

1 under some -- whatever circumstances might be appropriate to  
2 use video tapes. It simply says that you've got to reduce it  
3 to writing. But I don't want to, I don't want to -- Again,  
4 I'm not saying that because I'm criticizing your argument.

5 I'm saying that is in terms of why I was, was not  
6 prepared at that point to just stop it right then and there.  
7 I wanted to see how this thing was going to be presented, and  
8 I never did anticipate -- I will be very honest with everybody  
9 here. I did not anticipate that there was going to be a TV  
10 set that was taken to the courtroom, or I would have, I would  
11 have been glad to address this as a preliminary matter. Or  
12 even in a speaker phone context.

13 But be that as it may, I -- my ruling is that I'm  
14 not going to receive this video tape into evidence for the  
15 reasons that have been stated. And we will rely on -- Then I  
16 will leave Exhibit M, for Maryland, in the record as an  
17 explanation of what has been rejected. And Attachment N, for  
18 Nevada, of course will be, will be ruled on independently when  
19 we get to the Barr exhibits. And since it is represented on  
20 this record here today and what is in the written exhibits as  
21 to precisely what I have rejected, I'm not even going to keep  
22 the, the tapes or permit the tapes to go with the record as a  
23 rejected exhibit since it's been described.

24 Under our rules -- it has been described adequately  
25 as to what has been rejected. So I would ask somebody when we

1 finish here today to please pick up the copy of the tape that  
2 I have and return it to your -- Okay. We can now move back to  
3 Mr. Kleiner's exhibits.

4 MS. SCHMELTZER: All right, we're on page 10,  
5 paragraph 27.

6 JUDGE SIPPEL: That's correct.

7 MS. SCHMELTZER: I have an objection to the first  
8 sentence which concerns what Mr. Kleiner did prior to the time  
9 that the station was owned by Scripps Howard.

10 JUDGE SIPPEL: Where does that appear, on page --

11 MS. SCHMELTZER: That's paragraph 27, the first  
12 sentence.

13 JUDGE SIPPEL: The first sentence? "During the  
14 license term"?

15 MS. SCHMELTZER: Well, it's right after that.

16 JUDGE SIPPEL: Well, again, this -- You know, I  
17 understand your objection and -- but this goes back to what  
18 we've been wrestling with ad infinitum here. This is the way  
19 that they've chosen to present this, this evidence. It is --  
20 They're not going to get -- If you're worried that I'm --  
21 somebody's going to be asleep at the switch, they're not going  
22 to get credit for anything that they did prior to the renewal  
23 period as far as programming is concerned, or as far as  
24 ascertaining -- is concerned. They can say it different ways,  
25 but there's -- when it comes down to making a cut on this

1 case, they're not going to be able to use what they did at  
2 Gillett.

3 MS. SCHMELTZER: My next objection goes to -- Well,  
4 it goes to the extent to which they're using the term  
5 "ascertainment," but it also goes to the next, the next two  
6 sentences which refer to Attachment E of Emily Barr's  
7 testimony. And I don't -- Do you want to take up Attachment E  
8 at this point?

9 JUDGE SIPPEL: Well, I think we should -- Anything  
10 that I, anything that I rule on with respect to Emily Barr in  
11 Mr. Kleiner's testimony is subject to, so if you feel that --  
12 go over her materials.

13 MS. SCHMELTZER: All right. Attachment E --

14 JUDGE SIPPEL: This is called the "Issue  
15 Ascertainment" exhibit.

16 MS. SCHMELTZER: Yes. Let me just refer to Scripps  
17 Howard's filing on September 22nd, where you asked Scripps  
18 Howard to describe where some of the materials that were in  
19 the tabulated material came from. All right. And Attachment  
20 E is described as "documents that were originally prepared in  
21 1992 at the direction of Emily Barr from information gathered  
22 by individuals working under her supervision. In preparing  
23 the attachment, she relied upon her own calendar and  
24 recollections and the calendars and recollections of Arnold  
25 Kleiner and Maria Velleggia. In addition, she relied upon

1 discussions with and notes of Janet Covington, the former  
2 public affairs director.

3 "At that time, Ms. Covington already was a former  
4 employee of the station who had volunteered to help Ms. Barr  
5 on her own time. Ms. Covington had kept the notes in her  
6 possession when she left the station. It did not occur to  
7 Ms. Barr to preserve Ms. Covington's handwritten notes after  
8 their discussion." Now, we had a motion to produce documents  
9 in this proceeding which asked for all documents relating to  
10 the preparation of issues programs lists, including documents  
11 describing the conduct and results of ascertainment efforts,  
12 general public surveys, if any, and documents reflecting the  
13 compilation of responsive programming lists.

14 None of the material that's in Attachment E was --  
15 This, this attachment was never given to us. This attachment  
16 was prepared long after the fact of the -- long after the  
17 programming had aired by Scripps Howard. The depositions  
18 revealed that the Scripps Howard people did not keep any kind  
19 of notes from interviews with community leaders. So, for  
20 instance, during the renewal period if Mr. Kleiner talked to a  
21 leader, he did not write down that he talked to the leader on  
22 that date. He did not write down that the leader had come up  
23 with 10 community issues, and he did not write down how that  
24 was, was addressed.

25 So there are no contemporaneously prepared

1 | ascertainment documents. Everything was done after the fact.  
2 | This whole exhibit was done in 1992. This is -- Mr. Kleiner  
3 | was asked, "To the best of your recollection, there is no  
4 | written memorialization of the establishment of priorities or  
5 | the established identification? Answer: "From the meetings,  
6 | that is correct." Question: "Now, when a different  
7 | management level persons came back to the station, how were  
8 | their interviews memorialized, if at all?" Answer: "They  
9 | weren't. Discussion." There was just nothing in writing  
10 | memorializing how the ascertainment was done. And --

11 |           JUDGE SIPPEL: Okay. So what's the, what's the  
12 | point? That --

13 |           MS. SCHMELTZER: The point is that we think that  
14 | Attachment E, in its entirety, should be stricken. We  
15 | repeatedly asked these people during their deposition if there  
16 | were documents that reflected who was contacted when, what  
17 | issue they had identified. They said no. We have now come up  
18 | -- Their calendars did not -- All it may have shown in a few  
19 | instances were on -- maybe on July 5th I talked to John Smith.  
20 | Did not say what was discussed at that meeting.

21 |           JUDGE SIPPEL: All right. Well, I don't mean to cut  
22 | you off because what you're saying is -- goes right to the  
23 | heart of, of this exhibit, Exhibit E. This is the -- No, this  
24 | is the Barr Exhibit E.

25 |           MS. SCHMELTZER: Right.

1 JUDGE SIPPEL: Or Attachment E, rather. But this is  
2 going to require --

3 MS. SCHMELTZER: And it --

4 JUDGE SIPPEL: Well, let me just finish what I was  
5 saying. I'm not going to throw out this issue ascertainment  
6 exhibit based on this kind of debate. You're going to have  
7 to -- You can voir dire Kleiner, you can voir dire Barr. You  
8 can spend a considerable amount of time with what you're  
9 telling me here today. But I'm not going to reject this in  
10 today. So what we're left with is, as my earlier rulings have  
11 been, we'll let Mr. Kleiner testify this way, but it's going  
12 to be subject to a lot of cross examination and a lot of voir  
13 dire on this, on this type of evidence, how it was collected  
14 and what reliable -- But I've got to see the witness who  
15 testifies to this -- Ms. Barr's going to start off, so that's  
16 -- We'll hear her story and we'll hear Mr. Kleiner's story.

17 MS. SCHMELTZER: You know, in addition, Your Honor,  
18 Ms. Covington is not a witness. Her notes were not preserved.

19 JUDGE SIPPEL: I see that.

20 MS. SCHMELTZER: We were not advised in response to  
21 document -- response to our motion for production of documents  
22 that some documents had been destroyed. So I just think for a  
23 variety of reasons this exhibit is very suspect.

24 JUDGE SIPPEL: Well, that's, that's all  
25 argumentative. I mean, I'm glad I asked for the description

1 of the documents, but this is not what we're here for today.  
2 Do you want to respond to any of this, Mr. Howard, now or --

3 MR. HOWARD: Not if it's going in, Your Honor.

4 JUDGE SIPPEL: It's going in the way it is. Okay,  
5 paragraph 28.

6 MS. SCHMELTZER: Well, I guess I do have a concern  
7 about the fact that W -- that Scripps Howard repeatedly refers  
8 to its ascertainment, and we -- our objection is I'm not sure  
9 you can call it ascertainment, but with that caveat I will --

10 JUDGE SIPPEL: It's Mr. Kleiner's testimony and this  
11 is, this is, this is going -- this is pay dirt stuff, so we're  
12 going to leave it in the way it is, but you can, you can --  
13 Believe me, you will be able to cross examine thoroughly.

14 MS. SCHMELTZER: Okay. On the third line from the  
15 top on page 11, I would just object to the word "continued"  
16 because that discusses what happened under the prior owner,  
17 and also "a wide range of" as conclusory.

18 JUDGE SIPPEL: Well, again, I'm going to let him say  
19 it his way and you can cross examine him. So I'll overrule  
20 the objection.

21 MS. SCHMELTZER: Okay. On page 12, there's a  
22 sentence that says "The monthly reports that I received from  
23 each department head also discussed ascertained issues." We  
24 were not provided with any monthly reports.

25 JUDGE SIPPEL: Did you ask for them?

1 MS. SCHMELTZER: Yes. We were told they didn't  
2 exist.

3 JUDGE SIPPEL: Mr. Howard?

4 MR. HOWARD: We, we produced what existed, and these  
5 did not -- these were not retained.

6 JUDGE SIPPEL: You mean they were not -- You mean  
7 they existed at one time but they were not retained?

8 MR. HOWARD: That's right.

9 JUDGE SIPPEL: Well, I think you're going to want to  
10 inquire -- Did you ask Mr. Kleiner -- Oh, he didn't know, he  
11 didn't know in his testimony when, when you deposed him, did  
12 he?

13 MS. SCHMELTZER: Yeah, I think I did cover this with  
14 him.

15 JUDGE SIPPEL: All right. So then -- Okay. Well,  
16 this is, this is what I should know about but in a different  
17 format.

18 MS. SCHMELTZER: In paragraph 30, there's a --

19 JUDGE SIPPEL: I'm going to overrule the objection,  
20 if that's what it is. Paragraph 30 is next, yes.

21 MS. SCHMELTZER: I object to the sentence "I  
22 established the WMAR-TV Board in 1981." That sentence is  
23 irrelevant.

24 JUDGE SIPPEL: It's irrelevant. He starts off by  
25 saying, this is Mr. Kleiner, "Another way by which I

1 ascertained" was through this advisory board.

2 MS. SCHMELTZER: No, it's the next sentence.

3 JUDGE SIPPEL: "The Board is composed of individuals  
4 leaders in various groups."

5 MS. SCHMELTZER: I'm sorry, the third sentence, "I  
6 established the Board in 1981."

7 JUDGE SIPPEL: Oh, in 1981.

8 MS. SCHMELTZER: Right.

9 JUDGE SIPPEL: And so what's the objection then? Is  
10 he relying on -- I, I don't read this to mean that he's  
11 relying on what he is hearing from the Board in 1981. Now,  
12 you can clarify that. Maybe I can ask Mr. Zauner or Mr.  
13 Goldstein if they see it differently.

14 MS. SCHMELTZER: Now, getting --

15 JUDGE SIPPEL: Wait just one minute.

16 MR. ZAUNER: Your Honor, I don't see any real  
17 prejudice or harm in leaving the statement in. It's just a  
18 background statement, the Board began in 1981. And I don't  
19 think they're looking for credit based upon anything that  
20 occurred prior to the license tenure. In fact, they say  
21 "Although the Board existed during the license term, no formal  
22 meetings were held during that time due to scheduling  
23 difficulties." So I think it's more of a background  
24 statement.

25 JUDGE SIPPEL: All right. If that's what -- I

1 think, I think, I think this record should stay the way it is  
2 subject, of course, to cross examination. So if there's an  
3 objection to 30 and 31, it's overruled.

4 MS. SCHMELTZER: Okay. Let me ask you a mechanical  
5 question, because in paragraph 27 we have Mr. Kleiner  
6 referring to certain paragraphs of Emily Barr's testimony and  
7 Attachment E.

8 JUDGE SIPPEL: I saw that.

9 MS. SCHMELTZER: And in paragraph 31, he -- we have  
10 him referring to Attachment G to Emily Barr's testimony.

11 JUDGE SIPPEL: And Attachment G is?

12 MS. SCHMELTZER: I don't know why we would -- On  
13 page 11, he says my personal efforts are documented in Emily  
14 Barr's testimony, which just does not seem appropriate at all.

15 JUDGE SIPPEL: Well, you know, what you're  
16 addressing is arguments that could be, could be made if the  
17 record supports it after you get through with these people on  
18 the stand. I mean, this is the way they're presenting their  
19 case. I can't, you know, we tried that earlier this morning  
20 and we found out that we were really wasting a lot of time. I  
21 can't recast how they're going to put their case in, as long  
22 as this stuff -- as long as what they're offering is, is  
23 relevant.

24 And now we're into the things which are relevant.  
25 This morning it was different. So if that's the way they want

1 to present it, that's it. You cross examine, you give  
2 proposed findings, and off we go.

3 MS. SCHMELTZER: I object to the entirety of  
4 paragraph 32 as irrelevant. This concerns Mr. Kleiner's  
5 reading of the local newspapers.

6 JUDGE SIPPEL: Reading it during the renewal period?  
7 It says "In addition to my other ascertainment efforts during  
8 the renewal period, I continued my previous practice." Are  
9 you objecting to the continuing previous practice?

10 MS. SCHMELTZER: I don't think reading the local  
11 newspaper is relevant to the -- getting a license renewal.

12 JUDGE SIPPEL: Well, it's kind of a logical way to,  
13 to bone up on local issues, it seems to me. I'm not saying  
14 that it's the end of the ballgame. I'm, I'm, I'm going to  
15 permit that to stay the way it is. Paragraph 33?

16 MS. SCHMELTZER: Well, my next objection is to  
17 paragraph 34 and I would object to that paragraph as vague,  
18 conclusory and self-serving.

19 JUDGE SIPPEL: Well, it certainly is self-serving,  
20 but I, I, I can, I can recognize that. You certainly can  
21 point that out to me and that may go to the weight, but it  
22 seems like it's kind of a transition paragraph in there that  
23 now we're prepared to sift gears and go down to responsive  
24 programming. So I'll exercise my discretion and let that stay  
25 in, although there's merit to your objection. Overruled.

MS. SCHMELTZER: I have a general objection to the

1 references to -- for the record, to -- the references to  
2 management's ascertainment contacts because we maintain that  
3 it's questionable whether they really did a bona fide  
4 ascertainment. But putting that aside for a moment, I would  
5 move to strike the clause that's in the last sentence, and it  
6 says "and upon others' reports to me based on their  
7 ascertainment efforts", as vague and conclusory.

8 UNIDENTIFIED SPEAKER: Where?

9 JUDGE SIPPEL: She's down at the last sentence of  
10 paragraph 35 on page 14. Well, again, he's, he's chosen not  
11 to delineate those other reports, but there's certainly logic  
12 in what he's saying there. This all goes down to -- comes  
13 down to weight, reliability, assessments that can only be made  
14 after we see Mr. Kleiner on the stand and you're finished  
15 cross examining him. So I, I, I understand what your -- Your  
16 observation I understand, but there really is no basis to  
17 exclude this testimony based on that objection. So I'm going  
18 to overrule it.

19 MS. SCHMELTZER: Okay. Page 15, the last sentence  
20 in the top paragraph, "The process by which the Editorial  
21 Board functioned and made decisions is accurately described in  
22 paragraph 67 of the testimony of Emily Barr." I think that's  
23 unnecessary and redundant because that's Emily Barr testifying  
24 to it and he's not adding any personal observation or  
25 anything.

1 JUDGE SIPPEL: Well, as I say, you can make argument  
2 on that, but he's the -- Am I right, Mr. Howard, he's  
3 Ms. Barr's -- or at least during, during that period of time  
4 until he left, he was her superior?

5 MR. HOWARD: Absolutely.

6 JUDGE SIPPEL: So I'm going to allow that to stay.  
7 I'll overrule the objection.

8 MS. SCHMELTZER: Okay. The first sentence in  
9 paragraph 38, "WMAR-TV's consumer affairs service, Contact 2,  
10 was established well over a year before the license term," I  
11 would move to strike that sentence since it's irrelevant.

12 JUDGE SIPPEL: Well, it's explaining -- I, I, I  
13 would take that as a cautionary -- I would receive that  
14 evidence as a caution to me that don't think that we started  
15 this Contact 2, it was here when we got it but we're carrying  
16 forward. So to the extent that that's a limitation, I --  
17 that's how I would receive it. Am I misreading that, Mr.  
18 Howard?

19 MR. HOWARD: I, I don't see it as a negative in that  
20 regard, Your Honor, but it does, does have that effect, I  
21 agree. Also, it's just showing that it was a -- I think in  
22 terms of the effectiveness of the operation would be affected  
23 as well by the fact that it had been an ongoing process, the  
24 fact that a continuation showed entitles them to some more  
25 weight but not, not a great deal.

1 JUDGE SIPPEL: All right. Well, I'm not, I'm not  
2 totally convinced of, of, of your entire line of reasoning at  
3 this stage of the case, but let me say that I'm not -- When I  
4 say -- My limitations are not to, to negate in a qualitative  
5 sense what went on before. Simply saying is that for purposes  
6 of the record that I'm going to be considering there's a big  
7 difference as to whether or not it was Gillett or, or, or  
8 Scripps Howard programming. Okay. So I, I am -- I'm going to  
9 overrule the objection, but I've limited my -- I've limited  
10 the way in which I have to consider the evidence. Anything  
11 more on that paragraph?

12 MS. SCHMELTZER: No.

13 JUDGE SIPPEL: Thirty-nine okay?

14 MS. SCHMELTZER: Yes. My next objection is to the  
15 section that reads "Response to Comparative Renewal  
16 Challenge." That's not one of the criterion that the  
17 Commission evaluates. They don't evaluate how you respond to  
18 a comparative renewal challenge. But what's important here is  
19 what WMAR did, and that's elsewhere. This whole section  
20 appears to be mainly repetitive, except that it talks about  
21 the challenge. The last paragraph, by the way, paragraph 46,  
22 is entirely conclusory.

23 JUDGE SIPPEL: Well, that is conclusory, but there  
24 is an element of leeway given to a witness to sum up his  
25 position and perhaps any argument, argumentative assessment.

1 I, I'm not going to disturb. It's a nonjury case.

2 MS. SCHMELTZER: And finally, paragraph 47. We  
3 would argue that this is irrelevant. In addition, at an  
4 earlier stage we had requested documents concerning WMAR-TV's  
5 compliance with FCC rules, and I believe that you ruled that  
6 that was not relevant. So I don't think that WMAR-TV should  
7 now be permitted to make a general statement about its  
8 compliances. We never were provided with documents.

9 JUDGE SIPPEL: Is that true? Did I -- Is that --  
10 Did I rule on that?

11 MR. HOWARD: That's not my recollection of your  
12 ruling, Your Honor. Let me first address that it is in the  
13 KKK-TV decision where the Review Board specifically identified  
14 this as criterion 4 to be considered as the licensee's record  
15 of compliance with the Communications Act and FCC rules and  
16 policies. And then I believe that their, their request was  
17 much broader than one of whether or not there had been a  
18 compliance. I'm trying to recall their exact request, but --

19 MS. SCHMELTZER: Well, our request was "all  
20 documents reflecting or relating to notices of violations,  
21 forfeiture, letters of admonition, etcetera, from the FCC  
22 which relate to the station during the relevant period." And  
23 the judge said Scripps Howard need not produce adverse letters  
24 from the Commission because there is no ineptness issue. So I  
25 don't think that Scripps Howard should now be able to say

1 | there were no admonishments received.

2 |           MR. HOWARD: What was, what was the scope of your  
3 | request?

4 |           MS. SCHMELTZER: Well, we asked for admonishments,  
5 | notices of violation --

6 |           MR. HOWARD: Specification O? I'm sorry to  
7 | interrupt you, but I just want to make clear --

8 |           MS. SCHMELTZER: Yes, correct. -- notices of  
9 | violation, forfeiture, and letters of admonishment.

10 |           MR. HOWARD: And, and, Your Honor, you also noted in  
11 | the footnote that said documents should be available in the  
12 | Commission's files if any such documents exist. The -- Thus,  
13 | to just take care of the question of whether you ruled it was  
14 | not relevant in that case, that's -- But the --

15 |           JUDGE SIPPEL: Well, do, do we -- Has there been a  
16 | search made about, about the FCC violation notices?

17 |           MR. HOWARD: A search of --

18 |           JUDGE SIPPEL: I mean the file of the -- Yeah, the  
19 | files of the --

20 |           MR. HOWARD: Oh, yes. Yes. There, there, there  
21 | certainly was nothing there. They, they didn't need to search  
22 | much, that they knew there was nothing.

23 |           JUDGE SIPPEL: Well, yeah, okay, they knew. But do  
24 | they have a file like, you know, maybe even an empty file that  
25 | says FCC violations? Do you think there are any or something

1 | like that?

2 |           MR. HOWARD: No, Your Honor.

3 |           JUDGE SIPPEL: No such file. Did you, did you check  
4 | the public records at all?

5 |           MS. SCHMELTZER: Well, no. After your ruling,  
6 | Your Honor, we didn't check the public records. And I, I --  
7 | We may -- I can't recall whether we attempted to ask questions  
8 | on this deposition or not.

9 |           MR. HOWARD: Well, he's, he's pretty  
10 | straightforward. You heard him say he's qualified to the best  
11 | of his knowledge, but I, I think that that's an understandable  
12 | caveat.

13 |           MS. SCHMELTZER: I would also object to the last  
14 | sentence as beyond the relevant time period. And he's also  
15 | really not even in a position to address that at this point  
16 | and time because he's not presently at the station.

17 |           JUDGE SIPPEL: Yeah, I -- to the date of his  
18 | testimony.

19 |           MS. SCHMELTZER: He wasn't at the station on  
20 | September 13th either.

21 |           JUDGE SIPPEL: Well, he says he's aware of no  
22 | adverse FCC actions. And what's -- what did you -- what is  
23 | your question about the license term? In the license term?

24 |           MS. SCHMELTZER: Since the -- He's trying to speak  
25 | to --

1 JUDGE SIPPEL: Since the license term. I see, it's  
2 past September 30.

3 MS. SCHMELTZER: Right.

4 JUDGE SIPPEL: But he was there past September 3rd.  
5 He just --

6 MS. SCHMELTZER: Well, he was there until early  
7 July.

8 JUDGE SIPPEL: Well --

9 MS. SCHMELTZER: But I don't think --

10 JUDGE SIPPEL: -- I would permit him to amend his  
11 testimony, you know, he didn't have any, any, any first-hand  
12 knowledge up through July 17th, and then he hasn't heard  
13 anything since that time.

14 MS. SCHMELTZER: Well, that -- But that's not the  
15 period that's in question here. The period in question here  
16 is up to September the 3rd.

17 JUDGE SIPPEL: True. But I think again that can be  
18 cleared up when he gets on the stand. I mean, I think his,  
19 his knowledge with respect to, to the station complying with  
20 FCC rules is, is, is relevant testimony, unless you've got  
21 something -- Then as I say, unless you've found something to  
22 show otherwise. Are you asking me to instruct Mr. Howard to  
23 search their files for violations?

24 MS. SCHMELTZER: Well, I think if, if this is going  
25 to come in, then we should have been presented with any

1 documents on this.

2 JUDGE SIPPEL: Do you have an internal -- There's a  
3 -- Is, is there a -- There is an in-house counsel, isn't  
4 there, that advises on --

5 MR. HOWARD: No, sir.

6 JUDGE SIPPEL: There is none?

7 MR. HOWARD: No, Your Honor.

8 JUDGE SIPPEL: I thought I had seen him referred to  
9 someplace in here.

10 MR. HOWARD: There was a reference to Donald  
11 Zeifang. He is with Baker and Hostetler.

12 JUDGE SIPPEL: I'm sorry. My apologies. I, I, I,  
13 you know, I, I was making a different connection.

14 MS. SCHMELTZER: Sometimes it's rather difficult to  
15 find these things at the FCC if they're unpublished.

16 MR. HOWARD: Your Honor, I believe that -- I'm sorry  
17 I don't have our responses, but I think if you look at our --  
18 their inquiry and our objections and things, I think perhaps  
19 -- Do you have a copy of our objection?

20 MS. SCHMELTZER: No, I don't.

21 MR. HOWARD: 'Cause I thought --

22 JUDGE SIPPEL: Well, I'll let you work this out.  
23 I'll let you work this out after we finish here today. I just  
24 want to be sure that I'm not letting something slip through  
25 the cracks here. Mr. Zeifang maybe could check his files and,

1 | you know --

2 |           MR. HOWARD: We'll be glad to have Emily Barr check  
3 | the files and submit a statement, if there's no objection.  
4 | She, she also testifies to, to this point.

5 |           JUDGE SIPPEL: Well, I don't want to -- It's not  
6 | just a question if somebody can do that. If this is going to  
7 | be a burden and we can get this thing -- a real burden, I  
8 | mean, there's a lot of records perhaps. I would think that  
9 | you would have a file. If there was such a thing as FCC  
10 | matters or FCC whatever it might be, oversight, enforcement,  
11 | supervision, violations, I don't know what you'd call it, that  
12 | there'd be some kind of a compact place that if it existed it  
13 | would be there. I, I don't want to see the search conducted  
14 | simply because --

15 |           MR. HOWARD: Your Honor, I can promise you if  
16 | there'd been any kind of interest from the FCC, the station  
17 | manager and the director of operations would have been --  
18 | would know about it absolutely. It would have been prominent  
19 | and certainly would have been produced in this, in this  
20 | proceeding. There's no question about that.

21 |           JUDGE SIPPEL: All right. I'm going to wait until,  
22 | you know -- Ms., Ms. Schmeltzer can talk with you after we  
23 | finish here today and if there's something more on this that  
24 | you want to bring up tomorrow, I'll talk about it tomorrow. I  
25 | hope that this is the end of it. That finishes -- Do I have

1 any objections that I haven't ruled on at this point?

2 MS. SCHMELTZER: No.

3 JUDGE SIPPEL: I think I've covered them all? All  
4 right. Then that -- Subject to my rulings, Exhibit 2, Scripps  
5 Howard Exhibit 2, which is the testimony of Arnold J. Kleiner,  
6 is hereby received in evidence.

7 (Whereupon, the document referred to  
8 as Scripps Howard Exhibit No. 2 was  
9 received into evidence.)

10 JUDGE SIPPEL: That bring us -- Then we can start with  
11 the testimony of Emily Barr. And I'm going to ask if we can  
12 go off the record until I handle these documents, 'cause  
13 you're going to have to produce an original and a copy to the  
14 reporter and we've got quite a few attachments. So let's go  
15 off the record for a minute.

16 (Off the record.)

17 JUDGE SIPPEL: All right, we're on the record. Emily  
18 Barr, Exhibit 3, is marked for identification.

19 (Whereupon, the document referred to  
20 as Scripps Howard Exhibit No. 3 was  
21 marked for identification.)

22 JUDGE SIPPEL: Your first question or your first  
23 objection, Ms. Schmeltzer?

24 MS. SCHMELTZER: Paragraph 1, I assume that's coming in  
25 just for background material?

1 UNIDENTIFIED SPEAKER: Yes.

2 JUDGE SIPPEL: Looks like background.

3 MS. SCHMELTZER: Okay. And, and I would have the same  
4 assumption for paragraphs 2 and 3, that those are just  
5 background?

6 JUDGE SIPPEL: Are you concerned about the dates?

7 MS. SCHMELTZER: Yes. Well, yeah, the dates and the  
8 relevance.

9 JUDGE SIPPEL: Well, she, she's entitled to explain who  
10 she is and where she was educated and some experience  
11 information. I'm receiving it all as background, paragraphs 1  
12 and 2, paragraph 3.

13 MS. SCHMELTZER: Okay, paragraph 5 goes into her  
14 present duties. That's beyond the relevant period.

15 JUDGE SIPPEL: Again, it's, it's for background. I  
16 think it's -- With a witness like this who is doing as much  
17 work with this case, it's good to know what she's doing now,  
18 also.

19 MS. SCHMELTZER: Okay. Beginning with paragraph 6 and  
20 through paragraph 8, we run into the same problem that we ran  
21 into with Mr. Kleiner, where Ms. Barr is talking about her  
22 civic involvement, and a lot of it -- some of it precedes the  
23 renewal period and some of it's after the renewal period.

24 JUDGE SIPPEL: Well, the same ruling. It's going to be  
25 on her competence to -- more than -- would a fact witness be

1 in a position to observe that which is necessary to observe in  
2 order to do that kind of inquiry?

3 MS. SCHMELTZER: Okay. That's 5 through 8?

4 JUDGE SIPPEL: When I say inquiry, ascertaining  
5 inquiry. That's 6 I thought, 6 through 8.

6 MS. SCHMELTZER: I'm sorry, 6 through 8. Right. Okay.  
7 And paragraph 9, that same type of a paragraph was stricken in  
8 Mr. Kleiner's testimony. It was paragraph 11 of Mr. Kleiner's  
9 testimony.

10 JUDGE SIPPEL: I recall that, and the same ruling would  
11 be -- would apply with respect to paragraph 9 here. Now, I  
12 did --

13 MS. SCHMELTZER: As a matter of fact, going back to  
14 paragraph 8 here, that appears to all be her professional  
15 experience, which was also stricken in connection with  
16 Mr. Kleiner's testimony.

17 JUDGE SIPPEL: That's correct, I did strike that from  
18 Mr. Kleiner. All right, I'll make the same ruling. I'll  
19 strike 8, also.

20 MS. SCHMELTZER: Okay, page 4 at the, at the bottom of  
21 the test in paragraph 10, it says "This expansion brought the  
22 total of regularly broadcast, locally produced, weekday news  
23 casts and continued on," and then it says "For the period from  
24 September 23 to September 29." We would strike that sentence  
25 as outside the license renewal period. And the next sentence,

1 too, since that refers to the same time frame.

2 JUDGE SIPPEL: All right. When was this expansion --  
3 When was the expansion done?

4 MR. HOWARD: September 16th, Your Honor, but it was  
5 planned, as noted, just preceding that, well before September  
6 3rd in this documentation.

7 JUDGE SIPPEL: September 3rd?

8 MR. HOWARD: Before September 3rd it was planned, and  
9 then implemented September 16th. This is --

10 JUDGE SIPPEL: So from May 30 to September 15, the  
11 regularly broadcast, etcetera -- Beginning September 16.  
12 Okay, I see what you're saying. I'm going to have to --  
13 You're going to have to voir dire the witness on that. In, in  
14 short, programming which was -- where the concept was  
15 developed before September 3 but carried through, through the  
16 end of the month, so this doesn't really spell it out that  
17 clearly but I think there's some questions on voir dire. You  
18 can, you can make a determination if we're going to receive  
19 that or not.

20 MS. SCHMELTZER: Okay. By the way, Your Honor, what  
21 I'd like to do right now is just go through this exhibit  
22 without reference to the attachments. I realize they're sort  
23 of interwoven in here, but rather than go back and forth,  
24 'cause there are a lot of attachments referred to, if we could  
25 just go through the exhibit and then do the attachments

1 separately, I think it will go faster. If that's all right  
2 with you.

3 JUDGE SIPPEL: Do you have any objection to that?

4 MR. HOWARD: Seems to me like it would be confusing to  
5 go back -- Isn't it duplicative to go back to the --

6 MS. SCHMELTZER: Well --

7 MR. HOWARD: It just seems to me like -- I, I question  
8 the premise of whether it'll go faster if we have the  
9 testimony at one point. Would you just skip over any  
10 objection to the test-related matter at this time, so it's --

11 MS. SCHMELTZER: Right.

12 MR. HOWARD: Oh. Okay. If you -- If that's all right  
13 with you, Your Honor, I, I don't have any objection.

14 MS. SCHMELTZER: If you want me to go back and forth, I  
15 will. It's just --

16 JUDGE SIPPEL: Well, let's try it your way. If you --  
17 You've got a sense for this and --

18 MS. SCHMELTZER: I guess part of my problem is my  
19 exhibits are not tabbed. So for me to -- It, it takes me a  
20 little longer to go back and forth.

21 JUDGE SIPPEL: They're not tabbed?

22 MS. SCHMELTZER: No, they're not tabbed.

23 JUDGE SIPPEL: Well, you're entitled to a tabbed set.

24 MS. SCHMELTZER: I didn't get one.

25 JUDGE SIPPEL: Do you have a tabbed set that you can