

1 They're not -- They don't get any benefits out of it.

2 JUDGE SIPPEL: I, I, I'm satisfied.

3 MR. GOLDSTEIN: It's just a statement of fact.

4 MS. SCHMELTZER: Well --

5 JUDGE SIPPEL: Go ahead, Ms. Schmeltzer.

6 MS. SCHMELTZER: I don't think you can put in an
7 irrelevant fact in the record and say they're not going to get
8 any benefits out of it. Obviously, they're going to use it in
9 their proposed finding. And if it's deemed to be irrelevant,
10 then it shouldn't be there.

11 JUDGE SIPPEL: They, they have a, they have a right,
12 as does Four Jacks, to present the case the way they want to
13 present it. I mean, as long as they're not using irrelevant
14 evidence which I have a problem with specifically, because if
15 it's clearly irrelevant and it's going to mislead, then we're
16 not going to have any part of it. And the other problem would
17 be if it's competitive or if it's cumbersome or if it's
18 extensive or if it's going to expand the record unreasonably,
19 then it doesn't come in. But if this -- If, if they want to
20 offer this evidence as -- Is this being offered as background?

21 MR. HOWARD: Well, in addition, Your Honor, I
22 believe it is relevant to the, to the decision here, because
23 it also goes to the care with which Scripps Howard would
24 naturally take given its propensity to hold onto stations for
25 the long term with respect to any acquisition it undertakes

1 for television stations

2 JUDGE SIPPEL: I wouldn't -- I'm sorry, was somebody
3 else saying --

4 MR. GOLDSTEIN: That's not an issue at all, Your
5 Honor, and, I mean --

6 JUDGE SIPPEL: Oh, -- or something -- or anything
7 like that. So I wouldn't receive it for that purpose. I
8 would receive it as, as background information for purposes of
9 your explaining what this station and company is about.

10 MS. SCHMELTZER: Your Honor, I also find the
11 sentence contradictory because it's saying -- they're
12 admitting that they're selling one station and then they're
13 saying well, we haven't sold other stations. But what does it
14 mean? It doesn't mean that they can't sell other stations.

15 JUDGE SIPPEL: Well, when it comes time for replies,
16 you should be able to make -- I mean, this is not going to go
17 any further than we're talking about right here, as far as, as
18 reaching conclusions is concerned. It's, it is --
19 Technically, I will, I will concede that it is nonrelevant to
20 any of the issues stated in this case. However, in terms of
21 background information, there is, there is other nonrelevant
22 information -- I'm going to permit it for the, for the limited
23 purposes that I stated and I'm going to overrule the objection
24 in part. I'm giving you the -- I'm, I'm, I'm granting your
25 objection with respect to it's -- on the relevance issue.

1 MS. SCHMELTZER: Thank you. The last sentence I
2 also have an objection to as irrelevant and immaterial.

3 JUDGE SIPPEL: The last sentence of paragraph 4?

4 MS. SCHMELTZER: Paragraph 4, right.

5 JUDGE SIPPEL: Well, again it's -- Well, let me ask

6 --

7 MR. HOWARD: I have the same argument, Your Honor.

8 JUDGE SIPPEL: Again, this is -- is it background or
9 is this --

10 MR. HOWARD: No, I, I would argue that it does go to
11 the -- to a relevant issue in this case, namely, that Scripps
12 Howard took care in its acquisition of WMAR.

13 JUDGE SIPPEL: Well, again, care is, is really not a
14 standard. It's not a, it's not a question of how carefully
15 they did things, but otherwise we'd be in -- perhaps in --
16 that type of an issue added in the case.

17 MR. HOWARD: Perhaps I didn't explain it well, Your
18 Honor. The, the argument is that given the, the -- that it is
19 a relevantly short renewal period, Scripps Howard believes
20 it's particularly relevant in this -- under these particular
21 circumstances to show that it took a careful look at the
22 station as it existed at the time of the acquisition and that
23 that examination gave it the confidence to rely on the current
24 station manager as its representative in Baltimore and as
25 its -- the individual responsible for making the programming

1 decisions.

2 Thus, even though it was a short time period, it was
3 a -- Scripps Howard was entitled to have the, the confidence
4 that the station was going to continue to perform in -- at
5 least at the level that it had prior to the acquisition.

6 JUDGE SIPPEL: Well, what -- how does that tie in
7 with the last sentence of paragraph 4?

8 MR. HOWARD: Again, that shows that the, that the
9 company is going to continue in this same tradition of taking
10 a long-term view of its property acquisitions into the future,
11 so it has --

12 MR. GOLDSTEIN: Your Honor, there is no care issue
13 and there is no carelessness issue. To the extent that it's
14 in for background, the Bureau would have no objection. To the
15 extent that anybody wants to build on it to make a case, I
16 don't think it's appropriate.

17 JUDGE SIPPEL: Ms. Schmeltzer?

18 MS. SCHMELTZER: Well, I agree, but I feel that it
19 should be stricken because I don't want to have a record
20 that's full of this background information that's not
21 relevant.

22 JUDGE SIPPEL: Well, I'm, I'm going to let it stay
23 in as background. Again, I think it's fair to an applicant,
24 and this will hold true of Four Jacks as well. I mean, I
25 think that you should be able to present yourself in the

1 descriptive form in a way that you want to, so long as it
2 doesn't spill over into other problems. He's got this one I
3 think under control. Mr. Howard, the ruling is that I will
4 receive it over the objection of Four Jacks for background
5 purposes only. And, you know, you're instructed not to
6 advance these arguments in your proposed findings, other than
7 -- or to use this in your proposed findings, other than for
8 the limited purposes that we are receiving it.

9 MR. HOWARD: Your Honor, may I make a request?

10 JUDGE SIPPEL: Yes.

11 MR. HOWARD: To the extent that that material is
12 stricken from the, from the testimony, may I -- may we presume
13 that it is -- goes forward as an offer of proof?

14 JUDGE SIPPEL: Oh, yes. Yes.

15 MR. HOWARD: So we don't have to make that
16 statement?

17 JUDGE SIPPEL: No, that is a -- that's exactly
18 right. The testimony is now with the reporter and that's the
19 way it stays, and my rulings are subject to appeal all -- as
20 far as you want to go.

21 MR. HOWARD: Thank you, Your Honor.

22 JUDGE SIPPEL: You don't have to take this out.
23 Okay, that's paragraph 4. Paragraph 5?

24 MS. SCHMELTZER: Paragraph 5, the fifth line down
25 says "I was in contact with each station general manager."

1 We're only concerned in this proceeding with WMAR-TV, and so I
2 would ask that that be -- that "each station" be stricken.
3 And if it's -- And that WMAR-TV be inserted if appropriate.

4 MR. GOLDSTEIN: Your Honor, this is a strange one
5 because in this case it really shows that the -- his
6 responsibilities were spread. And if you were to limit to to
7 WMAR, it looks like he didn't have anything else to do in his
8 responsibilities. So I think it cuts the wrong way. And
9 again, I think it could be in for background, but this is the
10 -- this is his job description of what his role was, and part
11 and parcel of that was that WMAR was one of the stations with
12 which he met. I think that inadvertently -- Ms. Schmeltzer
13 would inadvertently mischaracterize his testimony if we
14 changed it the way she suggests it.

15 JUDGE SIPPEL: And miss a, miss a great opportunity
16 for cross examination. I, I -- Mr. Howard --

17 MR. HOWARD: I have no comment.

18 JUDGE SIPPEL: I'm going to overrule the objection.

19 MS. SCHMELTZER: On the next page, in paragraph 6, I
20 would move to strike the sentence "I participated in
21 negotiating the asset purchase agreement," and the next
22 sentence says "in the due diligence review," since all of that
23 negotiating of an asset purchase agreement which occurred
24 early in 1991 is irrelevant to this case.

25 JUDGE SIPPEL: Is your objection to the terminology,

1 "due diligence review"? I mean, is that --

2 MS. SCHMELTZER: No, my objection goes beyond that.
3 The actual negotiating of the asset purchase agreement is
4 irrelevant to the issues here.

5 JUDGE SIPPEL: All right. That sentence you want
6 stricken?

7 MS. SCHMELTZER: And the next one. "The due
8 diligence review" is part of the asset purchase process.

9 JUDGE SIPPEL: All right. Well, let's take them one
10 at a time because the -- I can anticipate Mr. Howard's going
11 to say something with respect to the last sentence. Let me
12 ask Mr. Howard to respond. Just, just, just on the second
13 sentence of paragraph 6.

14 MR. HOWARD: It's the same argument, Your Honor,
15 that the Scripps Howard's acquisition of this property was
16 done carefully. Also -- Well, and in addition that value was,
17 was paid for this station, substantial value that acquired an
18 ongoing operation and that is relevant to showing Scripps
19 Howard's -- the validity of continuing with Arnold Kleiner as
20 the station manager and that the station is an ongoing profit.

21 JUDGE SIPPEL: What is -- Does the Bureau have
22 anything on this?

23 MR. GOLDSTEIN: No. I think all of this stuff is
24 just background. As far as I'm concerned, it's, it's very
25 informative, but it's absolutely irrelevant to the issues in,

1 in the case. And I think Your Honor has stated that once,
2 stated it twice. We're beating a dead horse on all this
3 background for use for other, other purposes.

4 JUDGE SIPPEL: Well, my ruling is going to be the
5 same with respect to this sentence. But I will -- I'll
6 overrule the objection, but I'm only accepting it as
7 background, for background purposes. Now, that's again the
8 second sentence. The third sentence, I think Mr. Howard has a
9 little bit of a different -- a little different approach to
10 how he would view the, the evidence in the third sentence.

11 MR. HOWARD: The third sentence is the one --
12 (asides) Well, Your Honor, the -- it is part of Scripps
13 Howard's argument that the -- that by acquiring the employment
14 contract of Mr. Kleiner that Scripps Howard enjoyed the
15 benefit of a -- his many years as station manager and many
16 years of ascertaining community needs in Baltimore. And,
17 thus, it's, it's relevant that that was considered. As the
18 Commission has said, parties can -- licensees can engage in
19 ascertainment in any reasonable manner.

20 Part of that manner would be to acquire a study of
21 ascertainment that had been conducted in the study by -- in
22 the community by a third party, for example. And, thus,
23 Scripps Howard's entitled to benefit from the, from the
24 experience that Mr. Kleiner gained during his tenure as
25 general manager of WMAR, 10 years before Scripps Howard

1 acquired the station.

2 JUDGE SIPPEL: Well, you know, you've got testimony
3 from Mr. Kleiner and, and Mr. Kleiner certainly, as far as
4 explaining who he is and where he's been and what he's done, I
5 think you're going to be able to certainly argue a lot of
6 inferences in terms of the significance of him to the station
7 at various times -- Scripps Howard.

8 This, this particular -- I mean, using this
9 particular sentence to launch that kind of an analysis, it
10 seems to me is going, is going further than it's entitled to
11 go. So in order -- for clarification purposes, to avoid that
12 creeping in, I'm going to strike that sentence. So I'm going
13 to sustain the objection, I'm going to strike the sentence "As
14 part of this due diligence, I reviewed the station's
15 contracts, including the employment contract for Arnold J.
16 Kleiner". But I will -- Okay, that's my ruling, that's
17 stricken.

18 MS. SCHMELTZER: For the record, Your Honor, we
19 never were provided with an employment contract, either.

20 JUDGE SIPPEL: All right, that's -- But in any event
21 -- Now, having stricken that sentence, what about the last
22 sentence in that paragraph?

23 MS. SCHMELTZER: I don't have a problem with that,
24 sir.

25 JUDGE SIPPEL: All right. Anything else on that

1 page?

2 MS. SCHMELTZER: Yes. Paragraph 7, I would move to
3 strike everything after 1991. What Scripps Howard paid for
4 the station and what it got are irrelevant to this case.

5 JUDGE SIPPEL: I think again we're back into
6 background.

7 MR. HOWARD: Not entirely, Your Honor. Again, I
8 think in the closed decision the Commission ruled that part of
9 the renewal -- part of its basis for granting a renewal
10 expectancy was to encourage licensees to invest in quality
11 programming and thus the fact that Scripps Howard has invested
12 \$125 million in an ongoing property is directly relevant to
13 the renewal expectancies.

14 MS. SCHMELTZER: The Commission doesn't make
15 judgmental determinations as to whether somebody paid too much
16 or too little. The Commission just doesn't get into that at
17 all. The fact -- The important fact is that when Scripps
18 Howard acquired the station and what its record of programming
19 was after it acquired the station. Scripps Howard is, is
20 introducing some self-serving testimony here about well, we
21 invested in our ongoing programming operations.

22 What does that mean? We're not, we're not here to
23 determine what Gillett's reputation was or Gillett's
24 programming operations were.

25 MR. GOLDSTEIN: I agree with Ms. Schmeltzer on this.

1 I don't know whether 125 -- It may have been a bargain for all
2 we know. And they may have underpaid the market price. We
3 don't have any comparative evaluation based on what was paid
4 or what was not paid. What we know is what was invested once
5 the station was acquired to enhance it, to improve it, and so
6 on and so forth. So I would agree that we can strike after
7 1991.

8 MR. HOWARD: May I respond, Your Honor?

9 JUDGE SIPPEL: Yes.

10 MR. HOWARD: We're not certainly arguing that --
11 We're not arguing that it was a particularly good deal or, or
12 that we overpaid for this station in the market. I hope we, I
13 hope that, for the client's sake, it did get a good bargain on
14 the station. The issue is whether or not it paid a
15 substantial sum of money for a property, an ongoing property,
16 and there's no question that it did. And \$125 million should
17 not be ignored in the context of considering a licensee's
18 willingness to invest in programming, that it did pay for an
19 ongoing news operation, for an ongoing public affairs service,
20 and for the ongoing experience of, of a general manager.

21 Those facts are directly relevant under the
22 Commission's established criteria of saying that it is
23 interested in encouraging licensee investments in quality
24 programming. It's -- We're not -- It is offered strictly to
25 show that there was a substantial investment in those -- that

1 went in part to those very facets of the station.

2 JUDGE SIPPEL: Well, I don't mind the evidence on
3 the -- I don't mind evidence in terms of what was done to
4 improve physical assets after you acquired the station, but as
5 far as I would be concerned, you paid -- your client paid
6 whatever the market, what the market price was for the, for
7 the assets, and that happened to be \$125 million. So whether
8 they paid 125 or \$500 million, all that would reflect to me
9 would be what the, what the market value of the station was.

10 MR. HOWARD: And the market value of the station
11 included those ongoing operations in the area of public
12 interest service.

13 JUDGE SIPPEL: Well, that's --

14 MR. HOWARD: In, in any case.

15 JUDGE SIPPEL: Yes, I, I, I understand where you're
16 going with that argument, but I, I don't -- That, that would
17 not be convincing to me. Of course, I can't just sit here and
18 criticize your argument. We're really talking about whether
19 or not it's relevant. I'm going to, I, I'm going to, I'm
20 going to overrule the objections and let it come in. I will
21 ascribe weight to that. Well, you've heard my comment with
22 respect to what -- how my feelings are with respect to that
23 figure, but I do think that there is testimony that will tie
24 in with the last sentence in that paragraph.

25 You tell me if you see it differently, Mr. Howard,

1 but as I understand it there's going to be further testimony
2 down the road that's going to come in that's going to specify
3 ways in which these investments are made. Am I correct in
4 that?

5 MR. HOWARD: During the license term, yes,
6 Your Honor.

7 JUDGE SIPPEL: During the license term.

8 MR. HOWARD: Absolutely.

9 JUDGE SIPPEL: Then I'm going to overrule the
10 objections and let that stay. Paragraph 8?

11 MS. SCHMELTZER: Well, my concern is that that last
12 sentence speaks to prior to the license term.

13 JUDGE SIPPEL: Oh, no. You didn't mean that, did
14 you, Mr. Howard?

15 MR. HOWARD: I'm sorry, Your Honor, in paragraph 7?

16 JUDGE SIPPEL: We're talking about -- Yes, the last
17 sentence in paragraph 7. You're talking about investments
18 that Scripps Howard made, or I should say Mr. Schroeder is
19 talking about investments Scripps Howard made on, on -- well,
20 after the date that Scripps Howard acquired --

21 MR. HOWARD: I, I hate to disagree with Your Honor,
22 but I, I do -- did intend that statement to include the, the
23 investment of the \$125 million for the grounds that I just
24 identified. Part of that \$125 million went to the purchase of
25 this ongoing -- the ongoing programming operations and the

1 reputation of the station.

2 MS. SCHMELTZER: This is a problem that's going to
3 repeat itself later. Scripps Howard is trying to trade on
4 Gillett's record and that's not an issue in this case and we
5 can't cross examine Gillett.

6 MR. HOWARD: Your Honor, that's not so. And I, I,
7 I, I don't think that an argument -- some general argument
8 like that should be considered.

9 JUDGE SIPPEL: Well, you, you certainly can't -- You
10 know, the fact that you invested in an ongoing programming,
11 well, programming operation is one thing. But the reputation,
12 you certainly can't go strap onto the reputation of the former
13 owner. That you've got to do strictly on your own, and you
14 certainly have evidence that you can offer that would be
15 relevant to that.

16 MR. HOWARD: Yes, Your Honor.

17 JUDGE SIPPEL: But I, I agree with Ms. Schmeltzer,
18 this is going to start -- Maybe I confuse myself. I'm not
19 being critical. I thought really that you were saying that we
20 paid \$125 million for these assets and then we went ahead and
21 we invested into them and we made them even better. That's
22 where I was --

23 MR. HOWARD: Well, certainly, we, we did invest in
24 them to make them better, Your Honor.

25 JUDGE SIPPEL: I understand that. I understand

1 that. But this is -- I, I, I, I mean, having, having now
2 been, having now been -- as to what you're meaning by that
3 sentence, and I can see the danger that that entails, I am
4 going to strike it.

5 MR. HOWARD: Perhaps, perhaps reputation is over-
6 reaching in that regard, but I think that the, the case for
7 programming operations, in light of the Commission's statement
8 in, in Coves (phonetic sp.) is, is relevant.

9 JUDGE SIPPEL: Well, let me say this. You, you, you
10 might say -- Let me, let me, let me stay with you a little
11 bit. You could say by this purchase Scripps Howard invested
12 in, you know, the ongoing programming operations, physical
13 assets, and the broadcast license.

14 MS. SCHMELTZER: Your Honor, I would have a problem
15 with ongoing programming operations because, as Mr. Howard has
16 conceded, it relates to the period prior to May 30.

17 JUDGE SIPPEL: Well, they purchased their
18 programming formats what -- Is that correct?

19 MR. HOWARD: That's correct, Your Honor. The
20 programming -- The, the, the citizens of Baltimore did not see
21 a difference in the station WMAR on May 30th from what they
22 saw on --

23 MS. SCHMELTZER: Your Honor, I don't think
24 Mr. Howard should be testifying in this proceeding.

25 JUDGE SIPPEL: Well, maybe I'm inviting too much

1 here. This is a difficult -- I will permit this. I'm going
2 to grant the objection in part, and here's what I'm going to
3 do with that sentence. It'll read "By this purchase, Scripps
4 Howard invested in WMAR-TV's programming, programming
5 operations, physical assets and the broadcast license." Did
6 you, did you intend programming operations to be one -- is
7 that one concept?

8 MR. HOWARD: Yes, Your Honor.

9 JUDGE SIPPEL: That's how you intended it. All
10 right. Then that's how I will receive it. So with that, I
11 will, I will repeat that once more. That sentence will read,
12 "By this purchase, Scripps Howard invested in WMAR-TV's
13 programming operations, physical assets and the broadcast
14 license."

15 MR. GOLDSTEIN: May I make an editorial change,
16 Your Honor, as long as you're changing it?

17 JUDGE SIPPEL: Sure.

18 MR. GOLDSTEIN: It's by this, by this they acquired.

19 MS. SCHMELTZER: Right.

20 MR. GOLDSTEIN: It should be.

21 JUDGE SIPPEL: I'll, I'll take that comment and make
22 that change. So the words "invested in" will be stricken.
23 That will be received in evidence and I will permit that to be
24 received in evidence for whatever use you can make of it, but
25 I'm going to be very candid with you up front. I look at this

1 right now as being nothing but background information, unless
2 this is tied in with some other testimony. So I would be -- I
3 would not be inclined to take it beyond background for my
4 purposes. Okay.

5 MS. SCHMELTZER: Paragraph 8, the first sentence, I
6 would object to the reference to corporate management was well
7 aware, because Mr. Schroeder can only speak for himself. We
8 can't -- We don't have all of corporate management here. And
9 I also object to "of the particular qualities" as vague and
10 self-serving.

11 JUDGE SIPPEL: Well, what about -- Supposing he
12 struck aware, was well -- I'm sorry. Suppose he struck, he
13 struck the word well and the word particular, so that it would
14 show there was a general awareness of the qualities?

15 MS. SCHMELTZER: I don't mind if he said he was well
16 aware, but the reference to corporate management is, is vague.

17 MR. HOWARD: Your Honor, he understood the
18 investigation. It's, it's stated that -- And elsewhere in the
19 testimony, in Arnie Kleiner's testimony, that this was a team
20 effort by Scripps Howard corporate management, that the vice
21 president for programming, Ken Lowe, that the president, Dick
22 Janssen, all participated in this. It's a, it's a group
23 effort, so it's, it's supported in the record and it's a
24 statement of fact.

25 MS. SCHMELTZER: But, unfortunately, we only have

1 Mr. Schroeder to cross examine. We do not have Mr. Lowe or
2 Mr. Janssen.

3 MR. HOWARD: But you have Mr. Kleiner to testify as
4 well and Mr. Schroeder to testify that the visits were made.

5 JUDGE SIPPEL: Well, does this really make -- I
6 mean, really the case is not going to turn on whether
7 corporate management, as a whole, was aware of everything that
8 Mr. Schroeder was at every point. And I think that in this
9 Fox-TV case the review board was somewhat critical of, of
10 spending a heck of a lot of time arguing about points of
11 evidence, as to whether or not the big board of directors knew
12 everything that was going on all the time. I mean, we know
13 what the responsibilities are of the corporate directors and
14 officers.

15 But to get them -- I, I'm -- What I'm saying is is
16 that it's not helping the record and I don't think that it
17 needs to be done that way. I'm going to sustain your
18 objection and this will be changed to read -- Well, let me
19 hear from the Bureau first before I go into this. Do you --
20 Mr. Goldstein, are you --

21 MR. GOLDSTEIN: I mean, I would assume that by the
22 time they acquired the station they knew what they were
23 getting. So, I mean, to me it's all a waste of time.

24 MR. HOWARD: If I may argue, Your Honor, I think
25 that we're going to spend more time arguing these things by,

1 by striking the testimony than we would by, by, by admitting
2 it, because that's --

3 JUDGE SIPPEL: Well, you have a good point there.
4 You do have a good point there, but I, I, I -- conceptually, I
5 can understand what Ms. Schmeltzer is saying. I don't think
6 that it detracts from the case to make it -- to make the
7 testimony more precise. And I, I do have difficulty with
8 somebody coming in and just testifying immediately that, oh,
9 by the way, the whole -- You're right, this is, this is not,
10 this is not moving along as quickly as I'd like to see it, but
11 I'm going to make this one change.

12 I'm going to grant you this objection. See if we
13 can move faster after this. I'd like, I'd like to say that
14 Scripps Howard is aware. So I'll scratch "corporate
15 management," strike "corporate management" and the word
16 "well", and just say that Scripps Howard was aware of the --
17 And I'm going to scratch "particular." Strike that, rather.

18 MS. SCHMELTZER: And can we strike "quality," too?
19 They were aware of WMAR-TV's staff?

20 JUDGE SIPPEL: Well, no, because that could just
21 mean that they knew their names and their identification.
22 He's saying that -- And I, I, I will accept that testimony
23 subject to whatever cross examination you may think
24 appropriate. You also had time to depose these people. Isn't
25 that right?

1 MS. SCHMELTZER: That's right.

2 JUDGE SIPPEL: Take their depositions?

3 MS. SCHMELTZER: That's right.

4 JUDGE SIPPEL: That's all I'm doing with it. Do you
5 all understand now? So that sentence will read "By the time
6 Scripps Howard acquired WMAR-TV, Scripps Howard was aware of
7 the qualities of WMAR-TV's staff," and then the rest of that
8 sentence stays -- So next, next --

9 MS. SCHMELTZER: Yes. At the very bottom of page 3,
10 "For example, Attachment A is a memo from Ken Lowe to Richard
11 Janssen which describes Mr. Lowe's assessment of WMAR-TV's
12 programming." This is a memo from Lowe to Janssen. Neither
13 one of them are here. We can't test Mr. Lowe's assessment,
14 and so I think that that whole sentence should be stricken.

15 JUDGE SIPPEL: For what purpose are you -- Well, let
16 me find out from Mr. Howard what purpose is he offering this
17 Exhibit A that's, this Attachment A?

18 MR. HOWARD: It's offered in support of the previous
19 statement, that Scripps Howard made a carefully examination of
20 the qualities of the staff.

21 MR. GOLDSTEIN: And I trust it's not being left for
22 the truth of what's in there, just the fact that it
23 corroborates the statement that the study was made.

24 MR. HOWARD: That's correct.

25 JUDGE SIPPEL: Seems to fall within the hearsay

1 exception. It's just a question of whether or not -- And I've
2 already ruled on the relevance. I'll overrule the objection.
3 We're on page 4.

4 MS. SCHMELTZER: Right. At the top of page 4,
5 there's a reference that says "both Richard Janssen and I
6 reviewed." I would move to strike those "both Richard Janssen
7 and," since Mr. Janssen is not a witness in this proceeding
8 and has never been identified as a potential witness.

9 JUDGE SIPPEL: Well, it's a pretty technical item.
10 It's a very technical -- but, I mean, she's got a point,
11 Mr. Howard.

12 MR. HOWARD: It goes to -- I mean, certainly,
13 Mr. Schroeder has personal knowledge of the, of the fact. And
14 again this is only authored not to, to, to offer Mr. Janssen's
15 views on the acquisition or, or other matters, but simply to
16 state that he was there as the president of Scripps Howard at
17 that time and took that role in the acquisition.

18 MS. SCHMELTZER: I think the problem here is that it
19 says Janssen reviewed "in person the station's managerial
20 staff and the policies and procedures in effect there." Now,
21 we were able to depose Mr. Schroeder on what he did. But
22 since Mr. Janssen was never identified as a witness, we never
23 had the opportunity to cross examine or depose Mr. Janssen on
24 what he did, and I just don't think that's fair.

25 MR. GOLDSTEIN: Your Honor, I think you can ask

1 Mr. Schroeder about that.

2 JUDGE SIPPEL: Did you ask him in the deposition --
3 Did you ask Mr. --

4 MR. GOLDSTEIN: Well, she may not have known --
5 Mr. Schroeder was up for cross examination. I think you can
6 ask him at the time, rather than striking it now, and then
7 strike it at that time.

8 MS. SCHMELTZER: My understanding is that
9 Mr. Schroeder and Mr. Janssen were not always together.

10 MR. GOLDSTEIN: I don't know whether they were or
11 they weren't.

12 JUDGE SIPPEL: Well, okay. Well, we'll let that go
13 for cross. I'm going to -- I'll reserve ruling on the
14 objection.

15 MS. SCHMELTZER: Okay. Paragraph 9, I would move to
16 strike the entire paragraph. The first sentence refers to a
17 modified version of the employment contract. That gets back
18 to the sentence you struck earlier. And the rest of the
19 paragraph is an attempted comparison of Gillett and Scripps
20 Howard, which is irrelevant to this proceeding, and it's also
21 impossible to cross examine on this.

22 JUDGE SIPPEL: Mr. Howard?

23 MR. HOWARD: I think this is very important,
24 Your Honor. The, the -- This evidence is, is a fact and it is
25 certainly not offered for Scripps Howard to try to claim

1 credit for the programming that was offered by Gillett. It is
2 only offered to demonstrate that it's -- that there was a base
3 line of programming operations in existence at the time that
4 Scripps Howard took over the station and that the Scripps
5 Howard, with the exceptions identified in the testimony,
6 continued those operations in place.

7 This is necessary to have this in the record so as
8 to rebut any suggestion that Scripps Howard may have altered
9 the programming, for example, to try to, to upgrade the
10 programming or otherwise act in, in this short period of time
11 in a way that would be different from its long-term
12 performance.

13 MR. GOLDSTEIN: Your Honor, we don't have in the
14 record what Gillett did. So to the extent that you're saying
15 that you did what they did, we don't know what they did.

16 MR. HOWARD: Another point in support of the
17 position that I just offered, namely, we're not claiming
18 credit for what they did. We're only using it to show that
19 the, that the station -- that when Scripps Howard came in and
20 acquired this property it didn't suddenly transform it into a
21 -- for a relatively short license term, into some different
22 property in anticipation that it might face a renewal
23 challenge. It continued the, the operations as they were.

24 There was a base line. The Scripps Howard knew that
25 it was buying a station that was operating in this manner. It

1 continued it operating in that manner. I think it's important
2 that the Commission should have that information before it --
3 particularly in light of the possible challenge on the grounds
4 that they -- that it may not be as reliable a, a renewal
5 period performance because of the short duration.

6 JUDGE SIPPEL: Well, but, I mean, you're really --
7 it really works to your advantage. All you have to do is show
8 that for that short period of time you met the, the public
9 interest standard. That's all you have to do. What
10 difference does it make what the heck Gillett did or didn't
11 do?

12 MR. HOWARD: I'm only anticipating that there will
13 be arguments made, Your Honor, that the -- that in light of
14 that short period of time the weight of the renewal expectancy
15 to which Scripps Howard is entitled should be diminished.

16 JUDGE SIPPEL: I'm assuming that they will make that
17 argument. I'm assuming they'll make any argument that will
18 undercut your position, but I don't see where bringing -- You
19 know, what inference can I possibly draw from Gillett, as
20 Mr. -- as the Bureau points? I don't have any evidence from
21 Gillett.

22 MR. HOWARD: The only thing that it's offered for,
23 Your Honor, again is that we did not make radical changes in
24 -- or did not make changes except as identified.

25 JUDGE SIPPEL: Well, as I say, it's, you know, it,

1 it lends itself to being, being used for purposes beyond that
2 that are just going to complicate things. I, I've defined
3 what the relevant evidence is and you've agreed with that, and
4 I, I think -- much more than we have to in handling it as, as,
5 as you're suggesting. I'm going to strike -- I'm going to
6 grant the objection and I'm going to strike paragraph 9 in its
7 entirety.

8 And I'm doing this with knowledge -- I have read
9 ahead. I understand what Mr. Kleiner's going to testify to.
10 I understand what Ms. Barr's going to testify to. So I, I'm
11 just warning you, it's not going to prejudice your case.

12 MR. GOLDSTEIN: Your Honor, the only sentence, which
13 I assume is covered later, is the last sentence maybe should
14 remain because it did show --

15 JUDGE SIPPEL: Well, it's just --

16 MR. GOLDSTEIN: And I assume it's discussed. I
17 don't remember where it was discussed. But assuming it's been
18 discussed, that too can be stricken.

19 JUDGE SIPPEL: Okay. Well, I, I see what you're
20 referring to and I'm going to, you know, I don't think
21 Mr. Howard even has to be advised of that. He has said in
22 paragraph 9 -- The witness has said in paragraph 9 as
23 discussed below, Scripps Howard did bolster the record-
24 keeping, et cetera. That testimony better be down below then.

25 MR. HOWARD: Your Honor, could we go -- I'm sorry,