

1 MR. HOWARD: No, Your Honor, not each of them is. I  
2 believe that it starts with the Miracle Network Telethon. I'm  
3 going with my recollection of Emily Barr's deposition,  
4 testimony here, that the -- that was aired shortly after, but  
5 the preceding three matters were not -- they were projects  
6 that were completed prior to the renewal period.

7 JUDGE SIPPEL: Well then, if they were completed  
8 prior to the renewal period, they should be stricken. I mean,  
9 they were begun and completed before the renewal period?

10 MR. HOWARD: Yes, Your Honor, but this is -- the  
11 document was not prepared for, for this hearing. This is a  
12 document that was prepared at the end of the year just as a  
13 summary of what occurred during the year at the station.

14 JUDGE SIPPEL: Well --

15 MR. HOWARD: Thus, it's -- it would be not be relied  
16 -- we wouldn't -- Scripps Howard would not rely on those  
17 materials, but the document is still -- I think it should be  
18 part of the record in its totality I would think.

19 JUDGE SIPPEL: Well, under my favorite federal rule  
20 of evidence, 403, this could end up being confusing. I mean,  
21 even to -- without a jury because the record goes -- you know,  
22 it sits X number of months and one might lose sight of this.  
23 I'm going to -- yes. I'm going to strike the first three  
24 items to begin with, Expressions, Ed Block and Crystal Ball.

25 MR. GOLDSTEIN: Your Honor, if we turn to VII of Ms.

1 Barr's testimony, the page that starts at 53, she talks about  
2 a number of these activities and on page 56, for example, she  
3 talks about Panel for People which is also on here -- and in  
4 the body of the testimony she says it raised \$55,000. Here is  
5 raises, according to this document, 57, so I think this page  
6 0985 is going to do nothing but lead to confusion.

7 MS. SCHMELTZER: Well, also that Panel for People  
8 was held on October 5th which is after the renewal period, as  
9 well.

10 MR. HOWARD: But it was planned and worked on, as  
11 she testifies, during the renewal period.

12 MS. SCHMELTZER: Your Honor, one concern I had --  
13 this is a problem that Mr. Goldstein brought up at the  
14 deposition and he asked Scripps Howard's counsel that if they  
15 were going to rely on this kind of thing to make sure that we  
16 included projects that were within the renewal period, so  
17 Scripps Howard was on notice that they had ample time to  
18 prepare an appropriate exhibit.

19 JUDGE SIPPEL: Well -- yeah, go ahead, Mr. Howard.

20 MR. HOWARD: The -- I believe that the exhibit -- if  
21 I'm wrong, I apologize. I believe that the exhibit is  
22 appropriately offered as a business record. The testimony  
23 does make clear what did and did not occur during the renewal  
24 period.

25 JUDGE SIPPEL: Well, yeah, but see I'm hearing it

1 different ways and you can't really give me that degree of  
2 certainty. I acknowledge that this is a legitimate business  
3 record. However, it doesn't meet the standards of 403 in  
4 light of I just had to strike three things myself and to have  
5 to parse this out with her testimony and get clarifications on  
6 all of this at this stage of the game, I don't see that to be  
7 a wise use of our time. So I'm going to grant the Bureau's  
8 and the -- Four Jack's motion to strike this document, that is  
9 SH3-0985 which is Attachment Q. Attachment R?

10 MS. SCHMELTZER: Attachment R purports to be letters  
11 from the public. My concern about this is this is a selected  
12 group of letters from the public which are only the favorable  
13 letters. There are a lot more letters from the public and,  
14 frankly, I would prefer not to put them all in the record, but  
15 if I'm faced with this exhibit then I've got to put in all the  
16 letters of complaint. Since we are -- we have public witness  
17 statements, there's really -- the letters that Scripps Howard  
18 routinely got are just totally irrelevant.

19 JUDGE SIPPEL: What is the Bureau's view on that?

20 MR. GOLDSTEIN: Your Honor, this is their exhibit.  
21 I think they have the right to put in whatever they would like  
22 to put in in terms of favorable community response and their  
23 -- is that they did provide all of the letters that were in  
24 their public file and product them for, for Four Jacks and it  
25 will be Four Jacks' burden as rebuttal.

1 JUDGE SIPPEL: Is this -- this is relevant then to  
2 the renewal expectancy?

3 MR. GOLDSTEIN: It's favorable reputation.

4 MS. SCHMELTZER: It's not --

5 MR. GOLDSTEIN: The station's public -- this is  
6 quoting from Metro -- "The station's public file also held  
7 more than 90 letters of accolade received during the one year  
8 license term from local organizations," and it gave credit for  
9 it, so -- but you can make -- the finding you can make is that  
10 the license --

11 JUDGE SIPPEL: That's all right. You don't have to  
12 tell me the findings, but I mean I -- I'm trying to keep this  
13 record down as best I can and these -- if we're going to get  
14 these letters in, then we're going to get Ms. Schmeltzer's  
15 letters in.

16 MR. GOLDSTEIN: So be it.

17 MS. SCHMELTZER: And we also have no sponsor.  
18 There's no -- these documents really --

19 JUDGE SIPPEL: Is your question -- I'm sorry to  
20 interrupt, but is there really -- is there a question of  
21 genuine -- to the genuineness of these documents?

22 MR. GOLDSTEIN: I mean, if the testimony is that  
23 these were in the public files, I'm assuming we accept her  
24 testimony to be to that effect. They explained how she found  
25 them and how they were received and how they were processed.

1 I would certainly be -- respect Ms. Barr's testimony. I think  
2 the critical element here, Your Honor, is that -- if my  
3 recollection is correct, that the total contents of letters  
4 received in the public file were given -- made available to  
5 the Bureau and made available to Four Jacks and, therefore, I  
6 think that Four Jacks can make what use it wants of the  
7 negative letters --

8 MS. SCHMELTZER: Your Honor, then I --

9 MR. GOLDSTEIN: I think it's appropriate that they  
10 do so.

11 MS. SCHMELTZER: If these are going to come in, I  
12 think Scripps Howard should put in the record all of the  
13 letters. Ms. Barr is the only one that could conceivably be a  
14 sponsor of them, so I -- it's hard for me to put in the  
15 record.

16 MR. GOLDSTEIN: No. Absolutely not, Your Honor. If  
17 these letters -- if my recollection again is correct, Four  
18 Jacks requested all letters from the public file. All letters  
19 were produced to them. I think the same characterization and  
20 representation by Ms. Barr that these were letters provided in  
21 the ordinary course of business -- received in the ordinary  
22 course of business would enable Ms. Schmeltzer to introduce  
23 her negative letters -- based upon letters received in the  
24 ordinary course of business. They do not need a specific  
25 sponsoring witness and to the extent they need a specific

1 sponsoring witness, I think it would behoove Ms. Barr to  
2 testify that yes, indeed, these were documents in the record.  
3 I don't think that's a problem.

4 JUDGE SIPPEL: Well, Ms. Schmeltzer's got the  
5 objection.

6 MS. SCHMELTZER: If they come in, I want to put in  
7 the negative letters.

8 JUDGE SIPPEL: Well, how about -- all right. And  
9 the law is clear that this is relevant to the renewal  
10 expectancy albeit it's weight might be something else. All  
11 right. Why not just, why not just stipulate along the lines  
12 of a -- that you have X number of documents that meet that  
13 criteria -- but, however, there are also X number of letters  
14 that would be contrary?

15 MR. HOWARD: No, Your Honor. There were a number of  
16 negative letters that, in fact, Scripps Howard would be proud  
17 to hand in the records criticizing a decision, for example, to  
18 air a -- the telethon rather than the NBA finals game, the  
19 telethon for muscular dystrophy. What is a negative letter is  
20 a very subjective determination, as is what is a positive  
21 letter. There's really no substitute for the documents.

22 MS. SCHMELTZER: Then these letters shouldn't be in  
23 at all.

24 JUDGE SIPPEL: Well, I know that. I made that --  
25 did I make that broad a ruling? Was it really that broad?

1 All right. But these are coming in and, Ms. Schmeltzer, you  
2 can add to them.

3 MS. SCHMELTZER: Okay.

4 JUDGE SIPPEL: So Tab R is going to be received.

5 MS. SCHMELTZER: And I believe that --

6 JUDGE SIPPEL: But you do have the right, Ms.  
7 Schmeltzer, to -- at an appropriate time to offer letters that  
8 you deem to be negative. You can do that at the opening of  
9 the, of the hearing, the hearing session in November.

10 MS. SCHMELTZER: I believe that it complies with all  
11 of the attachments to Ms. Barr's testimony, when we go through  
12 the rest of her testimony, there's some references to things  
13 that were stricken.

14 JUDGE SIPPEL: Well, again, I'm going to -- my  
15 instruction on that would be that, you know, certainly if --  
16 anything that has even been stricken in this -- in these  
17 exhibits, if you're finding an inconsistency between what --  
18 that you have a credibility matter that's been raised with  
19 respect to this evidence, I will permit -- you know, you are  
20 going to have to ask leave to do so, but I will permit  
21 questions with respect to credibility, in other words,  
22 inconsistencies, even though we've stricken it because she has  
23 proffered this evidence to us. I don't think I'm going to see  
24 a lot of that, but I'm -- whatever. We'll take them one at a  
25 time. But, having said that, I'm just expecting that when it

1 comes time to proposed findings anything that has been  
2 stricken out of here is not going to appear in the proposed  
3 findings. I mean, I don't want to have to do anything more  
4 with this testimony in terms of parsing out that which is in  
5 and that which is out. I think the record's going to be  
6 clear. And I'm just -- I'm saying that in response to  
7 something you said, Ms. Schmeltzer. I can't remember exactly  
8 what it was, but you gave me some concern about -- in going  
9 through that some of the things that she's testified to that  
10 may not have been stricken in the narrative may relate to  
11 these tabs that -- and I'm just --

12 MS. SCHMELTZER: Right. This comes up toward the  
13 end of her testimony.

14 JUDGE SIPPEL: Well, as I say, if some of that is  
15 -- if some of those statements in her written testimony are  
16 missed inadvertently or even by selection on your part, you're  
17 not going to be prejudiced by that in the findings.

18 MS. SCHMELTZER: Okay.

19 JUDGE SIPPEL: All right.

20 MS. SCHMELTZER: Thank you.

21 JUDGE SIPPEL: And I also should -- I'm going to  
22 give you a deadline to get copies of those -- what you  
23 characterize as the negative letters. October, October the  
24 26th.

25 MS. SCHMELTZER: This is for an exchange?

1 JUDGE SIPPEL: That's -- exactly, an exchange of the  
2 negative letters.

3 MR. HOWARD: Your Honor, may I object to the -- do I  
4 have an objection -- is this rebuttal testimony that she -- or  
5 is there -- does she have a duty to have these letters  
6 prepared to admit them?

7 JUDGE SIPPEL: I think it's more in the context of a  
8 -- she wants me to see the whole thing. It's like taking out  
9 exhibits of the deposition. You know, you want to see the  
10 good with the bad or the bad with the good. If you're going  
11 to ask me to make a finding on, on the universe of these  
12 complimentary letters that are in the file, she wants me to  
13 see the negative letters that are in that file also.

14 MR. HOWARD: Yes, sir. I understand her right to do  
15 so, but I'm questioning whether she should have an additional  
16 period of time to do so rather than having brought them to the  
17 thing in anticipation that a ruling to strike these would be  
18 granted when, in fact, the law is quite clear that the, the  
19 letters are, are relevant and admissible. There's no question  
20 about whether the -- these matters are admissible.

21 JUDGE SIPPEL: Well, I certainly wouldn't want the,  
22 I wouldn't want the record to be -- as you said, I've been --  
23 I was trying to keep this evidence out and I've been  
24 unsuccessful in doing it because the law doesn't permit me to  
25 keep it out. I'll exercise my discretion and treat Ms.

1 Schmeltzer's arguments as a motion for additional time.

2 MS. SCHMELTZER: But, Your Honor, we weren't  
3 compelled to present anything on Scripps Howard today. It's  
4 just our direct case, so this is in the nature of rebuttal  
5 anyway.

6 MR. GOLDSTEIN: Well, it's -- Mr. Howard, I don't  
7 mean to cut you off, but I'm saying that this is -- I want to  
8 handle this the simple way and to me this is the simple way of  
9 doing it.

10 JUDGE SIPPEL: So you've got -- anyway, you have to  
11 exchange those by the 26th, by close of business, 4:00 p.m. on  
12 the 26th.

13 MS. SCHMELTZER: Yes.

14 MR. GOLDSTEIN: Will we have a session then on  
15 those?

16 JUDGE SIPPEL: No. We'll do -- as I said to Ms.  
17 Schmeltzer, she'll -- she can raise that as a preliminary  
18 matter when we go into -- or at an appropriate time during the  
19 hearing session.

20 MR. GOLDSTEIN: The reason I raised that as a  
21 question, my sense is from Mr. Howard's comments is that there  
22 may be considerable colloquy on the letters in terms of  
23 whether it's indeed a negative letter or how does one  
24 characterize the nature of the letters.

25 JUDGE SIPPEL: If they came from the, if they came

1 | from the file, these are --

2 |           MR. GOLDSTEIN: No, no. I understand that, but what  
3 | was stated by a listener, that they disagreed with something  
4 | or disapproved of something, may be a value judgment which is  
5 | going to require a response on the part of the licensee to  
6 | explain why in their judgment they did the right thing so it  
7 | may not be negative. That's the problem that we're going to  
8 | have to face.

9 |           JUDGE SIPPEL: Well, you see, now you're convincing  
10 | me all the more as to why my instincts were right as to why I  
11 | wanted to keep this out from the beginning. The problem --  
12 | that's a problem that's going to have to be dealt with in  
13 | findings. I mean, I'm not going to spend time comparing  
14 | letters. If they came from the same file as, as Mr. Howard's  
15 | letters came from and Ms. Schmeltzer wants them in, then they  
16 | come in. It's like getting a whole deck of cards. You can  
17 | see them all.

18 |           MR. GOLDSTEIN: I don't disagree with that, Your  
19 | Honor, and I submit that the question that I have is what is  
20 | stated on the face of the letter may not be an accurate  
21 | characterization and if, you know -- but if we all -- let us  
22 | assume that there are a dozen letters with respect to the  
23 | deletion of a particular program because the licensee chose to  
24 | put another thing on which had greater merit, I think to have  
25 | that -- the case remanded to find out why did you take it off,

1 that's not in the record.

2 JUDGE SIPPEL: Well, I'll --

3 MR. GOLDSTEIN: Then your -- was exactly right.

4 Your instincts were right, but I think we're bound to what  
5 precedent establishes this.

6 JUDGE SIPPEL: Well, I'll -- you know, that's one  
7 that I'll let -- yes. We have to change the tape.

8 (TAPE 2)

9 JUDGE SIPPEL: All right. We're back on the record.  
10 Ms. -- that's Mr. Zauner. They're going to have -- they,  
11 Scripps Howard, will have a period of time after receiving  
12 these letters to review and to consider whatever nuances they  
13 may want to raise when we -- when they're moved in and I will  
14 take them in subject to whatever warnings I'm given, but I  
15 don't -- I'm relying upon what the Review Board says to be  
16 relevant and let them -- maybe the problems will be different  
17 when they see them, but this is how I'm going to handle it.  
18 The Review Board can handle it their way.

19 MR. GOLDSTEIN: Thank you, Your Honor.

20 JUDGE SIPPEL: All right. Let's take -- it's almost  
21 11:00. Let's take a 15 minute recess. We'll come back at a  
22 little after 10 after 11:00 by that clock in the back of the  
23 room.

24 (Off the record.)

25 JUDGE SIPPEL: I am going to give an -- on the

1 record. I am going to give an additional instruction with  
2 respect to the use of these letters and that is when proposed  
3 findings -- at the time of proposed findings I'm -- I don't --  
4 I'm not going to permit these letters to be just referred to  
5 as a group and say that these show that we did a good job,  
6 something to that effect. If you're going to really -- if you  
7 want me to really consider this evidence, you know, have it  
8 presented in a meaningful way, and that should be some kind of  
9 a chart form, you know, the date of the letter, a brief  
10 description of the subject and what positive characteristic  
11 are you offering it for. And the same thing on the negatives.

12 MR. GOLDSTEIN: What about the neutral side?

13 JUDGE SIPPEL: I'll just assume anything that's not  
14 negative or positive is neutral. Now --

15 MS. SCHMELTZER: Are you going to go back to Ms.  
16 Barr's testimony?

17 JUDGE SIPPEL: Yes, we will. We will go back to Ms.  
18 Barr's testimony. Let me go off the record for just a minute.

19 (Off the record.)

20 JUDGE SIPPEL: We're back on the record. Do we have  
21 the -- can we take up Exhibit 3A now and then the rest of the,  
22 of the narrative of the Barr testimony? You were right, Mr.  
23 Greenebaum. It's actually his -- hot off the press. That's a  
24 very diligent effort. Why don't we get this marked into the  
25 reporter right away? You have two copies that have been

1 submitted by counsel. The reporter will now mark this  
2 document as Scripps Howard Broadcasting Company Exhibit 3A and  
3 it's pages SH3-10 through SH3-63 taken from what has  
4 previously been marked as Scripps Howard's Exhibit 3, and I'm  
5 satisfied that the record -- earlier record reflects exactly  
6 what we're seeking to accomplish here, what we are  
7 accomplishing here.

8 (The document that was referred to as  
9 Scripps Howard's Exhibit No. 3A was  
10 marked for identification.)

11 JUDGE SIPPEL: And these having been marked, I will  
12 now permit Ms. Schmeltzer to go forward with her objections.

13 MS. SCHMELTZER: Okay. Thank you, Your Honor. I  
14 don't have any objection to the revised page 10, nor the  
15 revised page 11. On revised page 12 in paragraph 26 there's a  
16 -- the first sentence says, "The more formal individual  
17 ascertainment interviews." Since there weren't any formal  
18 ascertainment interviews, I would object to the use of that  
19 phrase.

20 JUDGE SIPPEL: Well, that's the witness'  
21 characterization. You can ask the witness why she thought it  
22 was formal.

23 MS. SCHMELTZER: Okay. In paragraph 27, the second  
24 line, I would --

25 MR. HOWARD: Could I ask for a clarification on

1 that? The -- counsel is using formal ascertainment as a term  
2 of art.

3 JUDGE SIPPEL: No. It's in the testimony.

4 MR. HOWARD: I understand it's in the testimony, but  
5 she's referring to formal ascertainment efforts and I thought  
6 it might be helpful to have it clear now that the -- there is  
7 not going to be a distinction made in the hearing so that the  
8 witness won't be asked extensively about the formal  
9 ascertainment as it used to exist in some other record. She's  
10 using it as a -- the witness' testimony is not a capital F or  
11 anything in terms of formal ascertainment. There is no formal  
12 ascertainment and, thus, it's just a dictionary meaning of the  
13 word formal.

14 JUDGE SIPPEL: Well, the witness can explain it.  
15 She's -- it's the more formal individual ascertainment  
16 interviews. I mean, this is a -- to me this is a conceptual  
17 adjective that she can explain what she meant by it, she being  
18 the witness.

19 MS. SCHMELTZER: In paragraph 27 on the second line  
20 there's a word that said that individual "usually." I would  
21 move to strike the word usually.

22 JUDGE SIPPEL: Again, it's the same thing. I mean,  
23 if this is what she says happened, this is what happened.  
24 It's a -- I mean, it's almost like a layman's opinion, without  
25 getting into opinion testimony, but a layman's -- it's a feel

1 | for something, you know. They usually tell me these things.  
2 | And you can -- you know, you can cross-examine her on what she  
3 | means by that.

4 |           MR. GOLDSTEIN: Your Honor, I think if you take the  
5 | word out then if the person asks if you interviewed everybody  
6 | and she says no, she'd be accused of misrepresenting. So I  
7 | think you need some sort of a, some sort of a modifier there.

8 |           JUDGE SIPPEL: I see the point. Yeah. Yes. Okay.  
9 | So I'm going to overrule that objection.

10 |           MS. SCHMELTZER: Page 14 --

11 |           JUDGE SIPPEL: So the record is clear, we are now  
12 | talking only about Exhibit 3A. This is what we're on. Go  
13 | ahead.

14 |           MS. SCHMELTZER: Okay. There's a sentence near the  
15 | top that says, "Ms. Covington's ascertainment reports to me  
16 | were based on her personal ascertainment efforts that were  
17 | undertaken in the context of her job, information she received  
18 | from other station employees regarding -- and information she  
19 | received from other station employees regarding their  
20 | individual ascertainment efforts," and then you struck the  
21 | last part of the sentence. I do have an objection to that  
22 | portion of the sentence which is based on hearsay information  
23 | and that's we've got Ms., we've got Ms. Barr stating that Ms.  
24 | Covington received information from other employees and Ms.  
25 | Covington's not a witness in this proceeding.

1           JUDGE SIPPEL: Well, but she's talking about a --  
2 the witness, that is, is talking about her methodology in  
3 terms of what she did to collect what she thinks to be  
4 reliable information. I mean, if you can, if you can show  
5 through cross-examination that there were aspects of this that  
6 are unreliable, then you know we'll consider that in weight.

7           MS. SCHMELTZER: The difficulty is she's talking  
8 about Covington's methodology and we can't cross-examine Ms.  
9 Covington.

10           JUDGE SIPPEL: No, but you can ask, you can ask the  
11 witness, Barr, how does she know what Ms. Covington's doing or  
12 has done or what her -- you know, what her system -- what  
13 Covington's system was and what, what opportunities did Ms.  
14 Barr have to observe that Ms. Covington did and we just go on  
15 the weight then. I mean, I would be -- this is hearsay  
16 evidence. I understand it's hearsay, so --

17           MR. GOLDSTEIN: Could we backtrack for a second,  
18 Your Honor, to paragraph 30?

19           JUDGE SIPPEL: Paragraph 30?

20           MR. GOLDSTEIN: Yeah. It talks about Ms. Barr's  
21 monthly reports. I don't believe we have any in the record.  
22 Is that correct?

23           MR. HOWARD: That's correct.

24           JUDGE SIPPEL: Can you tell us -- well, let me ask  
25 you this. Why don't we have any in the record?

1 MR. HOWARD: As she states, these were not routinely  
2 kept in the ordinary course of business, last line of that  
3 paragraph.

4 JUDGE SIPPEL: All right. So they wouldn't be  
5 available. All right.

6 MR. HOWARD: Your Honor, with respect to the  
7 sentence that Ms. Schmeltzer raised, can we insert an "and"  
8 for clarity on -- between job and information?

9 MR. GOLDSTEIN: Before the word "information?"

10 MR. HOWARD: Before the word "information."

11 MS. SCHMELTZER: That's fine.

12 JUDGE SIPPEL: No objection? We'll insert the word  
13 "and." This is at the top of page SH3-14 so that that line  
14 reads, "undertaken in the context of her job and information  
15 she received." All right?

16 MS. SCHMELTZER: Okay. Paragraph 32, I object to  
17 the first two sentences as conclusory and they're not geared  
18 to the renewal period.

19 JUDGE SIPPEL: Well, again I -- she's trying to tell  
20 us -- tell it her way. This is -- I'm not being asked to draw  
21 any, any conclusions about the, at least not yet, about the --  
22 what the practice of the industry is or setting up some kind  
23 of a standard for ascertainment. This is just how she does  
24 it. This is what goes through her mind. I'm going to  
25 overrule the objection.

1 MS. SCHMELTZER: I have nothing further on page 14.  
2 I have nothing on page 15. I have nothing on page 16. I have  
3 nothing on page 17. On page 18 there is a reference in the  
4 middle of paragraph 38 that says, "In addition, on August 14,  
5 1991 Maria Velleggia held a meeting with Mindy Mintz of East  
6 Baltimore Resources." Ms. Velleggia is not testifying in this  
7 proceeding so I would move to strike that sentence.

8 JUDGE SIPPEL: Well, I'm -- I'll deny the -- I'm  
9 going to deny your motion. You certainly can voir dire the  
10 witness in terms of how she came about learning this, but I'm  
11 assuming this is information that would come to her in the  
12 course of her responsibilities or this type of information  
13 would, so it's -- to me it's sufficiently reliable to consider  
14 it. Next, next item, please?

15 MS. SCHMELTZER: The bottom of paragraph 39, the  
16 sentence, "Issue ascertainment was and is a fluid and ongoing  
17 process rather than a mechanistic procedure in which a  
18 specific meeting and program always can be tied together."  
19 Again, that's conclusory. It's redundant and it addresses the  
20 present.

21 JUDGE SIPPEL: Well, she's characterizing what the  
22 process is and I don't think that there's going to be too much  
23 disagreement. That's probably pretty much how it goes. I  
24 don't see any -- I see no prejudice there so I'm going to  
25 overrule the objection.

1 MS. SCHMELTZER: Okay. On page 19, the beginning of  
2 paragraph 42, it says, "Since before I arrived at the station  
3 in 1988."

4 JUDGE SIPPEL: We're back to the Community Advisory  
5 Board.

6 MS. SCHMELTZER: Right.

7 JUDGE SIPPEL: And this is a community -- this is a  
8 board that was never utilized.

9 MS. SCHMELTZER: This is a board that didn't meet  
10 during the renewal period and so, frankly, I mean, I have a  
11 problem with this whole paragraph because they admit in the  
12 last sentence it didn't meet.

13 JUDGE SIPPEL: All right. Let me hear from -- let's  
14 hear from Mr. Howard on this one.

15 MR. HOWARD: (a) The evidence is -- the issue's  
16 already been addressed and I believe the Community Advisory  
17 Board has been -- it was admitted in Arnie Kleiner's  
18 testimony, was it not? In addition, the -- she does testify  
19 that the individual members offered advice to station  
20 personnel during the period, so she offers personal knowledge  
21 about these members. While they didn't have a formal meeting,  
22 they did participate in advising the station.

23 JUDGE SIPPEL: But that's in other, other parts of  
24 her testimony?

25 MR. HOWARD: It's right here on the bottom of this

1 page, Your Honor, in paragraph 42.

2 JUDGE SIPPEL: Where does she say that?

3 MR. HOWARD: From the second from the last line,  
4 "Although the Board was in existence throughout the renewal  
5 period and individual members offered advice to station  
6 personnel during that period, no formal meetings were held  
7 during that time due to scheduling difficulties."

8 JUDGE SIPPEL: Well, that's -- I'm not persuaded  
9 that that's a reason to keep it in. I understand -- I think  
10 Mr. Greenebaum pointed out that, yeah, that Kleiner's -- we  
11 let Kleiner testify to this. Is that the same subject matter?  
12 Is that right?

13 MR. HOWARD: It's my recollection it's not stricken  
14 from Arnie Kleiner's testimony.

15 JUDGE SIPPEL: All right. Well, that's -- I can, I  
16 can make a distinction between those two situations, but  
17 before I do let me see what the --

18 MR. GOLDSTEIN: There was a Community Advisory  
19 Board. It was in existence and I think that that's -- it's  
20 appropriate to keep it in. They make the admission that the  
21 Board did not meet and we can give whatever weight we want to,  
22 but it's not as though the Board did not exist.

23 MS. SCHMELTZER: But I think for it to say here in  
24 the middle of the paragraph, "The Board meets with station  
25 management approximately six times per year," that sentence

1 | should come out. It's in the present tense and it wasn't true  
2 | that year.

3 |           JUDGE SIPPEL: I'm going to, I'm going to grant the  
4 | motion. I'm going to strike this and there is --  
5 | notwithstanding the fact that we're letting Mr. Kleiner  
6 | testify to this, he's testifying to it as, as a supervisor, as  
7 | her superior, and he -- I have given him a lot of leeway in  
8 | terms of explaining how things institutionally perhaps were  
9 | done, but this is, this is the woman who's doing the -- is  
10 | responsible for the hands-on work of getting the ascertainment  
11 | done and this could be misleading. This is -- three months  
12 | from now we may forget about this discussion.

13 |           MR. HOWARD: Your Honor, Attachment G has been  
14 | admitted into evidence and it's referenced in this. In fact  
15 | there was a reference which describes the members of the  
16 | Community Advisory Board as --

17 |           MS. SCHMELTZER: But I think that's also referenced  
18 | in Mr. Kleiner so it's not necessary to be here.

19 |           MR. HOWARD: Yes. He does -- Mr. Kleiner does state  
20 | that to the best of his recollection that these are the  
21 | members.

22 |           JUDGE SIPPEL: Well, that's enough. I'd like to  
23 | keep Mrs. -- Ms. Barr's testimony more focused and this is a  
24 | distractor, so I'm going to strike paragraph 42 in its  
25 | entirety.

1 MS. SCHMELTZER: And footnote 8?

2 MR. HOWARD: May I ask only that that part of it  
3 which states that individual members offered advice to  
4 station personnel during the period be retained because that  
5 is not contained in his, in his testimony?

6 JUDGE SIPPEL: Well, I hear you say that, but if  
7 those people are not -- if somehow or other -- if she hasn't  
8 identified those people, even if she identifies them by a  
9 Board -- as being a Board member -- let me take that back. If  
10 her direct testimony refers to these individuals, all right, I  
11 would, I would permit a brief redirect to give her an  
12 opportunity to identify who they are.

13 MR. HOWARD: Exhibit E does, in fact, identify who  
14 they are.

15 JUDGE SIPPEL: Exhibit G does. Well, exhibit -- and  
16 Exhibit G is in.

17 MR. HOWARD: No. I mean Exhibit -- the  
18 ascertainment exhibit goes identify where she talked to these  
19 members of the Community Advisory Board.

20 JUDGE SIPPEL: All right. Then I -- okay. Then I  
21 --

22 MS. SCHMELTZER: It was already in. I mean --

23 JUDGE SIPPEL: It's already in, so I don't see where  
24 anything is being lost except the -- all right. So my ruling  
25 is as I stated it, 42(g) is stricken. I'm sorry. Page --

1 paragraph 42 of 3A is stricken. Page 20?

2 MS. SCHMELTZER: Page 20. It says in paragraph 43  
3 that the issues programs lists were prepared by Ms. Wright and  
4 then the next sentence says, "To accomplish this, Ms. Wright  
5 did," such and such. It's our position that Ms. Wright should  
6 be testifying and so I would move to strike the sentence that  
7 says, "To accomplish this," after each of the quarters.

8 MR. GOLDSTEIN: But they didn't notice those dates.  
9 They were put on notice that they couldn't notify Ms. Wright.

10 MS. SCHMELTZER: We didn't know that Ms. Wright  
11 prepared those lists until we got this statement.

12 MR. GOLDSTEIN: Well, when you got the statement you  
13 could have notified her.

14 MS. SCHMELTZER: She was not identified as a Scripps  
15 Howard witness.

16 MR. GOLDSTEIN: But it's in the --

17 JUDGE SIPPEL: Well, the point is that you do have  
18 -- if the situation was -- enough you would have remedies in  
19 terms of calling her either -- or even asking for an  
20 opportunity to depose, but there hasn't been too much action  
21 in this case in that respect. And this witness known as Mrs.  
22 Barr -- and this is within the purview of what she does for a  
23 living with this station. She's competent enough to testify  
24 to it. If you want to, again, go into this on cross-  
25 examination and address the weight, the reliability, you know,

1 | feel free to do so, but I'm going -- I'm not going to strike  
2 | this testimony. Objection overruled.

3 |           MS. SCHMELTZER: On the next page, 21, paragraph 45,  
4 | the first line, we would move to strike the word  
5 | "consistently" as conclusory.

6 |           JUDGE SIPPEL: Well, it's qualified by "as  
7 | identified in the ascertainment efforts." The -- she's  
8 | competent to testify that way in light of her position. If  
9 | the ascertainment efforts don't support that conclusion, then  
10 | you can ask for the appropriate finding. I'm going to  
11 | overrule the objection.

12 |           MS. SCHMELTZER: I have nothing further on 21.

13 |           MR. GOLDSTEIN: Your Honor, I had a question on page  
14 | -- paragraph 44 on page 20. Since we don't have in the record  
15 | what the, the issues programs list were when Gillette had it,  
16 | it's hard to understand what the change was and then it says,  
17 | "They became more selective." We don't know what that means  
18 | either, so I don't think that paragraph really adds anything.  
19 | It's certainly vague and very general.

20 |           JUDGE SIPPEL: Mr. Howard?

21 |           MR. HOWARD: It's just an -- it's just intended to  
22 | offer an explanation to a matter that was raised in the  
23 | depositions about why there was a change between the second  
24 | quarter and the third quarter issues programs list and the  
25 | programming that was included therein. It's strictly