

1 MR. SCHATTENFIELD: I didn't know you were going to the
2 first sentence. That certainly shows his state of mind, does
3 it not? I didn't know we argued the first sentence.

4 JUDGE STEINBERG: Yes, we argued --

5 MR. SHOOK: Well, I was going to make the same
6 objection to the next.

7 JUDGE STEINBERG: Well, I thought the first sentence
8 was ruled in there.

9 MR. SHOOK: Well, I didn't, but I was getting there.

10 JUDGE STEINBERG: Okay. Why don't you get there?

11 MR. SHOOK: All right.

12 JUDGE STEINBERG: I will withdraw. Okay. So for now,
13 it is just the --

14 MR. SHOOK: Well, Your Honor, we have an objection to
15 paragraph 49, with the exception of the last sentence.

16 JUDGE STEINBERG: Okay.

17 MR. SHOOK: And actually not the entire sentence, but
18 that portion, "I never knowingly provided inaccurate
19 information or concealed information from the FCC." That
20 portion we don't object to, but everything else in the
21 paragraph we do.

22 JUDGE STEINBERG: Okay. Let's start again. Paragraph
23 49, you object to everything but the last sentence?

24 MR. SHOOK: Yes, Your Honor. And we don't believe the
25 entire sentence should be kept in, but only that portion

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1 beginning with, "I never knowingly provided."

2 JUDGE STEINBERG: Okay. Let me hear from

3 Mr. Schattenfield.

4 MR. SCHATTENFIELD: I hate to beat a dead horse, but

1 MR. SHOOK: Your Honor, with the exception of, it is
2 the sentence in the middle of paragraph 52, "In the mid 1970s
3 I owned an engineering and manufacturing company and hired a
4 black as president." We would object to the rest of the
5 paragraph as irrelevant. And also to, I guess, echo a point
6 made by Your Honor, in some respects cumulative. We are not
7 concerned about discrimination here. Discrimination is not an

1 | the Commission to depth to which he lived this and to show the
2 | Commission and whoever reviews it thereafter how he felt when
3 | he got the NAACP petition claiming that he discriminated.
4 | This a man in the deep South, and he said to me, he said, "You
5 | know, I'm from the South. Everybody will think I am a racist.
6 | They won't give me a chance." He is from the deep South and
7 | comported himself with no color-blindness at all. It is like
8 | if you or anybody --

9 | JUDGE STEINBERG: I think you misspoke.

10 | MR. SCHATTENFELD: Huh?

1 whites, blacks, greens and yellows equally in the
2 communities -- to them, to have somebody come up and charge
3 them with racial discrimination gets him right where he lives.

4 And I think if you will look at the first few documents
5 that were filed in this case -- the opposition, to wit, to the
6 opposition to deny -- you will see that there are no other
7 stations that not black-owned that hire any blacks in that
8 community, and you can go down and see the EEO records for
9 those stations. And here is a man who doesn't approach life
10 like that. He is trying to make me, you, the world feel just
11 exactly how he reacted when he saw that the NAACP charged him
12 with racial discrimination.

13 JUDGE STEINBERG: Let me understand this. The purpose
14 for this paragraph is to explain the basis for his state of
15 mind when the NAACP petition was filed, and solely for that
16 purpose?

17 MR. SCHATTENFIELD: And the validity of that. You
18 know, as you said before, you can say I don't discriminate,
19 but you do. Not only the basis, but the validity of that
20 basis.

21 JUDGE STEINBERG: Well, then we have got Mr. Shook's
22 objection then, and I agree with that. There is no
23 discrimination charged by the Commission.

24 MR. SCHATTENFIELD: I understand that, sir.

25 JUDGE STEINBERG: And so if we are going to get into a

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1 case of proving that the man didn't discriminate, I am not
2 going to do that.

3 MR. SCHATTENFIELD: No, no. That is not what I am
4 trying to say. What I am trying to say --

5 JUDGE STEINBERG: But, you know, if we are going to
6 say, this was his mental attitude, this is what he believed
7 and this was why he became so upset when the NAACP petition
8 was filed, that is one thing.

9 MR. SCHATTENFIELD: And why he reacted and answered the
10 various inquiries the way he did.

11 JUDGE STEINBERG: In other words, why he concentrated
12 on minorities?

13 MR. SCHATTENFIELD: Yes.

14 JUDGE STEINBERG: In total?

15 MR. SCHATTENFIELD: That is the picture.

16 JUDGE STEINBERG: With that, I am going to adjourn the hearing.

1 MR. SCHATTENFIELD: You said NCAA.

2 JUDGE STEINBERG: Have they got something to do with
3 this case too?

4 MR. SCHATTENFIELD: No, you brought that up when you
5 said --

6 JUDGE STEINBERG: Did I say NCAA?

7 MR. SCHATTENFIELD: Yes, you did.

8 JUDGE STEINBERG: Then let's change that to NAACP.

9 MR. SCHATTENFIELD: Okay. That raised a question that
10 I --

11 JUDGE STEINBERG: Sorry about that.

12 MR. SCHATTENFIELD: NCAA is my firm. I thought you
13 knew about that.

14 JUDGE STEINBERG: No, no.

1 among the documents that was copied, which shouldn't have
2 been. That is not relevant to anything in this case.

3 MR. SCHATTENFIELD: Well, it shows Mr. Goodwin's state
4 of mind.

5 JUDGE STEINBERG: Okay. What page are we talking about
6 now?

7 MR. SHOOK: It is page 40. It is in Attachment 1.

8 MR. SCHATTENFIELD: Well, can we just rip it out
9 because it obviously was in there -- it has nothing to do with
10 this case.

11 JUDGE STEINBERG: Well, I think we will just strike it,
12 or you can withdraw it.

13 MR. SCHATTENFIELD: Whichever way is more convenient.

14 JUDGE STEINBERG: Yes. We will strike it or it is
15 withdrawn.

16 MR. SCHATTENFIELD: Okay.

17 MR. SHOOK: Your Honor, that completes the Bureau's
18 objection to Dixie Exhibit No. 1.

19 JUDGE STEINBERG: Okay. No. 1 is received subject to

1 10-minute break or a 9-minute break?

2 MR. SCHATTENFIELD: Yes.

3 JUDGE STEINBERG: We will come back at 20 till.

4 (Whereupon, a brief recess ensued.)

5 JUDGE STEINBERG: Okay. We are back on the record. I
6 presume that the Bureau wants Mr. Bramlett for cross?

7 MR. SHOOK: We do.

8 JUDGE STEINBERG: And he will be crossed. So are we
9 ready to move on to Exhibit 2?

10 MR. SHOOK: Yes, sir.

11 JUDGE STEINBERG: Why don't you identify it?

12 MR. SCHATTENFIELD: Let the record show that I have
13 handed the reporter two copies of DBI Exhibit 2, Statement of
14 Susan A. Marshall, and I ask that they be marked for
15 identification as DBI Exhibit 2.

16 JUDGE STEINBERG: Okay. The document is 27 pages in
17 length, and as described, will be marked for identification as
18 DBI Exhibit No. 2.

19 (The document was marked for
20 identification as DBI Exhibit No. 2.)

21 JUDGE STEINBERG: Now do you want to offer it?

22 MR. SCHATTENFIELD: I hereby offer it into evidence,
23 Your Honor.

24 JUDGE STEINBERG: Okay. Mr. Shook?

25 MR. SHOOK: We do have a few objections, Your Honor.

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1 | Beginning with paragraph 2, it is the last sentence, but we do
2 | not object to the sentence in its entirety. We simply object
3 | to that portion which reads, "To my knowledge, this was the
4 | first petitions to deny radio licenses based on the new EEO
5 | rules," (semicolon). We don't see any relevance to this
6 | matter with respect to that statement.

7 | MR. SCHATTENFIELD: Well, the relevance is that at that

1 not the first or second.

2 JUDGE STEINBERG: I will tell you what, if there is no
3 objection. Why don't you make a note to ask Ms. Marshall
4 about this? Are you going to ask for Ms. Marshall on cross?

5 MR. SHOOK: Probably.

6 JUDGE STEINBERG: Okay. And --

7 MR. SHOOK: Oh, yes. I mean, the answer is yes. I
8 misunderstood your question. The answer is yes, and we will
9 ask her on cross-examination.

10 JUDGE STEINBERG: Okay. So why don't you ask
11 Ms. Marshall -- well, basically clarify the sentence if you
12 can, with the Bureau's objection in mind; I mean, and the way
13 I read it. I frankly read it the way the Bureau read it.

14 MR. SHOOK: Okay.

15 JUDGE STEINBERG: And if it is -- you come in and out

1 in this case. This is essentially legal argument, focusing on
2 the motion for summary decision, which you have already ruled
3 on.

4 JUDGE STEINBERG: Okay. Let me hear from
5 Mr. Schattenfield, first with respect to paragraph 6.

6 MR. SCHATTENFIELD: Okay. The Commission, the Mass
7 Media Bureau, took to task certain statements which appeared
8 in pleadings and which were filed with the Commission, and
9 Ms. Marshall's state of mind was that she was being accused of
10 deceit, and this reflects her response to that. The
11 Commission's opposition, the Mass Media Bureau's opposition to
12 the motion for summary decision seemed to delve into the legal
13 argument of counsel in order to support their claim of
14 misrepresentation which, at first blush, we were somewhat
15 amazed about. And then, of course, the question is, was

1 portion is stricken. Does everybody understand that?

2 MR. SHOOK: Yes.

3 MR. SCHATTENFIELD: From the first sentence on?

4 JUDGE STEINBERG: Yes. From "I have read" through
5 "they are baseless."

6 MR. SHOOK: Okay.

7 JUDGE STEINBERG: Then we will leave in, "The
8 opposition is structured like any other pleading," blah, blah,
9 blah.

10 MR. SHOOK: Okay, thank you.

11 JUDGE STEINBERG: And we will leave in, "Further, I
12 believe in good faith, based upon my review of FCC develop-
13 ments, that the legal arguments were well founded," (period).
14 And strike the rest of that paragraph. And that should take
15 care of your concerns. Now we go to paragraph 7. Let me hear
16 what you have to say about that.

17 MR. SCHATTENFIELD: Well, again, the Mass Media Bureau
18 was taken into -- has challenged statements in the pleadings
19 with respect to the claim that no sanctions were warranted.
20 And instead of looking at it as legal argument of counsel,
21 they are somehow trying to twist that into misrepresentation
22 of the client, which is really unfair on various grounds.

23 Number one, clients can argue to a jury that the guy
24 who committed murder is not guilty, and he is guilty, but that
25 doesn't mean the client who is guilty of murder is misrepre-

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1 | sending. And what she is saying there is that, at the time
2 | the argument was made, it was not clear that any sanctions
3 | should be imposed based on them; and that there has been a
4 | change in the law since then, which was not available to her
5 | at the time that she wrote the pleading.

6 | But the bottom line is, the Mass Media Bureau, the
7 | Commission and no court in the world would hold Dixie respon-
8 | sible for legal arguments concerning the nature of sanctions
9 | to be imposed. And if she wants to make that clear, that is
10 | what she is saying. But she is saying that she made the
11 | argument in good faith based on the law at that time.

12 | JUDGE STEINBERG: Okay. I will sustain the objection
13 | in part. Paragraph 7, leave in "I recognize now" through "at
14 | least in my mind." Then the remainder of the paragraph, "I
15 | made a similar argument to the FCC in July 1989," through the
16 | end of the paragraph will be stricken.

17 | MR. SCHATTENFIELD: The last sentence, what it does is
18 | show that the basis for her belief was not unfounded, but she
19 | made a statement based on her knowledge. But I don't think it
20 | makes a lot of difference either way. The point is that is
21 | Dixie should not be held responsible for legal arguments based
22 | on facts.

23 | JUDGE STEINBERG: Okay. Well, I think that is -- I
24 | think from that what is left in, her state of mind is clear.
25 | I think that is what you are trying to protect. Mr. Shook?

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1 MR. SHOOK: Your Honor, we have no other objections to
2 this exhibit.

3 JUDGE STEINBERG: Okay. On page 19, there is a
4 reference to, the third line from the bottom, "admissions
5 request, Attachment J," should that be stricken? It sounds
6 like it came from an earlier version of something.

7 MR. SHOOK: Well, it came from the admissions request
8 in this proceeding, and I guess I know what it means.

9 JUDGE STEINBERG: It doesn't mean anything to me.

10 MR. SHOOK: No, it doesn't mean anything to you, and I
11 suspect that, you know, because of that it won't mean anything
12 in the record.

13 MR. SCHATTENFIELD: I think you are right, that we can
14 strike that.

15 JUDGE STEINBERG: Yes, let's strike that. It is
16 confusing.

17 MR. SCHATTENFIELD: Because it refers to that the
18 Bureau has already offered and that we can receive anyway.

19 JUDGE STEINBERG: Yes. I have been reading along in
20 the deposition, and so I know what all of that stuff is. And,
21 again, I think on page 22, the third line from the bottom,
22 "provided because I was not confident"? Just a little thing.
23 The third line from the bottom.

24 MR. SCHATTENFIELD: You are right.

25 JUDGE STEINBERG: "Provided because I was not confident

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1 that it was accurate"? Am I right? So that you know I read
2 these things.

3 MR. SCHATTENFIELD: No, no, I don't think so.

4 JUDGE STEINBERG: I had some other objections to this.

5 MR. SCHATTENFIELD: DBI did not provide it because it
6 was not confident that it was accurate.

7 MR. SHOOK: Yes, DBI was not confident, as opposed to
8 Susan.

9 JUDGE STEINBERG: Oh, it was DBI?

10 MR. SHOOK: Yes.

11 JUDGE STEINBERG: Okay. Let's change it to "DBI" then,
12 because that confused me.

13 MR. SCHATTENFIELD: Because DBI was not confident?

14 JUDGE STEINBERG: Yes.

15 MR. SCHATTENFIELD: Okay.

16 JUDGE STEINBERG: Okay. I was confused. I thought it
17 was a typo. Okay. I just have to let you know that I read
18 these things, and I had a few more objections that Mr. Shook
19 didn't bring up, but that will remain a mystery to him. Okay.
20 Exhibit 2 is received.

21 (The document previously identified as
22 DBI Exhibit No. 2 was received into
23 evidence and made a part of the record
24 thereof.)

25 MR. SHOOK: Your Honor, we have our own reasons for not

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1 | objecting to certain things that you might find objectionable.

2 | JUDGE STEINBERG: I didn't say that I found them
3 | objectionable. I just found them subject to objection. Okay.
4 | Let the record reflect humor again. And Ms. Marshall is
5 | desired for cross?

6 | MR. SHOOK: She is.

7 | JUDGE STEINBERG: And so she will appear for cross.

8 | MR. SHOOK: Okay.

9 | MR. SCHATTENFIELD: Let the record show that I have
10 | handed the reporter two copies of Dixie Broadcasting Inc.,
11 | Testimony of Rebecca B. Bramlett -- her deposition of November
12 | 24, 1992, and ask that it be marked for identification as DBI
13 | Exhibit 3.

14 | JUDGE STEINBERG: Okay. The document is 37 pages in
15 | length, and it will be marked for identification as DBI
16 | Exhibit 3.

17 | (The document was marked for
18 | identification as DBI Exhibit No. 3.)

19 | MR. SCHATTENFIELD: We hereby offer it into evidence.

20 | JUDGE STEINBERG: Mr. Shook?

21 | MR. SHOOK: Your Honor, we have -- there is only one
22 | portion to which we object. It begins on page 32, starting
23 | with line 7, and carries over to page 33, line 1. We believe
24 | that those questions and answers are irrelevant. Otherwise,
25 | we have no objection to this exhibit.

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1 JUDGE STEINBERG: To line 1?

2 MR. SHOOK: Right. Page 32, line 7, through page 33,
3 line 1.

4 JUDGE STEINBERG: Mr. Schattenfield? That is the part
5 about --

6 MR. SCHATTENFIELD: That is the two minds. He doesn't
7 discriminate at the station in his whole life, and that goes
8 to it.

9 JUDGE STEINBERG: I will overrule the objection. I
10 think it is part of the whole man.

11 MR. SCHATTENFIELD: You know what we should have done?
12 I'm sorry, off the record. I should have --

13 JUDGE STEINBERG: Let's go off the record.

14 (Off the record.)

15 (Back on the record.)

16 JUDGE STEINBERG: Okay. Any other objection to Exhibit
17 3?

18 MR. SHOOK: None.

19 JUDGE STEINBERG: Okay. Exhibit 3 is received.

20 (The document previously identified as
21 DBI Exhibit No. 3 was received into
22 evidence and made a part of the record
23 thereof.)

24 MR. SCHATTENFIELD: Let the record show --

25 JUDGE STEINBERG: Okay. Do you want Ms. Bramlett for

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1 cross?

2 MR. SHOOK: We do, Your Honor. It may be that we will
3 change our minds on this, but our preliminary view right now
4 is that we do want her.

5 JUDGE STEINBERG: Okay.

6 MR. SHOOK: I mean, I don't want to set -- I would
7 rather have her come. I would rather say yes and have some
8 preliminary arrangements made, and then if we determine that
9 it is not really necessary, we can get together and arrange
10 that.

11 JUDGE STEINBERG: Okay. So Ms. Bramlett will appear
12 for cross. Let me just say that, since they are coming --
13 since the hearing is in Washington, there is going to be a
14 certain amount of expense and inconvenience involved. And I
15 would just urge the Bureau, if you know you don't want her,
16 don't make her come up here.

17 MR. SHOOK: Well, that's -- you know, the power of the
18 government is such that we can make people do things.

19 JUDGE STEINBERG: Yes.

20 MR. SHOOK: And really we don't need to, and that is
21 something that we are thinking through right now, whether we
22 really need to.

23 JUDGE STEINBERG: Yes. You know, on the other hand, by
24 the same token, if she does come up here and you decide that
25 you don't want her, don't think you have to cross-examine her

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1 just because you made her come up here. I am sure she won't
2 be disappointed. Am I right?

3 MR. SCHATTENFIELD: I am sure you are right.

4 JUDGE STEINBERG: Yes. You know, it works both ways.
5 Because I know the nature of the decisions, you know, that you
6 deal with when you are in fast-moving hearing.

7 MR. SCHATTENFIELD: Let me say for the record -- and I
8 discussed this with Mr. Shook and Mr. Schonman -- that if they
9 should decide there are a couple of things that they want to
10 clarify, we can do like my good friend, Mr. Cohen, and I used
11 to do, is meet with the witness by the telephone, and if they
12 would go along with that, we could settle that in a telephone
13 conversation, if that is -- you know, I am willing to do that.

14 JUDGE STEINBERG: Yes. And then you can supplement it
15 with a statement under perjury.

16 MR. SCHATTENFIELD: Or, when she is up here, meet with
17 her. That is what Lou and I did quite a bit, and just ask her
18 the questions you wanted, and then we could enter into some

1 | for identification as DBI Exhibit 4.

2 | JUDGE STEINBERG: Okay. The document described, which

1 MR. SHOOK: Were he to be called, we would request
2 cross-examination.

3 JUDGE STEINBERG: Okay. So --

4 MR. SCHATTENFIELD: But you don't want to call him? Is
5 that it? You would not call him?

6 MR. SHOOK: No, we have -- our direct case is the
7 paper.

8 MR. SCHATTENFIELD: Okay.

9 JUDGE STEINBERG: Okay. So basically, if Mr. Van Horn
10 is called for direct, he will be crossed?

11 MR. SHOOK: Yes.

12 JUDGE STEINBERG: But he is not being called for cross?

13 MR. SHOOK: Yes.

14 JUDGE STEINBERG: Okay. And your intention as of now
15 is to call him?

16 MR. SHOOK: Excuse me. Maybe I misunderstood something
17 here. We weren't going to call him for our direct case. We
18 would call him for cross-examination. I may have
19 misunderstood.

20 JUDGE STEINBERG: Yes, you did. Okay. Now let's start
21 again.

22 MR. SCHATTENFIELD: Now I am unclear.

23 JUDGE STEINBERG: Okay. Let's start again. We have
24 got DBI No. 4.

25 MR. SHOOK: Right, to which we do not object.

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1 JUDGE STEINBERG: DBI No. 4 is received. Now the next
2 question, let me just -- we will forget all that went before.

3 MR. SHOOK: Yes.

4 JUDGE STEINBERG: Does the Bureau want Mr. Van Horn for
5 cross-examination on No. 4?

6 MR. SHOOK: Yes, we do. Yes.

7 MR. SCHATTENFIELD: Okay.

8 JUDGE STEINBERG: Okay. So Mr. Van Horn will appear
9 for cross-examination.

10 MR. SCHATTENFIELD: Now who gets the subpoena? Do we
11 do that, or do you do that if you want him for cross? How
12 does that work? He needs a subpoena. That's all. I don't
13 know whether you get him because you want for cross or we get
14 him because we want him because we want him for direct. I
15 don't know how that works. My point is, if we decide not to
16 call him for direct, does the Bureau have to have a subpoena
17 for him, or do we have to subpoena him?

18 JUDGE STEINBERG: I think you would have to subpoena
19 him since he is your witness.

20 MR. SCHATTENFIELD: Okay.

21 JUDGE STEINBERG: In essence. And, I mean, if he
22 doesn't appear for cross, his testimony gets stricken, I
23 guess.

24 MR. SCHATTENFIELD: Gotcha.

25 MR. SHOOK: Okay.

1 JUDGE STEINBERG: Okay. Mr. Schattenfield, when he is
2 put on the stand, you may want to ask him additional direct
3 questions.

4 MR. SCHATTENFIELD: Yes.

5 JUDGE STEINBERG: Okay. And Mr. Shook doesn't have any
6 problem with that?

7 MR. SHOOK: I have no problem with that.

8 JUDGE STEINBERG: Okay.

9 MR. SCHATTENFIELD: Then they can cross-examine,
10 question then.

11 MR. SHOOK: Yes.

12 JUDGE STEINBERG: Okay. Problem solved. It was my
13 misunderstanding that you didn't want him for cross.

14 MR. SHOOK: In my haste, I misspoke.

15 JUDGE STEINBERG: Okay. Let's go to Exhibit No. 5.
16 Identify it.

17 MR. SCHATTENFIELD: Let the record show that I have
18 already handed the reporter two copies of Dixie Broadcasting
19 Incorporated Equal Employment Opportunity Program, and now ask
20 that it be marked for identification as DBI Exhibit 5.

21 JUDGE STEINBERG: Okay. The document, which consists
22 of 15 pages, will be marked for identification as DBI Exhibit
23 No. 5.

24 (The document was marked for
25 identification as DBI Exhibit No. 5.)

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1 MR. SCHATTENFIELD: I hereby offer it into evidence.

2 JUDGE STEINBERG: This is the one where we need a copy
3 of the NAACP letter, and that will be provided at the hearing,
4 and we will make that Attachment 8 to this.

5 MR. SCHATTENFIELD: Okay.

6 JUDGE STEINBERG: So. Now did I say that it was
7 identified? I will say it again. The document described will
8 be identified as DBI Exhibit No. 5.

9 MR. SCHATTENFIELD: I hereby offer it into evidence.

10 JUDGE STEINBERG: Better to say something twice than
11 not at all.

12 MR. SHOOK: Well, speaking of saying something twice,
13 we object to this exhibit in its entirety.

14 JUDGE STEINBERG: Okay. For the reasons that I
15 previously stated with respect to that portion of Exhibit 1, I
16 will receive the exhibit. Again, I will say that when I get
17 the findings and the replies and the arguments of law, then I
18 think I will take a look at it and see maybe if my rationale
19 that I expressed is incorrect or inappropriate. If it is
20 Commission position not to consider it, you had better believe
21 I won't consider it. But I don't want to make policy. I
22 would rather follow policy. And to be candid with you, I
23 didn't realize that there was a line of cases such as Rust.
24 So that will be open for argument later. So Exhibit 5 is
25 received.

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