

1 A No.

2 Q Do you know the definitions of employer for federal  
3 tax purposes?

4 A No.

5 Q Do you know the definition or meaning of the term  
6 employee for federal tax purposes?

7 A No.

8 Q Now sir, are you aware that Section 3401(c) of the  
9 code in defining employee says, "The term employee also  
10 includes an officer of the corporation"?

11 A I have no knowledge of that, no.

12 Q Are you aware of the provision of Section 3102(a) of  
13 the Tax Code that imposes the obligation to withhold payment  
14 from an employer to an employee which constitutes wages under  
15 the code?

16 A No.

17 Q Are you familiar with Section 3121(d) of the code  
18 which says employee -- "For purposes of this chapter, the term  
19 employee means (1) any officer of a corporation"?

20 A Is there a question there?

21 Q Are you familiar with that definition?

22 A No.

23 Q Were you ever advised that an officer of the  
24 corporation is an employee as a matter of law under the  
25 federal Tax Code?

1 A No.

2 Q Do you have any understanding of how someone can be  
3 an officer of the corporation without being an employee?

4 A I would only argue or answer by saying that as I  
5 said earlier, I've been what I would refer to myself over the  
6 years as an entrepreneur and an officer and director in any  
7 number of companies in the last 20 years. I don't -- and  
8 generally don't consider myself to be an employee in the  
9 normal sense because I don't come to work in a, in a normal  
10 fashion like normal people do in terms of a 9:00-to-5:00 job,  
11 I have no immediate supervisor, I don't consider necessarily  
12 the board of directors to be a supervisor, they're my family,  
13 not necessarily supervisors if you will.

14 Q Under your theory, Mr. Smith, can the chief  
15 executive officer of any major corporation be an employee?

16 A I don't know the answer to that.

17 Q I mean --

18 A What's the definition --

19 Q -- according to what you're saying --

20 A What is a major corporation? I don't know what that  
21 means.

22 JUDGE SIPPEL: Do you have an objection,  
23 Mr. Leader?

24 MR. LEADER: Well, I did because I think it's --  
25 what the issue and the case has to do with this person, not

1 other -- how would he know what Roger Smith considers himself  
2 to be or John Akers or any other corporate executive?

3 JUDGE SIPPEL: All right. I'll sustain the  
4 objection inasmuch as the general knowledge of this witness is  
5 irrelevant.

6 MR. GREENEBAUM: Well, Your Honor, based on his  
7 testimony I would renew my objection to strike that sentence  
8 based on his understanding of the tax law.

9 JUDGE SIPPEL: Well, your cross-examination  
10 certainly goes to the weight, perhaps even the competency of  
11 the witness to testify as to that sentence, but I want to see  
12 if I understand one thing. Assuming that you have somebody  
13 that's doing work for Sinclair that's not an employee,  
14 somebody such as -- do you know what an independent contractor  
15 is in general?

16 WITNESS: Would Arthur Anderson be considered an  
17 independent contractor?

18 JUDGE SIPPEL: Well, if -- how would you consider  
19 Arthur Anderson with respect to what it does for Sinclair?

20 WITNESS: I consider them to be, you know,  
21 consultants for the company.

22 JUDGE SIPPEL: Do they get W-2 forms for the work  
23 that they do for you?

24 WITNESS: Not to my knowledge, no.

25 JUDGE SIPPEL: You wouldn't think they would, would

1 you?

2 WITNESS: No, you know, they simply receive payment  
3 on a monthly basis like lawyers or anybody else.

4 JUDGE SIPPEL: And wouldn't one of your reasons be  
5 that -- well, not your reason necessarily, but one of the  
6 reasons being they wouldn't get a W-2 form because they're not  
7 performing services as employees of the company?

8 WITNESS: Well, they're performing services but  
9 they're paid in a different manner.

10 JUDGE SIPPEL: But they're not -- but I don't want  
11 to -- but in terms of just your general understanding as you  
12 characterize yourself as a boss, aren't they performing  
13 services other than employees and therefore they're not going  
14 to get W-2 forms?

15 WITNESS: I guess the answer is yes to the extent  
16 that that's the way the, the rules seem to be. As a function  
17 or how many hours a week Arthur Anderson works for me, under  
18 some senses you could consider them to be a full-time  
19 employee, arguably.

20 JUDGE SIPPEL: But the way the real world works --

21 WITNESS: In terms of the real world --

22 JUDGE SIPPEL: -- an employee gets a --

23 WITNESS: -- they're employees of Arthur Anderson,  
24 they're not employees of Sinclair Broadcasting.

25 JUDGE SIPPEL: Yeah. An employee gets a W-2

1 form --

2 WITNESS: I understand that.

3 JUDGE SIPPEL: -- and a nonemployee doesn't get a W-  
4 2 form.

5 WITNESS: That's correct.

6 JUDGE SIPPEL: All right. Can we move into another  
7 area?

8 MR. GREENEBAUM: Yes, Your Honor. I'll slide this  
9 over here and maybe I'll try to sneak back in.

10 JUDGE SIPPEL: You did renew your objection to the  
11 sentence and I'm going to deny the renewed objection.

12 BY MR. GREENEBAUM:

13 Q Now, would you refer to Exhibit 40, Tab 30, please?  
14 Do you have it, sir?

15 A Yes.

16 Q Do you recognize that to be pamphlets on your  
17 health-care benefits and at the top it says, "Employees  
18 Enrolled in Sinclair Broadcast Group, Inc. Employee Benefit  
19 Plan"?

20 A Yes.

21 Q And you participate in this program do you not, sir?

22 A Yes.

23 Q And if you turn to page FJS0095. Have that?

24 A Yes.

25 Q And do you see where it says, "Who is eligible"?

1           A     Yes.

2           MR. LEADER: Can I raise an objection to that.  
3 Hasn't Mr. Greenebaum's questioning already answered the  
4 questioning now? I mean, he's read the witness the code that  
5 says that for purposes of the Internal Revenue Service,  
6 officers and directors are legally employees. I mean, the law  
7 has made them employees whether or not they are. That's  
8 exactly what he said, sir. Now if he's going to start in  
9 again asking him about whatever he's going to ask him, it  
10 seems to me he's answered his own question.

11           JUDGE SIPPEL: Well, I'm going to respond. Let me  
12 just excuse the witness for a couple of minutes. I want to  
13 pursue this a bit. Excuse us, Mr. Smith. Let's go off the  
14 record.

15                     (Off the record. On the record.)

16           JUDGE SIPPEL: Let me phrase it again to you,  
17 Mr. Greenebaum. What I'm interested in is exploring with you  
18 and Mr. Leader is the receipt into evidence of all these  
19 documents in Volume I and II of 40 to -- for purpose of  
20 letting the documents speak for themselves as to the  
21 relationship of the Smith brothers to the company.

22           MR. GREENEBAUM: First of all, there's still a  
23 string of relevance to all of these documents -- in my mind we  
24 could have avoided these hearings and proceeded with the  
25 depositions that were taken and I actually raised that at one

1 point with Mr. Zauner and I'm told that from the Court's point  
2 of view that would not have been preferable because you're  
3 interested in credibility. And I believe that for a witness  
4 to come in and say I'm not an employee in my mind -- and my  
5 proffer to you is that the first time that came up was after  
6 Your Honor -- the issue. Until then everything in this record  
7 will show consistency with employment, in their testimony and  
8 in their depositions, their testimony at the hearing before  
9 you. And now they're trying because of that issue since  
10 February to get -- and I intend to show that they've got --  
11 plans that say you're only eligible if you're full-time. For  
12 example, what we're looking at, you're eligible to participate  
13 in this plan if you're a regular full-time employee of  
14 Sinclair Broadcast Group, Inc. for at least 90 consecutive  
15 days. I think each plan has an employment trigger, an  
16 employment prerequisite and when you get through there's not  
17 going to be any evidence to show that they're anything other  
18 than employees except their statement. And I believe that  
19 Your Honor should hear the witnesses trying to defend these  
20 positions so you can form an opinion as to their credibility  
21 because I really believe at the end we can move to strike  
22 their testimony as being inherently incredible and that's what  
23 I'm heading for. There isn't going to be one scintilla of  
24 evidence in this record that they're not an employee except  
25 their own statements to try to avoid this issue since Your

1 Honor added it. So, you know, if Mr. Leader is prepared go  
2 offer a stipulation -- and leave me free to argue in the  
3 findings of fact and conclusions of law anything in these  
4 documents -- I think it would be worthwhile to break for lunch  
5 now and let me talk to him about it.

6 JUDGE SIPPEL: What do you say, Mr. Leader? You  
7 want to talk to him about it?

8 MR. LEADER: I'll reiterate what I said here. I  
9 think I'll let the documents in and let them speak for what  
10 they say. I disagree with Mr. Greenebaum's characterization  
11 of the record. They've always considered themselves to be  
12 officers and directors of the company and owners of the  
13 company. I do question the relevance of some of these  
14 documents and I wouldn't want them in for all purposes. So,  
15 why don't we just let Mr. Greenebaum continue?

16 JUDGE SIPPEL: If I understand your argument, and I  
17 think I do and I understand what Mr. Smith is saying here, and  
18 I think I do, how could these business records even on a  
19 relevancy basis, how could they harm you?

20 MR. LEADER: Well, I don't think they can, frankly,  
21 but I still don't want to take the position from -- you know,  
22 the law may change, the Review Board may change, the Commission  
23 may change. In representing my client, I think this whole  
24 thing is totally irrelevant.

25 JUDGE SIPPEL: Well, I understand --

1 MR. LEADER: I'll let it in --

2 JUDGE SIPPEL: Okay.

3 MR. LEADER: I'll let it in for the purpose but I  
4 don't think it's very good lawyering to say sure, we'll let  
5 them in, dump them in the record and we'll argue about it  
6 later in the findings.

7 MR. ZAUNER: May I just ask Mr. Leader a question?  
8 What is the purpose for which you would be willing to let them  
9 in?

10 MS. SCHMELTZER: They say what they say.

11 MR. LEADER: That it says -- that they say what it  
12 says, that it says that you have to be a full-time employee,  
13 must be regularly scheduled to work a minimum of 25 hours a  
14 week, that this March 30, '94 10K says what it says.

15 JUDGE SIPPEL: You'd be willing to stipulate the  
16 evidence in for those purposes?

17 MR. LEADER: That they say -- but not when  
18 Mr. Greenebaum and Mr. Howard start parceling out little  
19 sentences and we've seen how --

20 JUDGE SIPPEL: Well, they're going to do that.

21 MR. LEADER: That somehow it's relevant.

22 JUDGE SIPPEL: I mean, let's not --

23 MR. LEADER: They can do that.

24 JUDGE SIPPEL: They're going to do it.

25 MR. LEADER: No, they can do it and then claim that

1 | it's relevant. I don't want there to be -- I want to be able  
2 | to claim that what they take out of this is irrelevant to the  
3 | issue.

4 |           JUDGE SIPPEL: Well, what I'm trying to do is I'm  
5 | trying to conserve the time of these witnesses. I mean,  
6 | there's complaints that this is not very important and people  
7 | would be rather be doing other things. Fine. That's all well  
8 | and good.

9 |           MR. LEADER: With all due respect, our witnesses  
10 | realize that this is very important, that they want this  
11 | resolved favorably to them and they're willing to stay here  
12 | and answer as many of Mr. Greenebaum's redundant questions  
13 | as is necessary to satisfy you and Mr. Greenebaum.

14 |           JUDGE SIPPEL: Please don't invite argument on the  
15 | quality or the nature of Mr. Greenebaum's questions.

16 |           MR. LEADER: I know. The record will speak for  
17 | itself.

18 |           JUDGE SIPPEL: I'm trying to get to the nub of the  
19 | matter here. If these documents come in they're going to come  
20 | in over your objection of relevancy or your statement for the  
21 | record that you don't see the relevancy of the documents and  
22 | you've been consistent on that all the way through. The fact  
23 | is, they're going to come in, they're going to be received,  
24 | they're going to be used for whatever purpose either party  
25 | wants to use them for, argument. But the facts aren't going

1 to change. The documents are business documents, the  
2 documents reflect -- I mean, Mr. Greenebaum has laid out the  
3 theory of his case from A to Z.

4 MR. LEADER: I agree with everything you've said.

5 JUDGE SIPPEL: And I don't think the Review Board is  
6 going to change the Tax Code.

7 MR. LEADER: Well, who knows. But the point is that  
8 I don't disagree that these documents say what they say and  
9 that they're business records. But my issue is that I don't  
10 think they're relevant or material and if you will let them in  
11 with that, that's fine.

12 MR. ZAUNER: Could I just be heard for one second on  
13 this?

14 JUDGE SIPPEL: Hear Mr. Zauner and then you can  
15 respond.

16 MR. ZAUNER: Your Honor is concerned with what is  
17 the nub of the matter here at issue and I think that these  
18 documents are being offered, and maybe I'm wrong, but the  
19 records here are being offered to show that the Smith brothers  
20 were employees of Sinclair and I think that's the sole purpose  
21 of these documents. I heard the witness testify that the  
22 stations' records would indicate that was an employee of  
23 Sinclair. It seems to me what we're doing is establishing the  
24 same thing over and over and over again using these records  
25 and that is a redundancy and a waste of everyone's time. We'd

1 almost stipulate that the stations' records indicate that each  
2 of the Smith brothers was an employee of the station -- of  
3 Sinclair. That being done, I can see no purpose in proceeding  
4 any further with this detailed line of examination on each of  
5 these specific documents and either the documents should be  
6 offered into evidence and we'll make any objections on the  
7 grounds of relevancy that we may have or they should not be  
8 offered and we should proceed to something else because we've  
9 already got in the record the fact that Sinclair's records  
10 would indicate that Mr. Smith was an employee of Sinclair.

11 JUDGE SIPPEL: I have reservations about taking it  
12 the way you're saying it because I think what Mr. Greenebaum  
13 was trying to show is that these people were employees in  
14 every sense of the word as far as the documents show, not just  
15 a general concept of employee because that is -- the general  
16 concept of employee is exactly what his general testimony is  
17 seeking to rebut and Mr. Greenebaum is showing that you're not  
18 just an employee in the general sense, you're an employee in  
19 this sense, this sense, this sense and this sense. So, I  
20 mean, there's a tension here and I see the relevancy in the  
21 tension. What I'm trying to do, is there a way of doing this  
22 without keeping these witnesses on the stand and going down  
23 each of these points because the documents -- they're just  
24 simply responding to the documents.

25 MR. ZAUNER: I understand, and that what would

1 | happen would be as these documents were offered if there was  
2 | an objection on the grounds of relevancy Mr. Greenebaum could  
3 | make the response that I'm offering this document because it  
4 | shows that -- for this purpose that Mr. Smith was considered  
5 | an employee for purposes of the health-care program and then  
6 | Your Honor would rule that the document either come into  
7 | evidence or not come into evidence. And that way we would  
8 | then I think meet your problem, we would have the document in  
9 | for the purpose for which Mr. Greenebaum was offering it, we'd  
10 | know specifically why he was offering it and it wouldn't be  
11 | necessary to examine this witness on it. I think that  
12 | procedure would save us --

13 |           MR. GREENEBAUM: What we're trying to show as Your  
14 | Honor has noted -- but more importantly, they've held  
15 | themselves out as employees. They're the people that run this  
16 | thing and they've taken the benefits under the Tax Code, to  
17 | the 401K and all those things. Now, Mr. Leader's suggestion  
18 | just put them in and we'll argue about it is unsatisfactory.  
19 | They're in or they're out. I don't understand put them in and  
20 | we'll argue the relevance about it later. Move them in --

21 |           JUDGE SIPPEL: No, that was my suggestion.  
22 | Mr. Leader didn't like that. That was my suggestion. My  
23 | suggestion was this. We've already heard -- I am anticipating  
24 | that this witness is basically going to say the same story  
25 | with respect to every business document you show him and the

1 | impression that the record is going to show this witness -- is  
2 | not going to vary that much between what we know now and what  
3 | we're going to know at the end of the day. The key thing as I  
4 | see it is with respect to the documents because the documents  
5 | show different incidents in the corporate life of this  
6 | Sinclair in which these people are treated as employees on the  
7 | business records and to me that's the sum and substance of  
8 | your case.

9 |           MR. GREENEBAUM: That's true, and I don't know of  
10 | any -- maybe I'll be educated in this proceeding, but I don't  
11 | know of any law that says the test is -- they're either  
12 | employees or they aren't and the objective standards of that  
13 | are the things they do as employees from the records of the  
14 | corporation.

15 |           JUDGE SIPPEL: Well, that's what the hearing is all  
16 | about and it's just a question of how much. Now, if  
17 | Mr. Leader feels that his clients have to explain that  
18 | proposition, the Sinclair position or the Four Jacks position  
19 | for each and every one of these documents, then so be it,  
20 | they're entitled to -- you know, you got the burden of proof,  
21 | Mr. Leader, the issue is cited against your clients. I'll sit  
22 | here and do it. I'm just trying to volunteer a procedure that  
23 | might shortcut a lot of this. I'm not going to deny you the  
24 | right of having your client go through this process.

25 |           MR. LEADER: I understand. Ken wanted to --

1           MR. HOWARD: Just one short thing, Your Honor, and  
2 that is that this Sinclair is not your typical publicly-owned  
3 company. Sinclair is these principals -- the three integrated  
4 principals own 75 percent of the company. So to the extent  
5 that these are Sinclair documents, these are business  
6 documents to the State of Maryland, representations to the  
7 IRS, representations to their health-care insurer. These are  
8 the representations of these very people as well, not just of  
9 the company because they control the company.

10           JUDGE SIPPEL: Well, I understand that.

11           MR. HOWARD: But that's an important part of why  
12 hearing what they say about it, is it more important here than  
13 it would be if this were just a company where they were not  
14 controlling the company?

15           MR. GREENEBAUM: If Your Honor, is prepared to admit  
16 the and overrule the objection of relevance, then we can put  
17 them in and forget about it.

18           JUDGE SIPPEL: That's the only reason I -- I  
19 wouldn't receive them if I didn't think they were not  
20 relevant. I would take them in, they would be relevant from  
21 my stand point and then they would be for any purpose you want  
22 to make of them.

23           MR. GREENEBAUM: I'm amenable -- I'd like to talk to  
24 my colleagues, but I'm amenable to that approach.

25           MR. LEADER: Well, to what approach?

1 MR. GREENEBAUM: What I just articulated.

2 MR. LEADER: Yeah, but then what happens? I mean,  
3 then the witness goes home or what?

4 MR. GREENEBAUM: Well, we may have a few more  
5 questions but we don't have to cross-examine him about these  
6 documents.

7 JUDGE SIPPEL: That's right, because the cross-  
8 examination will become purposeless at that point.

9 MR. GREENEBAUM: There are some other documents we  
10 need to talk about --

11 JUDGE SIPPEL: I understand. I understand. Let's  
12 go off the record a minute.

13 (Off the record. On the record.)

14 JUDGE SIPPEL: Let the record reflect that in an  
15 extensive off-the-record discussion it's been agreed that both  
16 parties are going to take an extended lunch hour until 1:30  
17 and they're going to look at Exhibit 40 which is the two  
18 volumes of considerable number of business records with the  
19 idea in mind of permitting these to come into evidence without  
20 further cross-examination or minimal cross-examination of the  
21 Four Jacks witnesses and that will facilitate considerably the  
22 time spent on this phase. We're in recess until 1:30.

23 (Whereupon, the hearing recessed at 12:10 p.m. and  
24 reconvened at 1:30 p.m.)

25

## AFTERNOON SESSION

1  
2 JUDGE SIPPEL: Let's go on the record. It's 1:30  
3 and do we have -- Mr. Leader and Mr. Greenebaum, do you have  
4 anything to report on how --

5 MR. GREENEBAUM: I've reviewed my -- Mr. Leader and  
6 I just spoke and here's the situation I find myself in. We  
7 have one stipulation to the authenticity of the document and  
8 there is a further stipulation on that stipulation, three or  
9 four factual statements that we stipulated to and which I  
10 assume the Court has -- in addition, we have the stipulation  
11 to 39 of the personal tax -- now, I think where we are is we  
12 spent more time talking and avoiding the questions than the  
13 questions would have taken. I only had a few questions on the  
14 documents. I think what happened was and I'm using the word  
15 of the witness, maybe I didn't artfully use the document --  
16 maybe Mr. Smith could be excused for this discussion.

17 MR. LEADER: I don't care.

18 JUDGE SIPPEL: Please, Mr. Smith, would you excuse  
19 us? Go off the record a minute, please.

20 (Off the record. On the record.)

21 MR. GREENEBAUM: If Mr. Leader is still going to  
22 maintain that the documents are not relevant -- to admit them  
23 over his objection, then that's not a stipulation at this  
24 point, we're no further along than we were this morning.  
25 If -- prepared to admit them as authentic and relevant and/or

1 that the witness knows -- within the documents because we're  
2 talking about his state of mind. There are only a few ways to  
3 test what he knows when he says I didn't consider myself an  
4 employee. I have to ask then it seems to me did you know what  
5 it took to be eligible to -- and that's where I was going when  
6 I went right to the document. I was actually trying to short-  
7 cut the process and I ended up setting off bombs. But to find  
8 out -- is really his state of mind. For example, he's a  
9 trustee in the 401K plan. I mean, doesn't he know -- ask him  
10 did you know that only employees are eligible to be in that  
11 and that goes to his state of mind as to whether or not he's  
12 an employee or not. So, I need to ask under any circumstances  
13 his state of mind or if he knew the eligibility of each one of  
14 these documents. I need to tie together the EEC and the  
15 insurance things --

16 MS. SCHMELTZER: EEO.

17 MR. GREENEBAUM: EEO, I'm sorry, and a couple other  
18 questions. But if we just say well, I'm going to admit them  
19 over Mr. Leader's objection, I'm going to -- and he's got his  
20 objections you can't ask any more questions about them, that  
21 doesn't seem to me to be a fair moving of the ball and that's  
22 putting efficiency over -- so I don't think it's going to be  
23 that long. His whole deposition only took about four hours to  
24 my recollection and I'm a little over halfway through what I  
25 planned to do when we started this morning. We've only had

1 | testimony from 10 o'clock to shortly before 12:00 before all  
2 | this started so we haven't wasted any time. And -- but if  
3 | there is a stipulation and they're prepared to let these  
4 | documents in and just say that the witness knows or is charged  
5 | with what's in them then we move the ball.

6 |           JUDGE SIPPEL: All right. Well, let's see what  
7 | Mr. Leader --

8 |           MR. LEADER: Your Honor, we can't stipulate to the  
9 | latter point and it seems to me that Mr. Greenebaum wants to  
10 | ask questions and he feels that's how he can best try his case  
11 | and we'll sit here and let him ask questions. I don't see how  
12 | I can admit -- you know, say that -- stipulate that the  
13 | witness knows what's in the documents or is charged with  
14 | knowing what's in them when with all due respect to everybody  
15 | we've heard a lot of testimony here to the contrary and so I'd  
16 | be stipulating to something that I know isn't accurate. Now,  
17 | there are some documents that even if we were to stipulate as  
18 | I explained to Mr. Greenebaum I think are redundant and that  
19 | is most of these two volumes are different copies of the S-1's  
20 | which are already in evidence and if we were to stipulate  
21 | their admissibility when we went to write findings I'd be  
22 | citing Exhibit 40-12 and Bob Zauner would be citing Exhibit 17  
23 | and, you know, that's something we can cure but I think that  
24 | all ought to be wrapped up in a meaningful stipulation. But I  
25 | can't -- when I left here I didn't understand that I'd be

1 stipulating that the witness knows what's in every document or  
2 is charged with knowing what's in every document -- I just --  
3 you know, whether or not they're relevant. I just think  
4 that's beyond my capacity to do.

5 JUDGE SIPPEL: Mr. Zauner?

6 MR. ZAUNER: It seems to me we haven't advanced the  
7 ball one inch in the hour and a half that we've been to lunch.  
8 The thing that's bothered me throughout the cross-examination  
9 by Mr. Greenebaum was that we're cross-examining on documents  
10 that aren't in evidence. Under the Rules of Evidence the  
11 documents should be identified and should be offered into  
12 evidence before substantive examination is permitted. And I  
13 think we should go ahead under the normal Rules of Evidence  
14 from here on in and let Mr. Greenebaum do what he thinks is  
15 proper.

16 MR. GREENEBAUM: I understood the Court wants to  
17 wait till the end for --

18 JUDGE SIPPEL: That's exactly right. It made more  
19 logical sense to --

20 MR. ZAUNER: It did in the beginning and I didn't  
21 object to that procedure. But what I see the breakdown here  
22 is that we have a lot of examination substantively on some of  
23 these documents and I think that had Mr. Greenebaum been  
24 required to state the purpose for which he was offering the  
25 document that the document then could have been received

1 | because you would have ruled on the objection, if the document  
2 | was received then there would be no further reason for  
3 | Mr. Greenebaum to continue his examination on the document  
4 | because he would have had it in the record for every basis  
5 | including the basis for which he wanted it.

6 |           MR. GREENEBAUM: I think Mr. Leader would not agree  
7 | with that statement.

8 |           MR. LEADER: I agree with Mr. Greenebaum. In all  
9 | due respect to --

10 |           MR. GREENEBAUM: I don't know of any requirement --

11 |           MR. LEADER: He could have --

12 |           MR. GREENEBAUM: -- to put a document you have to  
13 | identify --

14 |           JUDGE SIPPEL: This could be taken in the nature of  
15 | a voir dire. I obviously can focus much -- I can make a much  
16 | clearer ruling on the relevancy in a 403 objection after I've  
17 | heard the witness -- after I hear Mr. Greenebaum examine the  
18 | witness on the exhibit. Just bear in mind, Mr. Zauner, first  
19 | of all, this is cross-examination and it is not like a preset  
20 | testimony that's prepared in advance and exchanged so there  
21 | has to be a little give and take here and there's going to be  
22 | some repetition, there's going to be some seemingly  
23 | repetitious questions and all, but on balance it hasn't gone  
24 | so badly. If Mr. Greenebaum is telling me that we're about  
25 | halfway there or better than halfway there, it hasn't gone

1 that badly. I was just trying to be a little create here  
2 because I anticipate knowing pretty much what I'm going to  
3 hear.

4 MR. LEADER: I don't think we're going to be  
5 surprised either.

6 MR. GREENEBAUM: But that doesn't eliminate the  
7 burden.

8 JUDGE SIPPEL: No, it doesn't. No, I don't mean to  
9 belittle what you're doing, Mr. Greenebaum, by making that  
10 statement. I can just go on basically what I've -- this is  
11 the second time I've heard this witness on the stand and I  
12 understand exactly where you're going with the documents and  
13 I've set the issue. I mean, you know, I added the issue in  
14 this case so I'm expecting to hear evidence such as this, it's  
15 just a question of how much. Well, why don't we bring the  
16 witness in and just continue on?

17 MR. LEADER: Well, can we resolve an issue on all  
18 the SEC things, I mean, before we go or we'll do that when we  
19 -- as you look at this it looks like there's a lot of  
20 documents. Really, this is the documents right here is what  
21 we're talking about and a couple there.

22 MR. GREENEBAUM: Well, SEC, there are four in  
23 evidence and there's on that is not yet in and that's --

24 JUDGE SIPPEL: That's number 35.

25 MR. GREENEBAUM: We thought it would just be easier

1 to have them all in one book -- then we apologize. We didn't  
2 se out to do that.

3 MR. LEADER: I had another comment.

4 JUDGE SIPPEL: Go ahead, Mr. Leader.

5 MR. LEADER: The other thing is that do we need to  
6 have the whole SEC document in there? I mean, shouldn't we  
7 stipulate it came from the December iteration and it's the  
8 page whatever?

9 JUDGE SIPPEL: Well, we went through that or rather  
10 I addressed that once before and I just made the determination  
11 I think it's better to have the whole document in for purposes  
12 of having -- not leaving something out that may later shed  
13 some relevance or maybe by cross-referencing it it would make  
14 it clearer to me. I mean, it's a judgment call I recognize  
15 that, but these documents as big as they are they're not that  
16 big. I mean, we're not overwhelming anybody with this.

17 MR. LEADER: I think your ruling was the other way  
18 earlier, sir, with all due respect. I think you said you  
19 didn't want them to cross-reference. Ken, the record is  
20 whatever the judge ordered and it's a matter of public record  
21 so you and I arguing about it aren't going to make -- one way  
22 or another.

23 JUDGE SIPPEL: Here it is in my order 93-M-768,  
24 December 23, 1933 (sic). Four Jacks has objected only to the  
25 acceptance of all pages of the prospectus. This is the --

1 ended up being Exhibit 34. However, in the interest of  
2 continuity and assurance of a complete presentation of an SEC  
3 disclosure, as a matter of discretion the presiding Judge  
4 accepts the SBG prospectus dated December 6, 1993 in its  
5 entirety. Now, again, that's when I was receiving it off the  
6 record. This was an out-of-court situation.

7 MR. LEADER: I think that your earlier one, sir, had  
8 a limited purpose.

9 JUDGE SIPPEL: You may be right. I might have gone  
10 two ways on --

11 MR. LEADER: Because you didn't want a lot of cross-  
12 referencing. You wanted them to focus exactly on the  
13 paragraph they were questioning and you wanted our findings  
14 specifically directed to those paragraphs.

15 JUDGE SIPPEL: That's correct.

16 MR. LEADER: And they didn't want -- you didn't want  
17 them or us to jump back later on and say but here is this and  
18 create things or an extra record that on which there had been  
19 no cross-examination.

20 JUDGE SIPPEL: That is correct. I do recall that.  
21 I do recall that. So, I have gone both ways on this. I think  
22 there is some purpose in terms of it having been presented  
23 this way. I mean, having all of the SEC filings in one  
24 grouping for ease of reference. I'm going to have to give  
25 some very careful instructions on proposed findings. The only

1 other alternative would be to go back and to reconstruct these  
2 exhibits at this point and I don't think that --

3 MR. LEADER: Or we could just give the SEC documents  
4 in here the existing exhibit numbers and keep them in here  
5 without having to reconstruct everything.

6 MR. GREENEBAUM: Aren't we really talking about  
7 mechanics?

8 JUDGE SIPPEL: Yes, we are, and I'm sorry to have it  
9 belabored to this extent but Mr. Leader has got a point.

10 MR. LEADER: But it's important mechanics.

11 JUDGE SIPPEL: Yeah, I hear you, I hear you, but I'm  
12 going to exercise my discretion and I'll permit references to  
13 SEC pleadings in proposed findings only with respect to those  
14 pages of whatever the filing is that the witness has testified  
15 to unless there is some unforeseen situation which requires a  
16 cross-reference and then leave of myself can be asked to do  
17 that.

18 MR. GREENEBAUM: No problem with that but now you  
19 require me to go into the documents with the witness was what  
20 we set out to try to avoid to do any more than necessary.

21 JUDGE SIPPEL: Well, I don't see how we can avoid  
22 that.

23 MR. GREENEBAUM: I agree.

24 JUDGE SIPPEL: I just don't see how we can avoid it.  
25 But I'm going to leave these in the form that they've been