

1 disputing the view at this point that you cannot question the
2 station witnesses as to their, as to their lists and whether
3 or not they met these needs with their -- listed in the issues
4 programs lists. I'm not questioning that. I'm questioning
5 whether these individuals' testimony is relevant to that
6 subject. If in their judgment they feel that it doesn't show
7 discussion of service organizations like Salvation Army, etc.,
8 etc., didn't list any program addressing the material medical
9 or psychological needs of the homeless. I mean, who are these
10 individuals? Are these individuals experts?

11 MR. HONIG: Yes, they are.

12 JUDGE CHACHKIN: Well --

13 MR. MAY: If I may use an example, the declaration
14 that we exchanged yesterday by itself of Dr. Shea, she is a
15 professor of education at the University of Miami.

16 JUDGE CHACHKIN: That's the one submitted late, is
17 it?

18 MR. MAY: That's the one submitted late.

19 MR. HONIG: She is an expert on education. She
20 teaches educators. And what she has said is really two
21 things. One is that, although there's a lot of programming on
22 education, there's little instances where public school staff
23 appear in the programming, that much -- most of it is non-
24 local, that here are some examples of, of areas such as
25 language instruction, programs for immigrant children which is

1 a problem unique to south Florida where there are tens of
2 thousands of them who don't speak English who come into the
3 school, that are not addressed, at least in the issues
4 programs lists and that there's nothing on post-secondary
5 education. I think that's relevant evidence and it ought to
6 be considered.

7 JUDGE CHACHKIN: When we talk about issues programs
8 lists, the station is not required to list every -- all and
9 everything that they carry, are they?

10 MR. HONIG: No, but what they present is
11 illustrative of what they're holding out for the public as
12 responsive and, fortunately for us, Trinity has developed
13 very, very extensive lists which include -- I think it's not a
14 -- and more representative illustration of what they, what
15 they broadcast. I don't know if it's everything, but it
16 certainly is a lot of material.

17 MR. MAY: Well, Your Honor, I can only say that in
18 the deregulation that occurred in the early 80s the idea --
19 the traditional top ten programs and then you had to show
20 programs addressing all of those is long since fallen away and
21 that stations are now required to conduct ongoing
22 ascertainment in a fashion they believe reasonably calculated
23 to bring them to the place where they understand what the
24 needs and issues of their community and then select among
25 those as to the issues they then will treat with their

1 programming and provide that in the issues programs lists.
2 There is not a universal requirement that all such issues be
3 treated. And so just choosing the statement that was provided
4 by Kathleen Shea, just referred to by Mr. Honig, she says a
5 glowing omission from the issues problems lists is programming
6 dealing with post-secondary education, one of the things that
7 he mentioned.

8 MR. HONIG: Well, I mean, we'll argue the relevance
9 of that later but, I mean, that's the kind of thing you're
10 looking at that we don't believe is particularly relevant and,
11 therefore, we'd like to be able to conduct some examination on
12 it. He's also mentioned that he believes these individuals
13 are experts in some way, yet there's not a bit of showing
14 provided that they're "experts" in any way. I guess we would
15 be able to get into that, as well.

16 JUDGE CHACHKIN: Well, all I can say, Mr. Honig, if
17 you want to submit these documents into the record the parties
18 have a right to cross-examine your witnesses and they will do
19 it by way of deposition. If there are any objections to the
20 relevancy of this material -- of the declarations, that will
21 be done at the time that we have our admissions session. But
22 as long as you want to put forth these documents, if there is
23 any argument questions raised as to relevancy of any questions
24 put to these witnesses and if it goes outside the scope of the
25 declarations in your judgment, I will have these documents and

1 | you can call me and I'll make a ruling whether or not they're
2 | admissible or not. When are these depositions to be taken
3 | anyway? Sometime --

4 | MR. MAY: September 7th through October 7th, I
5 | believe.

6 | JUDGE CHACHKIN: Well, I'll be here and make a
7 | ruling if I have to, but I presume that the parties will --

8 | MR. COHEN: We don't want you to leave your office,
9 | Your Honor, from September 7th to October 8th including
10 | Saturdays and Sundays.

11 | JUDGE CHACHKIN: Well, I don't know if I'll agree to
12 | that. In any event, I don't think there'll be too much
13 | problem. I mean, I think -- it seems to me that there's
14 | material here and the parties can certainly question the
15 | expertise of these individuals and their viewing habits and
16 | what have you, so I will permit the parties to conduct cross-
17 | examination by way of deposition which I think would be a
18 | satisfactory method. I don't think it's a question of
19 | credibility and requires me to listen to the testimony, to
20 | question if they're developing the facts, and that could be
21 | done it seems to me by way of deposition without my being
22 | present. Is that it?

23 | MR. MAY: Your Honor, I have one other item --

24 | JUDGE CHACHKIN: Go ahead.

25 | MR. MAY: -- and that is the timeliness of the

1 submission. SALAD did present 11 declarations on the day that
2 they were supposed to and they then yesterday have submitted
3 another. I mean, it's a little awkward to sort of talk about
4 it, but since June 24 we've all been on notice and we squawked
5 most of all about the time frame within which to get this
6 material together and we just believe that since it is
7 submitted late perhaps we could limit it out and not have to
8 deal with it when we go down and take the depositions because
9 it is submitted out of time.

10 JUDGE CHACHKIN: Well, I don't think the one day
11 late is a big deal considering we're not dealing here with a
12 -- we're dealing with someone who's acting -- not a
13 communications law firm. We're acting -- we're dealing with a
14 situation here where it seems to me a little discretion is
15 warranted. I don't think the parties are handicapped by
16 receiving the documents -- one declaration one day late. If
17 all the declarations were received late I could understand the
18 concern, but the fact that one document was received late is
19 not going to affect the depositions to be taken in September,
20 so in light of all the circumstances, I'm prepared to overlook
21 it and allow them to go forward with the 11 declarations.
22 Anything else?

23 MR. HONIG: 12 declarations.

24 JUDGE CHACHKIN: 12 declarations. Anything else?

25 MR. MAY: And then there's basically two other items

1 we have. They both involve the SALAD matter.

2 JUDGE CHACHKIN: All right.

3 MR. MAY: That is that I've kind of gotten over the
4 last several days a whole collection of different
5 transmissions and sheets and material and the like. You did
6 request and order the parties in the notice that we provide
7 this bound with tabs. I wonder if that's impossible to try to
8 get that. I -- just it's -- I've got so many papers and faxes
9 coming from Mr. Honig that I'm kind of losing track of the
10 paper, frankly, Your Honor, even though it's only 12
11 declarations and the like.

12 JUDGE CHACHKIN: You want him to somehow put this in
13 some kind of bound --

14 MR. MAY: That's what you ordered.

15 MR. HONIG: Your Honor, the order contains a
16 footnote requiring that the exchange of written direct cases
17 be bound and tabbed, but that is for the November 8th
18 exchange. We had not understood that that was required here.
19 If counsel needs a cleaner set, I'd be happy to provide him
20 with one.

21 JUDGE CHACHKIN: I think the parties can work
22 something out. Mr. Honig does understand that the exhibits
23 will be bound and that was a reasonable interpretation. We're
24 only dealing with 12 documents so I don't think --

25 MR. MAY: It's just I've gotten them in so many --

1 JUDGE CHACHKIN: Well, these are the only documents
2 that you have to concern yourself with. The other is just
3 correspondence, what have you.

4 MR. MAY: Last, Your Honor, and this is kind of a
5 sensitive matter and I, I want to bring it out in the open
6 session here so we can -- and perhaps you can help us with --
7 mediate through these things. In the transmittal that was
8 provided by Mr. Honig he goes to some length in his letter to
9 you to describe the difficulty he had in getting his
10 statements together and he goes on and makes claims that some
11 people were fearful and that, while the station hasn't aired
12 any, any programming or broadcasts identifying "opponents" by
13 name, it's aware that it's done so in other instances and
14 gosh, it's this veiled idea that maybe this is the reason he
15 had problems providing the statements that he provided. And
16 maybe it's not. Maybe I'm just being oversensitive to it and
17 so that's why I wanted to raise it in this context. I just
18 don't know that that's the right kind of thing to be putting
19 into the trier of fact and I didn't know what else to do with
20 it.

21 JUDGE CHACHKIN: Well, I agree with you. I think
22 unless you have some evidence of impropriety, I don't think
23 that it serves any purpose by raising the specter that there
24 may have been something done wrong or something. I don't see
25 how that advances the ball.

1 MR. HONIG: Your Honor, the intent of this, and I
2 hope it made this clear, was not to accuse Trinity of any
3 impropriety. We explicitly -- that. But simply to point out
4 now a matter that we felt you should know, and that is that we
5 had witnesses who told us that because of their fear of
6 retaliation, of being in a difficult position, they would not
7 come forward to present evidence to a government agency. I
8 hope it will not be an issue in the matter. I don't think
9 that Trinity has conducted itself in a way which has abused
10 the process and I hope that they won't do that, but I think
11 that it's important that Your Honor know that, that this is
12 somewhat of a factor in the difficulty in getting the people
13 to come forward in this case. Fortunately, I think that we
14 got 12 people who did come forward who have presented what we
15 need presented and I'm not dissatisfied with the resulting
16 package.

17 JUDGE CHACHKIN: Well, I just don't think it serves
18 any purpose to include in the document -- public documents
19 material which seem to indicate that there is some wrongdoing
20 by the station where there's no evidence of any wrongdoing.
21 Whether they're fearful -- television station may be true in
22 any case whether it was this station or any other station.
23 But I don't think it needs saying. I mean, you present the
24 documents that you have and that's what you have and it seems
25 to me that's sufficient, but putting in language which raises

1 questions, speculates about things, without any facts to
2 support it doesn't seem to me putting things like that in the
3 public record is wise, something that should be done. That's
4 all I can say.

5 MR. MAY: I appreciate it, Your Honor, and truly I
6 didn't know what else to do with it but to bring it out.

7 JUDGE CHACHKIN: Well, I can understand your
8 concern. I mean --

9 MR. HONIG: Well, I'll accept that, Your Honor.
10 That's a fair criticism.

11 JUDGE CHACHKIN: If you do, in fact, feel at some
12 time that the station has done something improper, it's
13 threatened anybody, then certainly you certainly should bring
14 it to the Court's attention and we'll have to deal with that.
15 Anything else?

16 MR. EMMONS: Yes, sir, housekeeping matter, Your
17 Honor. I'm not sure that you received a fully signed copy
18 yesterday before you left of the joint request for a
19 Protective Order which we --

20 JUDGE CHACHKIN: Well, as I say --

21 MR. COHEN: That's all academic now.

22 JUDGE CHACHKIN: -- it's academic because what I
23 want is a draft Protective Order listing the documents that
24 you want me to protect and I'll be happy to sign it.

25 MR. EMMONS: I thought you just might want to --

1 just to complete the file and I didn't know whether your file
2 has it, so that's --

3 JUDGE CHACHKIN: Well, I'm just going to dismiss it,
4 the joint request, and await a draft Protective Order listing
5 the documents. All right. Thank you very much and we're in
6 recess until the admissions sessions.

7 (Whereupon, the conference was adjourned at 11:00
8 a.m).

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MM DOCKET NO. 93-75
Docket No. _____

WASHINGTON, D.C.
Place _____

AUGUST 12, 1993
Date _____

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August 20, 1993
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