

1 to give an instruction on that. This is how he has chosen --
2 This is how they've chosen to present their evidence,
3 Ms. Schmeltzer. You do with it what you see fit, all right?
4 I'm just ruling on these things as they, as, as they're coming
5 up here. Now, I've already -- You say that I have not ruled
6 on Attachment C? Is that what, is that what you --

7 MS. SCHMELTZER: I wasn't, I wasn't clear as to
8 whether you had. That's right.

9 JUDGE SIPPEL: Well, I'm -- As far as I'm concerned,
10 I'm finished with this evidence.

11 MS. SCHMELTZER: Okay.

12 JUDGE SIPPEL: Now, you can go back -- I'm giving
13 you -- You have another opportunity, you have cross
14 examination. And if the questions -- if, if you feel that the
15 answers to your questions on cross examination support a
16 motion to strike an exhibit, I will hear argument on that at
17 that time. But so far today, what I've done is I have
18 stricken what I clearly am convinced should be stricken from
19 the case and we should talk no further about it. And what's
20 left with Mr. Schroeder is that on which he will be cross
21 examined. So let's, let's, let's move on to the next -- It's
22 almost -- a little after 11:30. Does the reporter have copies
23 of Mr. Kleiner's testimony to mark?

24 All right, this -- Now, is this testimony that has
25 to -- we have to get another signature page for?

1 MR. HOWARD: Yes, sir, and we have that signature
2 page and it's introduced in -- it is in the original that we
3 supplied. What we introduced into evidence.

4 JUDGE SIPPEL: That the reporter has now?

5 MR. HOWARD: She has an original.

6 JUDGE SIPPEL: She has it?

7 MR. HOWARD: Yes, she has it.

8 JUDGE SIPPEL: All right. Then while the reporter
9 is now marking these documents for identification, I'm, I'm --
10 I missed a very critical part of what I'm supposed to be doing
11 here this morning. Now, subject to the rules with respect to
12 Exhibit 1, Scripps Howard Exhibit 1 is now received in
13 evidence and the reporter will so mark it as being received.

14 (Whereupon, the document referred to
15 as Scripps Howard Exhibit No. 1 was
16 received into evidence.)

17 JUDGE SIPPEL: And I would just mark for
18 identification Exhibit 2, which is the proffered testimony of
19 Arnold Kleiner. You've explained the status of the signature.
20 Let's go forward with the objections.

21 (Whereupon, the document referred to
22 as Scripps Howard Exhibit No. 2 was
23 marked for identification.)

24 MS. SCHMELTZER: Page 1, I would object to the last
25 three sentences in paragraph 1, from October 1986 through May

1 30th, down to the end of the paragraph as irrelevant. These
2 concerned Mr. Kleiner's experience before the renewal term in
3 question and his prior broadcast experience is not a matter
4 that's at issue in this case. And to go on, I would also
5 object to all of paragraph 2 for the same reason.

6 JUDGE SIPPEL: So it's, it's -- The -- Let me mark
7 this where you're talking about, please. Paragraph 1 and the
8 sentence from October '86 through --

9 MS. SCHMELTZER: Through May 30, 1991.

10 JUDGE SIPPEL: Now, that sentence ends at A.S. Abell
11 Corp.

12 MS. SCHMELTZER: Right. And then -- I move to
13 strike all the rest of paragraph 1 and paragraph 2 in its
14 entirety.

15 JUDGE SIPPEL: I hear you now. Let's hear from
16 Bureau counsel first.

17 MR. GOLDSTEIN: Your Honor, the Bureau has no
18 objection to this information as background.

19 MR. HOWARD: Your Honor, I think we, I think we
20 covered it in -- and we are -- that it also be admitted as
21 background and also as evidence of, of his qualifications as,
22 as having conducted ascertainment in the market during this
23 preceding time. Not for the weight of benefit of what
24 occurred in terms of adding to Scripps Howard's renewal
25 expectancy directly, but as an indirect matter. It was

1 | ascertainment that Scripps Howard acquired as it bought the
2 | station and it's admissible for that limited purpose, as well
3 | as for background.

4 | MS. SCHMELTZER: Your Honor, Scripps Howard does not
5 | receive credit for the ascertainment of the prior licensee.
6 | That's well documented in FCC cases.

7 | MR. HOWARD: And, and -- Nor are we claiming it,
8 | Your Honor. We're claiming credit for the knowledge that was
9 | acquired by Arnold Kleiner and used during the renewal period.

10 | JUDGE SIPPEL: Well, it's like trying to count
11 | batting practice as part of the game. You know, he may have
12 | had a chance to observe the market during that prior time and,
13 | you know, that may be a, a consideration -- nothing to do with
14 | the case. It might be a consideration as to why you want to
15 | keep him on in that, in that responsible position, but, you
16 | know, the case starts from the day that -- the relevant
17 | evidence starts from the day that Scripps Howard assumed
18 | responsibility to operate that station in the public interest.
19 | That's the way -- That's the day that it starts. You can't go
20 | back --

21 | MR. HOWARD: May I reoffer my analogy that it would
22 | be relevant if Scripps Howard went out and hired an
23 | independent contractor to ascertain the needs and interests of
24 | Baltimore? Say such a study had been done independently,
25 | never in connection with the station. Someone had done a

1 study of the Baltimore market's needs and interests during the
2 previous 10 years before Scripps Howard acquired the station.
3 If Scripps Howard chose to go out and purchase such a study,
4 that would be -- made I think quite clear that ascertainment
5 is solely within the -- excuse me, is greatly within the
6 discretion of the licensee. And I think that would plainly be
7 admissible.

8 The objection to it for, for -- as an ascertainment
9 mechanism certainly goes to -- may go to its weight, but not
10 to its admissibility 'cause it's -- the Commission has said
11 that there should be great flexibility for licensee's in how
12 they ascertain.

13 JUDGE SIPPEL: Well, I'm not going to, I'm not going
14 to get into a, a debate on this weight deal. I'm going to
15 receive the evidence. For my purposes, it's at this point is
16 background. I am not going to give you the limiting
17 instruction that I did earlier with respect to how you may
18 present this in your proposed findings, but, I mean, for
19 whatever assistance maybe I can give this case, I'm going to
20 -- I can only say it -- I don't think I can say it any
21 clearer.

22 If they had bought, if they had bought all the, all
23 the studies that there were to buy that preceded the date that
24 they took over, the evidence that's going to be considered
25 here, that's going to control here, is that -- is what they

1 did, what did the station do after they acquired the station
2 in terms of ascertainment or what did they do in terms of, of
3 putting on programming to meet the issues that they found.
4 That's what it's all about.

5 So I, you know, I just say that for purposes of
6 whatever assistance that might be in keeping the evidence here
7 to a relevant minimum that we need to get the case on.

8 MS. SCHMELTZER: I do have one additional objection.
9 The very last sentence in paragraph 1 says, "During my tenure
10 as the station's general manager, the FCC twice renewed the
11 license of WMAR-TV -- in '81 and '86." That was under the
12 prior owner. That is absolutely irrelevant to this case.

13 JUDGE SIPPEL: Bureau?

14 MR. ZAUNER: Your Honor, I don't see any great
15 prejudice to anything by leaving that sentence in.

16 JUDGE SIPPEL: Let me hear from Mr. Howard.

17 MR. HOWARD: It's relevant, both as background,
18 Your Honor, and also to the qualifications of Mr. Kleiner as a
19 prospective Scripps Howard general manager.

20 MS. SCHMELTZER: That has absolutely nothing to do
21 with Mr. Kleiner's qualifications, Your Honor.

22 JUDGE SIPPEL: Well, his, his qualifications are not
23 at issue, is not directly an issue. I, I understand what
24 Scripps Howard wants to make of his qualifications, but --

25 MS. SCHMELTZER: He's not even still at the Scripps

1 Howard station.

2 JUDGE SIPPEL: Well, that's -- We talked about that,
3 we addressed that earlier. But, again, I, I, I don't see --
4 As background, I will consider it and I will let it in the
5 record. I'm not even saying that I will consider it, but I
6 will permit it to remain in the record. I see -- I, I've even
7 made my, my editorial note on this particular sentence and
8 there's no inference to be drawn.

9 MS. SCHMELTZER: I do find this extremely
10 prejudicial because there's just --

11 JUDGE SIPPEL: Why is that?

12 MS. SCHMELTZER: Because we have -- You know,
13 there's, there's no indication as to what Gillett's record
14 was. And in order to derive anything from this, you would
15 have to examine the Gillett record. This -- These two
16 renewals were five years -- the latest of them was five years
17 before Scripps Howard acquired the station.

18 JUDGE SIPPEL: I don't understand where you're --
19 What I'm having difficulty with -- I don't want to spend more
20 time on this than I have to, but I don't see where you're
21 being prejudiced by -- I understand the logic of everything
22 that you're saying. And, as I said, my only reaction to this
23 sentence when I read it was I don't see any inference that can
24 be drawn from that. So I'm being --

25 MS. SCHMELTZER: Yeah. My concern is Scripps Howard

1 is definitely going to draw an inference from it.

2 JUDGE SIPPEL: Take a look at the record in
3 Foxchase. It's not going -- This is not going to -- I'm going
4 to move faster when we get through with this, but this one
5 sentence is certainly not going to burden the, the, the record
6 in this case, the -- of this case. The only thing that will
7 burden it right now is the length of the transcript, the
8 talking. But I'm going to exercise my discretion and let it
9 stay in for the limited purposes that I've indicated.
10 Paragraph 2.

11 MS. SCHMELTZER: My -- Well, we've already addressed
12 that. I believe that's the same background information.

13 JUDGE SIPPEL: Background information.

14 MS. SCHMELTZER: Paragraph 5, this says "While at
15 WMAR-TV, including throughout the license term." So this
16 goes back. And, in fact, if you read the succeeding
17 paragraphs, this all goes back to before Scripps Howard
18 acquired the station. It's all related to Mr. -- what
19 Mr. Kleiner did in the way of civic experience. There is no
20 credit for civic experience of Mr. Kleiner, even if he were
21 still associated with Scripps Howard, and he is not. And most
22 of this is outside the renewal period. So I would move to
23 strike 5, 6, 7, 8, 9, 10, and 11.

24 JUDGE SIPPEL: All right. I'm somewhat familiar
25 with these paragraphs from my previous reading. Let's start

1 with Mr., Mr. Goldstein, did you have a chance, or Mr. Zauner?

2 MR. ZAUNER: Yes, Your Honor. We believe that it is
3 relevant to the extent that the activities took place during
4 the license period. And if there's any question on whether or
5 not those activities did take place in the license period, we
6 can examine Mr. Kleiner on that question.

7 MS. SCHMELTZER: Well, I think that puts a
8 tremendous burden on cross examination. And it seems to me
9 that if any of these things occurred in the license period,
10 that was up to Scripps Howard to present in the appropriate
11 fashion.

12 MR. GOLDSTEIN: Your Honor, may I make a suggestion
13 that Scripps Howard be required to specify which one --
14 explicitly which one of these activities follows on the
15 specific license term and the rest be stricken?

16 JUDGE SIPPEL: I'm, I'm listening to you,
17 Mr. Goldstein. Let me hear from --

18 MR. HOWARD: Well, Your Honor, it's two things.
19 It's relevant to the background about Mr. Kleiner. Two, it's
20 relevant to the ascertainment issue that we've described above
21 and has been fully addressed. And, three, we have identified
22 dates that -- in which it's clear what part occurred during
23 the license term already. So it's -- there's -- If they want
24 to seek to -- if there's an effort to limit it -- And
25 certainly we're not going to try to draw inferences with

1 respect to community service, for drawing credit for community
2 service for any actions that Mr. Kleiner took outside the
3 license term.

4 JUDGE SIPPEL: Well, let's take, for example,
5 paragraph 9 is zero reference to a date that comes within the
6 renewal period on that.

7 MR. HOWARD: That would be -- We would only put that
8 in for background, Your Honor.

9 JUDGE SIPPEL: Well, that's, that's -- this is when
10 we start to get things confused. I mean, well, I'm looking at
11 paragraph 9. I'm going to sustain the objection on paragraph
12 9. I'm going to strike paragraph 9 for that reason. Now, I
13 can see in paragraph 7, you know, it goes back and forth, from
14 '88 to '93.

15 MS. SCHMELTZER: Your Honor, the, the Commission is
16 concerned with the licensee's reputation in the community.
17 It's impossible to determine here what Mr. Kleiner may have
18 been doing outside of the station, and the Commission is not
19 concerned with Mr. Kleiner's individual activities. I think
20 the licensee's reputation in the community is, is addressed
21 elsewhere, in their public witness statements.

22 JUDGE SIPPEL: Well, there are different ways of --
23 That would certainly be one way of getting at the evidence.
24 I, I'm agreeing with Ms. Schmeltzer, but we're not here to
25 decide which is the best way to do it. I have to rule as to

1 whether or not their evidence comes in or it goes out or we do
2 something different.

3 MR. HOWARD: Your Honor, I, I can only suggest that
4 we certainly don't -- We will use discretion in, in preparing
5 our proposed findings and recognizing what you are going to
6 assign weight to and what is not. And while we didn't make a
7 distinction in the testimony between background here and, and,
8 and other information, I think it's, it's very clear what the
9 standards are that would be applied and that there's no need
10 to try to distinguish what can be applied for what purpose at
11 the stage of determining what's admissible. I would just
12 suggest, in the interest of moving forward, that we -- if we
13 should -- If, if, if somehow we try to claim credit for his
14 being chairman of the Phantom Ball to benefit Baltimore Reads
15 in 1989 in any way in our proposed findings of fact and
16 conclusions of law, I think that we will not do that --

17 MS. SCHMELTZER: Well, I'd be happy -- Maybe over
18 the lunch break we could just go through and -- Well, I guess
19 I'd like a ruling on my general objection that this is all
20 irrelevant. But if you let any of this in, I definitely think
21 the sentences that refer to the period before May 30, 1991,
22 and subsequent to September 3, 1991, ought to come out.

23 JUDGE SIPPEL: Well, it, it does -- There's a lot of
24 work that's going to have to go into this and I'm, I'm trying
25 to -- right now I'm trying to think through what Mr. Goldstein

1 has suggested. There has to be some kind of a connection
2 between what this person does and how it relates to our case.
3 Do you have something to say, Mr. Zauner?

4 MR. ZAUNER: Just -- When I was listening to you
5 talk, I, I had a thought, and that is that it seems to me that
6 the history of what a person does and brings to his job of
7 ascertaining, for example, is relevant. And even though some
8 of these activities may have occurred in a period prior to the
9 license period, it's still relevant in evaluating his
10 knowledge of the community. And I was thinking about that in,
11 in the context of the Review Board's decision in the Metroplex
12 case where the Review Board talked about the obligation of a
13 station to engage in positive and continuing ethics to
14 discover and fulfill the tastes, needs, and desires of the
15 service area.

16 And this is part of a -- part of what Scripps Howard
17 had at the time of the license period to rely on in the
18 programming that it presented to meet the needs and interests
19 of its community. And I think, therefore, the individual
20 experience of Mr. Kleiner may in fact be relevant to a
21 determination of the renewal expectancy.

22 MS. SCHMELTZER: Your Honor, I'm not aware of any,
23 any cases that would support that very vague definition.

24 JUDGE SIPPEL: Let's hear -- Were you going to say
25 something.

1 MR. HOWARD: Only that Mr. Kleiner testifies to that
2 very point at paragraph 34, where he notes that his "long
3 involvement in the community affairs of Baltimore and my long
4 experience in conducting ascertainment" helped him to evaluate
5 the intensity of the interests in the community competing for
6 attention. He relied on that as part of his role during the
7 renewal period.

8 JUDGE SIPPEL: This is all very conclusory. The
9 point is is that the evidence has to show, and I'm not saying
10 that you can't show it, but the evidence has to show that
11 there was actually issues that were, that were ascertained and
12 that the, that the station addressed the issues with
13 programming. That's what -- That's the, that's the ultimate
14 test here.

15 MR. HOWARD: Is the programming, yes, Your Honor.

16 JUDGE SIPPEL: The programming -- the issue. Now,
17 whether this was done by Ms. Barr or whether this was done by
18 Mr. Kleiner or a combination of the two of them, it, it
19 doesn't have the significance that you're trying to attach to
20 it.

21 MR. HOWARD: The ascertainment, Your Honor? I'm
22 sorry.

23 MR. ZAUNER: The -- that you would take --

24 MR. HOWARD: Permit evidence to be produced as to
25 ascertainment efforts.

1 JUDGE SIPPEL: I'm, I'm saying that the
2 ascertainment efforts -- that ascertainment efforts which --
3 with which you're going to disclose the issues to which the
4 program relates, that's what, that's what -- that's the key
5 evidence in the case. And you're spending a lot of time
6 producing -- trying to introduce evidence on the
7 qualifications of the person that's responsible for doing a
8 lot of -- not all of it, but a lot of the ascertainment. And
9 this is where the -- this is where we're spending a lot of
10 time. I mean, it's -- And I -- now I hear from Mr. Zauner
11 that he's seeing relevance here that I'm not sure whether or
12 not I agree with it. Ms. Schmeltzer is objecting because
13 she's not convinced that the standard of the case is, is quite
14 that way, that there is, that there is -- that broad inference
15 is going to be drawn from experience in the, in the community.
16 I --

17 MR. ZAUNER: Your Honor --

18 JUDGE SIPPEL: Yeah, go ahead, Mr. Zauner.

19 MR. ZAUNER: There is one other. In the Metroplex
20 case the Review Board set five criteria that they said was
21 significant in determining renewal expectancy, and the fifth
22 of those was the presence or absence of any special effort at
23 community outreach or cross-dividing -- for local self-
24 expression. That ruling by the Review Board was, to some
25 extent, modified by the Commission in a subsequent decision in

1 Metroplex, but it's -- it appears that, that the Commission's
2 rejection was to that as a separate criterion, not to the
3 inclusion of it at all.

4 And to some extent, I think that Mr. Kleiner's
5 experience here in doing the things that are mentioned in
6 these paragraphs would, would fall under that sort of
7 outreach. Now, a lot of it, I understand, happened prior to
8 the license term, but some of it apparently happened during
9 the license term. And to that extent, I think it's relevant
10 again.

11 JUDGE SIPPEL: Well, that, that, that brings us
12 right back to where we were on this when Mr. Goldstein made
13 his point, and I know that, that, that's the five criteria
14 that -- case, too, and the Review Board goes back and talks
15 about that. And I'm, I'm using those five criteria to guide
16 me in this case. But, you know, I think that Ms. Schmeltzer
17 has a point in terms of how far back you would go with this
18 evidence. And, and what I'm going to be looking for is some
19 kind of a -- Even if when we get it down limited to the
20 relevant time period, is there, is there a correlation between
21 that experience, that exposure to the community, and
22 ascertainment efforts, actual efforts that were taken?

23 And that's -- I mean, that's where the crux of the
24 case is, you know, back here still trying to set the table up.
25 Go ahead.

1 MR. HOWARD: At the risk of overburdening the
2 transcript now, let me just offer one other example. The --
3 Suppose that Mr. Kleiner had come to Baltimore to manage WMAR
4 on the day that the station was acquired by Scripps Howard,
5 that is he came in on May 30, 1991. What efforts he would be
6 -- that the station would take in order to ensure that they
7 could reasonably -- that they could ascertain the needs and
8 interests of the community I think would be a very different
9 case from what's presented with a station manager who's had
10 the, the benefit of 10 years of experience in that community.

11 Thus, in order to assess the reasonableness of his
12 ascertainment efforts during the renewal period, it is
13 relevant to consider what knowledge he brought with him to
14 that position that was acquired previously. And, thus, I
15 think it's directly relevant.

16 MS. SCHMELTZER: I beg to differ, Your Honor. If
17 Mr. Kleiner had come in on May 30, 1991, the standard of
18 evaluating his performance would be precisely the same. There
19 would be no difference. Scripps is simply trying to go back
20 and get some extra points for what happened under the
21 stewardship of another licensee. And in, in addition to that,
22 a lot of -- the time frame also goes forward. They're trying
23 to get credit for things that Mr. Kleiner did in 1993, long
24 after the renewal period.

25 MR. HOWARD: Can we just focus on the past for the

1 time being and then turn to, to the future?

2 JUDGE SIPPEL: Well, these, these are all very valid
3 points, though, meaning we do have the time -- We, we limited
4 the -- I've limited the relevant time period and that has to
5 be adhered to.

6 MR. HOWARD: I understand. I'm not objecting to --
7 Your Honor. I just thought it would ease things, ease the
8 decision if we focused on the one objection.

9 JUDGE SIPPEL: I, I will accept -- Let me, let me --
10 What I am prepared to do is I am prepared to accept a, a
11 specific presentation of those community activities in which
12 this witness has been involved with in the relevant period for
13 purposes of showing that he is qualified to carry out
14 ascertainment functions for the station. But I am not going
15 to draw an inference from the fact that he belongs to 1, 2, 5,
16 or 15 community organizations in terms of saying that yes,
17 that's the -- that's direct evidence relevant to
18 ascertainment. The proof is only going to be in the pudding.

19 What did they ascertain and what is it that they
20 find and what program did they put on to address the issues?
21 That's what it's all about. So what I'm going to do is over,
22 over the lunch break is I'm going to go down these paragraphs
23 and I'm going to tell you exactly what I need to do in each
24 paragraph. I will put -- I will satisfy myself as far as
25 whether each paragraph stays in, goes out, or which you will

1 be permitted to clarify. And the clarification will be made
2 with an amended -- It doesn't have to be a sworn statement,
3 but it will be an amended summary of his testimony of these
4 qualifications that he will testify to directly.

5 I mean, he's locked in as far as -- For your
6 benefit, Ms. Schmeltzer, he's locked in in terms of what he
7 has here, but he's got to narrow it and he's got to, he's got
8 to come up on the stand and he's got to say here is the
9 organizations I belonged to during these -- this period of
10 time and these are, these are, and these are organizations
11 that are in the Baltimore community. Period.

12 MS. SCHMELTZER: But for the record, I do have an
13 objection to -- This was supposed to be a frozen written case.
14 Scripps knew the renewal period. I do have an objection to a
15 massive reformation of the case at this juncture.

16 JUDGE SIPPEL: Well, I think that, I think that
17 you're -- I think I'm giving you a lot in terms of your
18 objections. I think on the critical stuff, I think I'm giving
19 it to you and I think what we're doing here is, you know, it
20 may arguably be not, not the best way to use Commission time
21 but we want a record that's going to be usable. And, on the
22 other hand, I also want to give Scripps Howard its day in
23 court. So I think that -- I think I'm meeting both of my ends
24 of the responsibility.

25 It's 12:00. We'll be back at 1:15 and I will give

1 definitive ruling with respect to -- Now, let me see, the
2 paragraphs go from 5 through 11.

3 MS. SCHMELTZER: Yeah. And 11, actually, the
4 objection to 11 is that it's conclusory and self-serving.

5 JUDGE SIPPEL: All right. Let's see, all right, I,
6 I know what the problem is with 11, but I'm going to make a
7 ruling on that, on those paragraphs, and then we're going to
8 go on to 12. We're not going to discuss this unless somebody
9 has a question about my instruction. Understanding my
10 instruction, we're going to go forward.

11 (Whereupon, at 12:00 noon, a luncheon recess was
12 taken.)

13

14

15

16

17

18

19

20

21

22

23

24

25

A F T E R N O O N S E S S I O N

1
2 JUDGE SIPPEL: Okay, it's almost 20 after 1 and
3 we're going to continue where we left off this morning. I
4 have, I have reviewed -- In addition to other things, I have
5 reviewed paragraphs 5 through 8. This is with respect now to
6 Exhibit 2, testimony of Arnold Kleiner. And while I didn't
7 say that I was going to revise those paragraphs to comport
8 with my ruling on specificity, what I've, I've determined to
9 do as an alternative is I will permit this evidence to come in
10 in the form that it's presented, that is over any objections
11 of counsel for Four Jacks.

12 And I'm specifically referring to now paragraphs 5,
13 6, 7, and 8. However, I'm only receiving this as evidence of
14 the competence of the witness to testify as to community
15 matters. And with that instruction, those are my rulings. I
16 have already stricken paragraph 9 and I thought that through
17 in the same sense as my rulings on 5 through 8. However,
18 finding this to be a really -- a paragraph containing awards
19 that Mr. Kleiner received prior to the -- actually, prior to
20 the acquisition of the station, as well as, of course, prior
21 to the, to the renewal period, this is clearly irrelevant.

22 At least that's -- that has been my ruling, so I am
23 continuing with that ruling with respect to striking paragraph
24 9. Which brings me to paragraph 10, and I'll hear argument on
25 paragraphs 10 and 11 since that focuses really on another

1 subject matter, which would be professional associations. Is
2 there an objection to 10?

3 MS. SCHMELTZER: Yes, there is an objection and that
4 is that this information on professional associations is not
5 relevant to any of the issues concerning Scripps Howard's
6 license renewal.

7 JUDGE SIPPEL: Relevance is -- Mr. Howard?

8 MR. HOWARD: It's offered strictly for background,
9 Your Honor.

10 JUDGE SIPPEL: Well, we're on paragraph 10.

11 MS. SCHMELTZER: It also suffers from the same
12 problem that the others did. They both precede and extend
13 beyond the relevant period. In fact, the last sentence --

14 JUDGE SIPPEL: He said he just wanted it for
15 background. However, -- made that comment, how does it tie in
16 with paragraph 11, if at all? And it must, because paragraph
17 11 refers to professional experience.

18 MR. HOWARD: Well, Your Honor, it does have -- it
19 does go to, to the -- to his credentials as a -- for making
20 public interest programming decisions because of his
21 professional experience. So I, I -- we are offering it for
22 more than background. I would like to correct my statement
23 and say that I offer it as well for the evidence of his
24 professional background and competence to assess what -- how
25 to address the needs and interests of the community --

1 JUDGE SIPPEL: All right. Are you, are you trying
2 to -- With paragraph 11 and what you're saying -- plus the
3 rest of this section, are you trying to establish some kind
4 of, of opinion testimony for this witness?

5 MR. HOWARD: The, the purpose was along -- to, to
6 support his position that he is able to -- well, to discern
7 what the issues of primary importance to the citizens of
8 Baltimore are, yes. And that would be the only type of
9 opinion that we would give. We're not offering it for some
10 broad expertise on television --

11 JUDGE SIPPEL: But what is, you know, what is the
12 relevance to his familiarity, assuming that he has it? Or
13 what is his -- what is the relevance of his familiarity to the
14 ordinary and customary practices in the television broadcast
15 industry, whatever they may be?

16 MR. HOWARD: That they would be -- That his opinion
17 would be acceptable in that regard.

18 JUDGE SIPPEL: Well, then it sounds to me like
19 you're trying to -- you're looking for opinion -- or findings
20 on opinion testimony, as well as his fact witness. I mean,
21 he's basically --

22 MR. HOWARD: Yes, Your Honor. Upon reflection, I, I
23 cannot point to a particular type of opinion that we're going
24 to, to press for, that, that we are going to try to use
25 Mr. Kleiner to support.

1 JUDGE SIPPEL: All right. Well, I, I'm, I'm going
2 to, I'm going to see if the -- Does the Bureau have any
3 position on this or want to comment on this at all?

4 MR. ZAUNER: No, Your Honor.

5 JUDGE SIPPEL: Well, I'm going to strike 10 and 11.
6 His competence to observe the -- what's going on in the
7 community and what the issues of the community might be are
8 well covered in 5 through 8. I don't see the relevance with
9 respect to professional associations and, and, and that
10 capability. So, again, on a strictly narrow legal relevance
11 ground, I'm going to strike 10, and I'm also going to strike
12 11 just out of concern that there may be an effort to try and
13 get him into giving opinion testimony on matters which he
14 really, he really is testifying to as a matter of fact.

15 And I don't want the record to get confused between
16 opinion and fact and what the various standards might be,
17 legal standards. So my ruling is 10 and 11 are stricken on
18 the stricken relevance grounds. Which brings us then to
19 paragraph 12.

20 MS. SCHMELTZER: I have no objection to paragraph
21 12.

22 JUDGE SIPPEL: Does the Bureau have any objection?

23 MR. ZAUNER: No objection.

24 JUDGE SIPPEL: Twelve stays in. Thirteen?

25 MS. SCHMELTZER: My next series of objections would

1 be -- You know, this is head "Acquisition of WMAR-TV by
2 Scripps Howard," and this whole section is, is paragraphs 13
3 through 18. I have an objection to the entire section because
4 it covers the period prior to closing. In addition, I have
5 some further objections. In paragraph 14, there's a reference
6 to Mr. Janssen's questions. Mr. Janssen's not testifying.
7 Paragraph 15 refers to conversations with Mr. Janssen and
8 Mr. Lowe, and neither of those people are testifying.

9 Paragraph 17 refers once again to that employment
10 contract and its modifications, and a prior paragraph
11 concerning that was stricken. And paragraph 18 is totally
12 irrelevant. It, it, it concerns his apparent knowledge of
13 other station acquisitions that were things that not even
14 Scripps Howard was involved in. It also contains a reference
15 to what corporate management does, and he's not in a position
16 to speak for Scripps Howard's corporate management. He was
17 not an officer of Scripps Howard prior to June 13th of 1991.

18 JUDGE SIPPEL: Okay. The Bureau? Mr. Goldstein?
19 Mr. Zauner?

20 MR. ZAUNER: One second, Your Honor. Your Honor, I
21 have to agree with what's been said. I, I don't see the
22 relevancy of this information.

23 JUDGE SIPPEL: Well, let's hear from Mr. Howard.

24 MR. HOWARD: I'll try, Your Honor. The relevancy
25 is, as we've discussed, the -- There's going to be an issue in

1 this case whether or not the -- At least it may be an issue in
2 this case, as to whether or not Scripps Howard bought a
3 property that was ongoing and they just let it continue on
4 without any attention being given to it or to its practices.
5 I think that's -- I surmise from the way -- from some of the
6 arguments that that is going to be one of the arguments raised
7 in -- against Scripp Howard's renewal expectancy.

8 In anticipation that there may be an issue, the
9 evidence is offered to show that Scripps Howard carefully
10 considered the operations of the station before it made the
11 acquisition and that it carefully considered the operations of
12 the station and, thus, it made that purchase with that in
13 mind. It's also directly relevant to what happened during the
14 license term because, again, what happened during the license
15 term did not occur in a vacuum, it happened after -- to a
16 station that was an ongoing business operation. So it's, it's
17 directly relevant to what occurred in the license term. It
18 will only be offered, though, to, to show that Scripps Howard
19 paid attention to what it was --

20 JUDGE SIPPEL: All right. I'm going to, I'm going
21 to strike this testimony basically on a Rule 403 ruling of the
22 Federal Rules of Evidence, which is the exclusion of even
23 relevant evidence on grounds of prejudice -- time. And I'm
24 not conceding that this is relevant, but to the extent that
25 you, you may have a relevancy argument, as you have