

1 A No.

2 Q Is that a term that you're familiar with,
3 "dependent affiliates" and "independent affiliates"?

4 A No.

5 Q You got this letter. You recall reading that
6 letter?

7 A There are many letters. I don't specifically
8 recall that letter.

9 Q Let me ask you again: Is this the first time
10 that you've ever given any consideration, for what it's
11 worth, to this term "dependent affiliates" and "independent
12 affiliates"?

13 A Yes, it is.

14 Q And those are not words that have any meaning
15 to you?

16 A Those are words that are not within my purview,
17 and therefore I gloss over them. If I read that, it
18 wouldn't have meant anything to me.

19 Q Are those terms terms that you have used in
20 conversations with Smith & Powstenko?

21 A No.

22 Q Or with anybody else, to your recollection?

23 A No.

24 Q Now, I want to go back to yesterday's
25 examination, this is not the same question, but it's the

1 same general subject matter, about your trips to Wilmington,
2 your trip or trips, in connection with viewing or inspecting
3 the Wilmington facility.

4 Did you travel there once or twice?

5 A Once.

6 Q Am I correct, and I'm characterizing your
7 testimony, and if I'm characterizing it incorrectly, I want
8 you to tell me, when you made that trip, you didn't know
9 that NMTV was the prospective purchaser?

10 A That's incorrect.

11 Q Why don't you tell me what's correct, then.

12 A At the time Jane Duff summoned me to her
13 office, she explained that NMTV was considering purchasing
14 the station and that an equipment inventory would need to be
15 taken, and she was requesting that I go do that.

16 Q I guess yesterday the record will then just
17 speak for itself. Whatever it was, it was.

18 MR. TOPEL: Yes.

19 BY MR. COHEN:

20 Q So you did make the trip that Jane Duff asked
21 you to make?

22 A Yes.

23 Q And you traveled to Wilmington?

24 A Yes.

25 Q And how long did you stay there?



1 A I believe I arrived the night prior to the
2 inventory. I conducted the inventory the next day, spent a
3 second night, and on the third day I was called as a witness
4 in the bankruptcy proceeding as per Jane Duff's request.

5 Q Now, was that trip on Trinity's tab?

6 A To the best of my -- I don't know.

7 Q Well, I will ask you again. Did you use a
8 Trinity credit card?

9 A I don't know.

10 MR. TOPEL: Excuse me. We went through this
11 yesterday. Why go through it again?

12 MR. COHEN: Because my recollection of his testimony
13 about this trip is different now. Maybe your recollection
14 is the same.

15 MR. TOPEL: Yes, it is.

16 MR. COHEN: My recollection is his testimony was
17 different, and I could be wrong, so that's the reason I am
18 asking this question.

19 MR. TOPEL: What do credits cards -- your
20 recollection is wrong as to whether he understood --

21 MR. COHEN: Let's go off the record and I will tell
22 you.

23 MR. TOPEL: I want to stay on the record.

24 MR. COHEN: My recollection of his testimony is --
25 this is not fruitful. Yesterday's record will speak for

1 itself.

2 MR. TOPEL: What do credit cards have to do with
3 anything else?

4 MR. COHEN: I think it has to do with who paid for
5 his trip.

6 MR. TOPEL: You asked and he answered those.

7 MR. COHEN: I asked yesterday?

8 MR. TOPEL: Yes.

9 MR. COHEN: I think it's not clear for the record.
10 Are you directing him not to answer?

11 MR. TOPEL: No. I'll let him answer the questions
12 again.

13 MR. COHEN: That's the only question I have on that.

14 MR. TOPEL: But I think the record will clearly
15 reflect that you asked these questions and they were
16 answered yesterday.

17 MR. COHEN: My recollection of the record is
18 different than yours, Howard.

19 MR. TOPEL: Fine. Let's go ahead.

20 MR. COHEN: The record will speak for itself.

21 Q So you don't recall how the trip was paid for?

22 A No, I don't.

23 Q Now, did Dale Osborn write a report on an
24 inspection of WTGI?

25 A My recollection is that he did.

1 Q Was that done under your supervision?

2 A No. I believe that was -- I don't recall. I
3 don't recall.

4 Q Who is Dale Osborn?

5 A Dale Osborn is the chief engineer and station
6 manager for WDLI, Canton, Ohio.

7 Q Is that a Trinity facility?

8 A Yes.

9 Q And he was requested to make an inspection of
10 WTGI?

11 A Apparently so.

12 Q Did you ask him to do that?

13 A I don't recall.

14 Q Let me show you a document, and I just have
15 this one page, 55609, to Jane Duff from Dale Osborn, dated
16 November 7, 1990, which states that, in part, "here is part
17 of the report I am preparing for you for WTGI-TV 61 in
18 Wilmington, Delaware." And written on the bottom, do you
19 recognize the handwriting?

20 A I believe that's Jane Duff.

21 Q It states, "Ben is not impressed." Do you know
22 what she means by that?

23 A That would be her notation on the memorandum as
24 to a conversation she had with me based upon my apparent
25 analysis of something.

1 Q Is that your best recollection?
2 A That's my best recollection.
3 Q You can't be more specific than that?
4 A No, sir, I cannot.
5 Q It goes on to say -- and you believe this is
6 Mrs. Duff's handwriting, correct?
7 A I believe it is.
8 Q It says "low-ball offer." Do you know what
9 that means?
10 A That means -- my understanding of "low-ball
11 offer" is offer a low amount of money.
12 Q Let's read on. "1 mill coverage where dollars
13 are bad. Only reaching the depressed areas." Do you see
14 that?
15 A That doesn't make much sense to me either.
16 Q Well, you anticipated my question.
17 A Sorry.
18 Q Did Ms. Duff talk with you about the coverage?
19 A We must have.
20 Q Does this refresh your recollection?
21 A No.
22 Q So you have no recollection of having a
23 discussion with her on this point?
24 A I do. The finer points of that discussion I
25 don't recall.

1 Q Well, what do you recall about the
2 conversation?

3 A Very little.

4 Q Can you recall anything other than the fact you
5 had a conversation?

6 A Not much.

7 Q Well, tell me what you can recall.

8 A My recollection is that there was a discussion,
9 that I had performed coverage analysis, obviously, based
10 upon her notations I was not impressed with the coverage.
11 Much beyond that, I don't recall.

12 Q Did you understand you were performing those
13 services for NMTV or for Trinity or for both?

14 A I assumed for Trinity. At the time I was
15 requested by Dr. Crouch, I don't recall specifically. When
16 I interfaced with Jane Duff, it would have been that -- I
17 believe my first understanding of there being any National
18 Minority TV involvement would have been the week of the
19 20-something of July of '91, was my understanding of when --
20 my first understanding of when there was National Minority
21 TV involvement.

22 Q Prior to that time you thought it was Trinity
23 involvement?

24 A Yes.

25 Q Next in this fascinating saga there was a memo

1 to Jane Duff from Dale Osborn dated November 19th, 1991,
2 document 55610. I may have asked you this question. If I
3 asked you, I apologize.

4 Who was it that requested Dale Osborn to get
5 involved in this and to make this trip?

6 A I don't recall.

7 Q This document, 55610, has attachments 55611,
8 12, and 13. I don't want to take the time to read the
9 report, but I would like to ask you about the cover and the
10 memo.

11 A Okay.

12 Q Do you have any recollection of why he didn't
13 send a separate report to you?

14 A No.

15 Q Does that mean he didn't send you this report,
16 the report that's attached to this memo?

17 A I really don't know.

18 Q Now, just look at the report long enough to see
19 whether you recognize ever reading it before.

20 A Yes, I do believe I have seen this.

21 Q Now, was this report discussed with you by
22 anybody in the world, "this report" meaning pages 55611
23 through 55613?

24 A A specific recollection of who I discussed it
25 with, I don't remember.

1 Q Well, I'll take a general recollection. I'll
2 take any recollection you have.

3 A Reask the question, please.

4 Q I wasn't turning my back on you.

5 A No.

6 MR. TOPEL: You were turning your back literally, but
7 you weren't intending to signify anything by that.

8 MR. COHEN: I wasn't intending to be rude to you.

9 THE WITNESS: Please reask the question. I still
10 haven't --

11 BY MR. COHEN:

12 Q My question is: Do you have any recollection
13 of discussing this report or parts of this report with
14 anybody?

15 A Yes.

16 Q Share that with me.

17 A I don't recall with whom specifically I shared
18 the report with.

19 Q But you recall sharing it with somebody?

20 A Yes.

21 Q But you don't remember who?

22 A I really don't.

23 Q Do you remember the substance of the
24 conversation?

25 A Probably this report --

1 MR. TOPEL: Excuse me. I think there is a predicate
2 missing. I don't think it's been established that there was
3 a conversation. I think there was a discussion of sharing
4 the report.

5 MR. COHEN: I'll accept that.

6 Q Did you share any conversation? I think your
7 point is well-taken. No foundation.

8 A Reask the question, please.

9 Q Yes. Do you remember discussing it with any
10 person?

11 A Yes.

12 Q And do you remember the substance of the
13 discussion?

14 A No.

15 MR. COHEN: I think this would be a good place to
16 break, then, since I'm done with this.

17 (Lunch recess taken.)

18 BY MR. COHEN:

19 Q Mr. Miller, at the luncheon recess I've been
20 reviewing some documents, and I noticed that you seem to use
21 various letterheads for NMTV work, such as NMTV, Inc., Post
22 Office Box C-19949, Santa Ana, and National Minority TV,
23 Inc. Engineering Department Memo, and National Minority TV,
24 Inc. International Headquarters, 2442 Michelle Drive,
25 Tustin, California.

1 Is there any particular reason why one
2 letterhead is used as compared to another?

3 A Yes, sir.

4 Q Then I'll ask you about each. I want to show
5 you document 50555 on the letterhead of National Minority
6 TV, Inc. dated March 19, 1992, a letter to Frank Lee from
7 you. It's not signed, but this was produced in discovery.
8 I assume it came from your files.

9 Do you recognize the letter?

10 A Yes.

11 Q First tell me why that's on the letterhead of
12 National Minority TV, Inc., Post Office Box C-11949, Santa
13 Ana.

14 A Because most of these documents I personally
15 typed myself using a word processor. There is no letterhead
16 on the document, per se. There is a letterhead in the word
17 processor. I just make a transposition, whatever the last
18 thing happened to be in there out of convenience.

19 Q So it's random then?

20 A Exactly.

21 Q There is no pattern then?

22 A No.

23 Q It just happens to be whatever is in your word
24 processor when you typed or processed this particular
25 letter?

1 A Or if there is nothing, whatever I happen to
2 think of at the moment.

3 Q There is no grand design?

4 A No, sir.

5 Q Now I want to ask you about document 06722 on
6 the letterhead of NMTV Engineering Department -- maybe there
7 is a more accurate term, and if there is, please tell me,
8 and I will try to remember to use it -- dated December 4,
9 1990 from Eddie Sills to Pat St. John Clerke. You are not
10 copied on that. What I want to ask you about is the second
11 sentence in the letter.

12 A Okay.

13 Q Could we share that again?

14 A Certainly.

15 Q Am I correct, then, that the procedure was in
16 the operation of the Odessa station that your authorization
17 was required for repair and calibration of equipment before
18 that could be accomplished?

19 A Yes, sir.

20 Q And I want to show you document 06729 on the
21 letterhead of National Minority TV, Inc. Engineering
22 Department Memo dated October 10, 1990 to Darlene Eve.

23 And that, I believe, is your signature?

24 A Yes.

25 Q Could we share that.

1 A You fight over it.

2 Q The letter states, in part:

3 "Regarding your urgent request for
4 three-quarter-inch tape machines, please be
5 advised that although there has been no
6 budget allocated for this project, I can do
7 the next best thing for you. We have two
8 surplus Sony 5850 machines here at TBN's
9 facility in California which I will have sent
10 to you as soon as they can be removed from
11 service."

12 My first question is: The statement "there has
13 been no budget allocated for this project," did NMTV have a
14 budget for equipment, that you are aware of, such as
15 three-quarter-inch tape machines?

16 A The comment was a response back to my inquiry
17 to Jane Duff, NMTV, "Are there funds to purchase the tape
18 machine?" "No, there is not." So when I refer to a
19 "budget," I refer to being told there were no funds.

20 Q You spoke to Jane Duff?

21 A Yes.

22 Q And you said, "Are there funds?" She said,
23 "No, there are no such funds." So you said to Darlene Eve
24 that there was no budget allocated for this project?

25 A Correct.

1 Q Going on, "We have two surplus Sony 5850
2 machines here at TBN's facility which I will have sent to
3 you." Were those TBN surplus Sony machines?

4 A Yes.

5 Q Was it your practice, then, to use TBN
6 equipment at Odessa on an as-needed basis?

7 A This would be the first time it came up.

8 Q Did it come up subsequently?

9 A No.

10 Q To your knowledge, has TBN equipment been used
11 at Portland?

12 A To my knowledge, no.

13 Q So this is a one-time deal?

14 A It was a loan of equipment.

15 Q And, to your knowledge, it never did happen
16 again at Odessa until Odessa was sold?

17 A Not to the best of my recollection.

18 Q And it's never happened in Portland?

19 A Not to the best of my recollection.

20 Q I want to ask you about a memo dated December
21 10, 1990. This is a memo on the letterhead of NMTV
22 Engineering Department to Eddie Sills from you, and I want
23 to ask you about it, document 06732.

24 This memo states that "Test equipment is
25 available to you via TBN when you are in need of it." Did

1 you mean that the test equipment was TBN test equipment?

2 A Yes.

3 Q And was that the practice, to make TBN test
4 equipment available to the Odessa station?

5 A Yes.

6 Q And was it the practice to make TBN test
7 equipment available to the Portland station?

8 A Yes.

9 Q Do you know whether NMTV is charged for the use
10 of that test equipment?

11 A No.

12 Q Were you telling me a moment ago that you have
13 no knowledge as to whether NMTV is charged when it uses TBN
14 test equipment?

15 A That's correct.

16 Q I have two copies of this document, document
17 50541, NMTV Engineering Department Memo dated August 27th to
18 the file from you, Mr. Miller. Would you read that.

19 A Yes.

20 MR. SHOOK: If you could, please, August 27 of what
21 year?

22 MR. COHEN: Oh, I'm sorry. I thought I said it.
23 1991.

24 MR. SHOOK: Thank you.

25 //

1 BY MR. COHEN:

2 Q Explain why this memo was written by you.

3 A It was written for myself for instructions on
4 how to find various sites.

5 Q Was this in connection with your visit to
6 inspect the station in Wilmington?

7 A Yes.

8 Q How many trips did you make out there to
9 inspect the station?

10 A One.

11 Q I want to show you document 50537 on the
12 letterhead of NMTV to Mark Fountain from you. I ask you to
13 look at that, and I want to ask you about the last
14 paragraph.

15 A Okay.

16 Q My question is: You state there, "As you
17 probably know, a substantial investment has been made to
18 purchase these," referring to a Spectrum Analyzer and a
19 side-band adapter, "for use at your station."

20 Were you aware of what that equipment costs, is
21 that why you say what you did?

22 A Would you --

23 Q I'm talking about --

24 A I'm trying to determine what you are asking.

25 Are you asking why I made the comment?

1 Q I'll ask another question.

2 The first question is: Did you know when you
3 wrote that letter what the cost was of the Spectrum Analyzer
4 and the side-band adapter, which is the subject of the
5 letter?

6 A Yes.

7 Q And did you have knowledge when you wrote that
8 letter that NMTV had purchased a Spectrum Analyzer and a
9 side-band adapter?

10 A I purchased it on their behalf.

11 Q What do you mean you purchased it on their
12 behalf?

13 A You're going to have to elaborate on what you
14 want me to mean.

15 Q Well, you purchased it on their behalf.
16 Trinity funds were used to purchase it?

17 A No.

18 Q NMTV funds were used to purchase it?

19 A Yes.

20 Q You obtained authorization before you purchased
21 it?

22 A I approached Jane Duff, made a recommendation
23 to purchase the equipment. She approved it. I purchased
24 the equipment. I sent it to them with this memo.

25 Q Am I correct that any time you purchased any

1 equipment for NMTV, you first obtained authorization from
2 Jane Duff, or is that not correct?

3 A That's not correct.

4 Q What was your policy of when you obtained
5 authorization and when you didn't?

6 A It was situationally dependent.

7 Q What does that mean, sir?

8 A Well, that's exactly what I mean. It depends
9 on the situation.

10 Q What was the criteria to determine when you
11 would request permission and when you wouldn't?

12 A In this particular instance it was a capital
13 purchase that would have been made after the station was on
14 the air and did not fall within the guidelines of a new
15 construction. And my authorization with respect to
16 purchases for a, quote-unquote, new station was generally a
17 blanket authority, whereas in this particular instance the
18 station was built, the guidelines no longer were in effect,
19 and this was a situation where a capital purchase would have
20 been required after the station was in operation and
21 therefore required a special authority.

22 Q What were the guidelines that you just referred
23 to, those guidelines, what were they?

24 A They were a discussion as to the projected cost
25 to the station, an authorization to proceed based on those

1 guidelines, and at that point I pretty much had a blanket
2 authority within those guidelines.

3 Q And with whom did you have the discussion?

4 A Paul Crouch.

5 Q Do you have a recollection of when that
6 discussion occurred?

7 A Specifically, no.

8 Q Generally?

9 A Generally at the start of each full-power
10 project.

11 Q And would this be true for both Trinity and
12 NMTV?

13 A It differed from the standpoint that my
14 discussion was limited to technical equipment and initial
15 budgetary issues with National Minority TV. With Trinity it
16 was much broader in scope.

17 Q I want to ask you about a memo dated July 20,
18 1992 on the letterhead of NMTV Engineering Department to
19 Mark Fountain from you. It's not signed.

20 Do you recognize the document?

21 A Yes, I do.

22 Q The letter speaks in terms of you'll be glad to
23 submit the request to the NMTV board and wait.

24 Have you ever submitted any request to the NMTV
25 board?

1 A It's my understanding that when I go through
2 Jane for expenditure decisions, that it ultimately goes to
3 the board. That's my assumption.

4 Q Is that what you meant?

5 A That's what I meant, yes.

6 Q You've never been to an NMTV board meeting,
7 have you?

8 A I haven't.

9 Q I want to show you a document dated 50536 on
10 the letterhead of NMTV dated June 13, 1991.

11 MR. SHOOK: Rather than dated, you meant numbered,
12 correct?

13 MR. COHEN: Excuse me. Thank you. 50536 is the
14 number. The date is June 13, 1991. Thank you very much for
15 that correction.

16 Q It's not signed by you, but do you recognize
17 the document?

18 A Yes, I do.

19 Q Would you read it, and then I want to ask you a
20 question about it.

21 A The entire document?

22 Q Yes. For purposes of my question, sure.

23 A "In reviewing the" --

24 Q No. Read it to yourself. You don't have to
25 read it out loud.

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1 A Sorry. Okay. Yes, I've read it.

2 Q Now, as I understand this document, it was your
3 responsibility or your practice to review technical
4 discrepancy reports which were generated from the Portland
5 station; is that correct?

6 A Yes, I was requested to do so.

7 Q Do you do that on a regular basis?

8 A Yes.

9 Q And did you do that in Odessa?

10 A Yes.

11 Q How often do you do that?

12 A Monthly.

13 Q Tell me what services you provide on a regular
14 basis, and then define for me what "regular" means, what
15 services you provide on a regular basis for the Portland
16 station.

17 A Define "regular."

18 Q I said you can define it any way you'd like.
19 We'll do it different.

20 Do you provide any services where you're not
21 requested to provide them?

22 A No.

23 Q Do you get individual requests to provide
24 individual services?

25 A No.

1 Q Well, tell me, how does the procedure work,
2 then?

3 A The procedure is I have regular verbal
4 interface with Jane Duff with respect to the scope of my
5 involvement as to what they want me to be involved in, what
6 they don't want me to be involved in, I believe that's come
7 up, and within those guidelines I perform services.

8 Q She tells you what services to provide and what
9 services not to provide; is that what you're saying?

10 A To as accurately personify it as possible, it
11 came up most likely with Odessa when these guidelines were
12 first established, and in the case of Portland it would have
13 been a simplified, "We want the same degree of your
14 involvement."

15 Q Let's take a recent month that's fairly fresh
16 in your mind, say June, July, August, whichever month is
17 good for you. Do you have a recollection of what services
18 you provided for the Portland station?

19 A Off the top of my head, without thinking all
20 day, probably the discrepancy report that you just laid in
21 front of me comes to mind as probably being the only thing
22 that I can recall in recent memory having provided for
23 Portland.

24 Q Let me ask you this question: Can you give me
25 your best estimate of how many hours in either a week or a

1 month, whichever is best for you, that you devote to the
2 Portland station doing any kind of a service, performing any
3 kind of a service.

4 A Within the recent past, negligible, less than
5 an hour.

6 Q Less than an hour?

7 A Less than an hour.

8 Q Per week, per month, or what?

9 A Less than an hour per month.

10 Q How long did it take you to review the monthly
11 technical discrepancy reports?

12 A Per station?

13 Q The ones that are referred to, the reports that
14 are referred to in this memo.

15 MR. SHOOK: You'd better elaborate on which memo.

16 MR. COHEN: This memo, the one that I'm asking the
17 witness about, 50536.

18 THE WITNESS: How long did it take me to review the
19 discrepancy report?

20 BY MR. COHEN:

21 Q It says plural, the "monthly technical
22 discrepancy reports."

23 A That's not the context in which I wrote that
24 document, for one report.

25 Q I'm confused.

1 A That report refers to discrepancy reports in
2 general. The purpose of that document was to ask for
3 clarification on future reports where they do not elaborate
4 sufficiently on the nature of the difficulty. These reports
5 are monthly.

6 Q That's what I thought. So they're monthly
7 reports. My question is: How long did it take you to
8 review the May monthly technical discrepancy report?

9 A Specifically May, I don't recall. Typically 30
10 seconds.

11 Q I want to ask you about a memo dated February
12 12, 1991 on the letterhead of NMTV Engineering Department,
13 document 50534, to Mark Fountain from you.

14 Do you recognize the memo?

15 A Yes.

16 Q My sense from reading that memo is that
17 Mr. Fountain looks to you for guidance concerning carrying
18 out his engineering responsibilities at Portland. Is that a
19 fair statement?

20 A No.

21 Q To whom does he look for guidance?

22 A He looks to his station manager.

23 Q He looks to Jim McClellan?

24 A Right.

25 Q I am talking about engineering matters. Is Jim

1 McClellan an engineer?

2 A No.

3 Q So for matters that are beyond the competence
4 of Jim McClellan, engineering matters, does he look to you?

5 A Not in all cases.

6 Q To your knowledge, who does he look to other
7 than you on engineering problems and matters?

8 A He may call a manufacturer. He may call
9 another engineer in the local area.

10 Q Have you answered the question, then?

11 A Yes, just off the top of my head. There may be
12 others that I've neglected to --

13 Q That's fine. Here is a memo on the letterhead
14 of NMTV Engineering Department, 50533, dated January 17,
15 1991, to Eddie Sills from you.

16 Do you recognize it?

17 MR. TOPEL: Could we go off the record for a second?

18 MR. COHEN: Sure.

19 (Discussion off the record.)

20 MR. COHEN: Did I have an incisive and cogent
21 question pending?

22 MR. TOPEL: Let me get on the record, in case we have
23 a slip, that Mr. Cohen has presented the witness with
24 document number 50533, a memorandum which bears a date of
25 January 17, 1991.