

1 leader interviews?

2 A What I'm saying is that the people in paragraph 23  
3 are the ones who were specifically responsible for doing it.  
4 What I'm saying in paragraph 28 is that these were our  
5 department heads who were responsible for managing the day-to-  
6 day operations of this television station and, as such, it was  
7 their responsibility to generally understand what was going on  
8 in the community.

9 Q But there was nothing in writing about all of this?

10 A There was, there was -- As I said before, there was  
11 not anything in writing.

12 Q So this was all a very informal process. Is that  
13 correct?

14 A It was a very informal process.

15 Q And what did you mean then at paragraph 26 when you  
16 said, "The more formal individual ascertainment interviews  
17 were conducted in various locations, including the station"?

18 A I'm talking about specific meetings that were set up  
19 to discuss specific issues.

20 Q Well, how were they more formal? Just that they --

21 A Well --

22 Q -- were specific meetings that were set up as  
23 opposed to just someone going out into the community and  
24 saying hi?

25 A There were many occasions when one could get into a

1 conversation with someone and in the process of getting into a  
2 conversation could have a fairly long in-depth discussion  
3 about a specific issue. It might be education or homelessness  
4 of whatever. But it isn't that that particular conversation  
5 was, was begun specifically to ascertain that lead. However,  
6 in the process of having a conversation, it may in fact have  
7 turned into an ascertainment.

8           Then there are those discussions which are  
9 specifically ascertainment interviews and are set up to  
10 determine what the concerns are of a specific subset of the  
11 community.

12           Q     Did you consider all of these informal contacts when  
13 someone was just talking to someone, were those ascertainment  
14 interviews?

15           A     Not all of them.

16           Q     The more formal interviews, those were formal in the  
17 sense that you set up a meeting, but nothing was written down?  
18 Is that correct?

19           A     That's correct.

20           Q     And the only evidence that you had a meeting are  
21 your calendars? And all that's reflected on the calendar is  
22 the individual and perhaps the name of his organization. Is  
23 that correct?

24           A     The -- On my calendar, it generally indicated the  
25 name of the individual. Sometimes it was the organization.

1 MS. SCHMELTZER: Your Honor, I'd like to have marked  
2 for identification as Four Jacks -- I think I'm at 12. Is  
3 that right?

4 JUDGE SIPPEL: You are, you're past 11, you're up to  
5 12. That's correct.

6 MS. SCHMELTZER: Four Jacks Exhibit 12. It's an  
7 executive weekly minder, 1991, and this is Ms. Barr's. It's  
8 Ms. Barr's calendar.

9 JUDGE SIPPEL: Thank you. The reporter will mark  
10 this document. How many pages is it?

11 MS. SCHMELTZER: Let's see, it runs from SH000093 to  
12 SH000130.

13 JUDGE SIPPEL: All right. The reporter will mark  
14 that document then as Four Jacks Exhibit 12 for  
15 identification.

16 (Whereupon, the document referred to  
17 as Four Jacks Exhibit No. 12 was  
18 marked for identification.)

19 BY MS. SCHMELTZER:

20 Q Ms. Barr, is this the calendar to which you had  
21 reference during your testimony?

22 A Yes, it is.

23 Q This is your calendar from -- for the applicable  
24 period of time, correct?

25 A That's correct.

1 Q And this was produced during discovery. Now, let me  
2 just turn your attention for a moment to SH000111. It's  
3 July 25, 1993. And it says 10 a.m., Mike Kerans/Paramount.

4 A Yes.

5 Q That wasn't a community leader interview, was it?

6 A No.

7 Q Now, going to August 1, 4:30 p.m., Peter  
8 Colman/Center Stage. Was that a community leader interview?

9 A Peter Colman is the, the executive director of  
10 Center Stage.

11 Q So was that a community leader interview?

12 A I would, I would like to be able to refer to the  
13 other exhibit, because I don't -- I can't tell you -- I don't  
14 recall today whether or not this was -- what this discussion  
15 was about.

16 Q You can't recall today what your discussion was  
17 about?

18 A No. It was two years ago.

19 Q Okay. Well, look at July 16. That's SH000108.  
20 Ellen Kobler, Baltimore City Office of Recycling.

21 A Yes.

22 Q Was that a community leader interview?

23 A As I recall, that particular interview was with  
24 respect to -- Baltimore City was gearing up to do recycling  
25 and they had come to meet with us about helping them get the

1 word out about recycling and why it was important to the  
2 community.

3 Q If Ms. Kobler mentioned anything other than  
4 recycling during that interview, would you know it?

5 A I don't recall that she did.

6 Q I'd like you to look at August 14th, 10:30 a.m.  
7 There's a reference to Niki Mitchell.

8 A Yes.

9 Q Was that a community leader interview?

10 A That was an interview for a position at the station.

11 Q How about the next page, August 15th at 5:30, Carmel  
12 Losey, PA interview?

13 A That was an interview for, for an opening at the  
14 station.

15 Q You mention in paragraph 31 of your direct case  
16 exhibit some ascertainment reports by Janet Covington, the  
17 public affairs director. Do you see that?

18 A You're on page 14?

19 Q Yes.

20 A Yes.

21 Q Did you do those -- Did, did Ms. Covington do those  
22 community ascertainment reports for the second quarter of  
23 1991? Or the third quarter?

24 A The, the -- What I'm referring to here?

25 Q Um-hum.

1 A Are, are Ms. Covington's oral reports to me.

2 Q Are you referring to Ms. Covington's oral  
3 ascertainment reports?

4 A She -- Yes.

5 Q Is there some reason that you didn't put in there  
6 that these reports were oral?

7 A I, I refer to the fact that it's daily feedback on  
8 what issues were of primary concern in the community.

9 Q Now, am, am I correct, there were no written  
10 ascertainment reports for the third quarter or the second  
11 quarter of 1991?

12 A The, the Scripps Howard Broadcasting had a policy of  
13 having quarterly ascertainment reports that would be written  
14 by the director of public affairs or that equivalent in, in  
15 all of their stations, and we did not do one for the second  
16 quarter of 1991. I don't recall whether we did one or not for  
17 the third quarter of 1991, but we were -- since we were new to  
18 the company at that time, we were still getting used to the  
19 reporting process.

20 Q But you don't have any written community  
21 ascertainment reports for the second or the third quarter of  
22 1991, do you?

23 A That's correct.

24 Q When did, when did Ms. Covington leave the employ of  
25 WMAR-TV?

1           A     I, I -- As best as I can recall, it was December  
2 1991.

3           Q     So all of the reports of Ms. Covington that are  
4 referred to in paragraph 31 were oral reports and all of the  
5 discussions that you had were oral discussions?

6           MR. ZAUNER:  Objection.  Asked and answered at least  
7 twice.

8           JUDGE SIPPEL:  Sustained.

9           BY MS. SCHMELTZER:

10          Q     In paragraph 33 on SH3-15, Ms. Barr, there's a  
11 reference to the program "Lift Every Voice."

12          A     Yes.

13          Q     Was that program ultimately discontinued?

14          A     No, it was not.

15          Q     Did there come a time in 1992 when you decided to  
16 put together an exhibit on ascertainment?

17          A     I was asked by counsel to do so, yes.

18          Q     You were asked by counsel to do so?  And what did --  
19 what exactly did you do in August of '92?

20          A     I, I spoke with the individuals who were mentioned  
21 earlier in my testimony, the ones who were primarily  
22 responsible for conducting ascertainment interviews, and I  
23 asked them to retrieve for me, if they had it, their personal  
24 calendars and any information they might have had with respect  
25 to ascertainment interviews that they conducted for that

1 four-month-and-two-day period.

2 Q Well, who did you talk to?

3 A I spoke to Arnie Kleiner, Maria Velleggia, Janet  
4 Covington, and I, I believe I spoke to Howard Zeiden, although  
5 I didn't really get any information 'cause he had since left  
6 the employ of WMAR and did not have his calendar at that time.

7 Q Did you speak to anyone -- any of these other people  
8 that may have conducted interviews?

9 A I, I, I, I put a -- I spoke to all of the department  
10 heads and informed them of what I was doing and asked them if  
11 they had information to please forward it to me so that I  
12 could put it in this compilation.

13 Q And did they forward you information?

14 A They forwarded me what they had, which, which for  
15 those other individuals was nothing.

16 Q So the only people that had any information were  
17 Mr. Kleiner, yourself, Maria Velleggia, and Ms. Covington. Is  
18 that accurate?

19 A That's correct.

20 Q And you looked at the calendars of yourself,  
21 Mr. Kleiner, and Ms. Velleggia. Did you look at Ms.  
22 Covington's calendar?

23 A I looked -- Ms. Covington at that point had left the  
24 employ of WMAR. So what I asked her to do was if she could  
25 find her calendar. I did not know at that time that I would

1 need the actual calendar. What, what Ms. Covington did was  
2 she wrote down for me in longhand the meetings that she had  
3 held, who they were with, the dates that they were on, and  
4 what was discussed in general in those meetings. So I never  
5 actually saw her calendar.

6 Q You never actually saw her calendar, but she gave  
7 you some notes in longhand?

8 A That's correct.

9 Q When did she give you those notes?

10 A It was sometime during the summer of 1992 when I was  
11 asked to compile this document.

12 Q Did you -- Other than the calendars and the notes  
13 and recollections, was there anything else that you looked at  
14 in compiling your material? Are you looking at Attachment E?

15 A No, I don't believe so. I don't believe so.

16 Q Are you looking at Attachment E?

17 A Yeah. I was just looking at -- Yeah.

18 Q Attachment E is the product of the work that you did  
19 in 1992?

20 A That's correct.

21 Q This was a year after the license term ended?

22 A Um-hum.

23 Q When did you actually draft this exhibit? Was it  
24 drafted in '92?

25 A Yes, I -- it was compiled during the summer of 1992.

1 Q Has it been redrafted since 1992?

2 A I have reviewed it and, and did renew -- excuse me,  
3 did remove a few things that, that I was not absolutely  
4 certain of.

5 Q Has it been reformatted?

6 A It was reformatted, yes.

7 Q Do you have the prior draft?

8 A Do I personally have the prior draft? I have a  
9 copy.

10 Q Does anyone else have the prior draft?

11 A Counsel has it.

12 Q Do you know why it wasn't turned over in response to  
13 document production?

14 MR. HOWARD: Objection, Your Honor. It wasn't -- It  
15 was work product in preparation for testimony -- within the  
16 scope of the document production.

17 MS. SCHMELTZER: Your Honor, this was not identified  
18 as work product in response to our motion for production of  
19 documents.

20 JUDGE SIPPEL: It was supposed to be identified,  
21 wasn't it, any privileged documents?

22 MR. HOWARD: I don't think so, Your Honor.

23 MS. SCHMELTZER: Yes.

24 MR. HOWARD: These were, these were documents that  
25 she, that she prepared in anticipation of litigation. And

1 your order talked about a business record. This is not a  
2 business record, this is a document that's being produced. So  
3 it was not within the scope of your order, Your Honor, as we  
4 understood it. For example, the, the notes that we did in  
5 terms of preparing, the draft that we did of, of -- This is  
6 draft, this is drafts of exhibits, Your Honor.

7 JUDGE SIPPEL: Well, was it -- Was this -- Give me  
8 the -- Ms. Barr, give me the sequence of events again in terms  
9 of when things were documented. And, and how did -- And when  
10 were you informed by counsel to document this information?

11 THE WITNESS: I was asked by counsel, I don't  
12 remember the exact date but I believe it was in the summer of  
13 1992, to gather together information pertaining to the  
14 ascertainment interviews, and I spoke to the people I  
15 mentioned earlier and asked them for their calendars and we  
16 went over them individually to review what they had done. And  
17 I put it in the format for counsel that they had given to me.  
18 And then it was --

19 JUDGE SIPPEL: That they had given. Do you mean the  
20 format that they had given to you?

21 THE WITNESS: Just a format, just indicating what  
22 information would be necessary, the date, the person, their  
23 title, what issue was discussed, what resulted as, as --  
24 programming-wise as a result of that issue.

25 JUDGE SIPPEL: All right. And then from that format

1 the, the exhibit was prepared?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: And your objection is you didn't get  
4 the format?

5 MS. SCHMELTZER: We didn't get --

6 JUDGE SIPPEL: The formatted information?

7 MS. SCHMELTZER: We -- Yeah, we didn't get the -- It  
8 wasn't even identified as existing and then a privilege  
9 claimed of some sort.

10 JUDGE SIPPEL: Well, it's -- the way that's  
11 described to me, if that's -- and this witness is testifying  
12 with recollection as to what had happened, I certainly would  
13 not require that to be turned over. I mean, that was clearly  
14 work product.

15 MS. SCHMELTZER: But then it should have been  
16 identified.

17 JUDGE SIPPEL: Well, maybe it should have been  
18 identified, but identified now. I could go back and see how  
19 did I -- Did I include a general instruction in my prehearing  
20 order?

21 MS. SCHMELTZER: Yes, you did, Your Honor. Well,  
22 actually, it was in --

23 JUDGE SIPPEL: Yeah, that's where it is, 93-94. All  
24 right, perhaps, perhaps it should have been identified, but it  
25 wasn't. And now I'm satisfied that it was work product. So

1 we'll go from there. She formatted it, she told you how she  
2 did format it. Did you ask for the calendars from these  
3 individuals?

4 MS. SCHMELTZER: We have the -- We have, we have  
5 calendars from Ms. Barr, Mr. Kleiner, and Ms. Velleggia.

6 JUDGE SIPPEL: All right. So you have everything --

7 MS. SCHMELTZER: Right.

8 JUDGE SIPPEL: -- that went into the formatted --

9 MS. SCHMELTZER: Well --

10 JUDGE SIPPEL: -- version except for Covington?

11 MS. SCHMELTZER: Yeah.

12 BY MS. SCHMELTZER:

13 Q You referred to some handwritten notes that  
14 Ms. Covington had.

15 A Yes.

16 Q What did you do with those handwritten notes?

17 A I threw them away.

18 Q When did you throw them away?

19 A In the summer of 1992.

20 Q How do you know you threw them away in the summer of  
21 1992?

22 A Well, Janet Covington was -- had been at the station  
23 for a very long time and did everything longhand, and her  
24 handwriting, to be polite, was difficult to read. I had  
25 gotten used to being able to read it, but I didn't -- it never

1 occurred to me at the time that I would need this or that  
2 anybody would even be able to decipher the way in which she  
3 scribbled things on paper. So after discussing them with her  
4 and going over what I needed and pulling it out for this  
5 document, I then saw no further need for them so I did not  
6 keep the notes.

7 Q When you say you did not keep them, did you give  
8 them back to Ms. Covington or --

9 A No, I, I --

10 Q -- you just tossed them away?

11 A I threw them in the wastebasket.

12 Q And you didn't think that you should preserve them?

13 A It never occurred to me.

14 Q Did you consult with anybody before you threw them  
15 away?

16 A No, because it didn't occur to me.

17 JUDGE SIPPEL: This is when you were doing the  
18 formatted write-up for the attorneys?

19 THE WITNESS: Right. I kept the calendars. What I  
20 had from Ms. Covington was just notes. I went back to her  
21 much later, at the request of counsel, to ask her for her  
22 actual calendar from which she had pulled these notes.  
23 Unfortunately, she had been -- she had done some housecleaning  
24 or something. She had -- She threw it away or she could not,  
25 she could not find it. I asked her to go back and look for it

1 twice and she could never locate it, the actual calendar.

2 JUDGE SIPPEL: The calendar -- She could never  
3 locate the calendar?

4 THE WITNESS: No, she, she, she had the calendar --

5 JUDGE SIPPEL: Oh.

6 THE WITNESS: -- because that's how she had  
7 originally given me these notes. She never actually gave me  
8 her calendar. She used her calendar in order to provide me  
9 with these notes.

10 JUDGE SIPPEL: What did you ask her for?

11 THE WITNESS: Originally?

12 JUDGE SIPPEL: Yes.

13 THE WITNESS: Originally, I asked her for her  
14 calendar. And when she asked me why, I explained what was  
15 going on and that I needed to know what interviews she had  
16 conducted. And she said to me I better write it out for you  
17 because you'll never be able to decipher my calendar. So she  
18 wrote me these handwritten notes which indicated the date  
19 and --

20 JUDGE SIPPEL: Did you tell her that the attorneys  
21 wanted the calendar?

22 THE WITNESS: At the time, I didn't know that the  
23 attorneys wanted the calendar. All I knew at the time was  
24 that the information was required. I didn't know --

25 JUDGE SIPPEL: Who, who gave you that instruction,

1 to get the information?

2 THE WITNESS: Counsel gave me the instructions to  
3 get the information.

4 JUDGE SIPPEL: And it was to be gotten from  
5 calendars?

6 THE WITNESS: Well, it was to be gotten in whatever  
7 recordkeeping we had, which in that time was calendars.

8 JUDGE SIPPEL: Did you get any instruction from  
9 counsel to retain the information that you assembled? That  
10 is, the, the, the original of the information that you had  
11 assembled. Did you have instructions for that?

12 THE WITNESS: It came to me, as I recall, after we  
13 had assembled the information.

14 JUDGE SIPPEL: Go ahead.

15 BY MS. SCHMELTZER:

16 Q Ms. Barr, why did you ask your counsel in 1993 if  
17 the term "documents" in the document production order referred  
18 to handwritten notes?

19 A What, what are you referring to? When did I --

20 Q Do you recall asking your counsel in 1993 if the  
21 term "document" in the document production request referred to  
22 handwritten notes?

23 A I don't, I don't -- When did I --

24 MR. HOWARD: Your Honor, I object to the question as  
25 going to the attorney/client privilege.

1 MS. SCHMELTZER: Let me refresh your recollection.

2 JUDGE SIPPEL: I'm going to sustain the objection.

3 Now, you can --

4 BY MS. SCHMELTZER:

5 Q During your deposition, I asked you some questions  
6 about your response to the document production order and --

7 JUDGE SIPPEL: What page are you on?

8 MS. SCHMELTZER: We're on page 142, going over to  
9 143.

10 BY MS. SCHMELTZER:

11 Q And this -- And you -- Actually, Mr. Goldstein asked  
12 this question and you said, "The term 'documents' refers to  
13 the original in each individual thing. I specifically asked  
14 -- " And you were referring to your counsel there. "I  
15 specifically asked if we had to produce the video tape copies  
16 of everything because I didn't understand if we had to do that  
17 or not. I specifically asked if this implied every document,  
18 including handwritten notes and things of that nature."

19 A Um-hum.

20 Q Okay. Why did you ask your counsel in 1993 if the  
21 term "documents" included handwritten notes?

22 MR. HOWARD: Again I object, Your Honor.  
23 Attorney/client privilege. It goes to privileged  
24 communication of counsel.

25 MS. SCHMELTZER: I'm not asking what she asked her

1 counsel.

2 JUDGE SIPPEL: Well, wait just a minute. Just a  
3 minute. Well, she's -- If there is, if there is a privilege  
4 to that, she's waived it. She answered this question and so  
5 did she ask if this implied every document, including  
6 handwritten notes. If, if the privilege was to be asserted,  
7 it was at that time that it should have been asserted. Can  
8 you answer the question? Do you know what her question is?

9 THE WITNESS: Yes. Yes.

10 BY MS. SCHMELTZER:

11 Q Why did you ask your counsel in 1993 if the term  
12 "document" implied handwritten notes?

13 A I just wanted to make sure that I had given them  
14 every single thing that they had asked for.

15 Q Well, did you have handwritten notes in your  
16 possession in 1993?

17 A No, I was aware -- The only handwritten notes that I  
18 was aware of other than, you know, for example, this morning  
19 news document that you gave to me earlier, which are my  
20 handwritten notes, was that Janet Covington had given me  
21 handwritten notes. But I knew that I had not kept them. That  
22 was probably the reason why I asked.

23 Q Okay. Why didn't you disclose that in response to  
24 the document production order?

25 MR. HOWARD: I'm sorry, I don't understand that

1 question.

2 JUDGE SIPPEL: Well, I'll sustain the objection.  
3 Let's get it -- It assumes two or three things.

4 MS. SCHMELTZER: Let me --

5 JUDGE SIPPEL: While you're looking through that,  
6 again, I want to understand this. What I don't understand is  
7 how you threw the notes away from Covington when you didn't  
8 have Covington's diary and you were, you were working with,  
9 with counsel to get this case ready for, for hearing. I don't  
10 understand how you could throw those notes away without even  
11 saying to somebody is it okay if I chuck these things because  
12 of whatever reason.

13 I mean, everything else that you've done seems to  
14 have been done with, with, with a reasonable amount of care  
15 and, and, and attention to detail. I don't understand how you  
16 did that.

17 THE WITNESS: Well, I -- Your Honor, I, I, I made  
18 the assumption that I would be able to get Janet Covington's  
19 calendar when and if I needed it. What, what I didn't know  
20 was I didn't know how much time would elapse from the time  
21 that I first began working on this to the date -- to the time  
22 later on, which I believe was not until some time in 1993,  
23 when counsel asked me for the original calendars. And at that  
24 point, I called Janet Covington, who I had had much contact  
25 with anyway, even after her retirement, and I said I need you

1 to pull out your calendar from 1991. And she said oh, I don't  
2 know where it is, I need to go see if I can even find it.

3 And I said well, I really need you to find it  
4 because you based all of your remembrances on that calendar.  
5 And she went and looked for it, but she was never able to find  
6 it. To the best of her knowledge, she did not keep it.

7 JUDGE SIPPEL: Well, then how did the notes get to  
8 you? Or let me ask the question this way. On what did  
9 Ms. Covington base the notes that she wrote up and gave to you  
10 that you ultimately threw away?

11 THE WITNESS: They were based on her calendar, but  
12 that was done much earlier than the time that I actually asked  
13 her for her calendar. As I said before, the reason why she  
14 didn't give me the actual calendar at the time that I was  
15 putting this together is because her -- I know this sounds  
16 preposterous, but her handwriting and her recordkeeping was  
17 very unique and very difficult to decipher. And so she wrote  
18 out for me in longhand what had transpired as far as her  
19 ascertainment interviews during the relevant period and she  
20 gave it to me in the form of these handwritten notes.

21 That was early in the summer of 1992 when I  
22 requested that from her. She -- I don't, I don't recall ever  
23 saying to her save your calendar for me. I don't recall that  
24 I said save it and I don't recall that I said don't save it.

25 JUDGE SIPPEL: But when she said that she was going

1 to give you the handwritten notes and not the calendar, did  
2 you ever think to transmit that information to the attorneys  
3 to get some advice or some guidance or -- I mean, this sounds  
4 like it was done in an awful loose way.

5 THE WITNESS: I don't -- I, I really don't, I really  
6 don't think that I thought of that.

7 JUDGE SIPPEL: But you were careful about getting  
8 the other documents -- I mean the other calendars.

9 THE WITNESS: Well, the other people worked at the  
10 station, so it was a lot easier to get.

11 JUDGE SIPPEL: I, I, I understand what you're  
12 saying, but it's, it's disturbing.

13 BY MS. SCHMELTZER:

14 Q Did you transmit a copy of Ms. Covington's  
15 handwritten notes to your counsel?

16 A Not that I recall.

17 Q Did you -- Does Ms. Covington still have her  
18 calendar?

19 A She can't find it. If she has it, she cannot find  
20 it. She has looked for it on several occasions at my request  
21 and she cannot locate it.

22 Q When did you ask her to look for it?

23 A I asked her to look for it -- I don't remember the  
24 exact date. It was sometime I believe in early 1993 or late  
25 1992. And then, at the request of counsel, I asked her to

1 look for it again prior to my -- prior to I think it was June  
2 or July of this past summer. And she --

3 Q Why did you ask her to look for it in late 1992?

4 A Because I believe in preparing for this hearing  
5 someone at that point, one of counsel, had asked me to make  
6 sure I had these documents. And I -- Having realized at that  
7 point that I didn't have her particular calendar, asked her to  
8 look for it.

9 Q Wouldn't it have been useful to have her calendar  
10 with her handwritten notes?

11 A It would have had she been willing to give it to me.  
12 But, remember, she was not employed at the station at that  
13 time. She's a very strong-willed individual and she handed me  
14 these notes and told me that she needed to hand me the notes  
15 because she really wasn't at that point comfortable with  
16 giving me the calendar, because she said I'd never be able to  
17 interpret it.

18 JUDGE SIPPEL: Well, it sounds to me that she --  
19 that there was more to it than just not being able to read her  
20 writing. She didn't want to give you her calendar.

21 THE WITNESS: No, I -- Well, I know Janet Covington  
22 very well and I believe that, having worked with her and  
23 having seen her handwriting and having seen the way she keeps  
24 records, that it was probably that it would be very difficult  
25 to read. She just -- She had her own system of organization.

1 She knew where everything was and she knew how to, how to  
2 remember things, but that was her style and not, not one that  
3 was easily identifiable to anybody else.

4 JUDGE SIPPEL: Were the notes that she did give you  
5 that were later discarded, were they used to prepare the  
6 format that the attorneys have instructed you on?

7 THE WITNESS: I used those notes to, to arrive at  
8 some of the ascertainment interviews that are listed here.

9 JUDGE SIPPEL: Well, that's not quite my question.

10 THE WITNESS: Okay.

11 JUDGE SIPPEL: We went down this before and the  
12 sequence of events was you got the calendars, the notes, and  
13 then you put those in a format that the attorneys had asked  
14 you to, to utilize.

15 THE WITNESS: That's correct.

16 JUDGE SIPPEL: And then from that formatted  
17 information, the exhibit was prepared.

18 THE WITNESS: That's correct.

19 JUDGE SIPPEL: That's correct?

20 THE WITNESS: Um-hum.

21 JUDGE SIPPEL: All right. And that's my question.  
22 Did you use her notes to prepare the next original document,  
23 which would be the formatted thing that you prepared for the  
24 attorneys?

25 THE WITNESS: The format was given to me by the

1 attorneys, so I used her notes to plug into the format.

2 JUDGE SIPPEL: All right. What I'm going to require  
3 to be turned over, Mr. Howard, is that portion of the  
4 formatted work product that has the Covington information.  
5 Everything else can be masked.

6 MR. HOWARD: Provided to you, Your Honor, in camera?

7 JUDGE SIPPEL: No, I'm, I'm going to require that it  
8 be turned over, because even if it is work product, I think  
9 there's sufficient cause for it to be turned over. And it's  
10 3:00 now. Is this readily available at your office?

11 MR. HOWARD: I'm frankly not certain, Your Honor.  
12 I, I think so.

13 JUDGE SIPPEL: What, what I'd like to see done is  
14 I'd like to see it given to, to Ms. Schmeltzer, at least  
15 Ms. Schmeltzer, by some time -- by later this afternoon. I, I  
16 don't want to put a time on it, but if you could get it to her  
17 by 5:00, otherwise first thing tomorrow morning.

18 MR. HOWARD: Okay. I just don't know if we can go  
19 -- We'll certainly try, Your Honor.

20 JUDGE SIPPEL: I understand. Well, I, I understand  
21 you don't know. I'm saying what I'd like to see done, so that  
22 this -- primarily, so that we don't detain the witness  
23 unnecessarily, is to get it in Ms. Schmeltzer's hands as soon  
24 as possible so that we can come back to this subject tomorrow.  
25 I don't see anything else that you can, can do on this today,

1 Ms. Schmeltzer, do you? Do you have anything further on this?  
2 You're going to start repeating the questions.

3 MS. SCHMELTZER: You mean on the -- on  
4 Ms. Covington's notes? Maybe just one or two questions,  
5 that's all.

6 JUDGE SIPPEL: All right. Let's, let's get that  
7 done, and we can take a break and then move on.

8 BY MS. SCHMELTZER:

9 Q Ms., Ms. Barr, in Footnote 6 of your exhibit SH3-16  
10 where you say, "It did not occur to me to preserve  
11 Ms. Covington's handwritten notes," is there some reason that  
12 the destruction of the handwritten notes was not disclosed in  
13 response to the motion for production of documents?

14 A There was no reason, because I just didn't think it  
15 was -- I just didn't think it was a relevant issue.

16 Q You didn't think that you had --

17 MR. HOWARD: Your Honor, I think, I think we did  
18 disclose the -- that we did not have Ms. Covington's notes in  
19 response to the production of documents.

20 MS. SCHMELTZER: Not until the direct case exhibit.

21 JUDGE SIPPEL: This was not disclosed until October?

22 MR. HOWARD: With respect to calendars, when we  
23 responded and said that here are the calendars, it's my  
24 recollection that there was identification of --

25 JUDGE SIPPEL: Well, I, I think --