.

10 BY MR. GERSTEN:

11 Q Now, as you sit here today, ma'am, after you  
12 wrote this letter on January 15th, has anyone told you  
13 from the attorney general's office or his client -- I  
14 forgot that's your office, has anyone from your office  
15 told you, we will not accept your name to be a  
16 candidate for attorney general?

17 A No.

18 Q Has anyone from your office indicated that  
19 your name would not be accepted as a nominee for

20 attorney general?

21 A My secretary of state office.

22 Q Yes, ma'am.

23 A Notice.

24 Q Has anyone indicated to you that if you were  
25 to be nominated by the -- by the way you're not the

Brandon Smith Reporting

145

1 nominee by the democratic party are you?

2 A I'm not.

3 Q If anyone were to tell you that you were to  
4 be the nominee for the democratic party, your name will  
5 not be accepted by your office, Madam Secretary?

6 A No.

7 Q Is it your position that the secretary of  
8 state has the authority to reject your name as a  
9 candidate if you were nominated by the democratic  
10 party?

11 A Yes.

12 Q And what's the basis for that?

13 A The precedent in the Searle Field case, where  
14 Mr. Field wanted to run for attorney general and there  
15 was an issue with respect to his qualifications because  
16 he practiced only for six years in Connecticut.

17 Q And you're saying that your office would  
18 reject your name as the nominee from the democratic  
19 party in the event you obtain that nomination?

20 MR. HORTON: You said what.

21 A I don't know that.

22 BY MR. GERSTEN:

23 Q Oh, you don't know that?

24 A I don't know that.

25 Q Okay. That's what I thought I asked you. I

Brandon Smith Reporting

146

1 didn't know what you were talking about.

2 A No.

3 Q I apologize if I either misunderstood your  
4 answer or I didn't get your question.

5 A I have no idea.

6 Q Okay. So as you sit here today, we have no  
7 idea if the secretary of state would reject your name  
8 if you were lucky enough to get the nomination from the  
9 democratic party to run for attorney general,  
10 correct?

11 A Right.

12 Q Okay. Now, has anyone from the democratic  
13 party rejected your name as a nominee to run for  
14 attorney general?

15 A No.

16 Q Okay?

17 A It would not come up until the state  
18 convention on May 22nd.

19 Q Right. In fact there are no delegates  
20 finally selected are they?

21 A Yes.

22 Q Or are they just about selected now we have  
23 all the delegates selected?

24 A Well not all I think the deadline might be

25 March 31st. It's in process.

Brandon Smith Reporting

147

1 Q Okay. And have any of these candidates or  
2 excuse me have any of these delegates said -- strike  
3 that. There's no process for any of these delegates to  
4 say, I am rejecting Susan Bysiewicz as a potential  
5 candidate, they may not vote for you about there's  
6 notice -- you're allow to run in that convention,  
7 aren't you?

8 A Yes.

9 Q So there is no legal impediment to you right  
10 now that allows you -- that does not allow you to place  
11 your name in nomination at the convention, correct?

12 A There are just -- there are substantial  
13 questions, which we are attempting to resolve in this  
14 lawsuit.

15 Q Okay. But my point to you is there is no

16 legal impediment to anyone at the convention allowing  
17 you to strike that. That's a terrible question.

18           There is nothing barring you from having your  
19 name put into nomination at the democratic convention;  
20 is that correct?

21           A     I have announced my candidacy and --

22           Q     Can you interrupt you for a second? I'm  
23 sorry. Nothing barred you from announcing your  
24 candidacy, correct?

25           A     Correct.

Brandon Smith Reporting

148

1           Q     After you announced your candidacy has  
2 anything barred you from implementing your announcement  
3 and running for this office?

4           A     No. However, there is a substantial question  
5 which we are seeking to get an answer to.

6           Q     Okay. But no one is stopping you and saying

7 from the democratic party, Madam Secretary, we can't  
8 accept your name as a nominee, correct?

9 A No one said that. However, the democratic  
10 party, chair lady Nancy DiNardo has publicly expressed  
11 her concern about this question and that is why we are  
12 here today.

13 Q But in expressing her concern about this  
14 question, she expresses her opinion on a bunch of  
15 things, doesn't she?

16 A She does.

17 Q Okay. And some of them are of more  
18 importance to the secretary of state Bysiewicz than  
19 others, right?

20 A Depends.

21 Q For example -- right. It depends on the  
22 circumstances. This one effects you, right?

23 A Yes.

24 Q And that's why we're here because you want  
25 the answer to this question, right?

1 A Yes.

2 Q And that's what counts, right?

3 A I'm here with this lawsuit because I would  
4 like the answer to the question, yes.

5 Q Right. Now, no one in this -- have you read  
6 all the pleadings in this lawsuit?

7 A Yes.

8 Q No one in this lawsuit has said there's a  
9 substantial question and agreed with you on the  
10 pleadings of this case, correct?

11 A I'm not sure the question.

12 Q All right. You read your complaint?

13 A Yes.

14 Q And you said, there's a substantial  
15 uncertainty or substantial question about my ability  
16 here right?

17 A Yes.

18 Q Did you read any of the answers that were  
19 filed in this case?

20 A Yes.

21 Q Did the Office of the Secretary of State  
22 represented by the attorney general file an answer and  
23 say, we admit there's a big question here?

24 A I haven't seen their answer if they did.

25 Q Okay. Do you know if the democratic party

Brandon Smith Reporting

150

1 filed an answer in this case and said, we agree with  
2 the secretary of state -- sorry, we agree with Susan  
3 Bysiewicz, there's a big uncertainty here?

4 A When we filed our lawsuit, Nancy DiNardo was  
5 present at the press conference and she made a  
6 statement that there was uncertainty that she would  
7 like to resolve.

8 Q Right?

9 A And she wouldn't have been at the press  
10 conference had she not felt there was a substantial  
11 uncertainty.

12 Q You are aware she's not a defendant in this  
13 case anymore, is she?

14 A Correct.

15 Q And the answer that was filed by the  
16 democratic party did not agree with your position where  
17 you claim there's a substantial uncertainty, a very  
18 serious question, right?

19 MR. HORTON: I object. They didn't  
20 disagree with it. I don't think that's --

21 MR. GERSTEN: That's not the issue.

22 BY MR. GERSTEN:

23 Q Did they admit --

24 MR. HORTON: That's different. Okay.

25 BY MR. GERSTEN:

Brandon Smith Reporting

151

1 Q Did you see anyone who is on the defendant's  
2 side of the table admit that you are correct that

3 there's a substantial uncertainty and a serious  
4 question about your eligibility to become a  
5 candidate?

6 A I haven't seen it.

7 Q Okay. Now, when the secretary of state  
8 receives nominations from the parties for offices,  
9 what's the process by which you go through to -- what's  
10 the next step?

11 A There are endorsement certificates that are  
12 filed with our office after the parties hold their  
13 conventions or people petition and gather signatures  
14 and bring them to our office.

15 Q Okay. Has anyone indicated to you from the  
16 secretary of state's office that they won't accept an  
17 endorsement coming from the democratic party with your  
18 name on it?

19 A No.

20 Q By the way, ma'am, if you didn't get the  
21 nomination you could then go for this what did you say  
22 the primary what did you call it?

23 A Wells, if I were to get 15 percent of the  
24 delegates at the convention I could primary and I  
25 could -- or I could also collect petition signatures.

1 Q Okay. And has anyone from the secretary of  
2 state's office indicated to you that your name would  
3 not be accepted for the purposes of a primary?

4 A No we wouldn't know that yet, but no.

5 Q And how about for this petition thing, would  
6 your name be -- do you have any basis to believe that  
7 the Office of the Secretary of State would reject your  
8 name under the circumstances in the event you wanted to  
9 go for a petition?

10 A No.

11 Q And in fact, am I correct, ma'am, there's  
12 nothing preventing you if you went through the  
13 convention and you didn't get the nomination and you  
14 went through the primary, you didn't within the  
15 primary, you could still run as an independent?

16 A You mean as a petitioning candidate.

17 Q Petitioning candidate, right?

18 A Yes.

19 Q Like what's his name Joe Lieberman did,  
20 right?

21 A Yes.

22 Q And no one has said to you that you will  
23 not -- secretary of state's name won't accept your name  
24 if you decide to run as a petitioning candidate,  
25 correct?

Brandon Smith Reporting

153

1 A Correct.

2 Q Okay. Have you heard from my client that  
3 they won't accept your name as a petitioning  
4 candidate?

5 A No.

6 Q Okay. So --

7 A Your client being the republican party.

8 Q Republican party?

9 A No.

10 Q So as we sit here today at about 2:00ish, we  
11 know that there's one person claiming that there is a  
12 substantial uncertainty in this lawsuit anyway about  
13 your serious question that you need a court to  
14 determine, correct?

15 A Yes.

16 Q And that's you?

17 A Yes.

18 Q So far nobody else in this lawsuit's agreed  
19 with you, have they?

20 MR. HORTON: I object to that.

21 MR. GERSTEN: Strike that.

22 MR. HORTON: You mean disagree.

23 BY MR. GERSTEN:

24 Q According to the pleadings in this case, no  
25 one's agreed with you, have they?

Brandon Smith Reporting

1 A No.

2 Q And there is no impediment to you running for  
3 this candidacy at all, is there?

4 A There could be one in the future.

5 Q Okay. That's pretty speculative, isn't it?

6 A It is speculative.

7 Q Now, after you wrote to Ryan McKeen, you then  
8 sat down and you wrote a letter to the attorney general  
9 of the state of Connecticut Mr. Blumenthal, correct?

10 A Yes.

11 Q And am I correct did you draft that letter  
12 all by yourself?

13 A I drafted it with Leslie Mara, my deputy.

14 Q Is Leslie a lawyer?

15 A She is.

16 Q And did anyone help you or Leslie in drafting  
17 that letter?

18 A We wrote it together.

19 Q Okay. Did anyone review the letter after you  
20 wrote it together?

21 A We discussed it with Richard Orr.

22 Q And who is Richard Orr?  
23 A He's an attorney.  
24 Q And where does Richard Orr work?  
25 A He works at a private company in Meriden.

Brandon Smith Reporting

155

1 Q Okay. Is he another volunteer lawyer?  
2 A He is.  
3 Q Okay. Did you discuss it with Richard Orr  
4 before or after you and Leslie discussed this?  
5 A After.  
6 Q Okay. And what did you and Richard Orr talk  
7 about?  
8 A We --  
9 MR. HORTON: You mean the subject  
10 matter? The subject matter.  
11 A Yes, the subject matter was the eligibility  
12 issue.

13 BY MR. GERSTEN:

14 Q Okay. And --

15 A And the constitutionality of active -- the  
16 meaning of active practice and the constitutionality of  
17 the ten year requirement, generally.

18 Q Okay. Now, when you wrote this letter, you  
19 wrote this letter with Leslie in your office?

20 A Yes.

21 Q Did you send a copy of it to Mr. Orr?

22 A We wrote it in our office and we ran by the  
23 text with him or by him, if I got the right  
24 preposition.

25 Q I don't know either, but I'm not a

Brandon Smith Reporting

156

1 grammatikarian either.

2 Did you send him an e-mail version of this  
3 letter?

4 A I don't -- I don't remember.

5 Q Okay. How long did you and he spend talking  
6 about this letter?

7 A Not very long. The bulk of the time was  
8 Leslie and I discussing it in our office and drafting  
9 it.

10 Q And so Mr. Orr is a lawyer who works for a  
11 private company?

12 A Yes.

13 Q Okay. As I recall the letter you wrote to  
14 the attorney general you wrote it on secretary of state  
15 letterhead, correct?

16 A Absolutely.

17 Q And in that letter, did you indicate that you  
18 were sending -- that you had Mr. Orr involved in any  
19 way?

20 A No. Because let's Lee and I drafted it and  
21 we did discuss it briefly with Mr. Orr.

22 Q Okay. Well, how many lawyers work for the  
23 secretary of state's office in the elections  
24 division?

25 A I believe three.

1 Q Okay. And what are their names?

2 A Their names are Ted Bromley, Bernie Liu and  
3 Lou Button.

4 Q Okay. And they're election law people,  
5 right?

6 A They are.

7 Q And when they sign letters by the way they  
8 always say staff attorney, right?

9 A Yes.

10 Q Now, in this letter that you wrote to the  
11 attorney general Mr. Blumenthal, is there a reason why  
12 you didn't use the -- any one of the three lawyers who  
13 work for you in the elections division to confer with  
14 them about the letter?

15 A Leslie Mara did confer with Ted Bromley about  
16 the letter and he made some additional changes. I did  
17 not speak with him, Leslie did.

18 Q Good. I'm glad we're getting that filled in.

19 When did Leslie speak to Ted?

20 A After we had done our initial draft.

21 Q Okay. Did she send a draft of the letter to

22 Ted Bromley to look at?

23 A She did.

24 Q And did she get responses back and

25 comments?

Brandon Smith Reporting

158

1 A She did.

2 Q Did you incorporate Ted Bromley's comments

3 into your letter?

4 A His comment had to do, I recall, and this is

5 from her, not from him directly, but his comment had to

6 do with adding language about certificates of

7 endorsement that are filed with our office.

8 Q Okay. Anything else that you recall?

9 A That was, I believe, his comment.

10 Q Okay. So what was the reason that you were  
11 consulting with Mr. Orr if you had already received  
12 input from one of your staff attorneys who's an  
13 election law lawyer?

14 A We consulted -- I believe the chronology was  
15 that Leslie Mara and I drafted the letter together and  
16 we ran it by -- I ran it by Richard Orr who is just  
17 someone that I know to be a very smart lawyer who has  
18 volunteered on my campaigns.

19 Q And what was the reason for using a lawyer  
20 who -- strike that.

21 What was the reason for using a very smart  
22 lawyer who's worked on your campaigns to have him  
23 review a letter that's coming out of the secretary of  
24 state's office addressed to the attorney general?

25 A I trust his judgment and I just wanted to run

1 it by him.

2 Q Okay. What did he tell you?

3 A That he thought that it got to the issues we  
4 were hoping to get to.

5 Q What else did he tell you?

6 A That was about it.

7 Q Did you call him up and say hey, rich I've  
8 been writing a letter to the attorney general seeking  
9 his advice, in my position as secretary of state and I  
10 need you as someone who's worked on my political  
11 campaigns to give me some insight into what should be  
12 put into this letter?

13 A No, I just wanted to run by the language of  
14 the letter by him.

15 Q But he's not a state employee, is he?

16 A He's not.

17 Q And do you often go to people who are not  
18 state employees to ask them how to write a letter  
19 that's coming out of the secretary of state's office or  
20 do you rely on people who work within the secretary of  
21 state's office?

22 A Usually within the secretary of the state's

23 office.

24 Q Okay. Now when you say usually are there a  
25 lot of occasions where you go outside the secretary of

Brandon Smith Reporting

160

1 state's office to get input on how to write a letter  
2 that's coming out of the secretary of state's official  
3 letterhead?

4 A This would be -- the only case that I'm aware  
5 of.

6 Q There's been no other occasion in which you  
7 wrote a letter on behalf of the secretary of state on  
8 your letterhead that you went to someone outside the  
9 state for advice on what should go into that letter?

10 A It's the only occasion I can remember.

11 Q Okay. So -- and you've been serving as  
12 secretary of state for 11 years?

13 A Yes.

14 Q What would ever possess you to go see a very  
15 smart lawyer outside of the state government and to get  
16 his comments on a letter you're writing to your lawyer,  
17 the attorney general on secretary of state's  
18 letterhead? What made that mom meant us the?

19 A I just sought his judgment.

20 Q Because?

21 A Because I respect his judgment.

22 Q And is there any particular reason why you  
23 needed his judgment on this letter that you're writing  
24 on secretary of state letterhead to your lawyer, the  
25 attorney general? What influence did -- the first time

Brandon Smith Reporting

161

1 in 11 years it seems like there must be something that  
2 influenced it?

3 A I believe I've answered that question.

4 Q There was nothing that influenced you to do

5 that for the first -- nothing moment us the, just  
6 sought his judgment?

7 A Correct.

8 Q We'll come back to it.

9 Am I correct, ma'am, you spent two hours on  
10 this letter?

11 A I couldn't say exactly how long.

12 Q Okay. Did you call the attorney general  
13 before you sent it?

14 A I believe I did.

15 Q And did you tell him that you had talked to  
16 Mr. Orr and you were sending this letter along after  
17 talking to Mr. Orr?

18 A We talked about the -- we talked about the  
19 letter prior to my requesting it, as I recall, and then  
20 I called him shortly before we sent it to his office to  
21 let him know that it was coming.

22 Q Did he have a reaction?

23 A That it was coming? I believe I had left a  
24 message.

25 Q How about when you said -- I thought you said

1 you had actually talked to him about it?

2 A Yes. Because we talked about whether we  
3 could -- whether I could, as the head of an agency  
4 request an answer to the question about meaning of  
5 active practice and the constitutionality of the  
6 statute.

7 Q You didn't care about the words at the bar?

8 A I was just generally mentioning the issues.

9 Q I'm aware that you were just generally  
10 mentioning the issues. But I noticed in your letter  
11 that you wrote with Mr. Orr's review that you didn't  
12 ask the attorney general about what the meaning of the  
13 words at the bar were, did you?

14 A The focus, I believe, I haven't looked at the  
15 letter recently, was --

16 Q Let's pull it out. I didn't mean to cut you  
17 off and I apologize for that.

18 Sorry, Madam Secretary. Every time I think

19 I'm organized, it turns out that I'm not as well as I  
20 had hoped.

21           Okay. I've got it here somewhere. I'm going  
22 to show you what we've marked as Bysiewicz 209 and 210  
23 and I'll give you a copy after the court reporter marks  
24 it and I do have copies for everybody.

25

Brandon Smith Reporting

163

1                           (Defendant's Exhibit 6: Marked for  
2                           identification.) letter January 20, 2010?

3

4 BY MR. GERSTEN:

5           Q    Is this the letter that you recall writing,  
6 Exhibit 6?

7           A    Yes.

8           Q    And this is a letter that you sent to Mr.  
9 Orr, right?

10           A     I don't know if we sent him this exact thing.  
11     We discussed it with him.

12           Q     Now, you noticed in Exhibit 6 that there is  
13     no reference to at the bar.

14           A     Oh, there is. It's the words of the  
15     statute.

16           Q     Right. But in your request to the attorney  
17     general, do you recall asking him to tell you what do  
18     the words at the bar mean?

19           A     Yes. We ask, is that portion of Section  
20     3-124 that requires at least ten years active practice  
21     at the bar of this state constitutional?

22           Q     I am sorry. I must have been not very clear.  
23     You ask him what the meaning of active practice of the  
24     bar was, correct, excuse me, you asked him to give you  
25     an opinion as to what the meaning of the words active

1 practice was, correct?

2 A We ask him what or whether 3-124 requires, we  
3 ask -- well the question is right there. That's what  
4 we asked.

5 Q And did you ask him to tell you what the  
6 meaning was of at the bar?

7 A No. We asked him about the meaning of active  
8 practice.

9 Q Right. And you got a response with regard to  
10 the meaning of the words active meaning -- active  
11 practice, correct?

12 A Yes.

13 Q Was there a particular reason why you and  
14 Leslie and Ted and Richard Orr did not seek the  
15 attorney general's opinion on the meaning of the words  
16 at the bar?

17 A We were focused on the active practice  
18 portion.

19 Q Okay.

20 MR. GERSTEN: Could I have my question  
21 read back to her because I think she didn't understand  
22 it?

23

24 (The testimony was read.)

25

Brandon Smith Reporting

165

1 A No.

2 BY MR. GERSTEN:

3 Q Thank you. And you got a response back from  
4 the attorney general?

5 A I did.

6 Q Okay. And by the way, Mr. Orr, when he  
7 reviewed this, was he reviewing this from the  
8 perspective of a political advisor to you?

9 A Just as a lawyer.

10 Q Has he been a participant in your campaigns  
11 in the past?

12 A In past campaigns, yes.

13 Q Contributed money?

14 A In the past, yes, not for this particular

15 campaign.

16 Q Has he provided services to you in the past  
17 in connection with your campaigns?

18 A In the past he was a campaign treasurer.

19 Q Oh, he was. And when was that?

20 A In a past secretary of the state campaign,  
21 and I can't recall which, because I've had several  
22 different treasurers.

23 Q Okay. And in the current process of becoming  
24 the -- or trying to become the nominee, has Mr. Orr  
25 played any kind of role in advising you on your

Brandon Smith Reporting

166

1 campaign, your current campaign?

2 A Just as a volunteer counsel.

3 Q How often does he provide volunteer  
4 counseling?

5 A He did on this, just we ran this letter by

6 him. That's all.

7 Q Okay. Any other occasions in which you  
8 talked to him about the campaign?

9 A I may have spoken to him in January. I can't  
10 recall when, other -- prior to the drafting of this  
11 letter. I can't -- I don't have any specific  
12 recollection.

13 Q Of course. But you have had discussions with  
14 Ritchie or about this particular issue in his capacity  
15 as a political advisor to the secretary of state,  
16 correct?

17 A He -- I have spoken to him personally, yes.

18 Q Okay. So -- and you've spoken to him  
19 personally on more than one occasion on this particular  
20 issue, correct?

21 A On which particular issue?

22 Q The issue relating to the application of the  
23 Connecticut General Statute 3-124 to your candidacy?

24 A On the occasion of just running by the  
25 language in this letter, yes.

1 Q Okay. Other than this letter, are you  
2 testifying that you've had no other occasion to talk to  
3 Mr. Orr between January 15th and today regarding the  
4 application of 3124 to your candidacy?

5 A I spoke to him prior to the drafting of this  
6 letter.

7 Q Correct?

8 A On how many occasions and for how long, I  
9 couldn't say.

10 Q Okay. How about since this letter?

11 A Maybe on one or two occasions.

12 Q Did you talk to Mr. Orr about this topic  
13 after you received a response from the attorney  
14 general's office in which you sought advice?

15 A I didn't seek advice from him after I  
16 received the attorney general's opinion.

17 Q Okay. After you received the attorney  
18 general's opinion, did you talk to Ritchie or?

19 A Yes.

20 Q What did you and Mr. Orr talk about then?

21 MR. HORTON: Well, just the subject  
22 matter?

23 MR. GERSTEN: Yes.

24 A The subject matter was related to 3-124, but  
25 I wouldn't go any farther because of lawyer client

Brandon Smith Reporting

168

1 privilege and a subject that you have listed on this.

2 Q You got me completely confused here. You're  
3 telling me that Mr. Orr is providing you with legal  
4 advice with respect to Mr. Blumenthal's letter?

5 A No.

6 Q Okay. What are you talking about? Wait  
7 there is a question pending. After the question is  
8 answered you can talk to your lawyer?

9 MR. HORTON: Well, what's the question  
10 again.

11           A     We are talking about --

12                     MR. HORTON:  Could I have the question  
13 read back, please?

14

15                     (The testimony was read.)

16

17                     MR. GERSTEN:  There is no question --  
18 don't do a speech.  This is my transcript.  Are you  
19 saying there's --

20                     MR. HORTON:  What is -- are you asking  
21 what is the subject matter that's being discussed?  
22 Because if you're going beyond the subject matter, the  
23 content of a discussions I object and direct her not  
24 to answer because the attorney-client privilege.  But  
25 if you're just saying what's the topic, that's

Brandon Smith Reporting

169

1 something else.

2 BY MR. GERSTEN:

3 Q Are you indicating that Mr. Orr is providing  
4 you with legal advice regarding Mr. Blumenthal's  
5 response to you?

6 A No.

7 Q Okay. Then what did you and Mr. Orr talk --

8 A Pardon me. Can we have a break.

9 MR. HORTON: Yes because there is no  
10 question pending now.

11 MR. GERSTEN: Sure.

12 A I answered the question I would like to have  
13 a break now, please.

14 THE VIDEOGRAPHER: Off the record,  
15 3:10.

16

17 (Recess: 3:10 pm to 3:27 pm.)

18

19 (The testimony was read.)

20

21 THE VIDEOGRAPHER: This is the  
22 beginning of tape 4. On the record, 3:28.

23 MR. HORTON: Eliot, to the extent that  
24 I was claiming the attorney-client privilege for Mr.

25 Orr's advice to my client concerning the letter she

Brandon Smith Reporting

170

1 wrote to Richard Blumenthal, that claim is withdrawn.  
2 I am not claiming attorney-client privilege for his  
3 relationship with my client concerning the letter to  
4 Richard Blumenthal.

5 MR. GERSTEN: Okay. How about -- okay.  
6 I'll move on then.

7 BY MR. GERSTEN:

8 Q Did Mr. Orr and you discuss Mr. Blumenthal's  
9 response to you?

10 A I don't believe so.

11 Q Has Mr. Orr provided you with other legal  
12 advice in the past three months?

13 A Yes.

14 Q And what were those topics?

15 A .

16 MR. HORTON: Topics. Just the topics.

17 A Generally with respect to the attorney

18 general campaign.

19 BY MR. GERSTEN:

20 Q Okay. And did any of the topics he's

21 provided you in connection with advice with respect to

22 the attorney general campaign, is that advice

23 discussing your concerns about being eligible to run

24 for office under 3-124?

25 A Yes.

Brandon Smith Reporting

171

1 MR. HORTON: That's the topic.

2 BY MR. GERSTEN:

3 Q And when has he given you that advice?

4 A Some prior to the writing of this letter and

5 some after.

6 THE WITNESS: I don't like Pepsi. It's

7 okay. Sorry.

8 BY MR. GERSTEN:

9 Q I'm sorry, what was your answer, ma'am?

10 MR. HORTON: Maybe we can have it read  
11 back?

12

13 (The testimony was read.)

14

15 BY MR. GERSTEN:

16 Q What I'd like to focus now on, you've given  
17 us all the times beforehand now, correct? We've  
18 discussed all those? Or were there others?

19 A I think we've discussed them.

20 Q Okay. After this letter, then, when have you  
21 and Mr. Orr discussed the topic of 3-124?

22 A Probably later in January or February. I  
23 don't know when Richard wrote his opinion, but some  
24 point after that.

25 Q Okay. Well, let's -- as Warner Wolf would

1 say, go to his opinion.

2 My understanding is that Mr. Blumenthal wrote  
3 his response on February 2nd. Does that sound about  
4 right?

5 A I'd have to look at it, but probably.

6 Q Okay.

7 MR. GERSTEN: Let's get this marked as  
8 an exhibit, please. Bysiewicz 214 through Bysiewicz  
9 227.

10 MR. HORTON: Exhibit 7.

11

12 (Defendant's Exhibit 7: Marked for  
13 identification.) letter February 2,  
14 2010.

15 BY MR. GERSTEN:

16 Q See the letter?

17 A Yes.

18 Q That's the letter you were just making  
19 reference to?

20 A Great.

21 Q Now, have you and Mr. Orr discussed -- had  
22 your discussions after you received the Blumenthal  
23 letter, which is now marked as Exhibit 7?

24 A Yes.

25 Q Okay. And where were you when you had your

Brandon Smith Reporting

173

1 discussions. Terrible question. How many times have  
2 you and he had your discussions?

3 A Perhaps once or twice.

4 Q Okay. When was the first time?

5 A I don't have a specific recollection about  
6 the date.

7 Q Okay. Would it be before you actually  
8 received the letter or afterwards?

9 A Probably after.

10 Q Okay. Good. Was it before or after you had  
11 filed the lawsuit in this case?

12           A     Would be after, because we filed on the  
13 29th.

14           Q     Okay. So your discussions with Mr. Orr have  
15 taken place only after the 29th?

16           A     Which discussions?

17           Q     Okay.

18           A     After the discussion on this letter I had  
19 another one or two discussions, probably after the date  
20 of Mr. Blumenthal's letter.

21           Q     Okay. And my question now to you is: After  
22 the -- I'm trying to pinpoint the time. Did you have  
23 your discussions that you just made reference to with  
24 Mr. Orr before or after you filed your lawsuit in this  
25 lawsuit -- in this case?

Brandon Smith Reporting

174

1           A     After.

2           Q     Okay. Do you recall your discussions?

3 A I do.

4 Q Okay. And do you recall how long they  
5 took?

6 A I don't remember if it was one or two, but it  
7 was brief.

8 Q Okay. Do you recall where you were?

9 A I don't.

10 Q Was it in person?

11 A No. It was -- I believe it was a telephone  
12 conversation.

13 Q Okay. And do you recall if you were in the  
14 car or if you were in your office?

15 A I'm not sure.

16 Q Was it in the morning, noon or night?

17 A I don't know.

18 Q And are you indicating -- and what did you  
19 and Mr. Orr talk about on this conversation?

20 MR. HORTON: Hold on. Object. Are we  
21 talking about the response to Blumenthal's letter, if  
22 that's so, I object as to form. If we're talking  
23 about Blumenthal's letter it's a proper question, if  
24 we're talking about something else that may be  
25 privileged legal advice.

1           A     We were talking about something than is  
2 different than Mr. Blumenthal's letter and I would say  
3 it's privileged.

4                   MR. HORTON: Hold on he's got to  
5 clarify his question because if you're talking about  
6 this letter we'll get one answer.

7 BY MR. GERSTEN:

8           Q     Let's try this. We know there is this ethics  
9 complaint pending?

10          A     Yes.

11          Q     Correct. Were you and Mr. Orr discussing the  
12 ethics complaint?

13          A     Yes.

14          Q     Did you and Mr. Orr discuss Mr.  
15 Blumenthal's -- the content of Mr. Blumenthal's  
16 letter?

17 MR. HORTON: Hold on. I object.

18 Within the context of advising on the ethics

19 complaint.

20 MR. GERSTEN: I don't have any clue,

21 Wes. I'm trying to just lay the foundation.

22 MR. HORTON: That's why I'm saying, I'm

23 objecting as to form if you're asking if the question

24 was asked in -- because of his attorney-client

25 relationship, then I object. If you're asking simply

Brandon Smith Reporting

176

1 in the context of what he was saying concerning the

2 Blumenthal letter, then I don't object. Depends if it

3 has to do with advice concerning this confidential

4 proceeding, then I object on the attorney-client

5 privilege. So all I'm asking you to do is make your

6 question clear.

7 BY MR. GERSTEN:

8 Q Madam Secretary, I was wondering if you could  
9 tell me if you and Mr. Orr had discussed the ethics  
10 complaint, correct?

11 A Yes.

12 Q Okay. I'm not asking you to divulge the  
13 contents of your discussions with Mr. Orr regarding the  
14 ethics complaint yet. Is that clear?

15 A What do you mean yet?

16 Q When I said yet that's not the content of my  
17 question.

18 A Okay.

19 Q Now, did you and Mr. Orr discuss the content  
20 of Mr. Blumenthal's letter after Mr. Blumenthal issued  
21 his letter?

22 A I don't believe so.

23 Q So it's been limited -- your discussions with  
24 Mr. Orr were limited to this ethics issue?

25 A Yes, after we're -- we finished talking about

1 this?

2 Q This being?

3 A This being our opinion letter request.

4 Q Right. Okay. Thank you?

5 A Yes.

6 Q Now, did you read Mr. Blumenthal's letter?

7 A Yes.

8 Q Did you read all of it?

9 A Yes. All 14 pages.

10 Q Okay. In conducting your review of his  
11 letter, did you come to an understanding -- did you  
12 understand it?

13 A What do you mean by that.

14 Q Just what I said, did you understand his  
15 letter?

16 A I read his letter. I'm not sure what  
17 understand means.

18 Q Okay. Do you understand the term  
19 understand?

20 A I do.

21 Q Okay. What's your understanding of the

22 term?

23 A What's the question?

24 Q Okay. The question is: I asked you if you  
25 understood the term understand and you indicated yes?

Brandon Smith Reporting

178

1 A Yes.

2 Q What is your understanding of the word  
3 understand?

4 A Do I know what it means.

5 Q Okay. Taking your understanding of the term,  
6 after you read Mr. Blumenthal's letter, did you  
7 understand it?

8 A Yes.

9 Q Okay. Were there any portions of the letter  
10 that you understood and came to a disagreement on?

11 A Oh, yes.

12 Q I'm looking at page 1. Is there any portion

13 of page 1 that you came to a disagreement about?

14 A He is just restating the questions,  
15 essentially.

16 Q Okay. Did you agree with the way he restated  
17 it?

18 A Yes.

19 Q Okay. Now, one question I had when I read  
20 this, moving on to page 2, is that you indicated that  
21 you would be called upon to accept certificates of  
22 endorsement. Do you see that?

23 A Yes.

24 Q Was there a reason why you thought, as  
25 secretary of state, that the issues you raised in your

Brandon Smith Reporting

179

1 letter or in Mr. Blumenthal's response had anything to  
2 do with your accepting certificates of endorsement?

3 A Had to do with our offices accepting

4 certificates of endorsement because this is an office  
5 that will be on the ballot in November of 2010 and I do  
6 anticipate that there could be primaries on either side  
7 of the aisles, since there are multiple candidates for  
8 that office.

9 Q The reason I'm asking you that, ma'am, is has  
10 anybody indicated that your name will not be accepted  
11 if it is placed on a certificate of endorsement?

12 A No.

13 Q Now, you've indicated that your office will  
14 issue notices of primary?

15 A Yes.

16 Q When you asked Mr. Blumenthal to give you a  
17 response here. Let me interrupt you for a second.

18 You had a discussion with Mr. Blumenthal  
19 before you received his letter, didn't you?

20 A A short one.

21 Q Okay. And what did you and Mr. Blumenthal  
22 discuss in that short conversation?

23 A We had heard through a media source that he  
24 might be issuing an opinion and I just wanted to know  
25 whether he ought to anticipate that being sooner rather

1 than later. We did not discuss the contents of his  
2 opinion.

3 Q Going back to my question it says here you  
4 needed this opinion because your office issues notices  
5 of primary. See that?

6 A Yes.

7 Q Now, has your office indicated anything to  
8 you that if you have a primary going on, your name will  
9 not be accepted?

10 A No.

11 Q Okay. And it indicates here that your office  
12 will be placing candidates on the ballot for the 2010  
13 election. Do you see that?

14 A Yes.

15 Q Okay. And aim correct, ma'am, your office  
16 has not indicated that your name will not be accepted  
17 as a candidate for ballot for the 2010 election,

18 correct.

19 A No.

20 Q That's not correct?

21 A You said my office has not indicated.

22 Q Right. I'm sorry if the question was

23 confusing you tell me that. I'm sorry. Am I correct,

24 ma'am, that your office has not indicated to you that

25 your name will not be accepted as a candidate for the

Brandon Smith Reporting

181

1 ballot for the 2010 election?

2 A They have not.

3 Q And where it says here that Mr. Blumenthal

4 said there's a need to resolve these general legal

5 questions, you see that?

6 A Yes.

7 Q Okay. We've established it pretty far right

8 now that you haven't been given any notice from your

9 office that your name won't be accepted for a  
10 certificate of endorsement, there won't be any problem  
11 with you running in a primary, there will be no  
12 rejection of your name as a candidate, so what was the  
13 need, other than a personal one that you wanted to have  
14 this resolved as an individual as contrasted to the  
15 secretary of state?

16 A There was an interest in resolving this,  
17 given the controversy around the meaning of the ten  
18 year requirement and the meaning of active practice and  
19 the contents of 3-124.

20 Q Okay. Well, what was it about the  
21 performance of the official duties of the Office of the  
22 Secretary of State that you needed guidance on in this  
23 regard if your office has already indicated to you,  
24 personally, that your name will be accepted under any  
25 condition or are you just looking for free legal advice

1 from the chief state's lawyer?

2 MR. HORTON: Okay.

3 A I think those are several questions in there.

4 Can we do that again.

5 MR. HORTON: Yes, I object to the form

6 of the question.

7 BY MR. GERSTEN:

8 Q Sure. Were you just looking for some free  
9 legal advice in light of the fact that your office had  
10 already indicated to you that you would not have your  
11 name rejected under any condition set for the N this  
12 letter?

13 A My office has not indicated anything about my  
14 candidacy.

15 Q That's not what you told the attorney  
16 general, is it?

17 MR. HORTON: Are you referring to her  
18 letter? Is that what you're --

19 A I'm sorry, I'm lost.

20 BY MR. GERSTEN:

21 Q Okay. Madam Secretary, what you told the  
22 chief lawyer for the state of Connecticut is that my

23 office needs this information, correct?

24 A We need guidance about this issue because our

25 office will be responsible for placing names on the

Brandon Smith Reporting

183

1 ballot for the Office of Attorney General.

2 Q But you've indicated that your office hasn't  
3 done anything about this controversy.

4 A We've written this letter and we've received  
5 this response.

6 Q I understand that. When you say we, it's  
7 really you, isn't it? Correct?

8 A Yes.

9 Q And it was you acting in your dual capacity  
10 as an elected official seeking free legal advice from  
11 the chief lawyer for the state of Connecticut,  
12 correct?

13 A It is unusual -- it's an unusual situation to

14 have the chief elections official who happens also to  
15 be a candidate for attorney general, but we were quite  
16 clear in the letter that we wrote to the attorney  
17 general asking him for his advice, we were quite clear  
18 about that particular fact. But it is a question  
19 outside in the public realm and I am the chief  
20 elections official and the attorney general is the  
21 chief legal officer for the state. If he saw a problem  
22 with our opinion request letter, he could have chosen  
23 not to respond and said that it was inappropriate.

24 Q But Madam Secretary, you indicated to him  
25 wearing your hat as the chief elections official that

Brandon Smith Reporting

184

1 you had a need to get resolution of this, but you're  
2 indicating right now that your office hasn't taken a  
3 position on any of these issues, correct?

4 A That's correct because there have been no

5 certificates of endorsement, issues of primary notice  
6 or petitions submitted to our office for this  
7 particular office.

8 Q Now, what basis would your office have to  
9 reject any certificate of endorsement which would have  
10 your name on it if you were so nominated?

11 A I would not be the person placing the names  
12 of candidates on the ballot for attorney general  
13 because I have recused myself. My office, however,  
14 will need guidance because this is an open seat and  
15 there are many individuals who would like the position  
16 and they will need guidance on what active practice  
17 means.

18 Q Let's take you or your role here in a  
19 conflict and put it to the side for a moment. Let's  
20 take your expertise as the secretary of state who's  
21 performed that function for 11 years and let's have you  
22 explain from that level of expertise what the secretary  
23 of state's office would have as a basis to reject your  
24 name if it were placed on a certificate of endorsement  
25 under the circumstances?

1           A     I don't personally believe that they would  
2     have a basis; others may disagree.

3           Q     So would you agree with me that again, using  
4     your expertise in the 11 years, et cetera, that there  
5     would be no basis to reject your name if it was placed  
6     on a notice of primary either, correct?

7           A     Right.

8           Q     Okay. And the same thing is if your name  
9     came in as a candidate on the ballot for the 2010  
10    election, based upon your expertise, there is no basis  
11    for the Office of the Secretary of State to reject your  
12    name as a candidate, correct?

13                   MR. HORTON: I object as to form.  
14    That's not what she said. She said she didn't think  
15    that.

16                   MR. GERSTEN: I understand.

17                   MR. HORTON: Personally but otherwise  
18    might disagree.

19 MR. GERSTEN: I'm aware of that I don't  
20 care about others I'm talking about the chief  
21 elections officer in her experience over the past 11  
22 years.

23 MR. HORTON: Okay fine.

24 MR. GERSTEN: Giving us her opinion as  
25 to whether anybody in a similar position would have a

Brandon Smith Reporting

186

1 basis to reject her name as an individual.

2 BY MR. GERSTEN:

3 Q And there would be none, would there?

4 A No.

5 Q Now, you raised another point. You've  
6 recused yourself in connection with this particular --  
7 this question now, correct?

8 A I've recused myself in connection with the  
9 placement of candidates on the attorney general ballot,

10 yes.

11 Q Okay. And what goes into the decision making  
12 of the placement of candidates for the attorney general  
13 position.

14 A Whether the person is qualified under our  
15 statutes, whether they have submitted the appropriate  
16 endorsement certificate, whether they have met the  
17 primary requirements, the petition requirements to be  
18 on the ballot.

19 Q And when you use the word qualify, you're not  
20 saying that it's the job of the secretary of state's  
21 office based upon your many years of experience to take  
22 a look and determine whether a candidate satisfies the  
23 eligibility requirements of this particular statute, is  
24 it?

25 A Well, actually in the Searle case, Mr. Searle

1 went to the secretary of the state, I believe it was  
2 Gloria Schaffer at the time, and I believe she asked  
3 the attorney general for an opinion about whether he  
4 would qualify because he, as I recall, had six years of  
5 practice in Connecticut, and she wanted to know whether  
6 that was sufficient to place him on the ballot.

7 Q Okay. So is -- in answering my question, are  
8 you indicating that the offers of the secretary of  
9 state is authorized to examine whether a candidate has  
10 satisfied the requirements set forth in 3-124 before  
11 allowing that candidate to be placed on the ballot?

12 A Yes.

13 Q And your authority for that is what Gloria  
14 Schaffer did in the Searle Field case; is that  
15 correct?

16 A That is a precedent for asking the attorney  
17 general for his opinion and it is the role of the  
18 secretary of the state to determine who is placed on  
19 the ballot and whether they meet the requirements of  
20 our state statutes. That is what the chief election  
21 officer does.

22 Q Okay. Now, if it's not you making the  
23 determination in your elected capacity as the

24 commissioner of elections, who is making that  
25 determination at the secretary of state's office?

Brandon Smith Reporting

188

1 A For the attorney general position?

2 Q Okay. Try that.

3 A Could you please be specific about the  
4 question so I know what I'm answering?

5 Q Sure. You've indicated you've recused  
6 yourself?

7 A With respect to the attorney general  
8 position.

9 Q Okay. So who is making the determination if  
10 it's not the chief elected officer?

11 A It will be Ted Bromley, our elections  
12 attorney, I believe.

13 Q When you say it will be and I believe, what's  
14 the basis for your belief?

15           A     Because I believe that my deputy, Leslie  
16 Mara, who is appointed by me, has also recused herself  
17 and so I believe that responsibility now is with Ted  
18 Bromley.

19           Q     Okay. And when did Leslie recuse herself?

20           A     I'm not certain as to the date.

21           Q     Okay. And where is there any authority for  
22 the -- you as the chief elected officer to delegate  
23 this to someone named Ted Bromley?

24                     MR. HORTON: I object to form. That  
25 assumes that she did it: I mean you're assuming

Brandon Smith Reporting

189

1     what -- that she did.

2                     MR. GERSTEN: Okay. I'll try it  
3 another way.

4     BY MR. GERSTEN:

5           Q     What is the authority for Ted Bromley, who's

6 he? I'll restate my question?

7 A Ted.

8 Q Yes. Who's Ted?

9 A Ted Bromley is our elections lawyer. Is one  
10 of our elections attorneys.

11 Q Okay. And is he elected?

12 A No.

13 Q Okay. You're elected?

14 A Yes.

15 Q And you were elected as the commissioner of  
16 elections?

17 A Yes.

18 Q Now, what is the authority for Ted Bromley,  
19 who's not an elected official, to assume the position  
20 of the secretary of state in determining whose name  
21 should be put on the ballot if his capacity of  
22 commissioner of elections?

23 A That would be a question better directed to  
24 our attorney and that would be the attorney general.

25 Q You don't know?

1           A     I know that I recused myself. I believe my  
2     deputy has and I believe that Ted Bromley will make  
3     that determination.

4           Q     Madam Secretary, you haven't taken any steps  
5     to find out what basis there is to have Ted Bromley, a  
6     staff attorney, take over your function as an elected  
7     official; is that correct?

8           A     My deputy has taken care of that with Mr.  
9     Bromley.

10          Q     Your deputy is not the one who is elected as  
11     the secretary of the state by the voters of this  
12     state?

13          A     Correct.

14          Q     Correct. That's just a political appointee,  
15     correct?

16          A     Yes.

17          Q     Did you delegate that to this political  
18     appointee?

19          A     I was advised by my attorney to recuse myself

20 and so I have done that to avoid any appearance of any  
21 conflict.

22 Q What attorney gave you that advice?

23 A Dan Krisch.

24 Q Okay. Now, in your capacity as the elected  
25 official, who you're generally concerned about the way

Brandon Smith Reporting

191

1 that the way the commissioner of elections conducts the  
2 job, aren't you?

3 A Yes.

4 Q Have you -- have you not tried to ascertain  
5 what basis there is to have someone take your place?

6 A I believe there is precedent in our office  
7 for recuse Al and I followed it.

8 Q What precedent?

9 A I can't give you anything specific at the  
10 moment.

11 Q Okay. Now, Madam Secretary, what I'm trying  
12 to understand is given the importance of this, you've  
13 basically delegated this function to a nonelected staff  
14 attorney, correct?

15 MR. HORTON: I object. That's not what  
16 she said.

17 A I did not delegate it to Mr. Bromley. I  
18 delegated it to my deputy.

19 BY MR. GERSTEN:

20 Q Okay. So you delegated it to a political  
21 appointee -- let me restate my question.

22 You will admit that you were elected to serve  
23 in the capacity as the chief elections official,  
24 correct?

25 A Yes.

Brandon Smith Reporting

192

1 Q Pretty important part of the description of

2 your job, correct, commissioner of elections?

3 A Yes.

4 Q And when people go to the vote owe to vote  
5 they know that's who they're voting for, correct?

6 A Yes.

7 Q And you're now indicating that because you  
8 made a decision to delegate that function, you  
9 delegated it to some political appointee, am I  
10 correct?

11 A Yes.

12 Q And your understanding now is that political  
13 appointee has in turn delegated that job to some staff  
14 attorney, correct?

15 A Yes.

16 Q And you have no idea if there is any  
17 authority to allow that to take place, for that staff  
18 attorney to act as commissioner of elections,  
19 correct?

20 A I'm sure there is authority.

21 Q What is it?

22 A I can't provide it with you right now.

23 Q But you've abdicated that position, haven't  
24 you, as it relates to this attorney general job?

25

MR. HORTON: I object to that word

Brandon Smith Reporting

193

1 abdicate. She's disqualified herself, Eliot. She's  
2 disqualified herself.

3 MR. GERSTEN: Fine. She can --

4 MR. HORTON: She hasn't abdicated  
5 anything.

6 A I recused myself.

7 BY MR. GERSTEN:

8 Q Well, you'll agree that in recusing yourself,  
9 you play no role in this decision making of an elected  
10 official, that normally an elected official is supposed  
11 to do, correct?

12 A Play no role in what?

13 Q As the secretary of state, you're the one  
14 who's been elected to perform the function as  
15 commissioner of elections as it applies to attorney

16 general raises in general, correct?

17 A And other raises, yes.

18 Q And as applied to the attorney general's  
19 office, you've basically said, I'm not going to have a  
20 role in this and I'm going to let some staff attorney  
21 take that job, correct?

22 A I haven't said that. I have delegated it to  
23 my deputy and she delegated it further, I believe.

24 Q Okay. And as you sit here today you don't  
25 know of any authority to allow you to do that, do you,

Brandon Smith Reporting

194

1 this delegating to a political appointee?

2 A I believe there is authority. I just can't  
3 give it to you at the moment.

4 Q And all of this takes place because you made  
5 a decision to run for this office, correct?

6 A All of what takes place?

7 Q All of this delegating of the authority to  
8 act as commissioner of elections takes place solely as  
9 a result of your decision to run for this particular  
10 office, correct?

11 A Yes.

12 Q Now, Mr. Blumenthal gave you an opinion that  
13 says that -- on page 2, that the requirement of  
14 being -- of active practice at the bar means more than  
15 being a Connecticut -- a member of the Connecticut bar  
16 in active status, do you see that?

17 A Where are you looking?

18 Q Second paragraph.

19 A Yes.

20 Q Okay. Did you agree with that?

21 A Not necessarily.

22 Q Okay. What don't you agree with?

23 A That in 18 97, active practice may have meant  
24 simply being an active member of the bar.

25 Q So you're disagreeing with the attorney

1 general's opinion because you think that merely being a  
2 member of the Connecticut bar in if I have status in 18  
3 97 was sufficient?

4 MR. HORTON: For ten years, right?

5 A Could be.

6 BY MR. GERSTEN:

7 Q When you say could be, is that your position  
8 in this case?

9 A That is one of my positions.

10 Q That's why I'm asking.

11 A Yes.

12 Q Because you are the plaintiff and you're now  
13 saying that in 18 97 -- your position in this case that  
14 is Mr. Blumenthal was wrong because the requirement of  
15 being an active -- of active practice meant being an  
16 active member of the bar for ten years in 18 97. Do I  
17 understand your position correctly?

18 A I'm saying that the legislature may have had  
19 a -- it may have meant when it sedative practice in 18  
20 97, it may have been meant active practice to mean

21 being an attorney that was not retired or suspended  
22 from the bar.

23 Q And that's the position you're asserting in  
24 this lawsuit as the plaintiff in this lawsuit,  
25 correct?

Brandon Smith Reporting

196

1 A One of them.

2 Q Okay. What's another one then as it relates  
3 to this clause? Strike that. Is there another position  
4 that you're taking as it relates to this clause?

5 A Yes.

6 Q What's that, ma'am?

7 A That active practice can encompass the giving  
8 of legal advice, the drafting of documents, and the  
9 advocacy of reform to laws at the state level or the  
10 federal level.

11 Q Okay. Is there any other position you're

12 taking with respect to that phrase in this lawsuit?

13 A Generally speaking, those would -- I would  
14 have covered all of the positions that we're taking.

15 Q And I you on that but I want to make sure we  
16 get all specifics. You said generally. Is there any  
17 other position you're taking that you haven't mentioned  
18 besides those two?

19 A Yes. That 3-124 is unconstitutional in light  
20 of the amendments to the later -- the later amendments  
21 to our state constitution.

22 Q Okay. Is there any other basis you're taking  
23 to disagree with Mr. Blumenthal's opinion?

24 A Those would be the major ones.

25 Q Okay. I'm interested in getting them all.

Brandon Smith Reporting

197

1 You use the word major. Are there any minor ones?

2 A No. Those are the two points.

3 Q Okay. Well, you've mentioned --

4 A Actually there is more than two.

5 Q Right. There's three points aren't there?

6 A Uh-huh.

7 Q And I want to make sure we've exhausted them  
8 all Madam Secretary. There are any others as you sit  
9 here today that you're asserting as the plaintiff in  
10 this case?

11 A Yes. That the work that I am required to do  
12 under 9 dash 3 and 9 dash 4 of the Connecticut General  
13 Statutes constitutes legal work and the practice of law  
14 when done by a lawyer.

15 Q So now we have four. Are there any others?

16 A That lawyering and public service counts  
17 toward the active practice of law of the ten year  
18 requirement.

19 Q Remember when I said to you I don't want to  
20 cover just major ones I want to make sure we've  
21 exhausted all of the positions in this case?

22 A Yes.

23 Q So now we have five. Are there any others,  
24 ma'am?

25 A Those are the ones that I can think of at the

1 moment.

2 Q Okay. Unfortunately we're not going to get a  
3 lot of opportunity to ask you questions like this again  
4 so I'm really going to ask you to stretch your mind for  
5 a moment and make sure that if there are any others you  
6 can do it because now is the time to speak up. So if  
7 you have any others besides these five, this is your  
8 opportunity to tell us. This is your case. We can't  
9 guess. We're trying to understand it.

10 A That's my case.

11 Q No others?

12 A That's it.

13 Q Correct? Great.

14 Now --

15 MR. HORTON: You want me to mention one  
16 thing, Eliot, that she did not mention? Or I'll do it

17 later if you want.

18 MR. GERSTEN: Why don't you whisper it  
19 in her ear and you can tell her so it can come from  
20 her lips under oath.

21 MR. HORTON: All right.

22

23 (Witness and counsel conferred.)

24

25 A That's fine. I'm disagreeing with my lawyer,

Brandon Smith Reporting

199

1 too. I disagree with Mr. Blumenthal, I'm disagreeing  
2 with Wes Horton.

3 BY MR. GERSTEN:

4 Q Okay. So there are no other basis that the  
5 defendants in this case have to try to figure out in  
6 terms of your position in this case?

7 A Those would be the points.

8 Q ?

9 MR. HORTON: I'm satisfied.

10 MR. GERSTEN: Do you want me to go  
11 anymore in this? Sorry about that.

12 BY MR. GERSTEN:

13 Q Madam Secretary, are you aware of anyone  
14 besides yourself who have sought the advice of the  
15 Office of the Secretary of State to determine whether  
16 these requirements set forth in the statute are going  
17 to make them qualified or unqualified?

18 A Yes.

19 Q Who's that?

20 A The Searle Field.

21 Q Anyone else?

22

23 (Witness and counsel conferred.)

24

25 A Which statute are we talking about? Are we

1 just talking about 3-124 or are we talking about  
2 election.

3 Q Right. We're talking about the one that  
4 you're concerned with. Besides you, in 2009 and 2010,  
5 are you aware of anyone else who has approached the  
6 secretary of state, you, and said, I have a question as  
7 to whether I may be eligible under the confines of this  
8 statute, Madam Secretary?

9 A No. Others may have approached my elections  
10 division and I may not be aware of that, but I am  
11 not -- I was not asked that question.

12 Q Okay. Maybe it's a good time to go there.  
13 Explain, if you will, how do you operate your Office of  
14 the Secretary of State? Who's in charge? I'll strike  
15 that. You have this chief of staff lady that you  
16 talked about, correct?

17 A Yes.

18 Q You have these attorneys that you talked  
19 about?

20 A Yes.

21 Q Okay. Do you meet with these attorneys

22 yourself?

23 A Yes.

24 Q And do you meet with these attorneys yourself  
25 every day?

Brandon Smith Reporting

201

1 A It depends. I speak to them on the phone  
2 frequently.

3 Q How often do you have a face-to-face meeting  
4 with Ted Bromley?

5 A We see each other at the legislature when I  
6 testify, he accompanies me. I speak to him on the  
7 telephone frequently because my office is at the  
8 Capitol and his office is at 30 trinity street, so we  
9 speak on the phone frequently.

10 Q By the way you just testified in front of the  
11 judiciary committee this week or was it last week?

12 A Yes.

13 Q And didn't you refer questions about legal  
14 issues to your attorney accompanying you that day?

15 A Seth Klaskin is the head of my commercial  
16 recording division and he is an attorney and he was  
17 with me and yes.

18 Q And you referred questions to him and you  
19 said I'm really not sure how to answer those questions  
20 you got to talk to the lawyer, correct?

21 A There was one question that -- and it had to  
22 do with electronic signatures and how our division  
23 handles that and he answered that question, yes.

24 Q All right. Now, by the way when you received  
25 in front of the legislature, did you say, I am the

Brandon Smith Reporting

202

1 secretary of state and I am a lawyer?

2 A I say I am the secretary of the state and my  
3 name is Susan Bysiewicz.

4 Q Okay. In fact, have you ever, in any of the  
5 documents you provided to us which represented your  
6 written testimony, it does not appear that you've  
7 introduced yourself to the legislature and said you are  
8 a lawyer, does it?

9 A No. Most of my colleagues know that.

10 Q Okay. And in your testimony you provided  
11 last week, you did not represent yourself as being a  
12 lawyer, did you?

13 A No. However --

14 Q Nor to my of your so-called constituents that  
15 you give this advice to from your office, the people  
16 from your office identify themselves strike that. When  
17 people give -- when Ted Bromley signs a letter he says  
18 staff attorney, right? Wouldn't that be correct ma'am  
19 if someone got a letter from Ted Bromley they would  
20 know he's writing them as a lawyer?

21 A Yes.

22 Q Now, on documents you've signed written to  
23 some people, is there anything on those documents that  
24 would represent that you are a lawyer?

25 A No. My documents are signed as you see Susan

1 Bysiewicz, secretary of the state.

2 Q So would you agree with me, ma'am that there  
3 is nothing in the documents that you signed that  
4 differentiate you from Miles Rappaport signing his name  
5 the same way, correct?

6 A Not in the title, no. We both sign the same  
7 way, however, I'm a lawyer, Mr. Rappaport is not.

8 Q Okay. So if I receive one of those letters,  
9 is there anything in that letter that would lead me to  
10 believe as a constituent that I am getting advice from  
11 a lawyer?

12 A If you didn't know me or my background, you  
13 wouldn't know.

14 Q Okay. You're not going to represent that all  
15 the people who you've responded to that you gave us all  
16 these documents from know your a lawyer strike that.  
17 Are you making the claim that all of the people you

18 write to know that you're a lawyer?

19 A I am not.

20 Q And are you making the claim that these  
21 documents that you provided in discovery are to people  
22 who know that you're a lawyer?

23 A I am not.

24 Q Okay.

25 MR. HORTON: Eliot, excuse me, that

Brandon Smith Reporting

204

1 reminds me of an issue that I may -- she may not have  
2 properly disclosed to you earlier in saying what all  
3 the issues are.

4 MR. GERSTEN: You want to confer with  
5 your client find out if there is another issue.

6 MR. HORTON: This is not going to be  
7 something we disagree on.

8

9 (Witness and counsel conferred.)

10

11 MR. HORTON: All right. I'm sorry. I

12 forgot.

13 A My --

14 BY MR. GERSTEN:

15 Q After confirming with counsel do you have  
16 something to add?

17 A Yes. I believe I've already raised the  
18 issue, but to clarify even further, 9 dash 3 and 9 dash  
19 4 empower nonlawyers to do legal work. And what -- and  
20 if a lawyer does those activities that are mentioned in  
21 9-3 and 9-4, those constitute the practice of law  
22 giving legal opinions, and giving legal advice.

23 Q Okay.

24 MR. HORTON: If you see my draft brief,  
25 it will explain it.

Brandon Smith Reporting

1 BY MR. GERSTEN:

2 Q So there is a sixth claim you're making  
3 then?

4 A Well, I -- I think it relates to the  
5 statutory argument that I've already made under 9 dash  
6 3 and 9 dash 4. He thinks it's a -- my attorney thinks  
7 it's a subargument. I thought I had already raised it.

8 BY MR. GERSTEN:

9 Q I'm not even sure I understand it, that's why  
10 I'm going to ask you to try to explain it to me again.  
11 You're indicating that if a nonlawyer performs the  
12 functions that are empowered by the secretary of  
13 state -- strike that -- that are empowered by statute  
14 to be performed by the secretary of state, that  
15 nonlawyer would, in fact, be engaged in providing legal  
16 services --

17 A Yes.

18 Q -- to the constituency, correct?

19 A Yes.

20 Q Let me ask -- we're getting late in the day  
21 and I know we're going to end up having to come back.  
22 Let me ask you, you're aware Mr. Blumenthal -- you've

23 compared yourself in the public to the experiences of  
24 Mr. Blumenthal prior to the time he became attorney  
25 general, haven't you?

Brandon Smith Reporting

206

1 A We have some similar legal experience in  
2 common.

3 Q And you've actually said you're every bit as  
4 qualified as Dick Blumenthal was when he took this  
5 position based upon your legal experience, correct?

6 A Yes.

7 Q And you're aware, aren't you, that prior to  
8 the time Mr. Blumenthal became attorney general, he  
9 actually in contrast to you, appeared in court,  
10 correct?

11 A Yes.

12 Q In fact, he tried a bunch of cases, didn't  
13 he?

14 A Yes.

15 Q You never tried any cases?

16 A No.

17 Q So in your comparison to Mr. Blumenthal,  
18 that's something that you would agree he appears to  
19 have fulfilled the requirements of the statute in a way  
20 that you cannot if the statute is valid, correct?

21 A No.

22 Q Okay. What am I not correct about?

23 A That I believe my experience in private  
24 practice and in the public sector more than qualifies  
25 me to serve as attorney general because it more than

Brandon Smith Reporting

207

1 meets the ten year requirement.

2 Q Okay. Maybe my question wasn't clear and I'm  
3 wondering if I could have the court reporter reread it  
4 so that if it wasn't clear I'll redo it but I think it

5 called for a different answer, ma'am?

6

7 (The testimony was read.)

8

9 BY MR. GERSTEN:

10 Q Okay I'll restate my question. Mr.

11 Blumenthal appeared at the bar, didn't he?

12 A He did.

13 MR. HORTON: He appeared in court.

14 A He appeared in court, yes.

15 BY MR. GERSTEN:

16 Q If the interpretation of the word at the bar  
17 means a litigator, as you said it might?

18 A I didn't say I agreed.

19 Q I understand that. But you've conceded that  
20 it's a plausible argument that you disagree with,  
21 correct?

22 A Correct.

23 Q And will you concede that Mr. Blumenthal  
24 satisfied that requirement of being a litigator before  
25 he became attorney general?

1           A     Yes.

2           Q     Okay.  And that's not something you can  
3 satisfy in a way that he satisfied, correct?

4           A     Our experiences different.

5           Q     Right.  You're not a litigator?

6           A     No.

7           Q     He was?

8           A     Correct.

9           Q     So that's one difference when you've  
10 indicated to people my experience is the same as Dick  
11 Blumenthal's, I'm just as qualified, that's one  
12 distinction between the two, correct?

13          A     We do have similar experiences.  We both were  
14 in private practice.  We both served in the  
15 legislature.  And I run a large constitutional office.  
16 I supervise lawyers.  I give legal advice.  Mr.  
17 Blumenthal runs a large constitutional office, he  
18 supervises lawyers, he gives legal advice.  Therefore,

19 our experience is similar.

20 Q And you'll agree that your experiences are  
21 also different because he was a litigator before he got  
22 this position and you were not?

23 A Correct. That's one difference.

24 Q And in fact he spent a larger amount of time  
25 in private practice than you did, isn't that also

Brandon Smith Reporting

209

1 correct?

2 A I'm not certain. I'd have to look at his  
3 resume and count that up. I know he served as United  
4 States attorney and I know that he worked for several  
5 private law firms. I don't know how long he worked at  
6 private law firms.

7 Q Okay. Now, gist going back to the operations  
8 of the office again. Did you -- you indicated you have  
9 some face-to-face time with Mr. Bromley when you go to

10 the legislature?

11 A Yes, and Mr. Button and Mr. Klaskin and Mr.  
12 Liu.

13 Q Okay. How often do you meet with Mr. Bromley  
14 on an annual basis, face-to-face?

15 A I couldn't tell you.

16 Q Once a week?

17 A We have, as I said we have phone  
18 conversations. We have meetings in my office. We have  
19 meetings in the elections division. We see each other  
20 at town clerk conferences, registrar of voters  
21 conferences, and press conferences. Other office  
22 events.

23 Q All right. Maybe I can ask the question and  
24 it can be answered. How often do you and Mr. Bromley  
25 meet in the secretary of state's offices

Brandon Smith Reporting

1 face-to-face?

2 A Hard to say. Depends on the particular time  
3 of year. Depends on the month. Depends on whether the  
4 legislature is in session.

5 Q Do you meet 12 times a year?

6 A I'm sure more than that. And we speak on the  
7 phone frequently.

8 Q I'm just talking about the face-to-face at  
9 the moment so I get a handle on this. You keep ongoing  
10 to talking on the phone?

11 A Uh-huh.

12 Q How -- you're unable to state under oath here  
13 today how often you and Mr. Bromley meet face-to-face  
14 at the secretary of state's offices; is that correct?

15 A I would say frequently, because, for  
16 instance, he has come with me on three or four  
17 occasions as we've testified in the legislature, so we  
18 meet at our office. Also, we have -- we just had an  
19 office press conference on audits, choosing precincts  
20 for hand count audits. You know, I'm on the phone with  
21 him frequently.

22 Q Okay. You keep on talking about the phone.  
23 We don't have records of any phone calls, do we?

24           A     I'm sure we do, because we have phone calls  
25 with election officials, or mayors who are seeking

Brandon Smith Reporting

211

1     answers to election questions and he will make notes  
2     about those because we keep phone logs.

3           Q     Okay?

4           A     In our elections division.

5           Q     Okay. So if we ask the attorney general in  
6     our discovery here to have his client, the Office of  
7     the Secretary of State produce records of phone calls  
8     that people have with you from the attorneys, you're  
9     indicating there are records relating to your phone  
10    calls and discussions with the attorneys at the office,  
11    am I understanding that correctly?

12          A     I'm saying, if I -- for conversations with  
13    our client -- with our constituents, a registrar, a  
14    mayor, about a candidate, about an elections issue,

15 that may be noted in our attorney's phone logs. I  
16 don't know if there are telephone records in my  
17 telephone extension to Ted Bromley's or to Leslie Mara  
18 or to Lou Button.

19 Q That's why I'm asking the question. I'm  
20 trying to figure out because you keep talking about  
21 having phone calls, are your phone calls with Mr.  
22 Bromley only when these other people are on the  
23 phone?

24 A No.

25 Q Okay. So are there records of phone calls

Brandon Smith Reporting

212

1 between you and Mr. Bromley that you're aware of as the  
2 chief executive officer of the secretary of state?

3 A Well, I'll give you an example of one  
4 yesterday. I spoke to Ted about a town clerk issue  
5 brought to my attention by the mayor of Plymouth and we

6 talked about a statute 7 dash 22 and its application to  
7 this town clerk. That's one example.

8 Q Okay. That's one. Good. My question is:  
9 Are there any records of any conversations that you're  
10 aware of as the chief executive officer of this office  
11 relating to your conversations with Ted Bromley, for  
12 example?

13 A And I said to you that we have -- that we  
14 have phone logs in our elections division and so when  
15 I'm on the telephone with a constituent and Ted might  
16 be on the phone, Leslie Mara might be on the phone or  
17 some other election attorney, they might note that in  
18 the phone log.

19 Q Okay. I apologize if I wasn't clear. You're  
20 the boss over there, correct?

21 A Yes.

22 Q You're the head dog, right?

23 MR. HORTON: I object to that  
24 characterization.

25 A I'm the chief elections official.

1                   MR. HORTON: Let's go back to  
2 esquire.

3 BY MR. GERSTEN:

4           Q     You're the CEO, right?

5           A     Yes.

6           Q     And as the CEO, are you aware of any records  
7 relating to phone conversations between you and Mr.  
8 Bromley where no one else is on the phone?

9           A     Yes. I made a note on my schedule  
10 yesterday.

11          Q     Okay. Is the note on your schedule that you  
12 made of this phone call yesterday are there other  
13 records besides a note on your schedule of your  
14 telephone call with Ted Bromley that we could look to  
15 determine how often there are -- that there's  
16 documented evidence to support how many times you and  
17 Ted talk on the phone one on one?

18          A     I'm not aware of them. You could certainly  
19 ask Mr. Bromley.

20 Q I could ask Mr. Bromley, but as I asked you,  
21 you're the boss, aren't you?

22 A Yes.

23 Q And as you sit here today as the boss, is it  
24 your testimony you don't know? Is that correct?

25 A I don't know what?

Brandon Smith Reporting

214

1 Q You don't know if there are any records?

2 A I don't know of any telephone records outside  
3 of the log books that --

4 Q Okay. Now, how about with Mr. Button, that's  
5 one of the other guys?

6 MR. GERSTEN: Can I just have my  
7 notebook that you're in the way of there. Sorry,  
8 Jake.

9 A Mr. Button is frequently in our office,  
10 because he brings writs for me to sign and he also is

11 our legislative liaison to the general assembly. So we  
12 will meet to go over testimony and he will accompany me  
13 to the legislature and he will bring various bills to  
14 my attention and we discuss them.

15 BY MR. GERSTEN:

16 Q Okay. And it's all in the function of you  
17 performing your job as secretary of state, correct?

18 A Yes.

19 Q Now, are there any records of phone calls  
20 between you and Mr. Button?

21 A I don't know that our office keeps track of  
22 internal telephone calls.

23 Q Okay. Now, there is a log kept by the  
24 election law division of the offices of the secretary  
25 of state reflecting responses to official election law

Brandon Smith Reporting

215

1 inquiries during the year 1999 to 2010?

2           A     There are log books kept by our attorneys and  
3 election officers to document conversations that they  
4 have with election officials because we have found that  
5 people who call our office will shop around for  
6 opinions, so we have log books so we can keep an  
7 accurate record of the questions that are asked and  
8 make sure that people get consistent advice.

9           Q     What do you mean they shop around?

10          A     Well, they don't like the answer they get  
11 from one particular election officer, so they try  
12 another attorney, they try another election officer.

13          Q     So in other words, somebody will call and  
14 talk to Ted Bromley?

15          A     Uh-huh.

16          Q     And then they'll turn and talk to this guy  
17 Lou Button?

18          A     Yes, or Art Champagne or Mike Kozik when he  
19 was there.

20          Q     Now, when those conversations take place, are  
21 you involved?

22          A     Sometimes.

23          Q     How often?

24          A     You know, a lot around election time because

25 we get more questions when an election is occurring.

Brandon Smith Reporting

216

1 Q Okay. But I'm wondering about your  
2 participation now, Madam Secretary. How often do you  
3 get involved with responding to inquiries such as the  
4 ones that you just described get shopped around?

5 A Frequently.

6 Q How much is frequently? What does that mean,  
7 once a week?

8 A I guess -- I have discussions with town  
9 clerks and registrar on a daily basis or have mayors  
10 call frequently for --

11 Q Is that what you're talking about people  
12 shopping around?

13 A No, I was talking about --

14 Q Right?

15 A -- Either -- could be an election official

16 like a registrar or could be a constituent of our  
17 office.

18 Q Right. So often do you get involved  
19 personally responding to these discussions that you  
20 said people are shopping around?

21 A Oh, I just was talking about why the log book  
22 is kept.

23 Q Okay. Well, how often do you get involved  
24 with responding to people who call in shopping around  
25 for answers to election law questions?

Brandon Smith Reporting

217

1 A I frequently answer election law questions.

2 Q Okay. Maybe my question wasn't clear. When  
3 people call in with an election law question and  
4 they're referred to -- do they get referred to Mr.  
5 Bromley?

6 A Our registrar have the various attorneys and

7 election officer phone numbers. So they decide who  
8 they would like to speak to or they could call our  
9 elections division and they might be referred to  
10 whoever is free.

11 Q Okay. Try this a different way. Madam  
12 Secretary, I'm wondering if you could push your memory  
13 back to last Friday. Okay?

14 A Uh-huh.

15 Q How did you begin your day?

16 A I don't know. I have to look at my  
17 schedule.

18 Q Okay. So unless you have your scheduler, you  
19 can't tell us how you spent your day last Friday?

20 A I don't know. I have to look at my  
21 schedule.

22 Q Okay.

23 A I do a lot of things during a particular  
24 day.

25 Q So as recently as last Friday, without having

1 your schedule in front of you, you're unable to tell us  
2 what did you for the day? I just want to make sure  
3 we're clear on this?

4 A Yep.

5 Q Okay. So if we look at your schedule from  
6 the year 2001 and I ask you is this what you did during  
7 the day, that's the only evidence that would be in  
8 existence about what you did, correct?

9 A Yes.

10 Q You can't recall anything about what you did  
11 in 2001 without looking at that schedule?

12 A Well that would certainly help me remember.

13 Q Okay. Same for 2002?

14 A Yep.

15 Q Same for 2003?

16 A Yep.

17 Q Throughout this, correct?

18 A (Nodding in the affirmative.)

19 Q And if we don't see -- if we see a lot of  
20 entries about press conferences, you're not considering

21 press conferences the practice of law, are you?

22 A It depends, because sometimes in press  
23 conferences we -- I might be advocating for a change in  
24 the law.

25 Q In your position is it when you as the

Brandon Smith Reporting

219

1 secretary of state advocates for a change in the law,  
2 you're practicing law?

3 A Sure. And advocating for reform of the law  
4 or change of the law.

5 Q Okay. Are you the only person in the state  
6 of Connecticut who's elected who does press conferences  
7 advocating for changes in the law?

8 A Certainly not.

9 Q And is it your position that anyone who  
10 advocates for a change in the law is engaged in the  
11 practice of law?

12 A No.

13 Q Okay. Is it your position if that person is  
14 a lawyer and they are doing a press conference  
15 advocating for a change in the law that's practicing  
16 law?

17 A Well, it would be part of legislative  
18 advocacy, because if you look at the canons, you will  
19 see that one part of lawyering is suggesting reforms  
20 and improvements to the law. And I believe that  
21 advocating for law changes before the legislature and  
22 in public is part of that process.

23 Q So if you're performing that as a lawyer,  
24 that's performing law, correct?

25 A That is part of the practice of law, yes.

Brandon Smith Reporting

220

1 Q And if you're not a lawyer, that's not  
2 practicing law?

3 A Yes.

4 Q So it's the qualification of a law degree --  
5 do you have to be admitted to the bar to be able to be  
6 engaged in that distinction? Let me ask it this way.  
7 That's a terrible question. If you're a law school  
8 graduate and you never took a bar exam, never passed  
9 the bar, never was admitted to the bar, but you  
10 participate in the kinds of advocacy that you're  
11 talking about, that is practicing law?

12 A There are activities that nonlawyers do that  
13 could constitute the practice of law.

14 Q Of course?

15 A And that would be for a judge to say.

16 Q Okay. I'm asking you to understand your  
17 position here. If I graduated Duke law and never  
18 sought admittance to a bar of any state and I engage in  
19 the kind of advocacy that you're referring to, is that  
20 engaged in the practice of law?

21 A If you're not admitted to the bar of a state,  
22 I couldn't tell you the answer to that.

23 Q So you don't have a position on that topic?

24 A No. Not on -- because I don't -- I'm not  
25 certain of the status of someone who went to law

1 school, graduated but then never passed the bar.

2 Q Well, would you agree that that person is  
3 using whatever legal skills they learned out of Duke  
4 law school to do the advocacy you're suggesting?

5 A Yes.

6 Q But you're having difficulty calling that the  
7 practice of law because that person hasn't been  
8 admitted to the bar; is that correct?

9 A Correct.

10 Q Okay. So am I correctly understanding your  
11 position that it's the admittance to the bar that  
12 allows you to claim that when you engage in this kind  
13 of activity, you're actively engaged in the practice of  
14 law?

15 A For the purposes of this lawsuit, yes.

16 Q Okay. For any other purposes?

17 A Such as?

18 Q I'll restate my question.

19 What if I'm not an elected official and I  
20 engage in the kinds of activities you're talking about.

21 Is that the practice of law?

22 A Yes.

23 Q Okay. Now, if you're an elected official,  
24 such as you are, do you consider these advocacy things

25 you're talking about to be part of your job as the

Brandon Smith Reporting

222

1 secretary of state?

2 A Yes.

3 Q And would you agree that when Miles Rappaport  
4 was secretary of state, he performed similar functions  
5 in the advocacy of positions?

6 A Yes.

7 Q But the difference between you and he is that

8 you've been admitted to the bar and he was not?

9 A Yes.

10 Q And that's why he was not practicing law when  
11 he did it, correct?

12 A Correct.

13 Q But that's why you are practicing law because  
14 you are doing it while you have a law degree and  
15 admitted to the bar?

16 A Yes.

17 Q Okay. And when you do your advocacy you're  
18 talking about, do you describe yourself having -- do  
19 you tell people, I'm a lawyer?

20 A No.

21 Q Okay. Now --

22 MR. HORTON: You have to wrap up, soon.

23 It's quarter of 5:00.

24 MR. GERSTEN: Okay.

25 MR. HORTON: Whenever it's

Brandon Smith Reporting

1 appropriate.

2 MR. GERSTEN: Okay. Be right there.

3 BY MR. GERSTEN:

4 Q So if I understand that last line, ma'am,  
5 correctly, that means when you advocate that it's time  
6 to help small businesses in Connecticut, you're  
7 engaging in the practice of law?

8 A When I advocate for abolishing the business  
9 entity tax, which would help small businesses, yes.

10 Q You're engaged in the practice of law when  
11 you do that?

12 A When I bring forth a bill that is drafted to  
13 remove the business entity tax from the statutes and  
14 advocate before that legislation, before the general  
15 assembly, yes.

16 Q And just to distinguish again, when Miles  
17 Rappaport or Gloria Schaffer or Ms. Kennelly engaged in  
18 similar activities, that would not be the paragraph law  
19 because they don't -- they weren't admitted to the  
20 bar?

21 A Yes.

22 Q Now, I know we've got these here somewhere so  
23 where is the official one? Bysiewicz -- there we go.  
24 MR. GERSTEN: Yes, I'm wrapping up.  
25 I understand. Thank you, Jake.

Brandon Smith Reporting

224

1 BY MR. GERSTEN:

2 Q Ms. Bysiewicz, you are going back to the  
3 occupational tax returns for a moment. You've  
4 indicated you file these every year when you wrote to  
5 young Ryan there, Ryan McKeen, do you remember that?

6 A Yes.

7 Q Did you actually sign all those yourself?

8 A Yes.

9 Q And did you actually sign all of the  
10 documents that you submitted to the clients funds  
11 people yourself?

12 A Did I I'm sorry.

13 Q Did you actually do the signature of these  
14 forms when they're submitted?

15 A Yes.

16 Q Is that your signature on all these?

17 A Yes.

18 Q So when there are mistakes made on those  
19 documents, that's a mistake that you made?

20 A Yes.

21 Q And you'll agree that there's been a number  
22 of changes that you've made to both the occupational  
23 tax return and to the client's fund account form that  
24 were -- you're claiming now were errors when you filed  
25 them, correct?

Brandon Smith Reporting

225

1 A Yes.

2 Q And you knew that when you signed these  
3 forms, that you were doing it under penalty of perjury,

4 weren't you?

5 A Yes.

6 Q It's an oath just like the one you took  
7 today?

8 A Yes.

9 Q Okay. Now, what was the reason in -- for  
10 example, the year 2000, that you indicated that you did  
11 not work or were employed as an attorney at the time  
12 you signed the forms?

13 MR. HORTON: Which one are you talking  
14 about?

15 MR. GERSTEN: 2000.

16 BY MR. GERSTEN:

17 Q Ma'am?

18 A Well, I am employed as the secretary of the  
19 state, and I realized in reviewing these forms in  
20 January that I had made a mistake and decided to  
21 correct it. And filed an amendment.

22 Q Okay.

23 A To that one, I believe.

24 Q You did a lot of amending sometime in January  
25 of 2010 after you declared your candidacy for attorney

1 general, correct?

2 A I amended several occupational tax returns  
3 and client security fund, and made an additional client  
4 security fund payment, yes.

5 Q But in fact it was your first client security  
6 fund payment you've ever made out of your own pocket;  
7 isn't that correct?

8 A Yes. Because our office had made the policy  
9 decision to pay for all of our attorneys.

10 Q Well, when you say our office, that's you,  
11 isn't it?

12 A Yes.

13 Q You made that decision?

14 A Yes.

15 Q You didn't delegate that to Ted Bromley, did  
16 you?

17 A No.

18 Q You're the CEO?

19 A Yes.

20 Q Okay. Now, as of 12/1/2000, what was the  
21 reason why, when you indicated your employer was the  
22 state of Connecticut, that you indicated at that time  
23 that you were not working or employed as an attorney?

24 A That was a mistake and I was getting  
25 frustrated with these forms, they're ambiguous and

Brandon Smith Reporting

227

1 there are several boxes that could apply to my  
2 situation.

3 Q Well, you've indicated that the only way you  
4 can tell what you were doing back in 2000 is if you  
5 took a look at your schedule and you -- that would help  
6 you maybe understand what you were doing back then,  
7 correct?

8 A Yes.

9 Q And would I be correct, ma'am, that when you  
10 signed this as of 12/1/2000, you knew what you were  
11 doing when you signed it as of that period of time,  
12 correct?

13 A Yes.

14 Q And you went through it very carefully  
15 because you knew you were signing this under penalty of  
16 false statement, correct?

17 A Yes.

18 Q And you took your time to sign it, right?

19 A Yes.

20 Q And you said you thought it was pretty  
21 confusing, if I understand your testimony, correct?

22 A My testimony is that these forms are  
23 ambiguous and there is -- there are multiple boxes that  
24 could apply to my situation, not exactly, certainly,  
25 but I had decided that there was a better box to --

1 that would apply to my situation in other years and  
2 reasonable people can differ about which boxes apply.

3 Q And you only made that decision that you  
4 should make some changes to the boxes that you did in  
5 2000 after you decided to run for attorney general and  
6 found out about this eligibility issue; isn't that  
7 correct, ma'am?

8 A No. Well --

9 Q Okay. You didn't make the decision to go  
10 back and review things beforehand, did you?

11 MR. HORTON: Hold on. I think you  
12 interrupted.

13 MR. GERSTEN: I didn't interrupt.

14 BY MR. GERSTEN:

15 Q You didn't make the decision to go back and  
16 look and see if you committed some kind of error on any  
17 of these occupational tax returns before you declared  
18 your candidacy, did you?

19 A No, it was after.

20 MR. GERSTEN: We're out of time.

21 Thanks.

22 THE VIDEOGRAPHER: Off the record,

23 4:51.

24

25 (The deposition adjourned at 4:51 pm.)

Brandon Smith Reporting