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APPEARANCES:

For Glendale Broadcasting Company:

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dba Trinity Broadcasting Network, and  
National Minority TV, Inc.:

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Also Present:

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I N D E X

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
MILLER, II, WARREN BENTON (Volume II)	BY MR. COHEN  BY MR. SHOOK  BY MR. TOPEL	52  113  147

EXHIBITS FOR IDENTIFICATION

(None)



1 Santa Ana, California, Wednesday, September 22, 1993

2 11:00 a.m.

3  
4 WARREN BENTON MILLER, II,

5 produced as a witness by and on behalf of Glendale  
6 Broadcasting Company, and having been first duly sworn, was  
7 examined and testified as follows:

8  
9 MR. COHEN: Now, the record should reflect that  
10 Mr. Miller's deposition was adjourned yesterday, and then in  
11 order to accommodate Scott Morris, we took Scott Morris out  
12 of turn, so to speak, and so now we are resuming with  
13 Mr. Miller. Off the record.

14 (Discussion off the record.)

15  
16 EXAMINATION (Continued)

17 BY MR. COHEN:

18 Q I want to ask you, Mr. Miller, about another  
19 subject that we didn't have the opportunity to deal with  
20 yesterday, and this concerns a dispute that was had with an  
21 outfit called Syncom, Incorporated.

22 Does that strike a bell to you?

23 A Yes.

24 Q The first document I want to show you is a  
25 letter on your letterhead dated August 13, 1992, document

52



1 52866, 67 and 68, to a fellow named Michael Blackwell.

2 Will you just look at that letter and satisfy  
3 yourself that that's your signature at the end there.

4 A Yes, it is.

5 Q Spend as much time as you need to just look it  
6 over to familiarize yourself, because I want to ask you a  
7 few questions about it.

8 A Okay.

9 Q Can we share that, since that's the only copy I  
10 have. Is that your signature?

11 A Yes, it is.

12 MR. TOPEL: Can I have a minute just to familiarize  
13 myself with it?

14 MR. COHEN: Sure. Take as much time as you need.  
15 You can share, because Mr. Shook has a copy of the letter,  
16 so we're in business.

17 MR. TOPEL: Great.

18 BY MR. COHEN:

19 Q Have you had a chance to look at that?

20 A Yes, we have.

21 Q I wonder if you could tell me briefly, but tell  
22 me nonetheless, what the multitude of issues were which  
23 prompted the letter which you wrote on August 13, 1992, that  
24 is, "the multitude of issues which have arisen in our  
25 attempt to construct my client's low-power television

1 station."

2 A Generally those center around technical  
3 difficulties which were identified by the installation crew  
4 when they arrived on-site to construct the station. So the  
5 multitude of issues were all technical in nature.

6 Q Now, you state there "my client." And your  
7 client was whom?

8 A National Minority TV.

9 Q You used the word "client." What did you  
10 understand the word "client" to mean when you used it in  
11 that letter?

12 A The firm that is utilizing my services.

13 Q You consider NMTV to be your client?

14 A Yes.

15 Q Is that your view, when you provide services  
16 for NMTV, you are providing them to them as a client?

17 A Yes.

18 Q Do you get paid by that client?

19 A No.

20 Q Do you have an agreement with that client?

21 A No.

22 Q Do you have an understanding with that client?

23 A Yes.

24 Q And who is the client, then?

25 A National Minority TV.

1 Q And who in National Minority Television, NMTV,  
2 do you have an agreement with?

3 A A verbal agreement?

4 Q Yes.

5 A With Jane Duff.

6 Q Let's just make sure we have this in the  
7 record. What is your understanding of what your agreement  
8 is with Ms. Duff?

9 A My agreement is to provide technical services  
10 in support of National Minority facilities and projects as  
11 per her requests.

12 Q And is 719 Calle Vallarta your home address?

13 A Yes.

14 Q Why did you use your home address there?

15 A I sometimes do that.

16 Q For any reason?

17 A I do that with some clients, and others I  
18 don't. I guess it depends, probably more often than not, on  
19 whether I perform that work from my home.

20 In this particular instance -- I can't really  
21 tell you why I put it in this particular instance. I vary  
22 back and forth. Probably the main reason is because I do  
23 perform some functions from my home and I do put that down  
24 from time to time.

25 Q You were not trying to disguise your

1 relationship with Trinity by using your home address; is  
2 that correct?

3 A I saw no need to disguise the relationship.

4 Q You weren't trying to disguise it?

5 A No, I was not.

6 Q That wasn't the reason you used your home  
7 address?

8 A The reason I used my home address is as I just  
9 explained, that I do that from time to time in my consulting  
10 capacity.

11 Q You said other clients. I think I wrote down  
12 you did this on occasion for clients or other clients.

13 A Yes.

14 Q What other clients do you have or did you have  
15 in 1992?

16 A All American TV, Sonlight Broadcasting,  
17 Jacksonville Educators. There may have possibly been  
18 somebody using my services on a one shot that existed, I  
19 don't recall.

20 Q Now, were you paid by All American?

21 A Yes.

22 Q And was that pursuant to a written agreement?

23 A No.

24 Q An oral agreement?

25 A Yes.



1 Q And with whom did you have the agreement?

2 A I don't recall the individual.

3 Q When was the agreement made, the verbal  
4 agreement?

5 A Initially it was made in the mid-'80s. If my  
6 recollection is -- I'll come back and I will tell you the  
7 name. I do remember now. It's Linda Hernandez. And that  
8 was made with her verbally in the mid-'80s. I don't recall  
9 the year.

10 Q And has All American been your client since the  
11 mid-'80s continuing on until today?

12 A Yes.

13 Q Is Linda Hernandez the person you considered to  
14 be your, quote, client, end quote?

15 A She is at this time, yes.

16 Q And you say you are paid for that work?

17 A Yes.

18 Q Are those funds that go into your pocket or  
19 into Trinity's pocket?

20 A They go into my pocket.

21 Q So this is an independent client that you have,  
22 then?

23 A Yes.

24 Q And is Trinity aware of this relationship?

25 A Yes.

1 Q And has Trinity approved it?

2 A Yes.

3 Q And who in Trinity has approved it?

4 A Paul Crouch.

5 Q And do you use Trinity facilities in order to  
6 represent this client?

7 A I do with respect to business dealings with  
8 equipment which is leased by Trinity to All American.

9 Q Would you repeat that. I don't understand what  
10 you meant. Let me hear that answer again.

11 (Record read.)

12 BY MR. COHEN:

13 Q Trinity leases equipment to All American?

14 A Yes.

15 Q Is that something you are directly responsible  
16 for?

17 A I am responsible for the interface between the  
18 two organizations.

19 Q What equipment is leased?

20 A Towers, transmission facilities.

21 Q And you are the interface on the Trinity end of  
22 the relationship; is that correct?

23 A I am the interface on both ends of it.

24 MR. TOPEL: I'm just going to put on the record an  
25 objection to this line of questioning on the ground of

1 relevance. I believe it's beyond the scope of the issues in  
2 the proceeding. But I'll allow the examination to continue  
3 in the hope that it will be over soon.

4 MR. COHEN: No one hopes it will be over sooner than  
5 me. Could I hear the witness's last answer read back, the  
6 last question and the last answer.

7 (Record read.)

8 BY MR. COHEN:

9 Q Are Trinity personnel other than you used in  
10 connection with you representing All American?

11 A Only with respect to Trinity-involved assets.  
12 Other involvement, no.

13 Q And by "Trinity-involved assets," what do you  
14 mean?

15 A Towers, transmission equipment which is leased  
16 by Trinity to All American TV.

17 Q But no Trinity personnel other than you are  
18 involved in that relationship; is that what you're saying to  
19 me?

20 A With respect to pure All American TV business,  
21 no.

22 Q What do you mean by "pure All American TV  
23 business"?

24 A Business which is not related to the  
25 Trinity-held assets.

1 Q And what assets are the Trinity-held assets?

2 A Transmission equipment and towers.

3 Q Now, turning to Sonlight, you stated that you  
4 have a client relationship with Sonlight also?

5 A Yes.

6 Q When did it begin?

7 A I believe 1989.

8 Q And who is the client, as you see it there?

9 A The individual or the entity?

10 Q The individual and the entity.

11 A The entity is Sonlight Broadcasting Systems,  
12 Incorporated. The individual is Stuart J. Roth, Esquire.

13 Q Is that a written or an oral agreement?

14 A That's oral.

15 Q And are you paid?

16 A Yes.

17 Q Do those funds go to you individually or to  
18 Trinity?

19 A They go to me individually.

20 Q And is Trinity aware of this relationship?

21 A Yes.

22 Q And who has approved it?

23 A Paul Crouch.

24 MR. TOPEL: The record should again reflect this is  
25 all subject to my continuing objection.

1 MR. COHEN: I recognize that. And you're not waiving  
2 any rights by not making an objection to every question. I  
3 tell you that you will not hear from me that Mr. Topel  
4 waived his rights.

5 Q What kind of services do you provide for  
6 Sonlight?

7 A They have retained me to supervise the  
8 construction of new television stations. They continue to  
9 use my advice with respect to compliance issues, FCC  
10 filings, and occasional advice with respect to their  
11 engineering area.

12 Q And do you use Trinity facilities in rendering  
13 advice and assistance to Sonlight?

14 A The guidelines given to me on that are that I  
15 may use my office if various pieces of business come up  
16 during business hours; however, the requirement is that I do  
17 not allow my time, my full time dedicated to Trinity, to be  
18 eroded by my relationship with them.

19 Q Who gave you these guidelines?

20 A Paul Crouch.

21 Q When?

22 A When the relationship first started.

23 Q And these guidelines are oral or written?

24 A They are oral.

25 Q Were they given to you in a face-to-face

1 conversation?

2 A I don't recall.

3 Q You don't recall whether it was telephone or  
4 face to face?

5 A I don't recall.

6 Q And was anyone else present?

7 A I don't recall.

8 MR. COHEN: I'd like to hear the witness's last  
9 substantive answer, lengthy answer.

10 (Record read.)

11 BY MR. COHEN:

12 Q Are any Trinity personnel other than yourself  
13 utilized in carrying out your responsibilities for Sonlight?

14 A No.

15 Q Is Dr. Crouch aware of the extent of your  
16 compensation from both All American and from Sonlight?

17 A At this time, I'm not sure.

18 Q Was he ever aware?

19 A Yes.

20 Q What's your best recollection of when he was  
21 made aware of that?

22 A At the initiation of each verbal agreement.

23 Q Did you obtain Dr. Crouch's approval separately  
24 or together; that is, did you ask him for approval for  
25 All American, Sonlight and Jacksonville at one time or was

1 this separately?

2 A Separate.

3 Q Three different occasions?

4 A Yes.

5 Q Do you recall the circumstances surrounding any  
6 of those three occasions as to whether they were face to  
7 face or over the telephone?

8 A No.

9 Q And do you recall concerning any of those three  
10 whether anyone else was present?

11 A No.

12 Q And that relationship is continuing for  
13 Sonlight?

14 A Yes.

15 Q How recently have you rendered services for  
16 Sonlight?

17 MR. TOPEL: I'm going to object now and instruct the  
18 witness not to answer. I don't see where this has any  
19 bearing on the relevant issues in this proceeding.

20 MR. COHEN: I strongly disagree with you, and I think  
21 the judge would disagree also. I have two considerations  
22 here. On the one hand I want to protect my position. On  
23 the other hand, I want to move this deposition along, which  
24 I am sure your position is the same.

25 So what I'm going to do, then, is to state my

1 position and go on so that we don't get hung up on this. I  
2 appreciate your position, and I think you appreciate mine,  
3 so there we are. Let's go on to Jacksonville.

4 MR. TOPEL: I would use the words I understand yours.

5 MR. COHEN: I would say I respect your position. I  
6 don't know if you respect mine. I respect yours. It  
7 doesn't mean I agree with it. I certainly don't think your  
8 position is frivolous, but I think it's in error. That's  
9 what lawyers do, disagree, unlike engineers, Mr. Miller,  
10 right, who always agree on everything?

11 THE WITNESS: No.

12 MR. COHEN: Let the record show that was my poor  
13 attempt at humor, which everyone is shaking their head at,  
14 that it's a poor attempt.

15 Q Turning to Jacksonville, the name of that  
16 entity is what?

17 A Jacksonville Educators Broadcasting, Inc.

18 Q And with whom do you have the relationship?

19 A Jane Duff.

20 Q And are you compensated for carrying out  
21 services for Jacksonville?

22 A No.

23 Q Why are you not compensated for that  
24 relationship when you are compensated for the other ones  
25 you've mentioned?

1 A None was offered.

2 Q And you were willing to provide the services  
3 without being compensated?

4 A Yes.

5 Q And that's also an oral understanding or a  
6 written understanding?

7 A It was a request, oral.

8 Q Is Dr. Crouch aware of that, to your knowledge?

9 A Yes.

10 Q In your dealings on behalf of the clients you  
11 have just described, is it your general practice to use your  
12 home address when you write letters?

13 A I do from time to time.

14 Q You have no practice, then? It's whatever,  
15 huh?

16 A It's whatever.

17 Q Now, to your knowledge, was Mr. Juggert  
18 involved in this dispute with Syncom?

19 A Yes, he was.

20 Q And did he provide legal services?

21 A I don't recall.

22 Q Well, to what extent was he involved, then?

23 A In a conversation I had with him over it.

24 Q And why did you have a conversation with him?

25 A Because of my concern for the legal

1 ramifications of the situation.

2 Q Were you consulting him as counsel for NMTV?

3 A I was consulting him as an attorney. It was my  
4 assumption he was counsel for NMTV.

5 Q And what is that assumption or what was that  
6 assumption based upon?

7 A My own personal belief.

8 Q Do you know that he has provided legal services  
9 for NMTV?

10 A No, I don't.

11 Q So you just assumed it?

12 A I assumed it.

13 Q And you talked with Mr. Juggert, then, about  
14 this dispute?

15 A Yes.

16 Q And he gave you information or advice?

17 A He listened.

18 Q He listened, sympathetically, I hope.

19 He listened, and what happened next in terms of  
20 your conversation with Mr. Juggert?

21 A I simply don't recall.

22 MR. TOPEL: Can we go off the record.

23 (Discussion off the record.)

24 MR. COHEN: Let's go back on the record.

25 Q Now that I know how to pronounce Mr. Juggert's



1 name, do you know whether Mr. Juggert prepared any  
2 correspondence in connection with this dispute with Syncom?

3 A I don't recall.

4 Q I want to show you a document that was produced  
5 in discovery. It purports to be a draft of a letter to  
6 Syncom from Mr. Juggert unsigned, no date, in 1992, document  
7 52856 and 52857, and ask you whether you've ever seen that  
8 document before.

9 A I still don't recall whether --

10 Q It doesn't refresh your recollection?

11 A It really doesn't.

12 Q We have to share this document. Mr. Shook  
13 apparently doesn't have this. Do you recognize the  
14 handwriting on that document?

15 A This is Jane Duff's, and this is mine, so I had  
16 to have read it.

17 Q Now, do you know who the George is?

18 A Could have been one of two Georges.

19 Q Who?

20 A Either Mr. Sebastian or Mr. Horvath, depending  
21 on the chronology of when this happened.

22 Q Identify for the record who Mr. Sebastian is or  
23 was.

24 A George Sebastian was at one time the low-power  
25 coordinator.

1 Q For whom?

2 A For Trinity Broadcasting, and my understanding  
3 is also for National Minority TV.

4 Q And George Horvath?

5 A George Horvath would have been his successor.

6 Q And he also serves in the same two capacities?

7 A Correct.

8 Q How long did Mr. Sebastian serve in the  
9 capacity of low-power -- did you say coordinator?

10 A Uh-huh.

11 Q -- coordinator for TBN, if you can recall?

12 A My guess, it would have been from the mid-'80s  
13 through, I believe, early 1991.

14 Q And during that time did he also wear the hat  
15 of low-power coordinator for NMTV?

16 A That was my understanding, yes.

17 Q I want to show you a letter dated July 29, 1991  
18 on the letterhead of NMTV, document 00370, directed to Al  
19 Brown signed by Jane Duff, and you are copied on the letter.  
20 Look at this for a second, if you will.

21 A Okay.

22 Q Again, does it bother you if I stand next to  
23 you?

24 A No, not at all.

25 Q I want you to tell me about your involvement,



1 if you had any, in bringing automatic monitoring equipment  
2 to NMTV from Trinity Broadcasting Network. Were you  
3 involved in that?

4 A I don't believe that monitoring equipment was  
5 made available to the NMTV facilities on an on-site basis.  
6 I don't understand this letter myself.

7 Q Do you recall seeing it on or about the time it  
8 was written?

9 A I don't recall.

10 Q The letter doesn't make sense to you?

11 A It doesn't make sense to me.

12 Q Then I'm not going to ask you about it if it  
13 doesn't make any sense.

14 Does the name Inspirational Television,  
15 Southern Oregon strike a bell to you?

16 A Yes.

17 Q Would you tell me how it strikes a bell.

18 A From a broadbrush stroke understanding, that is  
19 an entity which applies for and operates low-power  
20 television stations which is headed by at least one person I  
21 am familiar with, and that's George Sebastian.

22 Q It operates low-power television stations?

23 A That's my understanding.

24 Q Did it also provide services to NMTV, to your  
25 knowledge?

1 A I don't know.  
2 Q You have no knowledge of that?  
3 A I have no knowledge of that.  
4 Q Did it provide services to Trinity?  
5 A I don't know, other than through affiliation.  
6 Q What do you mean by that?  
7 A Carrying the programs broadcast by Trinity over  
8 their low-power stations.

9 Q I want to show you a letter dated November 1,  
10 1989 on the letterhead of that organization, Inspirational  
11 Television, Southern Oregon. You're not copied on the  
12 letter. It's a letter to Murray Michaels, and it's signed  
13 by George Sebastian. I just have one question about it.

14 MR. TOPEL: Could we get the document number? It's  
15 52878.

16 BY MR. COHEN:

17 Q To your knowledge, sir, did Mr. Sebastian serve  
18 as a consultant for NMTV?

19 A I don't really know, other than -- the only  
20 thing I have knowledge of was his relationship with Jane  
21 Duff in providing coordination services for National  
22 Minority's low-power stations. Under what arrangement that  
23 that existed, I really don't know.

24 Q Let me go on to another matter. I want to show  
25 you a couple of documents, and to do this quick, because I

1 want to move this along and you along, I think the best way  
2 to do this is to identify four documents. I think you can  
3 handle four documents at once, Mr. Miller. You could  
4 probably handle 40 at once. They are invoices. Two of them  
5 are invoices on the letterhead of Planck Technical Services,  
6 document 54510 and 54511, and then a third one, it's 54507.

7 Let me ask you this: My search of the records  
8 would indicate, and correct me if I'm wrong, that this was  
9 misdirected, the billing at least was misdirected, and that  
10 that was an NMTV facility and Planck should have been  
11 billing NMTV and instead billed Trinity. I know that NMTV  
12 has a low-power station in Massena, New York, and I don't  
13 believe that Trinity does. I checked last night. I think  
14 that's accurate. All I am getting at in my very foggy way  
15 is: Is that just a billing error on Planck's part, then?

16 A Yes.

17 Q What's the procedure -- I have several of  
18 these, and I want to try to make this shorter rather than  
19 longer. What was the procedure? How was Planck informed as  
20 to who the -- I guess it's a customer. Is that the right  
21 term? How was Planck informed as to who the customer was?

22 A The request for quotation was generally done on  
23 behalf of the entity making the purchase. The purchase  
24 order was generated by the entity making the purchase.

25 Q Well, there are several examples of this same

1 error. So we don't go through each of them, because I want  
2 to move this along, can you kind of walk me through how it  
3 came about that Planck was billing Trinity for an NMTV  
4 facility.

5 A You are asking why he made the error?

6 Q Obviously you don't know why Planck made an  
7 error. What I'm trying to understand is the process which  
8 resulted in the error.

9 A I couldn't begin to tell you why he made the  
10 error. Laxness in the way that the invoices were prepared  
11 on the part of his personnel would be speculation.

12 MR. TOPEL: I don't want you to speculate.

13 BY MR. COHEN:

14 Q Who would have been the person or the persons  
15 that would have contacted Planck?

16 A The procedure which exists right now is a  
17 request for quotation, and it generally is done by  
18 Mr. Horvath.

19 Q I want to show you document 54551, a bill from  
20 Planck to Trinity involving Charlotte, North Carolina, which  
21 is also, I believe, an NMTV facility.

22 Was that just an error like the other one was,  
23 as far as you could see?

24 A There are two Charlotte area facilities, one  
25 for National Minority, one for Trinity. I can't answer the



1 question.

2 Q I was not aware of that. Let's go off the  
3 record.

4 (Discussion off the record.)

5 MR. COHEN: Back on the record.

6 Q I want to show you some documents that have  
7 been the subject of earlier examination. The pages are not  
8 consecutive. When I reviewed them, the pages were together.  
9 I can make that representation. But I have no understanding  
10 other than that. We're going forward under the assumption  
11 that the pages go together, but a further search may  
12 establish that they're not.

13 Is that an accurate statement?

14 MR. TOPEL: I'm not making any assumptions. There is  
15 a possibility those pages belong together. There is a  
16 possibility they don't. I don't know. But he's going to  
17 ask you questions about them.

18 MR. COHEN: And my questions assume they go together.  
19 That's the point. But I want you to be very clear as to  
20 what the circumstances were.

21 MR. SHOOK: Perhaps you could establish through the  
22 witness what his understanding is as to whether they go  
23 together.

24 MR. COHEN: That's a very good point. Mr. Shook, I'm  
25 glad you are here. It never occurred to me.

1 Q Let me show you what I have in mind. This is a  
2 page on the letterhead of Smith & Powstenko, a letter to  
3 Jane Duff signed by Kevin Fisher dated May 12, 1992, and  
4 it's 00997.

5 First let me ask you this: Do you recognize  
6 the handwriting on that document?

7 A That looks like Jane Duff's to me.

8 Q And you are copied on this letter. You will  
9 notice that the letter makes reference to "dependent  
10 affiliates," and then there is attached pages 01012, 01013,  
11 01014, 01015 up through 17, and you will notice those  
12 numbers are not consecutive. That's what I was referring to  
13 earlier. But when I reviewed them, they were together.

14 Do you recognize the handwriting on the top of  
15 01012?

16 A No.

17 Q I recognize that you didn't write this letter.  
18 My question is: Do you have any knowledge or any  
19 understanding at all as to what Kevin Fisher meant when he  
20 talked about "dependent affiliates"?

21 A No.

22 Q Or "independent affiliates"?

23 A No.

24 Q Is that a matter that you ever talked with  
25 anybody at Smith & Powstenko about?