

1 and you have your cross examination. My inclination is that  
2 if the man is talking about a program he appeared on  
3 consistent with my prior rulings I will allow in those  
4 opinions and conclusions which presumably you cross examined  
5 him on.

6 MR. MULLIN: Then I would ask that you accept also  
7 his deposition which is S.A.L.A.D. Exhibit 2 --

8 MR. HONIG: I intend to move it --

9 MR. MULLIN: Okay.

10 MR. HONIG: -- Your Honor.

11 MR. MULLIN: And there are also two other S.A.L.A.D.  
12 Exhibits, excerpts from issues programs lists that need to be  
13 identified and accepted in order to make the cross examination  
14 comprehensible.

15 JUDGE CHACHKIN: All right, but let's first deal  
16 with --

17 MR. MULLIN: All right.

18 JUDGE CHACHKIN: -- Cherry's declaration. I will  
19 accept all of the declaration with the exception of the second  
20 and third paragraphs.

21 (The document previously marked for  
22 identification as S.A.L.A.D. Exhibit  
23 13, was entered into evidence,  
24 modified as stated.)

25 MR. HONIG: Your Honor, turning to S.A.L.A.D.

1 Exhibit 14, the declaration of Charles W. Cherry, in light of  
2 your previous ruling there is an aspect of, of these exhibits  
3 which is perhaps illustrated by his testimony. There are  
4 really three things that many of these witnesses speak of: one  
5 is their evaluation of the contents of the issues programs  
6 list; second, their description of community needs as they as  
7 leaders see them independently of --

8 MR. MULLIN: Excuse me, I, I think Counsel is  
9 characterizing direct testimony that's been reduced to writing  
10 and obviously we all have to do that to some extent, but I  
11 think this is going too far. I think the exhibit should stand  
12 or fall as direct testimony on what is in writing.

13 MR. HONIG: Your Honor, may I continue please?

14 JUDGE CHACKIN: Yes.

15 MR. HONIG: Second, there are descriptions of  
16 aspects of community needs standing alone and independently of  
17 their descriptions of the programming; and third in effect a  
18 comparison of the two. Your Honor has ruled that, that the  
19 descriptions of the issues programs list and a comparison of  
20 those lists with the aspects of the needs with which these  
21 community leaders are familiar, that is the first and the  
22 third of those three points, would not be admitted. But  
23 nonetheless, some of the evidence offered in Dr. Cherry's, in  
24 I'm sorry, Attorney Cherry's declaration is of the second  
25 type. That is, descriptions of particular aspects of these

1 needs which could be useful in developing findings even  
2 independently of whether the rest of the testimony comes in.

3 I'm speaking for example of the paragraph which  
4 begins at the bottom of the first page in which he provides  
5 specific statements derived from his own expertise as a  
6 practicing attorney in Boward County, relating to a particular  
7 need which the station ascertained.

8 JUDGE CHACKIN: Is this Exhibit 14 we're talking --

9 MR. HONIG: This is Exhibit 14. So in light of Your  
10 Honor's previous ruling I would, I would assume that your  
11 intention would be to strike paragraph, the second paragraph  
12 which begins on the first page, which begins "I have reviewed  
13 the issues programs lists," that first sentence. The sentence  
14 which states "In my capacity as a trial lawyer I did not find  
15 these issues responsive." But, nonetheless, the paragraph  
16 which begins "Unfortunately I see first hand" I think is  
17 permissible.

18 MR. MULLIN: Where is that? That "Unfortunately I  
19 see first hand?"

20 MR. HONIG: The third, the, it begins on the second  
21 paragraph on, in his declaration. The sixth line down. The  
22 sentence following that which begins "In 1990 AIDS was the  
23 number two killer," the sentence following that one states "In  
24 Dade and Bowers Counties African Americans represent close to  
25 40 percent of the reported AIDS cases." But I assume that

1 Your Honor would not allow in the remainder of that paragraph.

2 MR. MULLIN: May I respond at this point?

3 JUDGE CHACHKIN: Yes.

4 MR. MULLIN: In S.A.L.A.D. Exhibit 3 for  
5 identification at page 12 Charles W. Cherry was asked "Is it  
6 fair to say that the criticism or the observations that you  
7 have made in paragraph two are not criticisms of what was  
8 broadcast but criticisms of the station's failure to cover  
9 other issues, and specifically issues specifically relating to  
10 the black community?" Answer, "I think that's a correct  
11 characterization." Question, "Sir, yes, I would think that  
12 that was a correct characterization." He's criticizing what  
13 the station didn't do, not what it did do.

14 MR. HONIG: But I --

15 MR. MULLIN: He's saying should, should have  
16 responded with other programs and I think that's a pretty  
17 dangerous area for the Federal Communications Commission to be  
18 getting into.

19 MR. HONIG: But I think, Your Honor, that the  
20 witness's description of his intentions in providing the  
21 paragraph doesn't control, the words themselves should control  
22 and the words themselves at least as, of the I guess third and  
23 fourth sentences which speak of needs in a way which is  
24 independent of the issues programs list is useful and  
25 permissible as an expert's view of needs and could be used by

1 the parties to analyze the issues programs list and offer  
2 findings.

3 JUDGE CHACHKIN: Well I disagree with you. That's  
4 not, the Commission does not tell the station what to program.  
5 Commission tells a station to ascertain what the needs are and  
6 to be responsive to those needs, and that's the station's  
7 obligation. It's not proper for, for a member of the public  
8 to make his own determinations of what the needs are  
9 independent of this ascertainment and then attempt now to  
10 argue in findings that because this individual said there are  
11 needs therefore the Commission is going to fault the station  
12 for not meeting the needs as he sees it. That's not the  
13 Commission's requirement. The Commission does not play that  
14 role.

15 MR. HONIG: Well if that were so, Your Honor, we  
16 would never have had the WLBT case. Those were experts who  
17 came in and said the station has ascertained these needs and  
18 determined that there are certain needs, but nonetheless  
19 African Americans in Jackson Mississippi are 40 percent of the  
20 population and I don't see them here. Without something in  
21 the record that says that they were 40 percent of the  
22 population you would never have had that, the holdings in that  
23 case.

24 JUDGE CHACHKIN: Well --

25 MR. HONIG: Here are experts who are saying these

1 are statistics which ought to be considered.

2 JUDGE CHACHKIN: I'm not going to receive these  
3 statistics. They're not relevant to anything as far as I can  
4 see, they have no bearing on the issues in this case. I'm  
5 just not going to receive the declaration of Charles Cherry II  
6 simply because there's nothing here dealing with his review of  
7 the programing of the station. I don't know to what extent  
8 the station has even addressed the, his concerns. You can't  
9 tell that and he can't tell you that since he doesn't, he  
10 hasn't watched the station. So I will not receive S.A.L.A.D.  
11 Exhibit 14, it's rejected.

12 (The document previously marked for  
13 identification as S.A.L.A.D. Exhibit  
14 14 was rejected.)

15 MR. HONIG: Turning to S.A.L.A.D. Exhibit 15, in  
16 light of Your Honor's ruling am I correct in assuming that  
17 you're not going to accept any of S.A.L.A.D. Exhibit 15?

18 JUDGE CHACHKIN: That's correct, on grounds of not  
19 being relevant. S.A.L.A.D. Exhibit 15 is also rejected.

20 (The document previously marked for  
21 identification as S.A.L.A.D. Exhibit  
22 15 was rejected.)

23 MR. HONIG: S.A.L.A.D. Exhibit -- and, Your Honor,  
24 so I can make the record clear as I'm going through these my  
25 intention is to offer them with the understanding that they're

1 being rejected, but, but would stand as an offer of proof?

2 JUDGE CHACHKIN: I understand.

3 MR. HONIG: Okay. S.A.L.A.D. Exhibit 16, this is a  
4 witness, Your Honor, whose declaration states that he watches  
5 two or three hours a week, on cross examination he said he  
6 watched maybe some lesser amount, but still a substantial  
7 amount, perhaps one hour a week or a month. And reached  
8 evaluations based on his viewership. I don't think the amount  
9 of his viewership is insignificant and, and he does state, and  
10 in paragraph number 3 on the second page that he has sent  
11 notices to the station --

12 MR. MULLIN: Excuse me --

13 MR. HONIG: -- but nonetheless has, and other  
14 stations have contacted him and he identifies those other  
15 stations, but he's never been contacted by Channel 45 and the  
16 station was never responsive.

17 MR. MULLIN: May I respond to that at this point?

18 JUDGE CHACHKIN: Yes.

19 MR. MULLIN: The man ran for congress in the  
20 democratic primary in 1992. That's what he's talking about  
21 here. This was made explicit in the deposition. That's  
22 absolutely outside the time period here.

23 MR. HONIG: Insofar as --

24 MR. MULLIN: And also that's true of the last  
25 sentence in paragraph 2B, where he talks about coverage of the

1 parade through Overtown. He testified that that parade was on  
2 January 19th, 1993.

3 MR. HONIG: Insofar as programming has been offered  
4 by Trinity, some of which is outside the renewal term, I would  
5 only ask that --

6 UNIDENTIFIED SPEAKER: Is it?

7 MR. HONIG: -- consistently -- and it was rejected.  
8 That if, that this, that -- well I guess that would be an  
9 argument for use, I'll withdraw my comment, Your Honor.

10 JUDGE CHACHKIN: Well if it's outside the renewal  
11 term it's not relevant for that reason.

12 MR. HONIG: Well, but he states in the paragraph  
13 number three on page two, "I have never been contacted by  
14 Channel 45."

15 JUDGE CHACHKIN: Well --

16 MR. HONIG: And on the other hand, and he identifies  
17 four specific stations "That have contacted me scores of times  
18 about legal, political and civil rights issues."

19 MR. MULLIN: And then he goes on to talk about fund  
20 raisers. He's talking about running for congress in the  
21 democratic primary in 1992.

22 MR. HONIG: I won't contest Counsel's point relating  
23 to the sentences in paragraph number three which followed the  
24 first two, but I believe that the first two sentences of  
25 paragraph three ought to stay in.

1 JUDGE CHACHKIN: The exhibit is rejected as not  
2 relevant.

3 MR. HONIG: The entire exhibit, Your Honor?

4 JUDGE CHACHKIN: The entire exhibit, yes.

5 MR. HONIG: It's --

6 JUDGE CHACHKIN: That's 15, is it? 16?

7 UNIDENTIFIED VOICE: 16, Your Honor.

8 MR. HONIG: Do I understand, Your Honor, that --

9 MR. MULLIN: That's 17.

10 MR. HONIG: -- that this is --

11 JUDGE CHACHKIN: 17?

12 MR. HONIG: -- that this is --

13 MR. MULLIN: That was 16, excuse me.

14 JUDGE CHACHKIN: 16 yes.

15 (The document previously marked for  
16 identification as S.A.L.A.D. Exhibit  
17 16 was rejected.)

18 MR. HONIG: That this is a continuing ruling, that  
19 if a witness states he's never been contacted by the station  
20 and other stations did contact him that that's not relevant?

21 JUDGE CHACHKIN: That's correct.

22 MR. HONIG: Okay.

23 JUDGE CHACHKIN: There's no requirement as far as I  
24 know that a particular individual be contacted. There are  
25 other individuals presumably who have knowledge in that same

1 area who may have been contacted. The fact that one  
2 particular individual was not contacted by itself is, it seems  
3 to me is irrelevant. And it also appears here that, at least  
4 as I understand it from the cross examination, that the  
5 context we're talking about occurred after the renewal period.  
6 I mean, I don't have the cross examination in front of me but  
7 that's what Mr. Mullin indicates to me, that all of these  
8 appearances you're talking about were in connection with his  
9 running for office.

10 MR. HONIG: I think that's correct for the  
11 fundraisers, Your Honor, I don't believe that that's correct  
12 for the other period. I, I understand your ruling and --

13 JUDGE CHACHKIN: All right.

14 MR. HONIG: -- I -- Paragraph 17 -- Okay.  
15 S.A.L.A.D. Exhibit 17, I'm sorry, declaration of -- it's Mrs.  
16 Johnny McMillion.

17 MR. MULLIN: Are you going to withdraw some of that?

18 MR. HONIG: Let me go -- Paragraph two --

19 JUDGE CHACHKIN: Paragraph -- Well, first of all,  
20 are there objections to S.A.L.A.D. Exhibit 17?

21 MR. MULLIN: Yes.

22 JUDGE CHACHKIN: I should have asked that with  
23 respect to 16.

24 MR. MULLIN: Yes, there are objections to paragraphs  
25 two and three as immaterial and irrelevant. In paragraph two

1 Mrs. McMillion is simply saying that Channel 45 did not  
2 contact her or did not contact the Miami-Dade branch of the  
3 NAACP. That's pretty much what you just ruled, the fact that  
4 a station does not contact the particular organization is  
5 immaterial.

6 JUDGE CHACHKIN: No, I ruled a particular individual  
7 is immaterial.

8 MR. MULLIN: All right.

9 JUDGE CHACHKIN: We haven't gotten to the  
10 organization yet, but that's -- at least I think -- Well  
11 that's what I ruled, was a particular individual.

12 MR. MULLIN: Yeah. I would, I would say that it  
13 also applies to an organization. On paragraphs five through  
14 -- well, let's take it one at a time. Paragraph five is and  
15 purports to be a breakdown of topics discussed on certain  
16 issues programs lists. The, S.A.L.A.D. Exhibit 6 for  
17 identification establishes that the breakdown, the tally for  
18 example, that there were 14 mentions of home schooling and 10  
19 mentions of opposition to sex or drug education was tally  
20 prepared by Mr. Honig and Mrs. McMillion with as I recall Mr.  
21 Honig keeping the tally. It may be perfectly acceptable  
22 argument, maybe it belongs in proposed findings, but it's not  
23 testimony. It's simply a statistical analysis or a tally of  
24 something that's in a list of programs. That's also  
25 applicable to paragraph six on page three, that's simply

1 | argument about what is in and what is not in S.A.L.A.D.  
2 | Exhibit 6 for identification which relates to education in  
3 | schools. Also contained some value judgments particularly in  
4 | the last sentence in paragraph six, where the adverb  
5 | incredibly introduces the sentence. Same objection to  
6 | paragraph seven, it's argumentative, characterizing what's in  
7 | and not in S.A.L.A.D. Exhibit 30 for identification.  
8 | Paragraph seven also is objectionable when it gets to that  
9 | sentence about halfway down that begins "Only a small handful  
10 | of ultraconservatives," et cetera. That invites the  
11 | Commission to make a judgement on which side is right on a  
12 | controversial issue of public importance. I think that's not  
13 | the business of the FCC. Paragraph seven is also  
14 | objectionable in the next to last sentence where she says that  
15 | Channel 45 is the only television station which simply does  
16 | not address civil rights at all; aside from the fact that that  
17 | is about as conclusary as one can get her testimony  
18 | establishes, treated as voir dire for this purpose, that her  
19 | only basis for that is her review of S.A.L.A.D. Exhibit 30 for  
20 | identification. Paragraph eight where she withholds the  
21 | adjective, or the label meritorious is simply irrelevant  
22 | opinion and is conclusary.

23 | MR. HONIG: May I respond, Your Honor?

24 | JUDGE CHACHKIN: Yes, Mr. Honig.

25 | MR. HONIG: I think we can easily lose sight of what

1 | the designated issue is. This is not an issue going to  
2 | whether the station produced minimal programming necessary to  
3 | survive a renewal. If that were the issue I would agree with  
4 | my, with many of the objections that Counsel has stated. This  
5 | is an issue that goes to whether the station's programming was  
6 | meritorious, was special. Was more than the Commission  
7 | minimally requires, and that's why I think it's germane that  
8 | for example the, the head of the largest black organization in  
9 | south Florida by her own testimony -- and it's correct -- who  
10 | not only was never contacted but attempted to establish  
11 | dialogue with all of the local stations, this was the only  
12 | station that didn't respond. This is not just any person,  
13 | this is a person who, who has unique standing in the community  
14 | and to whom the station, and to whose organization the station  
15 | did not respond even when the organization went out of its way  
16 | to try to address these issues directly with station managers.  
17 | Who makes repeated efforts to try to, to notify the station  
18 | of, of events issues and so forth all of which were rejected.  
19 | This is very, this is a wealth of information in the testimony  
20 | and the, the record will be far more bearing without it.

21 |           On the specific points that Counsel has raised,  
22 | paragraph five standing by itself I think is unobjectionable  
23 | because it simply categorizes --

24 |           JUDGE CHACKIN: What paragraph?

25 |           MR. HONIG: -- in the record --

1 JUDGE CHACHKIN: Pardon me?

2 MR. HONIG: Pardon me?

3 JUDGE CHACHKIN: Paragraph five?

4 MR. HONIG: Paragraph five, yes.

5 JUDGE CHACHKIN: What about it?

6 MR. HONIG: Simply, simply describes in a systematic  
7 way evidence that's otherwise already in the record and thus  
8 is, is unobjectionable. Para -- and there's, and there's  
9 cross examination that explains how it was done. Paragraph  
10 six, if Your Honor's ruling before is continued I would assume  
11 that you would not admit paragraph six, and although I think  
12 it's unfortunate that you would not admit paragraphs seven and  
13 eight. But I would hope that Your Honor would find it  
14 possible to admit paragraphs one through five.

15 JUDGE CHACHKIN: Anybody else wish to comment? The  
16 exhibit will be rejected in its entirety as irrelevant.  
17 That's S.A.L.A.D. Exhibit 17 is rejected.

18 Your next exhibit?

19 MR. MULLIN: I have an objection to Exhibit 18.

20 JUDGE CHACHKIN: Is that being offered, Mr. --

21 MR. HONIG: It is.

22 MR. MULLIN: Sir --

23 JUDGE CHACHKIN: All right, what is your objection?

24 MR. MULLIN: It's objectionable entirely because  
25 this witness has no knowledge of Channel 45 programming other

1 | than what he's read in the program extracts. He testified in  
2 | S.A.L.A.D. Exhibit 7 for identification, page six, "That I  
3 | told him..." -- him being the paralegal or clerk assisting  
4 | S.A.L.A.D., Mr. Tyrone Shanks -- "...that I had watched  
5 | Channel 45 on occasion but never in any great length." He  
6 | later used the phrase "Very rarely," that was at pages 15 and  
7 | 16 of S.A.L.A.D. Exhibit 7 for identification. "I have not  
8 | discussed Channel 45 with anyone," S.A.L.A.D. Exhibit 7 for  
9 | identification, page 19. He has no information except what he  
10 | read in the excerpts from the issues programs list.

11 |           MR. HONIG: Paragraph number three does state that  
12 | he's generally, generally aware of the programming routinely  
13 | available from all local stations and he expresses his  
14 | opinion. I think that's different in kind from the type of  
15 | testimony which Your Honor has previously rejected.

16 |           MR. MULLIN: That's about as conclusary and as non-  
17 | specific as one can get.

18 |           MR. HONIG: But he's an --

19 |           JUDGE CHACHKIN: The only --

20 |           MR. HONIG: -- expert, and his ability to offer this  
21 | opinion has not been seriously contested. He's a city, he's a  
22 | city commissioner in Fort Lauderdale, he's lived there all his  
23 | life. Station had an opportunity, opportunity, Trinity had an  
24 | opportunity to cross examine him and, and determine the extent  
25 | of his awareness.

1 JUDGE CHACHKIN: You know, Mr. Honig, among your  
2 other problems, none of these declarations delineates a  
3 particular time frame. There is a particular time frame that  
4 we're dealing with here, the renewal period. It is impossible  
5 to see from any of your declarations as to when even any of  
6 the sporadic viewing took place, since there's no indication  
7 in the declaration. If it took place outside the time frame  
8 clearly it's not relevant. And there's no way of telling from  
9 the declaration as I said when it took place.

10 MR. HONIG: This viewer has stated that he's lived  
11 in Fort Lauderdale all his life and --

12 JUDGE CHACHKIN: I understand that, but the time  
13 frame, the renewal period is not offered, is not that  
14 extensive. The renewal period is a discrete period of time  
15 and that's the only thing that's relevant.

16 MR. HONIG: Your Honor, I would agree that it's the  
17 only thing that's relevant, but if he's stated that, made a  
18 conclusary statement across all time periods then I would  
19 agree that it's relevant only insofar as it applies to that  
20 time period. But he doesn't say that for some periods it was  
21 responsive and for some it wasn't but not say what time  
22 periods, if that were so then I, then that would pose a  
23 problem.

24 JUDGE CHACHKIN: Well, his conclusion which as you  
25 say stretches across time has no facts to substantiate his

1 conclusion. You just made a general conclusion here, there's  
2 no factual basis for it which is indicated in the declaration.  
3 The only -- now we're talking about paragraph five, earlier  
4 this year. What time frame are we talking about there?

5 MR. HONIG: I gather that's outside the time span,  
6 Your Honor, because that's early 1993.

7 MR. MULLIN: That's correct.

8 JUDGE CHACHKIN: Now what are we talking about in  
9 Channel six? What period are we talking about?

10 MR. HONIG: In paragraph six? He states never, so  
11 that's all time periods including the renewal period.

12 JUDGE CHACHKIN: I don't know, were there other  
13 instances before where requests were made to cover a  
14 particular thing which were not covered?

15 MR. HONIG: He doesn't state he's stating this as  
16 events of interest to him and presumably as a city  
17 commissioner he's genuinely, even if he did not see the  
18 coverage he can be presumed to be generally aware of what's  
19 being covered.

20 MR. MULLIN: Well now I don't think we ought to  
21 overdo presuming here, I mean this is direct testimony.

22 MR. HONIG: If it were not he would have been  
23 impeached, I don't believe he was.

24 JUDGE CHACHKIN: All right, I will allow in with  
25 respect to S.A.L.A.D. Exhibit 18, first and second paragraph.

1 And the sixth paragraph. The remainder of the exhibit will be  
2 rejected.

3 (The document previously marked for  
4 identification as S.A.L.A.D. Exhibit  
5 18 was entered into evidence,  
6 modified as stated.)

7 MR. MULLIN: And I presume when we get to it the  
8 S.A.L.A.D. Exhibit 7, the deposition of Carlton Moore will be  
9 accepted --

10 MR. HONIG: Yes.

11 MR. MULLIN: -- or at least will be offered?

12 MR. HONIG: Yes, it will.

13 MR. MULLIN: Okay.

14 MR. HONIG: S.A.L.A.D. Exhibit 19 is, is offered.

15 JUDGE CHACHKIN: 19?

16 MR. HONIG: It's offered with the understanding  
17 though that in light of Your Honor's previous rulings, I  
18 believe I'm correct your intention would be to reject the  
19 entire exhibit?

20 MR. MULLIN: I'm going to object to the entire  
21 exhibit on the ground that in S.A.L.A.D. Exhibit 8 for  
22 identification at pages nine and 10 this witness said she did  
23 not recall having seen any programming on the channel in any  
24 of the years in the renewal period, series of questions what  
25 about 1990, same answer, answer, same answer. All she knows

1 about any program is what she read in S.A.L.A.D. Exhibit 32  
2 for identification.

3 JUDGE CHACHKIN: Is that correct, Mr. Honig?

4 MR. HONIG: That's correct.

5 JUDGE CHACHKIN: All right, then S.A.L.A.D. Exhibit  
6 19 is rejected.

7 (The document previously marked for  
8 identification as S.A.L.A.D. Exhibit  
9 19 was rejected.)

10 (Tape 2)

11 JUDGE CHACHKIN: Next exhibit, Mr. Honig?

12 MR. HONIG: Your Honor, S.A.L.A.D. Exhibit 20 is  
13 offered, Osvaldo Soto's declaration and, Osvaldo Soto is the  
14 president of --

15 MR. MULLIN: Mr. Soto testified, you'll find it in  
16 S.A.L.A.D. Exhibit 9 for identification at page 41, that he  
17 watches a half hour to an hour a week, mostly on Saturday and  
18 Sunday. His testimony -- let's not say his testimony, all  
19 that he knows about the station is what he reviewed on a  
20 review of issues programs list or what he has been told by I  
21 believe Mr. Honig. He has no, no individual knowledge.  
22 Paragraph two is irrelevant, paragraph three is irrelevant,  
23 also conclusary in the first sentence. Paragraph three is  
24 irrelevant, there's no obligation to contact a particular  
25 person. Paragraph four is not based on his knowledge but is

1 | based upon what he was told about on that program by Mr. Honig  
2 | -- that's S.A.L.A.D. Exhibit 9 for identification, pages 35 to  
3 | 39, but to be more precise the witness could not recall  
4 | whether he told Mr. Honig or Mr. Honig told him about this  
5 | particular program; it is a program that is synopsized in an  
6 | issues programs list in which a representative from  
7 | S.A.L.A.D., Mr. Soto's organization, did appear on the station  
8 | as one of four members of a panel discussing an issue of  
9 | importance to S.A.L.A.D.. The fact that S.A.L.A.D. was  
10 | represented on the program is a fact otherwise established on  
11 | the record. But this witness simply has no knowledge to deal  
12 | with that. And paragraph five, I simply point out he beings  
13 | by saying "I understand that few if any Hispanics are listed."  
14 | Well, you know, I guess someone told him that but that's not  
15 | competent.

16 | JUDGE CHACKIN: Mr. Honig, any response?

17 | MR. HONIG: Yes. Your Honor, this is the President  
18 | of, of S.A.L.A.D., and why we're here. This is two pages of  
19 | direct testimony. Paragraph two I think is useful background  
20 | of what is the reason this organization has gone to the  
21 | trouble to, to be here. And in that sense it's useful as  
22 | background for that purpose. This is a 20 year resident, head  
23 | of the largest Hispanic civil rights organization in the  
24 | community, he states that he's familiar in a general way with  
25 | all of the television stations and their programming, and

1 based on that has formed an opinion --and it doesn't say it's  
2 because of issues programs lists at all -- about the station's  
3 programs service. And he watches the station, I believe  
4 Counsel said half an hour, hour a week, and a S.A.L.A.D.  
5 representative, a person well known to him has appeared and he  
6 has an opinion about that appearance by a person well known to  
7 him representing his organization. I think that that, that is  
8 useful testimony and ought to be considered.

9 JUDGE CHACHKIN: S.A.L.A.D. Exhibit 20 is rejected  
10 as not relevant.

11 (The document previously marked for  
12 identification as S.A.L.A.D. Exhibit  
13 20 was rejected.)

14 JUDGE CHACHKIN: Your next exhibit, Mr. Honig?

15 MR. MULLIN: We object to S.A.L.A.D. Exhibit 21, the  
16 declaration of Rodney Thaxton, he has no knowledge of the  
17 programming other than reviewing an issues programs list on  
18 the subject of crime. According to his testimony in  
19 S.A.L.A.D. Exhibit 10 for identification he spent, quote, "Not  
20 very much time" unquote watching Channel 45. That's also on  
21 page 13, where he also said it was, quote, "Like just flipping  
22 through the channel, stopping to watch what was going on,"  
23 unquote. No viewing of the station except casual and  
24 incidental viewing. All he knows about the station is what  
25 he's read in S.A.L.A.D. Exhibit 29 for identification, and if

1 I may have a moment -- he was asked specifically on page 17 of  
2 S.A.L.A.D. Exhibit 10 for identification: "So really all that  
3 you know about the programming on Channel 45 is what you have  
4 read in Trinity Exhibit 8..." -- which is now S.A.L.A.D.  
5 Exhibit 29, and the answer is yes.

6 MR. HONIG: Counsel is almost correct in his  
7 description. The last three sentences on page four of this  
8 exhibit, paragraph nine, however, specifically relate to the  
9 experience of this witness at public hearings conducted during  
10 the license term on police misconduct, a subject about which  
11 this witness is an eminent expert, he's the senior death  
12 penalty defense attorney in the city. He was a witness at  
13 these hearings and testified that Channel 45 was the only  
14 television station which did not cover or otherwise present  
15 any programming concerning those hearings. I think that's  
16 relevant to have in the record.

17 MR. MULLIN: Well, you know, evidence about what the  
18 station did not do opens up a very interesting prospect. I  
19 mean, you could just as well offer evidence that the station  
20 did not put on a student production of Hamlet, or the station  
21 did not put on programming in Ukrainian. I mean, there are  
22 all sorts of things the station did not do, that's simply not  
23 relevant. We simply can't deal with that, that's never  
24 ending.

25 MR. HONIG: Your Honor, that's what meritorious

1 programming is about. Give and take between what was done and  
2 what was not done and was it sufficient, that's, that's an  
3 argument to be made in findings.

4 MR. MULLIN: Yes.

5 JUDGE CHACHKIN: Go ahead.

6 MR. MULLIN: No, I have no response, I rest on the  
7 objections already made.

8 JUDGE CHACHKIN: S.A.L.A.D. Exhibit 21 is rejected  
9 as not relevant.

10 (The document previously marked for  
11 identification as S.A.L.A.D. Exhibit  
12 21 was rejected.)

13 JUDGE CHACHKIN: Next exhibit?

14 MR. HONIG: S.A.L.A.D. Exhibit 22, the declaration  
15 of William Thompson Jr.

16 MR. MULLIN: We object to that on the same ground,  
17 the witness has no knowledge of the programming except from a  
18 review of S.A.L.A.D. Exhibit 33 for identification on housing  
19 and homeless. He testified in S.A.L.A.D. Exhibit 11 for  
20 identification at pages six and seven that -- give me a moment  
21 -- that he told S.A.L.A.D.'s attorneys he was not a regular  
22 viewer, hadn't watched for more than five minutes at a time,  
23 his viewing was incidental or while on his way to another  
24 channel. Now I want to make sure I'm right on that if I can  
25 have just a moment.

1           In S.A.L.A.D. Exhibit 11 for identification at page  
2 six, line 17, "I'm still not a regular viewer." Question, "In  
3 that particular time frame, 1987 through '91, did you do any  
4 viewing at all of Channel 45 that you can now recall," answer,  
5 "Not for any length of time, I think five minutes is the most  
6 I've ever watched a program." "Would it be fair to say that  
7 any viewing you did was incidental and probably while you were  
8 on your way to viewing other programs or changing the  
9 channel," so to be honest that was suggested to him and the  
10 answer was "Probably, yes."

11           MR. HONIG: Your Honor, this declaration is more  
12 than many of them, provides a good example of why I think the  
13 record would benefit greatly from having some evidence from  
14 eminent community leaders who don't feel the station's  
15 programming has been meritorious. This witness is the  
16 executive director of the only organization devoted to  
17 fighting discrimination in housing. He testifies that he  
18 reviewed programming held up by the station on the subject of  
19 housing, an issue which it ascertained, and in those lengthy  
20 documents there was no discussion of housing discrimination,  
21 an area in which he is the principle point person in the  
22 community and he's never been contacted about it. Again I  
23 would argue that parties may disagree about the weight but  
24 since we're talking about meritorious programming and not  
25 minimal programming the station's failure to identify any

1 programming on the subject of housing discrimination, even for  
2 the purpose of impeaching this witness over a five year period  
3 is relevant and ought to be allowed.

4 MR. MULLIN: I don't want to, by my silence, suggest  
5 that I suggest Counsel's characterization of what the station  
6 did or did not do with respect to housing, there's other  
7 testimony including testimony in the issues programs list, but  
8 I don't think that has anything to do with the admissibility  
9 of this witness's exhibit.

10 JUDGE CHACHKIN: S.A.L.A.D. Exhibit 22 is rejected.  
11 (The document previously marked for  
12 identification as S.A.L.A.D. Exhibit  
13 22 was rejected.)

14 JUDGE CHACHKIN: Next exhibit, Mr. Honig?

15 MR. HONIG: Your Honor, if we could turn then to  
16 S.A.L.A.D. Exhibit 1, which is Branford Brown's deposition  
17 testimony, in light of Your Honor's ruling on Dr. Brown's  
18 declaration, which was S.A.L.A.D. Exhibit 12, we would offer  
19 S.A.L.A.D. Exhibit 1 with the understanding that, consistent  
20 with your previous ruling you are rejecting that exhibit?

21 JUDGE CHACHKIN: Yes, I'm rejecting, we'll go  
22 forward with the record --

23 MR. HONIG: Okay.

24 (The document previously marked for  
25 identification as S.A.L.A.D. Exhibit