

1 repeated?

2 WITNESS: Could you repeat the question?

3 BY MS. SCHMELTZER:

4 Q Am I correct that it was not your purpose in looking
5 at the "MEMOS TO B & H" -- and that means Memos to Baker &
6 Hostetler, correct?

7 A That's --

8 Q And look -- it was not your purpose in looking at
9 the "MEMOS TO B & H" file to look for the '92 Covington notes
10 or anything that might help you find those notes?

11 A Right. Because I did not believe that the notes
12 existed, so there would have been no reason for me to look for
13 anything relating to them, because I believed at that time and
14 at that moment that they did not -- and up to that moment that
15 they did not exist.

16 Q What was the purpose of looking at the "MEMOS TO
17 B & H" file?

18 A I said earlier and I stated in my direct testimony,
19 I went in, as near as I can recollect, to refresh my memory as
20 to the date that I had sent something. I just don't remember
21 what it was that I was looking specifically for. I remember
22 Ms. Abrutyn asked me a question. I said: let me see if I can
23 remember when I sent that to you, meaning to counsel. And,
24 and then I, you know, discovered this memo with these notes
25 attached. And, frankly, at that point, you know, that sort of

1 superseded anything I was looking for.

2 Q Do you remember the subject of the memo you were
3 looking for?

4 A No. I just stated that I have no specific recol-
5 lection as to what I was looking for, because I must tell you
6 that as soon as I discovered those notes attach-- the copy of
7 the notes attached to that memo, it really became kind of the
8 paramount issue in my mind. I mean, I had really believed
9 that I had thrown those notes away. I had no memory of saving
10 them, no memory of copying them. And all of a sudden, there
11 they were.

12 Q Ms. Barr, what were you looking for when you went to
13 the "MEMOS TO B & H" file?

14 A I was looking for --

15 MR. HOWARD: Objection.

16 MR. ZAUNER: Objection. That's been asked --

17 JUDGE SIPPEL: It's been asked and answered.

18 MR. ZAUNER: -- and answered three times.

19 JUDGE SIPPEL: Yes. I'll sustain the objection.

20 MS. SCHMELTZER: I, I don't think the question's
21 been answered, with all due respect.

22 MR. HOWARD: The subject matter of that question has
23 been so thoroughly explored that, that asking it in a slightly
24 different way could not possibly be designed --

25 JUDGE SIPPEL: I'm going to sustain the -- I'm, I'm

1 going to sustain the objection.

2 MS. SCHMELTZER: Ms. Barr, do you remember -- do you
3 recall providing a declaration on February 15 of 1994 in
4 connection with the Motion for Summary Decision filed by
5 Scripps Howard --

6 WITNESS: If you'd let me see it, I can tell you if
7 I recall it.

8 JUDGE SIPPEL: Is this one of the exhibits to her
9 deposition?

10 MS. SCHMELTZER: Well, Your Honor, I'm going to, I'm
11 going to mark this for identification as a Four Jacks exhibit.

12 JUDGE SIPPEL: All right.

13 MS. SCHMELTZER: I'd like to have marked for iden-
14 tification as Four Jacks Exhibit 32 a Declaration of Emily L.
15 Barr dated February 15, 1994. Attached to it as exhibit 1 is
16 a copy of what has previously been received as Four Jacks
17 Exhibit 31. Attached to it as exhibit 2 are -- is a copy of
18 the handwritten notes, the Covington handwritten notes. And
19 attached as exhibit 3 is a copy of a post-it with some writing
20 on it.

21 JUDGE SIPPEL: All right. The reporter will mark
22 that as, as Four Jacks Exhibit 32 for identification.

23 (Whereupon, the document referred to
24 as Four Jacks Exhibit No. 32 was
25 marked for identification.)

1 BY MS. SCHMELTZER:

2 Q Do you have a copy of what's been marked for iden-
3 tification as Four Jacks Exhibit 32 before you, Ms. Barr?

4 A Yes, I do.

5 Q And if you would just look through that and -- I'd
6 like to ask you on page 3 is that your signature?

7 A Yes, it is.

8 Q And do you recall signing that document on February
9 15, 1994?

10 A Yes, I did sign it.

11 Q Now, if you look at the first page of that
12 Declaration, Ms. Barr, it, it refers to a meeting that you had
13 with Ms. Abrutyn on February 9, 1994, and you state, "At one
14 point during our meeting, I opened one of the file cabinets in
15 my office to look for a memo that I had sent to Baker &
16 Hostetler in order to refresh my recollection as to the date
17 that I sent the memo and other materials to Baker & Hostetler.
18 A copy of this memorandum is attached hereto as Exhibit 1."

19 And if you would look at Exhibit 1, that's the June
20 25, 1993, memo that you wrote to Dave Roberts. Do you see
21 that?

22 A Yes, I do.

23 Q Was that Declaration on February 15th true and
24 correct, Ms. Barr?

25 A Yes, I believe it was.

1 Q Was that in fact the memo that you were looking for
2 on February 9th, the June 25, 1993, memo?

3 A Let me state that at the time that I signed this
4 Declaration this Declaration was true and correct, and that is
5 what I believe to be the memo. That was my -- you know, a
6 week after having found this that was what I believed I was
7 looking for. What I'm trying to state to you today, many
8 months later, is that I just simply don't remember what spe-
9 cific information I was looking for. I can make an assumption
10 that I was looking for some information that was in this
11 particular memo, but I don't remember today that that's what I
12 was looking for. Clearly, on February 15th I may have had a
13 slightly better memory since it was, you know, about a week
14 later from the date that I originally found the information.

15 Q Well, let me make sure I understand this, Ms. Barr.
16 On February 15th, that was six days after your meeting with
17 Stephanie Abrutyn, you remembered that you were looking for
18 the June 25, 1994, memo when you opened the file entitled
19 Memos to Baker & Hostetler?

20 A Well, what I said here in my declaration was that I
21 wanted to refresh my recollection as to the date that I had
22 sent the memo and other materials to Baker & Hostetler.
23 That's what I remembered. What I stated several times is that
24 I have no memory of sending Janet Covington's notes -- or
25 copying Janet Covington's notes or retaining Janet, Janet

1 Covington's notes. But I want to point out that in this June
2 25th memo there are other issues that are addressed. This is
3 not only about Janet Covington's notes.

4 Q Ms. Barr, I'm not asking you about the notes right
5 now. I'm asking you about what you recall looking for on
6 February 9, 1994. And at paragraph 2 of your February 15th
7 Declaration you say: "...I opened one of the file cabinets in
8 my office to look for a memorandum that I had sent to Baker &
9 Hostetler in order to refresh my recollection as to the date
10 that I sent the memorandum and other materials to Baker &
11 Hostetler."

12 A That's correct.

13 Q And that memorandum that you were looking for which
14 is attached hereto is the June 25th memo, was it not?

15 A Yes, it was.

16 JUDGE SIPPEL: That's Exhibit 31.

17 BY MS. SCHMELTZER:

18 Q And you attached the June 25th memo to your
19 Declaration of February 15th, correct?

20 A Yes, I did.

21 Q And when you found that June 25th memo it had at-
22 tached to it the Covington notes and also a post-it, which is
23 on exhibit 3, that said, "Janet Covington's original notes to
24 me regarding appointment..." -- I'm sorry -- "...regarding
25 appointment/ascertainments. She did not save her original

1 calendar." Well, let me clarify --

2 MR. HOWARD: Objection, Your Honor. Objection, Your
3 Honor.

4 JUDGE SIPPEL: Wait.

5 MR. HOWARD: She is mischaracterizing the
6 Declaration by stating that it was the notes and this post-it
7 note --

8 MS. SCHMELTZER: Your Honor, he's coaching the
9 witness and I object to this. He did this yesterday --

10 MR. HOWARD: Let her --

11 MS. SCHMELTZER: -- as well.

12 MR. HOWARD: -- let her leave -- ask the witness to
13 leave the room. I don't think --

14 JUDGE SIPPEL: Well, wait just a second now. Wait
15 just a second.

16 MS. SCHMELTZER: That was a very simple question and
17 I don't -- I think it's improper for Mr. Howard to be coaching
18 the witness.

19 JUDGE SIPPEL: It's -- I was, I --

20 MR. HOWARD: She misstated the fact.

21 JUDGE SIPPEL: Well, I'm going to permit the witness
22 -- let, let's have the, the ques-- can you, can you -- well,
23 have the question re-read. Can you find it?

24 COURT REPORTER: Play it back?

25 JUDGE SIPPEL: Please.

1 (Whereupon, the question was played back from the
2 tape recording of the proceedings.)

3 JUDGE SIPPEL: -- for the record?

4 MS. SCHMELTZER: Let me, let me just reframe the
5 question.

6 MR. HOWARD: I, I -- I've been accused of coaching
7 the witness. I'm entitled to --

8 MS. SCHMELTZER: Well, that's --

9 MR. HOWARD: -- indicate what my objections are --

10 JUDGE SIPPEL: Well -- we're on the record.

11 MR. ZAUNER: The question is withdrawn.

12 MS. SCHMELTZER: I'm, I'm --

13 JUDGE SIPPEL: We're on the --

14 MS. SCHMELTZER: I'll reframe it.

15 JUDGE SIPPEL: Are we on the record?

16 (Off the record. On the record.)

17 JUDGE SIPPEL: All right? Okay. Mr. Howard.

18 MR. HOWARD: She's withdrawn the question. I have
19 nothing further to say.

20 JUDGE SIPPEL: All right. I, I do -- be, be careful
21 about how you do phrase your objections though. Just be
22 careful.

23 MR. HOWARD: If you're concerned, Your Honor, may I
24 just point out that she stated that it was the Janet Covington
25 notes and a post-it that were found, and it was a copy of

1 Janet Covington's notes.

2 JUDGE SIPPEL: All right. I, I know that --

3 MR. HOWARD: It was a copy --

4 JUDGE SIPPEL: -- that, that's --

5 MR. HOWARD: -- that they were found in that --

6 something that should be kept straight in this proceeding.

7 JUDGE SIPPEL: That's, that's permissible. Be very
8 careful how you frame the questions also, Ms., Ms., Ms.
9 Schmeltzer. But we did have an incident of that yesterday too
10 and I got the feeling that -- and I, and I don't think it was
11 intentional. I'm not saying it's intentional. But Ms.
12 Schmeltzer is entitled to have her day in court in terms of
13 getting these cross-examination questions out. But I, I --
14 let's, let's move on. You're going to rephrase the question.

15 MS. SCHMELTZER: Right.

16 BY MS. SCHMELTZER:

17 Q And you found -- am I correct, Ms. Covington-- Ms.
18 Barr, that you found with the June 25, 1993, memo to Mr.
19 Roberts a copy -- a photocopy of the 1992 Covington notes?

20 A The memo and the notes were a copy of what I had
21 sent to Mr. Roberts.

22 Q And you also found a photocopy of a post-it note
23 that you had written to Mr. Roberts in June of 1993? Is that
24 correct?

25 A There's no date on the post-it note. I don't know

1 | when I wrote the post-it note.

2 | Q And the post-it note said, "Janet Covington's
3 | original notes to me regarding appointments/ascertainments.
4 | She did not save her original calendar." You don't -- you
5 | have no recollection of when you wrote that?

6 | A That's correct. I don't remember when I wrote it.

7 | Q But subsequently you became aware that the original
8 | post-it note itself was attached to the original notes them-
9 | selves, which were at Baker & Hostetler? Is that correct?

10 | A After that -- after February 9th?

11 | Q Right, after February 9th.

12 | A Yes, I did become aware of that.

13 | Q When did you become aware that the original copy of
14 | the Covington notes and the original post-it note and the
15 | original memo were at Baker & Hostetler?

16 | A I think it was within a day or so of having found it
17 | in my -- the copy in my files.

18 | MR. GREENEBAUM: Just for the record so we're clear
19 | that the original copy -- or the original set of notes --
20 | because she talked about the original copy of the notes, then
21 | the original of the post-it. We're talking about the original
22 | set at Baker & Hostetler, I believe.

23 | JUDGE SIPPEL: The -- I, I take that her testimony
24 | is that she meant that the original post-it note was with the
25 | original Covington --

1 MR. GREENEBAUM: Yes.

2 JUDGE SIPPEL: -- notes, handwritten notes, that
3 were at Baker & Hostetler.

4 MR. GREENEBAUM: Yes.

5 MS. SCHMELTZER: And attached to the original June
6 25 memo, is that correct?

7 MR. HOWARD: Objection.

8 MS. SCHMELTZER: I --

9 JUDGE SIPPEL: Well, wait just a minute.

10 MR. HOWARD: There's not a --

11 MS. SCHMELTZER: Was the origi--

12 MR. HOWARD: There's not a foundation.

13 JUDGE SIPPEL: Wait just a minute. Mr. -- go ahead,
14 state it, Mr. Howard.

15 MR. HOWARD: Objection. There's no foundation for
16 that assumption by the counsel.

17 MS. SCHMELTZER: Did you subsequently learn that the
18 original June 25, 1993, memo was also at Baker & Hostetler?

19 WITNESS: I, I don't know that I did or I didn't.

20 MR. GREENEBAUM: That's a different question.

21 JUDGE SIPPEL: Yes, it was. It was. And I didn't
22 have to rule on the objection.

23 MS. SCHMELTZER: Now, Ms. Barr, you've told us that,
24 that the memo that you were looking for in your February 15,
25 1994, Declaration was the June 25, 1993, memo, correct?

1 WITNESS: That's what I --

2 JUDGE SIPPEL: We're back to Exhibit 32?

3 MS. SCHMELTZER: Correct.

4 WITNESS: That's what I stated in my Declaration.

5 MS. SCHMELTZER: Now, if you would look to paragraph
6 29 and 30 of your direct case testimony, you say you went
7 through your files to retrieve a memo that you had sent to
8 Baker & Hostetler. That's in paragraph 29. And in paragraph
9 30 you say, "I was not specifically looking for this memo ..."
10 You discovered the memo "...prepared by me and dated June 25,
11 1993. I was not specifically looking for this memo..." Do
12 you see that?

13 WITNESS: Yes, I do.

14 MR. ZAUNER: Is there a question?

15 JUDGE SIPPEL: Go ahead.

16 MS. SCHMELTZER: I'm going to ask it.

17 JUDGE SIPPEL: She's laying the foundation.

18 MR. HOWARD: If she's laying a foundation, Your
19 Honor, may I request that she read the rest of that sentence?

20 MR. GREENEBAUM: She read parts of sentences. But
21 that's the whole paragraph. She needs the whole sentence.

22 JUDGE SIPPEL: Well, why don't you read the portions
23 of the paragraph that's going to be the premise of your ques-
24 tion --

25 MS. SCHMELTZER: Okay.

1 JUDGE SIPPEL: -- Ms. Schmeltzer?

2 MS. SCHMELTZER: Ms. Barr, in paragraph 29 you say,
3 "At one point during our meeting, I went through my files to
4 retrieve a memorandum that I had sent to Baker & Hostetler in
5 order to refresh my recollection so that I could answer one of
6 Ms. Abrutyn's questions." What memorandum were you looking
7 for at that time?

8 MR. ZAUNER: Has, hasn't this been asked and
9 answered --

10 MR. HOWARD: Asked and answered.

11 MR. ZAUNER: Objection.

12 JUDGE SIPPEL: That was asked and answered in the
13 context of Exhibit 32.

14 MR. ZAUNER: I recollect it was also asked and
15 answered in the context of the Exhibit 36.

16 JUDGE SIPPEL: Yeah. I'm going to sustain that
17 objection.

18 MS. SCHMELTZER: Okay.

19 JUDGE SIPPEL: It has been asked and answered.

20 MS. SCHMELTZER: Now, in paragraph 30, Ms. Barr, you
21 say you were not specifically looking for the June 25, 1993,
22 memo. Didn't you just tell us in response to questions on --

23 MR. HOWARD: Objection.

24 MS. SCHMELTZER: I haven't finished the question.

25 MR. HOWARD: But she, she said -- I had -- if, if --

1 she's ignoring the previous objection, which was that she had
2 not laid a foundation for that because she had not read into
3 the record finishing the sentence that she was relying on in
4 laying her foundation, and she has once again stopped in the
5 middle of the sentence and then -- and then gone to other
6 matters without finishing the information --

7 JUDGE SIPPEL: I'm going to sustain the objection.
8 And this, this, this paragraph 30, it's, it's very important
9 to read that whole preliminary -- the whole first sentence
10 into the record in, in the -- in, in connection with what I
11 think you're going to be asking.

12 MS. SCHMELTZER: All right.

13 BY MS. SCHMELTZER:

14 Q Ms. Barr, paragraph 30 says, "While looking in this
15 "MEMOS TO B & H" file on February 9, 1994, I discovered a
16 memorandum prepared by me and dated June 25, 1993. I was not
17 specifically looking for this memorandum, because I did not
18 recall at the time that the June 25, 1993, memorandum existed,
19 nor do I recall at this time exactly what I was looking for."
20 Do you see that?

21 A Yes, I do.

22 Q Now, am I correct that on February 9, 1994 -- or,
23 I'm sorry -- on February 15, 1994, you did recall that you
24 were looking for the June 25 memorandum to refresh your
25 recollection?

1 A That's what I said --

2 Q You were --

3 A -- earlier.

4 Q You, you recall that you were looking for that memo?
5 You recalled the subject of the memo, didn't you?

6 A I said that I was trying to refresh my recollection
7 as the -- to the date that I had sent the memo and other
8 materials.

9 Q But you did recall sending the memo and the other
10 materials to Baker & Hostetler?

11 A I didn't say that. I said, I said that I wanted to
12 refresh my recollection as to the date that I had sent the
13 memo. I didn't say that everything I wrote in the memo was
14 something I had remembered.

15 Q So, the purpose of going to the Memos to Baker &
16 Hostetler file was to look for a memo that related to the
17 calendars and the Covington notes, wasn't it?

18 MR. HOWARD: Objection, Your Honor.

19 WITNESS: Now, your --

20 JUDGE SIPPEL: I sustain the objection. I, I don't
21 -- I, I don't want to put words in the witness's mouth myself,
22 but I think again that this area has been -- that particular
23 point -- and I know what you're trying to determine. But I
24 don't -- I think it's been asked and answered numerous times.
25 And if you want to discuss it further, I'll excuse the witness

1 | if this is the -- if, if, if you think you're being denied
2 | something, Ms. Schmeltzer, but this has been gone over several
3 | times.

4 | MS. SCHMELTZER: All right.

5 | BY MS. SCHMELTZER:

6 | Q Ms. Barr, the Memos to Baker & Hostetler file, was
7 | in -- was that in the top drawer of your file cabinet?

8 | A Yes, it was.

9 | Q And this was a file into which you and your secre-
10 | tary would place documents from time to time? Is that
11 | correct?

12 | A The only thing that went into the "MEMOS TO B & H"
13 | file were copies of memos that I had written to Baker &
14 | Hostetler with respect to this case. That was the only thing
15 | that was supposed to be in that file.

16 | Q Now, you also state in your direct case testimony
17 | that you believed you had thrown away the 1992 Covington
18 | notes, is that correct?

19 | A Yes.

20 | Q And do you recall testifying in the hearing in this
21 | proceeding in November 1993 that you placed them in a
22 | wastebasket?

23 | A What I said, if you read all of my testimony from
24 | 1993, was at first I said I threw them away, and then I said:
25 | as best as I can recall, I must have thrown them away, because

1 I had no memory of having retained them and, as far as I could
2 recall, having gone through my files on several occasions,
3 they did not exist. So, therefore, in my mind as I recalled
4 it at the time -- and I believed it then and I believe it now
5 -- I had thrown them away.

6 Q Do you recall stating that you had thrown them in a
7 wastebasket, Ms. Barr?

8 MR. ZAUNER: I'm going to object. What difference
9 does it make?

10 JUDGE SIPPEL: Well --

11 MR. GREENEBAUM: We're going to have a page and
12 we're going to go do it, but -- I think we're wasting time,
13 but if we're doing --

14 JUDGE SIPPEL: Yeah. I, I --

15 MR. GREENEBAUM: We got to put trash in the
16 record --

17 JUDGE SIPPEL: This is --

18 MR. GREENEBAUM: --dragging -- wastebasket.

19 JUDGE SIPPEL: This is really pushing it to the --
20 right to the limit, Ms. Schmeltzer. I mean, it -- are you
21 saying that she -- can you tell us that the transcript shows
22 that she testified --

23 MS. SCHMELTZER: Yes.

24 JUDGE SIPPEL: -- that she threw them in the trash?

25 MS. SCHMELTZER: Yes, Your Honor.

1 JUDGE SIPPEL: All right. Well, then, what would
2 your next question be?

3 MS. SCHMELTZER: Do you want me to show the witness
4 a copy of the transcript?

5 JUDGE SIPPEL: Well, I'm, I'm -- let's, let's assume
6 that she did say that she threw it in the trash bin. What is
7 your next question going to be?

8 MS. SCHMELTZER: Ms. Covington, after Four Jacks --

9 MR. GREENEBAUM: It's Ms., Ms. Barr, not Ms.
10 Covington.

11 BY MS. SCHMELTZER:

12 Q Ms. Barr, after Four Jacks filed its Motion to
13 Enlarge Issues, did you ever attempt to look for the Covington
14 notes?

15 A As I've stated before, I did not look for the Covin-
16 gton notes because I believed that the Covington notes had
17 been thrown away. So, I never made any attempt to look for
18 the Covington notes because as far as I knew they, they didn't
19 exist.

20 Q Did you ever ask your counsel to look for the Covin-
21 gton notes?

22 A I believed that I had thrown the notes away, so I
23 would have had no reason to ask counsel to look for anything,
24 because I had no memory and continued to have no memory of
25 having sent the notes to counsel.

1 (Off the record. On the record.)

2 MS. SCHMELTZER: Now, Ms. Barr, we have previously
3 given you a copy of the July 13, '93, letter.

4 JUDGE SIPPEL: Are you going to move her Declaration
5 into evidence at this time?

6 MS. SCHMELTZER: Yes, Your Honor. I would like to
7 move her Declaration into evidence.

8 JUDGE SIPPEL: Objection? No objection. It's
9 received.

10 (Whereupon, the document marked for
11 identification as Four Jacks Exhibit
12 No. 32 was received into evidence.)

13 JUDGE SIPPEL: You're back to the letter now, which
14 has been marked for identification as --

15 MS. SCHMELTZER: Four Jacks Exhibit 30.

16 JUDGE SIPPEL: Okay. Four Jacks No. 30 for identi-
17 fication.

18 MS. SCHMELTZER: And, and this is the letter that
19 you were discussing at page 13 of your deposition. Do you see
20 that, Ms. Barr?

21 JUDGE SIPPEL: '94 or '93 deposition?

22 BY MS. SCHMELTZER:

23 Q I'm -- I'm sorry. Ms. Barr, this is the letter
24 you're discussing at paragraph 39 of your direct case testi-
25 mony, that's Scripps Howard Broadcasting Company Exhibit 36.

1 A Okay.

2 Q And if you would look at page 2 of the letter, it
3 said, "These notes..." meaning the Covington notes "...were
4 not retained in any files at WMAR-TV." Am I correct that as
5 of February 9, 1994, that statement was not accurate?

6 A Well, a copy was retained at WMAR-TV. The original
7 notes, as the June 25th memo indicates, were sent to Baker &
8 Hostetler; so, the notes were not retained. The copy of the
9 notes was retained, but I was unaware that it existed.

10 Q But a copy of the notes was at -- I mean, you knew
11 as of February 9, 1994, that there was a copy of the notes in
12 the files at WMAR-TV?

13 A When I found them I sure did know.

14 JUDGE SIPPEL: It's, it's 25 after 12. Do you have
15 much more? I'm, I'm willing to go forward if the witness is.

16 MS. SCHMELTZER: It's your pleasure, Your Honor.

17 JUDGE SIPPEL: Or, or --

18 MS. SCHMELTZER: Which -- however you would like
19 to --

20 JUDGE SIPPEL: Well, do you have a ballpark estimate
21 as to how much longer you have?

22 MS. SCHMELTZER: I, I don't at the moment. You
23 know, perhaps if we took a break I'd have a better idea.

24 MR. GREENEBAUM: Your Honor, if we could have an
25 understanding that we're going to quit at one, I'd say let's,

1 let's continue. But if we're going to go to 1:30, then I
2 don't think it's fair to the witness to keep her on the stand
3 this long.

4 MS. SCHMELTZER: It's, it's hard for me to estimate
5 because, you know, I don't know how many objections I'm going
6 to have or what else is going to come up.

7 MR. GREENEBAUM: Well, assume there aren't any
8 objections, how long do you have?

9 MS. SCHMELTZER: As I said, it's a little hard -- I,
10 I can't --

11 MR. GREENEBAUM: Well, I know what my next question
12 is, Your Honor. What time do you want us back?

13 JUDGE SIPPEL: Yeah. Why don't we -- can we get
14 back at 1:30? That's not much time, but can we --

15 MS. SCHMELTZER: Sure.

16 JUDGE SIPPEL: I mean, I don't care. I -- you want
17 to do it at 1:45? What would be your preferences?

18 MR. GREENEBAUM: 1:45 would be good, because we'd
19 like to go back to the office.

20 JUDGE SIPPEL: All right. We'll come back at 1:45.

21 MR. GREENEBAUM: Thank you.

22 (Whereupon, the proceedings were adjourned for the
23 luncheon recess at 12:25 p.m. to reconvene at 1:45 p.m.)
24
25

1 A F T E R N O O N S E S S I O N

2 JUDGE SIPPEL: We're on the record. You're still
3 under oath, Ms. Barr. Ms. Schmeltzer?

4 MS. SCHMELTZER: Thank you, Your Honor.

5 MR. GREENEBAUM: I have to, with the Court's per-
6 mission, leave at about 2:10 for a few minutes. The hearing
7 can go on. I'm not objecting. I just need to get in on a
8 conference call for a few moments, with the Court's
9 permission?

10 JUDGE SIPPEL: Certainly. Certainly. Ms.
11 Schmeltzer?

12 BY MS. SCHMELTZER:

13 Q Ms. Barr, do you, do you have your direct case
14 testimony in front of you?

15 A Yes, I do.

16 Q If I could turn your attention to page 13, paragraph
17 40?

18 A All right.

19 Q And you say there that at your deposition on July
20 29, 1994, you were directed to footnote six of your September
21 13, 1993, written direct testimony. Do you see that?

22 A Yes, I do.

23 Q Okay. And footnote -- that footnote is -- let me
24 just give you a copy of that footnote. I think it's an
25 attachment from your deposition exhibit.

1 JUDGE SIPPEL: That's on page 16, I believe, of the
2 September 13 testimony?

3 WITNESS: Paragraph 40?

4 JUDGE SIPPEL: Well, I'm sorry. I thought you were
5 at footnote 6. I have it.

6 MS. SCHMELTZER: I'm handing the witness a copy of
7 the footnote 6 that was referred to in paragraph 40, Your
8 Honor, and that footnote is part of Scripps Howard Exhibit 3,
9 and it's that page 16 of the hearing testimony that came in on
10 -- in November of 1993.

11 JUDGE SIPPEL: I have it. Thank you.

12 BY MS. SCHMELTZER:

13 Q Now, you see, Ms. Barr, "That footnote contained an
14 incorrect statement that Ms. Covington kept these notes in her
15 possession when she left the station.'" Do you see that?

16 A Yes, I do.

17 Q And in fact the notes were not created by Ms. Covin-
18 gton until 1992. Do you see that testimony as well?

19 A Yes, I do see it.

20 Q I would like you to look at footnote 6, at the
21 footnote I, I've just referred to, and you'll see the last
22 sentence says, "It did not occur to me to preserve Ms.
23 Covington's handwritten notes after our discussions."
24 My question is, is that statement correct?

25 A At the time --

1 MR. HOWARD: Objection. Could you specify when?

2 BY MS. SCHMELTZER:

3 Q Is that statement correct as of today, Ms.
4 Covington?

5 A I'm Ms. Barr.

6 Q I'm sorry -- Ms. Barr.

7 A As of today? Obviously, it is incorrect because we
8 now know that I did preserve the notes. But at the time that
9 this was written in September of 1993, that was true and
10 correct to the best of my knowledge.

11 Q So, you're telling us that on September 13, 1993,
12 and when you testified in the hearing of November of 1993, it
13 was your testimony that it did not occur to you to preserve
14 Ms. Covington's handwritten notes?

15 A To the best of my recollection, at the time that was
16 what I believed, that I had not preserved them.

17 Q That you had not preserved them?

18 A Saved them.

19 Q When did you prepare the hearing exhibit that was
20 introduced as Scripps Howard Exhibit 3? Do you recall when
21 you prepared that?

22 A It was just prior to when it was filed. I mean, it
23 was prepared in September, I believe.

24 Q In early September --

25 A Early September of 1993.

1 Q -- 1993. And that was approximately two-and-a-half
2 months after you wrote the June 25, 1993, memo to Mr. Dave
3 Roberts, wasn't it?

4 A Yes. Yes, that's about two-and-a-half months.

5 Q And that memo transmitted the original calendars and
6 the original Covington notes, is that correct?

7 A Among other things, yes.

8 Q And it also transmitted a post-it with some hand-
9 writing that's contained as Attachment D of your direct case
10 exhibit. Is that your handwriting, Ms. Barr?

11 A Yes, it is.

12 Q And you, you also stated previously that you had a
13 conversation with counsel about Ms. Covington's handwritten
14 notes, is that correct --

15 A I had that --

16 Q -- in approximately June 1993?

17 A Well, I had that prior to -- I must have had that
18 prior to the time that I wrote the June 25th memo.

19 Q So, is it your testimony that despite the fact that
20 you wrote a memo to counsel transmitting the original copy of
21 Ms. Covington's notes in June 1993 --

22 JUDGE SIPPEL: Not the original copy, you mean the
23 original?

24 BY MS. SCHMELTZER:

25 Q The original. The original of Ms. Covington's notes