

1 relative to the presence of African-Americans in the labor
2 force. Is that what this is conveying to you?

3 A Yes, sir.

4 Q And do you recall having read this at about the time it
5 was submitted to the Commission?

6 A I've already said I don't have any specific
7 recollection of reading this, but I'm certain that I did.

8 Q Well, I mean, in, in this, this paragraph, does it not
9 tell the Commission that not only is this station good in the
10 sense that it hires minority group individuals, but that the
11 percentage of their hiring is so good that not only should you
12 not sanction us, Commission, you should be giving us an award
13 of some kind?

14 MR. SCHATTENFIELD: I object to the characterization.
15 Go ahead.

16 WITNESS: It does not say that the station should be
17 given an award. You know, I can read this into the record if
18 you want. It says what it says.

19 BY MR. SHOOK:

20 Q No, I know it says what it says.

21 A And, and it does -- I will agree that it says that the
22 station has hired approximately 20 new employees, of which 7,
23 or 35 percent, were African-American. It says that the
24 station's effort were very successful despite the fact that
25 there are only 7.4 percent African-Americans in the local

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1 labor force.

2 Q Do you recall having any discussions with Susan about
3 this in terms of -- We're talking seven years now. We're
4 talking a relatively small radio station. At this point,
5 you've had a certain number of years of experience in dealing
6 with radio stations. From that, you've probably been able to
7 formulate an idea as to a normal rate of turnover at such
8 stations.

9 A I don't agree with that.

10 Q Okay.

11 A I don't agree, I don't agree with the characterization
12 that I was able to formulate what's a normal rate of turnover.

13 Q Why don't you, why don't you help me out then?

14 A Because it's different and stations vary in their
15 degree of turnover. As I described before, the contacts that
16 I had had with this licensee were fairly sporadic over the
17 years and it was my distinct impression that it was a very
18 small station. They probably had a fairly stable staff.
19 And --

20 Q So, in other words, the factual statements here didn't
21 strike you as --

22 A This is --

23 Q -- nonremarkable?

24 A This is not something that leaped out and grabbed me at
25 the time and, and said wait a second, this can't be right. I

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1 have learned subsequently some things that -- Now I realize
2 this is not right. But at the time it did not strike me as
3 being something that was so far out of proportion that it just
4 couldn't possibly be true.

5 Q All right. And the context of, of the review would
6 have been you reading through the supplemental report, and, so
7 far as you can tell, the supplemental report appears to be
8 factually accurate?

9 A Correct. It would have been a relatively cursory
10 review. Ms. Marshall was employed at Arent, Fox when I
11 started here, so she's actually been doing communications --
12 actually doing communications a little longer than I have been
13 and she had this -- I also knew her to be very, very cautious
14 and very careful, and if she had put -- if it was
15 approximately 20 here, I would have accepted that as being
16 accurate.

17 Q Okay. Do you have any idea as to where that number,
18 approximately 20, came from?

19 A No. I, I would presume -- I can tell you at the time
20 that my presumption would have been that this came from the
21 licensee, either Mr. Bramlett or some source at the station.

22 Q Did you have any recollection at the time this was
23 being prepared and submitted that in the EEO program the
24 licensee had told the Commission we hired 12 persons and that
25 none of them are minorities for one year?

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1 A I didn't at the time, and the reason I didn't was
2 because in reviewing this -- You go back and you -- I, I, I
3 agree with you that you can put all these things in the book,
4 as they are before me now, and you start going through the
5 book and review these things seriatim, one after another, you
6 can see that it couldn't be this way.

7 But if you look at the dates on which these things were
8 prepared, you will see that there are -- one was prepared one
9 date, and then there's a fairly lengthy gap before the next
10 one is prepared. What I did not do, and this may have been a
11 failing on my part, I didn't line up everything that we had
12 filed before and review all of that in sequence before looking
13 at this.

14 Q Well, that's one of the things --

15 A This came, this came onto my desk --

16 Q Cold?

17 A -- cold. I would have gone through it pretty quickly
18 and I -- based on what I saw there. I didn't see anything that

1 his review. And I notice there is a statement attached from
2 him that says that. So I, I would not have had anything there
3 to cause me to believe that, that I had to give this some kind
4 of searching examination of the underlying facts.

5 Q All right. With respect to the statement by
6 Mr. Bramlett, you didn't have any role in preparing or sending
7 that for him, did you?

8 A No, sir.

9 Q Do you recall having any conversations with him at this
10 time, this time meaning July of -- or April, rather, of 1991,
11 you know, relative to the factual accuracy of the material?

12 A No, sir. I -- And I doubt that any such statements or
13 any such conversations or contacts took place.

14 MR. SCHATTENFIELD: Are you going to the next letter?

15 MR. SHOOK: Yes.

16 MR. SCHATTENFIELD: Good break time.

17 MR. SHOOK: Okay.

18 (Brief recess.)

19 (Back on the record.)

20 BY MR. SHOOK:

21 Q Moving on to Attachment G, this is an October 15, 1991,
22 letter from Susan Marshall to Glen Wolf, and it is four pages
23 in length. Now, Mr. Van Horn, have you ever seen this letter
24 and the accompanying statement before?

25 A Yes.

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1 Q What if any role did you have in the preparation of the
2 statement from Mr. Bramlett?

3 A My recollection is that I -- Well, I should say I don't
4 have any real specific recollection, but I am certain I would
5 have discussed this with Ms. Marshall and would have -- This
6 is the draft that she would have prepared and I would have
7 reviewed it.

8 Q All right. Well, I'd like to focus your attention on
9 this statement, specifically paragraph 3.

10 A Yes.

11 Q Do you recall having discussed the information in
12 paragraph 3 either with Ms. Marshall or with Mr. Bramlett?

13 A I don't recall discussing this with Mr. Bramlett.

14 MR. SCHATTENFIELD: Is that the paragraph beginning
15 "The July 28 report"?

16 MR. MCCARTIN: Tom, you're on the wrong document. It's
17 October 15th.

18 MR. SCHATTENFIELD: Oh, I'm sorry.

19 WITNESS: This is paragraph 3 that begins "I have
20 prepared this statement"?

21 BY MR. SHOOK:

22 Q Yes, sir.

23 A I don't remember discussing that with Mr. Bramlett. I
24 probably did discuss this with Ms. Marshall in the nature of
25 what I would call like a status update from her that this is

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1 what she was doing.

2 Q All right. Do you recall anything of the substance of
3 that conversation?

4 A Nothing beyond what I just told you.

5 Q All right. Do you recall noting here that the EEO
6 branch has an apparent problem with the number of hires being
7 represented for a 7-year period relative to the number of
8 hires that took place during a 15-month period?

9 A Yes. And I remember Ms. Marshall telling me that she
10 was receiving calls from -- there was some question about the
11 number of new hires. I have a little bit of trouble fixing
12 this, when those conversations with Ms. Marshall took place,
13 but I remember that she was having some difficulty trying to
14 reconcile what Hope Cooper was telling her with her own
15 computations.

16 And she couldn't understand the methodology, she had
17 trouble understanding the methodology that Ms. Cooper was
18 using to say that there was some discrepancy because, at least
19 at first, Ms. Marshall didn't believe that there was a
20 discrepancy. She tried to explain to me what the rationale
21 for Hope Cooper's problem in the numbers was. And because she
22 didn't really understand it, she couldn't really explain it to
23 me.

24 Q All right. Did that in turn, though, trigger, you
25 know, any call on your part to Hope Cooper --

1 | A | No.

2 | Q | -- and say what are you doing here?

1 the first time that I saw it.

2 BY MR. SHOOK:

3 Q All right. Do you recall the conversation that is
4 referenced there? Not so much between Hope Cooper and your
5 attorney, which apparently means Susan Marshall, but Susan
6 coming to you --

7 A It does.

8 Q -- and saying, you know, I'm having these further
9 conversations with Hope and this is what's happening?

10 A As I said before, I, I remember, I remember a series of
11 conversations that I had with Ms. Marshall about the problem
12 that she was having with Ms. Cooper concerning the accounting
13 for the number of new hires by the stations. But I, I can't
14 really fix when those conversations took place or exactly what
15 was said in each one of them or to say that yes, there was a
16 specific conversation about this letter or something --
17 anything of that sort.

18 Q All right. Do you recall having any conversation with
19 Mr. Bramlett relative to this letter?

20 A I, I had no such conversation.

21 Q Okay. Nothing to the effect that, you know,
22 Mr. Bramlett, we may be getting into some serious difficulty
23 here because the Commission is of the belief, whatever that
24 belief may have been?

25 A No. No, no such conversations took place.

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1 Q All right. Moving on to Attachment I, which -- All
2 right, Attachment I is approximately 10 page -- no, 8 to 10
3 pages in length. Do you recall having anything to do with the
4 preparation of any of the materials in Attachment I? And I'll
5 let you look through it here.

6 MR. MCCARTIN: Is this dated January 13, 1992?

7 MR. SHOOK: Yes, it is. It's a letter dated
8 January 13, 1992, from Susan Marshall to Glen Wolf.

9 (Off the record.)

10 (Back on the record.)

11 WITNESS: This would have been prepared along the same
12 basic procedures that we followed with the other documents.
13 This document was written by Ms. Marshall. I would have
14 reviewed it --

15 BY MR. SHOOK:

16 Q In the course of reviewing it, did you have any
17 conversations with Mr. Bramlett about the information in here?

18 A I believe so in this case, because I believe this one
19 was prepared after the payroll records that we -- I had
20 originally been under the impression were unavailable had now
21 been discovered. And there may have been a conversation with
22 him about the potential ramifications of that discovery.

23 Q And what was the substance of that conversation about
24 those ramifications, if you can recall?

25 A If you'll remember, up to now I have been thinking that

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1 | the stations were basically ^{factually} reporting conditions. When it
2 | became apparent that we had been saying approximately 20
3 | people had been hired and now we'd found records showing that
4 | in fact it was 4 or more times that number, that immediately
5 | raised concern in my mind that we were looking at a much more
6 | potentially serious problem because of the inconsistency
7 | between that representation and the prior representations that
8 | had been made in preceding filings. And I, I -- At some point
9 | here, I, I personally called Mr. Bramlett to bring to his
10 | attention that we now had a potentially much more serious
11 | matter on our hand than I had heretofore believed.

12 | Q Do you recall what if any reaction Mr. Bramlett had to
13 | that information?

14 | A He wasn't pleased, I'm sure. I don't really have a
15 | specific recollection about anything that he said to me or
16 | any -- the nature of what his response was.

17 | Q As, as you've indicated, the discrepancy that the
18 | Commission could conceivably have a problem with is that on
19 | the one hand or in an earlier submission or series of
20 | submissions the stations had been reporting approximately 20
21 | new hires over the license term and now it was reporting a
22 | much higher number.

23 | Did Mr. Bramlett react in any way to the apparent
24 | understanding of the Commission that Dixie had had only 20 new
25 | hires over the course of the license?

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1 A Could you try that question again? Did Mr. Bramlett
2 react in any way to the apparent understanding of the
3 Commission that there had only been 20 new hires? I don't
4 understand what the question is.

5 Q Okay. Dixie's been reporting to the Commission, at
6 least twice now that we're --

7 A Um-hum.

8 Q -- certain of, that it had approximately 20 new hires
9 over the 1982 to 1989 license term. Now the Commission is
10 going to learn that there are many more hires. Did
11 Mr. Bramlett say anything to you or react in any way to the
12 information about the number 20 having been reported, reported
13 previously? In other words --

14 A I'm not sure that -- I, I think you may be
15 mischaracterizing something a little bit. I'm not --

16 Q If I am, please straighten me out.

17 A I'm not sure that, that I, I told him, as you seem to
18 think, gee whiz, Mack, you said 20 and now there's a lot more.
19 I think it was more like I was saying we've been going along
20 under the assumption that we didn't have any records and now
21 we've got records and now there are all these hires that we
22 have that we haven't said anything about. So I'm not sure
23 that I made that stark of a contrast in the conversation
24 between the number 20 and the number 83 or 100, that it was
25 really presented to him in that distinct a manner.

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1 Q Okay. Yeah, I don't mean to suggest that that is
2 exactly what you said or I'm, you know, I'm not trying to put
3 words in your mouth. I'm just trying to get a flavor for what
4 the conversation was, what his reaction was, and, you know, if
5 I can trigger anything in your memory.

6 A The, the only thing that I -- The recollection here is
7 very hazv. I apologize for that. but that's just the way it

1 beginning with "However." All right, in the information --
2 Well, my question is, is do you recall having -- or do you
3 recall discussing with Mr. Bramlett here the, you know,
4 difference between the approximate 20 and the determination
5 that there were 83 new hires?

6 A No, I don't. I, I was again of the concern that we
7 had -- As I look back over the records, this isn't entirely
8 correct, but I was, I was of the concern that we had, had been
9 saying we don't have any records and now we do have records.
10 That was the thing that I was -- that I really focused on when
11 this stuff came to light.

12 Q All right. Moving on to Attachment J, which, you'll be
13 happy to know, is pretty much the end of the line here --

14 MR. SCHATTENFIELD: What's Attachment J, the
15 February --

16 MR. SHOOK: That's the February 7, 1992, letter from
17 Susan Marshall to Glen Wolf, and there are some 300 pages
18 worth of materials in here and I do not intend to go through
19 all of them.

20 MR. SCHATTENFIELD: Go ahead.

21 BY MR. SHOOK:

22 Q Now, did you have anything to do with the preparation
23 of the supplementary materials that are attached to this
24 letter, the February 7 letter?

25 A It was the same sort of general oversight and

1 | supervisory role that I had played with respect to the prior
2 | submissions.

3 | Q All right. Do you recall what if any fact-checking
4 | there was with respect to the information that appears
5 | beginning in Exhibit 1 of the supplementary materials, and
6 | there, there are a list of names and dates indicating people
7 | who were hired and what their job was and when they left the
8 | station, relative to the payroll records that appear as
9 | Exhibit 3?

1 persons who are noted in Exhibit 1 constituted hires, whereas
2 the 57 persons who are noted as Exhibit 2 did not, do you have
3 any knowledge as to who made the determination whether
4 somebody should be in Exhibit 1 or, or Exhibit 2?

5 A I don't know.

6 Q Focusing on the first page of the supplementary
7 materials, and if you could take a minute to read through
8 Footnote 2 that appears on page 1 of the supplementary
9 materials.

10 A Is that the one that begins "It should be noted...."?

11 Q Correct.

12 (Pause.)

13 WITNESS: Yes, I've read it.

14 BY MR. SHOOK:

15 Q Did you have any role in checking -- or in ascertaining
16 the accuracy of the factual information contained in the
17 footnote?

18 A No.

19 Q Mr. Van Horn, I thank you for coming. I'm finished,
20 but there may be some questions from Mr. Schattenfield and
21 McCartin.

22 MR. SCHATTENFIELD: Let's go off.

23 (Off the record.)

24 (Back on the record.)

25 CROSS EXAMINATION

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1 BY MR. SCHATTENFIELD:

2 Q We just have a few questions. I want to refer you to
3 your letter of July 28th, 1989, which was the cover letter to,
4 to the resubmission of the opposition to the petition to deny,
5 and that was, that was being done in response to a letter from
6 the Commission of July 3, 1989.

7 You testified in response to a question from Mr. Shook
8 that you did that because you did not believe there were any
9 records and, therefore, that everything you had to say, you
10 know, you or -- we had to say or Mack Bramlett had to say was
11 set forth in the opposition to the petition to deny.

12 However, if you'll look at the last sentence in the
13 second paragraph, the statement is made, and I quote, "The
14 information the requested by Mr. Wolf's office is contained in
15 the text of the opposition." Do you believe that the
16 information requested by -- in the Commission letter of
17 July 3, 1989, all the information requested in that letter was
18 contained in the opposition?

19 A The way this -- Well, the answer is no, because we, we
20 obviously didn't have enough records to really provide that
21 information.

22 Q And why did you not say that in your cover letter of
23 July 28th, 1989?

24 A Because I'm a bumbling idiot. The sentence should have
25 said "The information requested by Mr. Wolf's office, to the

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1 extent available, is contained in the text of the opposition."
2 And it was just -- it was done not as carefully as it should
3 have been. That's the only explanation I ^{can} come up with, it was
4 not, it was not well phrased.

5 Q Okay. Are you appearing here today pursuant to
6 subpoena served on you by the Mass Media Bureau?

7 A Yes, I am.

8 Q Are you represented by an attorney here?

9 A No.

10 Q Brendan Sullivan didn't show up then?

11 A He's, he's the potted plant.

12 Q Now, some time in I believe it was January 1992 you
13 learned from Susan Marshall that Mack Bramlett had found
14 employment records going back for many years. Is that
15 correct?

16 A Correct.

17 Q It was at that time, you testified, that you, you
18 formed the opinion that this case was far more serious than
19 your initial evaluation when you thought only reporting
20 conditions would be assessed?

21 A Correct.

22 Q At that time --

23 A -- said potentially far more.

24 Q Potentially. Pardon?

25 A Potentially far more serious.

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1 Q At that time, did you or did Mack Bramlett, to your
2 knowledge, ever give any consideration to not providing the
3 information contained in the payroll records which had been
4 discovered to the Commission?

5 A As far as I'm concerned, I never gave any consideration
6 not to disclose. It was absolute that we would disclose them
7 all the way. And I, I don't -- There was never any ~~time~~ ^{time} to my
8 knowledge, where Mr. Bramlett said do we have to disclose this
9 stuff or gave any consideration not to disclose.

10 Q Now, I'm going to refer you to our response on behalf
11 of Dixie, or the response filed on behalf of Dixie, together
12 with our cover letter of October 15, 1991.

13 A Okay, I have it.

14 Q Okay. Now, during the course of questioning by
15 Mr. Shook earlier today, you indicated that some time during
16 this period, and you weren't exactly sure when, you had
17 learned that Hope Cooper was having problems with the 20 new
18 hires that had been set forth in our pleadings. Do you recall
19 that?

20 A Yes.

21 Q Was, was that information concerning the conversation
22 with Hope Cooper passed on to you prior to the submission of
23 the October 15 response?

24 A That I, I don't really know. I know there were several
25 conversations that I had with Susan, brief conversations,

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1 | about her conversations with Hope Cooper. And I, I really |
2 | can't fix when any particular conversation would have taken |

1 questions that he has asked me were not.

2 Q So it was topical as opposed to specific questions and
3 answers?

4 A Yes.

5 Q Thank you.

6 MR. SHOOK: No further questions. Signature?

7 MR. SCHATTENFIELD: Going into that is kind of
8 improper, but that's all right. I didn't object -- in this
9 case.

10 MR. MCCARTIN: You can explain it to him because I'm
11 not his attorney.

12 MR. SCHATTENFIELD: That was all right.

13 MR. SHOOK: I didn't do it with Susan.

14 MR. SCHATTENFIELD: No, I know. For your -- For, for
15 the record, the way I operate is if I think there are holes in
16 the record where timing or other things were not covered, I
17 ask the witness what he recalls about that and if he tells me
18 what he recalls, I then ask him a question. I never told you
19 what to say, I'm sure of that.

20 WITNESS: You did not tell me what to say. And
21 everything that I have said has been truthful, in any event.

22 MR. SCHATTENFIELD: I'm aware of that. You want to
23 waive signature? You don't, do you? You want to read your
24 deposition and then make --

25 WITNESS: I want to read every golden word.

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1 MR. SCHATTENFIELD: Okay.

2 MR. SHOOK: Mr. Van Horn, thank you for coming.

3 (Signature not waived.)

4 (Whereupon, at 12:00 p.m., on December 11, 1992, the taking
5 of the instant deposition was ceased.)

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1 CERTIFICATE OF REPORTER

2 I hereby certify, as the Reporter, that the witness,
3 DANIEL VAN HORN, whose testimony appears in the foregoing
4 deposition testified under penalty of perjury, that the
5 testimony of said witness was duly recorded and accurately
6 transcribed by me or under my direction; further, that said
7 proceedings are a true and accurate record of the testimony
8 given by said witness; and that I am neither counsel for,
9 related to, nor employed by any of the parties of this action
10 in which this deposition was taken; and further, that I am not
11 a relative nor an employee of any of the parties nor counsel
12 employed by the parties, and I am not financially or otherwise
13 interested in the outcome of the action.

14
15 David B. Denson

16 DAVID B. DENSON
17 Notary Reporter in and for the
18 State of Maryland

19 My Commission Expires:

20 August 14, 1995
21
22
23
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

Dixie Broadcasting, Decatur, Alabama

Name

92-207

Docket No.

Washington, D.C.

Place

December 11, 1992

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 74, inclusive, are the true, accurate and complete transcript prepared from the reporting by David B. Denson in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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