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TRANSCRIPT OF PROCEEDINGS

DEC - 1 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 93-94

SCRIPPS HOWARD BROADCASTING COMPANY
and
FOUR JACKS BROADCASTING, INC.

Baltimore, Maryland

DATE OF HEARING: November 8, 1993

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DEC - 1 1993

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SCRIPPS HOWARD BROADCASTING COMPANY)
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FOUR JACKS BROADCASTING, INC.)
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The above-entitled matter came on for hearing pursuant to Notice before Richard L. Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Monday, November 8, 1993, at 10:00 a.m.

APPEARANCES:

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P R O C E E D I N G S

1
2 JUDGE SIPPEL: This is our first day of testimonial
3 hearings and I'm going to ask counsel to identify themselves
4 for the record in docket order. This'll be the first time
5 that I'll do this. This'll be the last time, rather, I do
6 this formally during this session, but I will note for the
7 record the absence of any counsel. It doesn't mean that all
8 counsel have to be present, but if any party is not
9 represented by counsel when we go forward, I, I will note that
10 for the record. Starting with counsel for Scripps Howard,
11 please. I'm sorry -- Yeah, Scripps Howard Broadcasting
12 Company. Mr. Howard.

13 MR. HOWARD: Yes, sir, it's Kenneth C. Howard, Jr.,
14 Leonard Greenebaum, Stephanie Abrutyn, and David Roberts.

15 JUDGE SIPPEL: All right. And on behalf of Four
16 Jacks?

17 MS. SCHMELTZER: Kathryn Schmeltzer, Gregory
18 Masters, and Mr. Martin Leader will also be here.

19 JUDGE SIPPEL: All right. And on behalf of the
20 Bureau?

21 MR. ZAUNER: Robert A. Zauner and Norman Goldstein.

22 JUDGE SIPPEL: The -- Let me just briefly go over
23 the schedule. That is, what the courtroom schedule will be.
24 This, this being the first day, we're starting at 10:00.
25 We'll go to 12 noon. This afternoon we'll go from 1:15 to

1 approximately 2:45 and then break until 3:00, come back at
2 3:00 and continue till 4 p.m. The second day we'll start at
3 9:30 and go to approximately 10:45 and then pick up at 11 till
4 noon, with the same afternoon schedule.

5 And I intend to follow that schedule unless there is
6 some need that becomes apparent to me or that any of the
7 parties represent to me as to why we should even start earlier
8 or go later in order to accommodate a witness or to, you know,
9 close, close the session down a day earlier than otherwise.
10 Does anybody have any questions about that? Mr. Howard?

11 MR. ZAUNER: Yes. Your Honor, will we be having a
12 hearing session on Friday?

13 JUDGE SIPPEL: We will be having a session on
14 Friday, as I had announced at the admission session in
15 October. That's correct.

16 MR. HOWARD: Your Honor, we do have the problem with
17 two witnesses coming in from out of town. I would ask that we
18 try to anticipate, that other counsel will help us to
19 anticipate when those witnesses may be needed for testimony.
20 With respect to Arnie Kleiner who is in San Diego, we have
21 arranged flights for him to come in. If we can give him
22 notice at noon the day before, he can be here the next day.
23 So if that would be possible, it would be very helpful to us.

24 JUDGE SIPPEL: All right. What we'll do is -- And
25 we did cover this in the admission session. I, I am prepared

1 to, to, to break earlier in the schedule in order to
2 accommodate a witness coming in from out of town, so long as
3 it does not unreasonably extend the time for the hearing.

4 MR. HOWARD: Thank you.

5 JUDGE SIPPEL: And that, that holds true for Four
6 Jacks' witnesses, too, who will be coming down from Baltimore
7 to --

8 MS. SCHMELTZER: Right.

9 JUDGE SIPPEL: All right. Sequestration. We've
10 already discussed this, but I want to just briefly state for
11 the record at this time that a witness, that is a testifying
12 witness, can only remain in the courtroom to hear other
13 witnesses testify for the same party only when that first
14 witness has already testified. For example, today Ms. Barr
15 will be allowed to remain in court after we finish her
16 testimony, but Mr. Schroeder and Mr. Kleiner cannot be in the
17 courtroom while Ms. Barr testifies. And the same principle
18 would apply to the Four Jacks' witnesses.

19 Just a word of caution. Please advise your -- If
20 you can think of this, advise your witnesses to be careful
21 when they pour the water from the pitcher, to be sure and take
22 the top off, because we've had debilitating accidents occur.
23 Nothing major. With respect to exhibits, now, Scripps Howard
24 has attachments to its testimony which are tabbed. And also,
25 the same with respect to Four Jacks. I will be referring to

1 these attachments as, as Tab A, Tab B, etcetera. Now, these
2 aren't really attachments, but just so that the record doesn't
3 get muddled or unclear, I want all the participants to know
4 that I will be freely using tab as a reference.

5 You can choose to call it whatever you choose,
6 either attachment or tab, just so long as the exhibit -- so
7 that it's given a letter and that it refers to an exhibit
8 number. Now, the other point I have with respect to exhibits
9 is there are some exhibits that Four Jacks is going to be
10 seeking to introduce. What I would prefer to do is wait until
11 after lunch to do that.

12 MS. SCHMELTZER: That's fine.

13 JUDGE SIPPEL: So that you can work out logistics
14 with the reporter. Maybe you've already done that. But
15 unless you are going to use some of the documents to cross
16 examine in the morning session. But my preference would be to
17 wait till after lunch, and you didn't care, that's all right
18 with you, Ms. Schmeltzer?

19 MS. SCHMELTZER: Yes.

20 JUDGE SIPPEL: All right. Then the only thing I
21 have as a -- other things that I have as a preliminary matter
22 are the, the motions with respect to the -- considering the
23 "Today Show" as a news item and with respect to striking
24 certain of the descriptive language of the Four Jacks
25 testimony on broadcast experience. I am --

1 MS. SCHMELTZER: Your Honor, with respect to the
2 "Today Show," could we conceivably withhold your ruling until
3 noon? We're going to have some cross examination on that.

4 JUDGE SIPPEL: All right, I will. I will. But I,
5 I -- All right, I will defer ruling on that till afternoon.
6 Although some of the -- what my ruling is going to be may, may
7 affect in terms of the scope of the cross examination on that,
8 but I'll, I'll let you proceed as you, as you've indicated.
9 With respect to the motion --

10 MR. ZAUNER: I was going to say, Your Honor, it
11 makes sense to have a ruling on it I think beforehand if she's
12 going to attempt to cross examine based upon the "Today Show."
13 We -- It seems to me that your ruling would be critical to us
14 to know whether we can object to questions that are asked by
15 Mrs. Schmeltzer.

16 JUDGE SIPPEL: Well, do you -- Is -- Let me see if
17 -- What, what would be the nature of the cross examination,
18 without getting into specifics? I, I take it Ms. Barr's in
19 the courtroom?

20 MS. SCHMELTZER: She is in the courtroom. If she
21 leaves the courtroom, I'll be happy to discuss it.

22 JUDGE SIPPEL: All right. Would you step outside
23 for just a moment, please? Go off the record.

24 (Off the record.)

25 MS. SCHMELTZER: The premise of the Bureau's

1 comments on the "Today Show" is a presumption that the program
2 had been logged as news. In fact, the program is logged as
3 entertainment in the WMAR-TV logs. And the Bureau concedes
4 that its comments would probably differ if it were logged as
5 entertainment.

6 MR. ZAUNER: Well, I, I don't remember saying how we
7 would decide this had it been logged as entertainment. My
8 recollection is, and Kathy has my copy of the brief because
9 she had not gotten it this morning and I wanted her to have an
10 opportunity to see it, but my recollection is that we thought
11 this thing -- and we said in that case -- the case had turned,
12 in part, on the fact that the station had logged the programs
13 as entertainment. Let me take one look at my -- and refresh
14 my recollection.

15 JUDGE SIPPEL: Well, why don't we do this? Why
16 don't we do this? Wait just a minute, Mr. Zauner. Let's take
17 the witness and put her on the stand and get this thing
18 started, and I will rule -- Since you've only seen the
19 Bureau's pleading --

20 MS. SCHMELTZER: To-- this morning.

21 JUDGE SIPPEL: -- this morning, I'll wait until
22 after lunch to give my ruling. But my ruling will be -- And,
23 and we'll hear argument outside the presence of the witness
24 after you -- Well, are you prepared to argue it now?

25 MR. ZAUNER: Your Honor --

1 JUDGE SIPPEL: I don't want to take up a lot of time
2 with this.

3 MS. SCHMELTZER: No, I don't want to take up a lot
4 of time --

5 MR. ZAUNER: I don't want to take up a lot of time
6 on this, either, but just let me read, if I may, the sentence
7 I think that Kathy Schmeltzer is referring to. In talking
8 about the case that I cite I say, "In logging these programs,
9 the licensee did not distinguish between the entertainment and
10 news content of the programs. Therefore, the ALJ declined to
11 grant the licensee credit for their broadcast. Here, the
12 program in question is clearly news and there is no need to so
13 distinguish." We're not here in this case relying upon the
14 local station's characterization of the program in its logs.

15 Here, we have Commission holdings that in fact the
16 "Today Show" is news. So I think that regardless of how I
17 distinguish the particular case, and perhaps Mrs. Schmeltzer
18 is correct that here WMAR did in fact log it as entertainment,
19 I think that fact is still irrelevant in light of the
20 Commission's determination that in fact the "Today Show" is
21 news.

22 JUDGE SIPPEL: Is that it?

23 MR. ZAUNER: That's it, Your Honor.

24 JUDGE SIPPEL: Mr. Howard?

25 MR. HOWARD: Nothing to add, Your Honor.

1 JUDGE SIPPEL: Well, I was, I, I was prepared this
2 morning to rule. You want an opportunity to take a look at
3 their paper? Is that what you want to do?

4 MS. SCHMELTZER: I want an opportunity to at least
5 cross examine her to some extent on the "Today" -- on the, on
6 the logging of the "Today Show."

7 MR. ZAUNER: Your Honor, one other point, if I may.
8 My understanding was that Ms. Schmeltzer's pleading, that she
9 did not object to the characterization of the "Today Show" as
10 news, but her real aim was that Scripps Howard not be given
11 credit for those portions of the program which might not be so
12 characterized. That is, she wanted to segment the show and
13 she wanted to exclude the commercial minutes from the
14 calculation of the amount of news broadcast by WMAR-TV.

15 MS. SCHMELTZER: That's correct. There are some
16 segments of the "Today Show" that are news, but then there are
17 a number of segments that we contend cannot be considered
18 news.

19 MR. ZAUNER: And if, and if that's the case,
20 Your Honor, then Ms. Schmeltzer's comments regarding the
21 classification of the "Today Show" by the licensee are
22 irrelevant, because the question is not whether or not it is
23 news. That has been determined and Kathy, Ms. Schmeltzer is
24 not contending that.

25 MS. SCHMELTZER: No. Well, I disagree with you.

1 I'm contending that the Commission has only declared the
2 "Today Show" to be news for purposes of Section 315, which is
3 a totally different approach. And, and they have never
4 declared in a comparative renewal proceeding that the entire
5 "Today Show" is news.

6 MR. ZAUNER: We're doing what we said we weren't
7 going to do, Your Honor.

8 JUDGE SIPPEL: Well, I'm trying, I'm trying to get
9 this thing -- If I can resolve it now, I will. I am
10 concerned -- I'll agree with you in just a minute, Mr. Howard.
11 The only thing I'm concerned about is that Ms. Howard (sic)
12 seems to be grasping very clearly what is in the Bureau's
13 brief. My concern is is that she's only received it this
14 morning, and do you need more time?

15 MS. SCHMELTZER: I haven't even received it. I just
16 looked at their copy.

17 MR. ZAUNER: Your Honor, Your Honor --

18 JUDGE SIPPEL: Yes?

19 MR. ZAUNER: -- my pleading was the last pleading in
20 the cycle. Under your ruling, she technically does not have a
21 right to respond to my pleading, either here orally or in
22 writing.

23 JUDGE SIPPEL: I understand that, but she wants to
24 cross examine this witness and I want to be sure that my
25 ruling -- that I'm not missing something in my ruling, that

1 she has an opportunity to present her position fully before,
2 before I rule. Now, I don't want to -- Again, I don't want to
3 spend too much time on it. I think she understands what it is
4 that you've said.

5 MR. ZAUNER: She's had an opportunity to present her
6 view, Your Honor, in your pleading schedule, and she has done
7 so. And we were given the last bite of the apple. What you
8 are doing now is undercutting your own pleading cycle.

9 MS. SCHMELTZER: No. With all due respect,
10 Mr. Zauner, the judge did not say that there would be no oral
11 argument on this point or no further discussion.

12 JUDGE SIPPEL: Well, I certainly have the discretion
13 to, to handle a motion like this as I see, as I see necessary.
14 And I would like to hear a little bit of it. Now, I, I don't
15 know if it's going to be necessary -- She's got to look at
16 the, at the, at, at the pleading, though, to come up with
17 anything more than you've already said. We do have, we do
18 have an apparent inconsistency. Is that correct? I will say
19 it this way. As I'm hearing this, I see that there is an
20 apparent inconsistency in terms of the "Today Show" being a,
21 a -- as a matter of law, being a news program and the way in
22 which it was carried at times on the log. I'll ask that
23 question of Mr. Howard. Am I correct in that?

24 MR. HOWARD: No, Your Honor, I don't think so. The,
25 the Commission doesn't require stations to keep logs any

1 longer. It's a matter of the station's position as to how
2 they are going to, to -- The purpose of the log is so that the
3 station knows what it's aired. The classification is not
4 something that the Commission any longer requires and there's
5 no reason the station should be bound by a determination that
6 was made in one context when it comes to assessing whether
7 that is comm-- issues responsive news.

8 JUDGE SIPPEL: But I'm just talking about --

9 MR. HOWARD: Particularly when the Commission has
10 ruled that it is.

11 JUDGE SIPPEL: It's just as a factual matter.
12 Somebody who is -- You, you elected to keep these logs and to
13 record information about the, about the "Today Show" and it
14 was recorded as something other than news. Is that --
15 Without, without pulling the documents out, is that
16 essentially correct?

17 MR. HOWARD: Without pulling the documents out, I
18 would agree that that -- that the -- it was logged as
19 entertainment. I'll take Ms. Schmeltzer on that. But the,
20 the relevance of it is, is nonexistent. Suppose we listed the
21 Orioles games as news? That wouldn't make them news.

22 MS. SCHMELTZER: Well, I'm surprised that Mr. Howard
23 would question the credibility of his clients' own logs
24 because their relying on these logs for other things in, in
25 their direct case exhibits, such as PSA's. So we presumed

1 that things were accurately logged PSA. But, you know, we
2 feel there's a terrible inconsistency here. For instance, the
3 "NBC News at Sunrise" was logged as news. And yet, the "Today
4 Show" was logged as entertainment.

5 JUDGE SIPPEL: Well, but we still have the -- we
6 still have a holding by the Commission that the "Today Show"
7 is news.

8 MS. SCHMELTZER: For Section 315 purposes.

9 JUDGE SIPPEL: Well, I know you're trying to draw
10 that distinction and I, I, I'm not, I'm not convinced that
11 that's -- I understand your argument on that, but I don't -- I
12 can't see that as being controlling. If this is, if this is
13 how Scripps Howard intends to present its news, we're
14 certainly -- the Commission certainly does not want us to get
15 into the, to, to, to the quality of the news coverage. It's
16 just --

17 MS. SCHMELTZER: No, I don't --

18 JUDGE SIPPEL: It's just a question of whether -- I,
19 I understand what you're saying. But if I go down the road
20 with you on that, then I don't know how extensive this cross
21 exam is going to be and it's going to be --

22 MS. SCHMELTZER: I'm not envisioning an extensive
23 cross examination. I just want to ask her a few questions
24 about it.

25 JUDGE SIPPEL: Just a few questions? For what

1 purpose?

2 MS. SCHMELTZER: Because it gets to her testimony
3 about how she arrived at the 35 percent figure.

4 JUDGE SIPPEL: All right. I will permit a few
5 questions for purposes of credibility and inconsistency of
6 this witness's presentation. That I will permit. But not for
7 purposes of establishing that the -- as a fact issue that the
8 "Today Show" is anything but news.

9 MS. SCHMELTZER: But I take it I can ask her as to
10 why she included the commercial content in, in her
11 calculation?

12 JUDGE SIPPEL: Well, I'm not so sure what you mean
13 by the commercial content.

14 MS. SCHMELTZER: Well, in other words, the "Today
15 Show" is composed of maybe three to five minutes of
16 commercials per half hour, and that was all counted in here as
17 well, to my understanding.

18 MR. HOWARD: Your Honor, she did not claim that all
19 those commercials were programming. That's a
20 mischaracterization of the testimony. The testimony says that
21 there was 35 percent of the time was devoted to news programs
22 and it expressly notes at the bottom, the footnote explaining
23 how this calculation was made. The commercial time is
24 excluded.

25 MS. SCHMELTZER: No, that does not note that,

1 Mr. Howard. It says commercial time was included. I believe.

2 MR. HOWARD: Oh, was included in the, in the count.

3 Yes. That's what I meant. But it's revealed that the

4 commercial time was in the 35 percent figure.

5 JUDGE SIPPEL: So she's already disclosed that?

6 MR. HOWARD: Yes.

7 JUDGE SIPPEL: Well, I, I, well, I, I, I -- I'm not
8 going to permit cross examination for undercutting the
9 proposition which I'm satisfied has been established by the
10 Commission, that the -- that it's -- that what we're talking
11 about is the news program. That is, that the "Today Show" is
12 a news program. Now, in terms of inconsistency with respect
13 to how that was recorded by this witness or how this witness
14 may have, may have been treating it, since this is the witness
15 that they're relying upon to show the relationship of this
16 information to, to meeting community needs, and, and upon your
17 representation that you're only going to ask a few questions
18 on this area, I'll permit some questions on this area but only
19 with respect to the inconsistency and not with respect to
20 asking her to explain things that have already been explained
21 on the record.

22 For example, the commercial time. She put down --
23 Apparently, it has been disclosed. We know what the break
24 down is. Is that correct?

25 MR. HOWARD: We know that the commercial time that

1 was in those programs was included in the 35 percent figure
2 that was identified as news program.

3 JUDGE SIPPEL: So it's broken out?

4 MS. SCHMELTZER: No, it's not broken out.

5 JUDGE SIPPEL: It's not broken out.

6 MS. SCHMELTZER: We don't know how much commercial
7 time was included.

8 JUDGE SIPPEL: Well, again, it's, it's, it's
9 irrelevant because to get into that we're going to start
10 measuring whether or not the, the quantity of the news
11 coverage, and that we can't do. So the only thing that
12 you're --

13 MS. SCHMELTZER: We can measure quantity, we can't
14 measure quality. It would be our contention, Your Honor, that
15 this exhibit that she arrived at is meaningless, because it
16 included all these commercials. It didn't sever out
17 commercial programming.

18 JUDGE SIPPEL: Well, you can take that position.
19 You, you've got a record, you're making a record and you can
20 take that position at, at proposed findings. But as I say,
21 all I'm trying to do is keep this witness's testimony limited
22 to what I feel is really the relevant information. Otherwise,
23 we could be spending here a half -- We're already spending 10
24 minutes just talking about what she's going to testify to, and
25 perhaps that's my fault.

1 But I, I do see, I do see the merit in what you're
2 saying. If she had logged these -- Or not if she, if the
3 station had logged these as news, that would be the end of
4 this discussion. But they were logged as entertainment.
5 There is an inconsistency there. We have a fact witness, and
6 you can -- Certainly, any fact witness's credibility is always
7 subject to cross examination if there's an inconsistency. But
8 we're not going to spend a lot of time on that. Do you
9 understand that, Ms. Schmeltzer?

10 MS. SCHMELTZER: Yes.

11 JUDGE SIPPEL: Now, I will, however, rule right up
12 front that, as I have -- I think it's pretty clear from, from
13 what I've said that the NBC's "Today Show" does qualify as
14 news programming. So the only thing we're left with is an
15 apparent inconsistency, which is a matter of record. Now, if
16 you want to raise this again, your position again, as a matter
17 of law in your proposed findings, you may be permitted to do
18 so based on this record. But, you know, don't expect anything
19 different from me than you're hearing today in terms of the
20 bottom line. Mr. Zauner?

21 MR. ZAUNER: A point of information. Would your
22 ruling then also cover other programming of WMAR-TV? For
23 example, their local news where they have a half hour. Would
24 we then be permitted to I guess question the amount of
25 commercial times in that half hour?

1 MS. SCHMELTZER: The only ruling today concerns the
2 "Today Show". We have not gone beyond that in terms of
3 argument.

4 MR. ZAUNER: Yeah, but the exhibits do include other
5 programs that may have commercial time within them.

6 JUDGE SIPPEL: I, I, I, I think we put that behind
7 us. Under my ruling, there is, there is an apparent
8 inconsistency about what was put down in the log and what
9 we're establishing here today with respect to the status of
10 the "Today Show". I have said that we're going to keep --
11 we're not going to permit cross examination as to how much
12 time the "Today Show" has allocated to commercials versus
13 news. We're not going to get into that for the very reasons
14 that you're raising the concern and the Commission has raised
15 the concerns.

16 It's a very limited ruling. With respect to the --
17 I might as well rule on the other while we're here, and then
18 we can bring the witness in. With respect -- I'm also denying
19 the motion to strike the testimony of the Four Jacks'
20 witnesses with respect to Broadcast Experience. As I
21 understand that, Ms. Schmeltzer, you're not claiming anything
22 other than Broadcast Experience?

23 MS. SCHMELTZER: That's correct.

24 JUDGE SIPPEL: And this is the way that you want to
25 express it?

1 MS. SCHMELTZER: That's correct.

2 JUDGE SIPPEL: There's not going to be any effort to
3 get credit for civic activities?

4 MS. SCHMELTZER: No, no.

5 JUDGE SIPPEL: I, I'm basing that on -- just on an
6 equality basis. I, I think I've been liberal in terms of some
7 of the things that I've permitted to come in on, on Scripps
8 Howard's side, which has been a lot more voluminous. And
9 based on her commitment and what's in these papers, I think
10 that you're, you're going to end up getting the, the bottom
11 line relief that you want anyway out of this, Mr. Howard.
12 That is, all we've got here is Broadcast Experience.

13 MR. HOWARD: If you're not relying on the cases they
14 cited in their pleading, I will not comment on it.

15 JUDGE SIPPEL: Well, I think it's a fact. It's more
16 of a fact issue than it is a matter of law. That's all.
17 We've got the limitations in this case with respect to what
18 the relevance is of the evidence. The relevance of that
19 evidence is only to establish broadcast experience, not to get
20 into civic activities. It's more than is needed to do that,
21 but I'm going to permit them to present it the way they want.

22 MR. HOWARD: May I, may I argue, Your Honor?

23 JUDGE SIPPEL: Well, yeah. I can see --

24 MS. SCHMELTZER: Your Honor, this point has been
25 fully argued. It was argued at the last hearing conference.

1 It was argued in the motion to strike. We submitted an
2 opposition. If anything that's, that's been fully explicated,
3 it 's this.

4 JUDGE SIPPEL: All right. Well, I'll -- If you have
5 a concern, I'll hear it.

6 MR. HOWARD: Well, I believe that we are prejudiced
7 by putting it in. While they mischaracterize their pleading
8 as suggesting that we were concerned that you might misrule as
9 to the effect, there are other decisionmakers, as we cited in
10 our pleading, that will be facing this issue. And the
11 question of community involvement is an important part of the
12 case that's being presented by, by any applicant for a, for a
13 broadcast license. It's an integral part of the local
14 residence criteria, as the -- under the Commission's recent
15 ruling, and there has never been any case that has interpreted
16 the -- Contrary to their claim about these citings, we
17 certainly do not say that to hold that the activities by the
18 station in the community have any bearing on the applicant's
19 broadcast experience.

20 Here, there was a, a, a camera person who went out
21 and, and did news, news taking, news gathering, and that was
22 properly deemed broadcast experience, even though the news
23 gathering was involved in community activities. In another
24 case, a woman worked with a public broadcasting station.
25 Appropriate broadcast experience. It wasn't there because

1 | it's associated with the broadcast station. She went out into
2 | the, into the community. So the precedent is simply
3 | nonexistent to take this kind of evidence under the broadcast
4 | experience criteria.

5 | And I believe that the -- that we, we did limit the
6 | scope of our discovery on this issue because what we did
7 | explore it, as they note in the, in the deposition. We did
8 | not take further evidence requests to get their personal
9 | diaries, explore the amount of time that they spent on this,
10 | explore their personal involvement. All that issue was not,
11 | was not explored. And we're harmed by now having this
12 | completely extraneous criterion brought in under broadcast
13 | experience. That's, that's the scope of our objection,
14 | Your Honor.

15 | JUDGE SIPPEL: What are you asking for this
16 | information to be in the record -- For, for what purpose?

17 | MS. SCHMELTZER: As related to broadcast experience.
18 | We have specifically disclaimed civic credit. And so I don't
19 | know why Mr. Howard is presuming that Commission officials
20 | will not understand that. I think it's very clear and I fully
21 | believe that all -- the Commission reviewers that review this
22 | case will understand that point. So I don't think that the
23 | argument that someone may misunderstand that is a very good
24 | argument here.

25 | JUDGE SIPPEL: Well, I, I, I would not receive --

1 Well, I've made my ruling and I've given my limitations on it.
2 I would not consider it myself. I, I don't even expect that I
3 would even write about it, except to note the fact that it's
4 been objected to. But to the extent that I'm listening to it
5 or seeing it, it would be -- to me it would just be background
6 in how they want to explain how they got their broadcast
7 experience.

8 I, I can't concern with -- Well, I'm going to say it
9 for the last time. That's it. If you want to cross examine
10 on it, you may. If you don't want to cross examine, you don't
11 have to.

12 MR. HOWARD: Yes, Your Honor.

13 JUDGE SIPPEL: Let's bring Ms. Barr back in. You
14 may, Mr. Howard, you may raise that again in your proposed
15 findings. Now, if you want to, you know, if you want to raise
16 it as a point of error, and I will address it in proposed
17 findings. I don't mean to, to say that your argument is not,
18 is not, is not worth addressing. It is.

19 MR. HOWARD: Yes, sir.

20 JUDGE SIPPEL: But -- Okay. Does anybody else have
21 anything of a preliminary nature?

22 MR. HOWARD: Yes, Your Honor. We have several minor
23 corrections to the, to the testimony that we would like to get
24 into the record.

25 JUDGE SIPPEL: To Ms. Barr's testimony?

1 MR. HOWARD: Ms. Barr's testimony, yes. I've --

2 MS. SCHMELTZER: Well, I think she should be on the
3 stand.

4 MR. HOWARD: Yes.

5 JUDGE SIPPEL: I want to just hear what he has in
6 mind.

7 MR. HOWARD: It's corrections to her title. That
8 has changed since the last -- And there are some typos in the
9 testimony that we thought we would clarify.

10 JUDGE SIPPEL: All right. Does Ms. Schmeltzer have
11 an idea as to what's going to happen?

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

13 JUDGE SIPPEL: All right. Well, we'll take it one
14 at a time. Would you call your first witness, please?

15 MR. HOWARD: Yes, Your Honor. We call Emily Barr to
16 the stand.

17 JUDGE SIPPEL: Would you step forward, please? Just
18 raise your right hand.

19 Whereupon,

20 EMILY LOUISE BARR

21 having been first duly sworn, was called as a witness herein
22 and was examined and testified as follows:

23 JUDGE SIPPEL: Please be seated. State your full
24 name and place of residence for the record, please.

25 WITNESS: Emily Louise Barr, 116 East Churchill