

1 Loginow received, are you?

2 MR. ARONOWITZ: Me impeach a Commission employee?

3 MR. RILEY: Why not?

4 MR. ARONOWITZ: No.

5 MR. RILEY: No. I'm serious. I asked that
6 seriously, though.

7 JUDGE STEINBERG: I know you asked it seriously.

8 MR. RILEY: You're not --- I'm relying on the
9 first of his written reports to some extent as I had
10 anticipated you would be. You're not going to ask Mr.
11 Loginow whether he doubts the accuracy of the material in
12 his written report?

13 MR. ARONOWITZ: I expect Mr. Naftalin to do that.

14 MR. RILEY: No. But just let me deal with my
15 question. Do you -- you're not going to, are you?

16 JUDGE STEINBERG: Think about it.

17 MR. ARONOWITZ: I can't imagine that I would be.
18 But, I mean, to the extent, -- I mean, I'm not entirely
19 sure, and let me preface that by saying I intend to rely on
20 Serge's report. I intend to rely on Serge to the extent
21 that it may come up that he might have had a faulty memory
22 versus his report and if I'm in the position that I need to
23 rehabilitate him for a question that may have been asked, I
24 don't think I'm going to impeach him. I think I'm going to
25 try to point out that could it be consistent. I mean, I'm

1 not entirely sure what you're asking me.

2 MR. RILEY: Your Honor, what I was trying to get
3 at was we engaged in less discovery than Mr. Turro because
4 early on in discovery I concluded that many of the facts and
5 then we had a brief set of requests for admissions, which I
6 was satisfied with the Bureau's response to and we have the
7 Interrogatories to Mr. Loginow, which, again, I will say
8 this the Bureau's and Mr. Loginow's responses. But it is
9 important to me and I think it would have come up in our
10 Interrogatories to Mr. Loginow. It is important to me if
11 the Bureau now has information that will lead Mr. Aronowitz
12 in introducing evidence to dispute himself. Maybe impeach
13 is the wrong word, but to dispute the contemporaneous
14 written reports accuracy. That is Mr. Loginow's
15 contemporaneous report of his inspection of the Monticello
16 Station, which is the one of more interest to me.

17 If he's going to dispute its accuracy now, and
18 knows he's going to be doing that, that is, Mr. Loginow's
19 recollection today is clear and reliable and Mr. Loginow,
20 today, would testify that he was in error in what he put in
21 that written report, it's important that the parties know
22 that because proceeding to trial, we're relying on the
23 accuracy of those written reports. There's nothing the
24 Bureau has said to date that suggests that it has more
25 reliable testimony that those reports are erroneous.

1 There's nothing the Bureau said today on that point.

2 JUDGE STEINBERG: Mr. Aronowitz?

3 MR. ARONOWITZ: I think I agree with that.

4 MR. NAFTALIN: That was my initial comment, Your
5 Honor, which is, if there is evidence that would undermine
6 what we have already received from the Bureau, we'd like to
7 know about it, if there isn't, there isn't.

8 JUDGE STEINBERG: I could play evil judge and
9 write this down and say "I'm going to ask Mr. Loginow," but
10 I wouldn't do that to you guys.

11 MR. ARONOWITZ: I - I -- and I may be failing to
12 grasp what we're doing here, but I have no knowledge -- if
13 the question is, am I aware of anything that would suggest
14 to me that Loginow's report, contemporaneous reports are
15 inaccurate, I have nothing.

16 MR. RILEY: That's --

17 MR. NAFTALIN: Thank you.

18 MR. RILEY: That was all I was asking.

19 JUDGE STEINBERG: And, if you do find something,
20 you'll notify the other parties immediately?

21 MR. ARONOWITZ: I think I'm bound to do so.

22 JUDGE STEINBERG: Okay. Let's turn to now, 34, 5,
23 6 and 7. Now here we've got -- in 34 we've got a problem
24 with semantics and what's meant by program delivery
25 mechanism.

1 MR. NAFTALIN: I'm happy to address that. In Mr.
2 Loginow's -- this group deals with the two E-mails. In the
3 first E-mail or the that's dated -- when Mr. Loginow reports
4 about his July 31 observations, he said that, in effect, --
5 jump if I say this wrong -- but he said, in effect, "Gee,
6 juke box radio sounds really great on the air, better than
7 the last time I listened to it." This must mean he can't be
8 taking this off the air. He must be delivering the
9 programming via some other means like a telephone line.
10 Okay?

11 JUDGE STEINBERG: Let me read it.

12 MR. NAFTALIN: It's quoted in here.

13 JUDGE STEINBERG: I know. (Pause.) Okay. That's
14 the August 1st one and then the --

15 MR. NAFTALIN: Yes, the one dated August 1. Then,
16 the second one is when he actually gets into the stations
17 with Mr. Turro, looks, touches, listens, turns things on and
18 off.

19 MR. ARONOWITZ: Wait a minute. I'm not sure that
20 Mr. Loginow turned things on and off.

21 MR. NAFTALIN: He says they were turned on and off
22 while he was --

23 MR. ARONOWITZ: That doesn't mean that he did it.
24 See, this is the problem. He said what he said. Stipulate
25 to what he said. Here's what he said. Our spin on what he

1 said is a difficult stretch for me in admissions. I mean,
2 again, I don't see --

3 JUDGE STEINBERG: Oh, I see. What you're saying
4 in No. 34 basically Mr. Loginow thinks that the programming
5 was not received off the air, but did not observe anything
6 to support that conclusion.

7 MR. NAFTALIN: Correct.

8 JUDGE STEINBERG: That's what you're asking the
9 Bureau to admit to?

10 MR. NAFTALIN: Right.

11 JUDGE STEINBERG: Okay.

12 MR. ARONOWITZ: And I don't think we're in a
13 position --

14 JUDGE STEINBERG: Wait. How about on cross
15 examination, show him the August 1, 1995 E-mail and say,
16 "Okay. Mr. Loginow, what lead you to reach the conclusion
17 that it was not off the air? Did you observe anything --
18 did you observe him taking it off the air?" That's -- I'm
19 not going to require the Bureau to further answer that. You
20 can -- that's something that will wait for the hearing.

21 MR. NAFTALIN: We're certainly prepared to do
22 that, Your Honor.

23 JUDGE STEINBERG: Yes, I'd look forward to it.
24 And, Mr. Riley knows I'm not kidding. 35 and 36 I have the
25 same problem that I had with 7 and 8 with the "directly

1 through space," and I'm not going to require further answers
2 to that. No. 37, again, the same thing with -- the same
3 ruling with respect to No. 9. I think that asks for a legal
4 conclusion and I'm not going to require a further answer to
5 that.

6 The next group is --

7 MR. NAFTALIN: Your Honor?

8 JUDGE STEINBERG: Yes.

9 MR. NAFTALIN: Could I back up --

10 JUDGE STEINBERG: Sure.

11 MR. NAFTALIN: In No. 34 as part of the Bureau's
12 denial it says, "However, it appears that Loginow did not
13 test whether the Fort Lee translator received juke box radio
14 programming off the air," not the statutory term, his term,
15 from the Pomona translator and the Pomona translator
16 received juke box radio programming off the air from the
17 Monticello station and he made no conclusions in that
18 regard. I -- would you consider, in light of his E-mails --

19 JUDGE STEINBERG: Just cross examine him.

20 MR. NAFTALIN: Well -- okay.

21 JUDGE STEINBERG: Just cross examine him and
22 presumably that information came from Loginow and you can --
23 is that correct, Mr. Aronowitz? I see you shaking your
24 head?

25 MR. ARONOWITZ: Yes, Your Honor.

1 JUDGE STEINBERG: And, you know, you can formulate
2 questions working in what the Bureau said, I'm sure.

3 MR. NAFTALIN: Okay.

4 JUDGE STEINBERG: The next grouping is 48, 49 and
5 53 and I don't need to hear argument on that. I'm denying
6 you. I won't ask -- I won't require the Bureau to further
7 answer that, because I don't think that the requested
8 admissions are within the scope of the issue -- of any of
9 the issues of this proceeding and I wouldn't have answered
10 them to begin with.

11 Now, by far the largest group which is 3, 6, 14,
12 16, 17, 20, 21, 22, 23, 24, 27, 28, 32 and 46. I don't
13 think I missed any, and this was the grouping where -- where
14 it was where the Bureau said "Unknown to the Bureau" or
15 unknown plus some other stuff. I'll hear from Mr. Naftalin.

16 MR. NAFTALIN: We're very troubled, given -- we
17 discussed earlier the limited, the more limited than normal
18 ability to discover information from the Bureau. We're very
19 troubled when the Bureau will say it doesn't know
20 information which is under its control or it doesn't know
21 the knowledge of a witness which is under its sole control.
22 And, --

23 JUDGE STEINBERG: Which you don't have access to.

24 MR. NAFTALIN: And, to which we also don't have a
25 shot at finding out directly, so this is the posture we're

1 in in this proceeding. Having -- and, again, I would note
2 that Federal Rules on admission say that parties are
3 required to admit or deny to matters to which they
4 reasonably could know, and I believe the Bureau reasonably
5 could know what Mr. Loginow knows. Having said that, most
6 or all of these things are, again, directly from Mr.
7 Loginow's written statements. For instance, No. 14, when
8 they say they don't know if Loginow is on the top floor of
9 the building when he was conducting his test. He said he
10 was on the top floor of the building. I mean, that's a
11 written statement of his, contemporaneous -- I believe
12 contemporaneous written statement of his. If they don't
13 know that, why don't they know that? That seems like a very
14 simple straightforward factual statement contained in Mr.
15 Loginow's writing, the kind of thing -- it's not a legal
16 argument or anything else that could be admitted to.

17 MR. ARONOWITZ: Excuse me. Did you say that is
18 not a legal thing that we could admit to?

19 MR. NAFTALIN: No, it's not a legal --

20 JUDGE STEINBERG: It's not a legal argument.

21 MR. NAFTALIN: -- argument, like quoting of a rule
22 the difference are metaphysical difference between off the
23 air and directly through space.

24 JUDGE STEINBERG: Metaphysical difference, I see
25 you're a McLaughlin watcher. Right? Metaphysical

1 servitude. I caught you, didn't I?

2 MR. NAFTALIN: If that's plagiarism, I admit it.
3 These requests for admissions are, again, asking take Mr.
4 Loginow's written statements and ask that they be admitted
5 or denied and the Bureau says it didn't know, and given, we
6 don't have an opportunity to directly find these things out
7 other than what we've already been given, it's very
8 troubling to be told "I don't know".

9 JUDGE STEINBERG: Mr. Aronowitz?

10 MR. ARONOWITZ: Your Honor, we were asked
11 questions in this proceeding both Mr. Naftalin and Mr. Riley
12 directed Interrogatories to us, written Interrogatories and
13 we got the answers. We put them in the form as Exhibits.
14 Serge has statements as contemporaneous notes. Those have
15 been put into the record. What these -- what the Bureau --
16 the Bureau's knowledge of whether Serge was on top of the
17 building, on the side of the building, outside of the
18 building or hovering over the building with a helicopter is
19 not within the Bureau's knowledge. We could certainly --
20 one of the elements here is that we've been asked these
21 questions, and we've written the answers. They are what
22 they are.

23 In terms of admissions would require to locate Mr.
24 Loginow, going through, in essence, admissions that are
25 really follow-up Interrogatories that result in the very

1 disruptions to our activities that the Rules are designed to
2 avoid. Now, Mr. Loginow's statements say what they say.
3 The Bureau's admission as to those statements, we can't
4 admit it. We will stipulate that if he said it, that's what
5 he said.

6 JUDGE STEINBERG: Well, if you're stipulating to
7 it, then you're admitting it.

8 MR. NAFTALIN: We're satisfied if the Bureau
9 stipulates that when he was doing what he was doing he was
10 on the top floor of the building, we're there.

11 MR. ARONOWITZ: If that's what he said, then we
12 will stipulate to it.

13 JUDGE STEINBERG: Let me do this, --

14 MR. ARONOWITZ: I mean --

15 JUDGE STEINBERG: Okay. Let me do this. With
16 respect to those, the last group of Interrogatories, I will
17 ask that the Bureau revisit those -- not Interrogatories --
18 did I say Interrogatories --

19 MR. NAFTALIN: Admissions.

20 JUDGE STEINBERG: Request for admissions. I'll
21 require that the Bureau revisit them, and if you're more
22 comfortable with the word "stipulate," I'm sure that Mr.
23 Naftalin would be happy to have some kind of a document from
24 the Bureau saying "We will stipulate to the facts recited in
25 admission requests whatever they are."

1 And these -- how quickly do you think you -- is a
2 week from today too quick?

3 MR. ARONOWITZ: Your Honor, some of these --

4 JUDGE STEINBERG: And if you still have
5 objections, you know, I'm not precluding you from raising
6 legitimate objections to certain of the requests. I don't -
7 - yesterday when I was reviewing this I went through all the
8 requests and I'm not going to pretend to remember today what
9 they are, but if you have legitimate objections, for
10 instance, where there's a language change between what Mr.
11 Loginow said in his report and what the admissions request
12 is, then you can say "We will stipulate to the language used
13 by Loginow in his report, but not to this other language."
14 If there's a legal conclusion, you can object to the legal
15 conclusion, stuff like that. But what I would require you
16 to do would be to revisit these, and submit further
17 responses.

18 MR. ARONOWITZ: Your Honor, --

19 JUDGE STEINBERG: This is -- let me just -- this
20 is No. 3, No. 6, No. 14, No. 16 --

21 MR. ARONOWITZ: Excuse me, Your Honor.

22 JUDGE STEINBERG: Actually, if you look at the
23 bottom of page 14 of the Motion to Compel --

24 MR. NAFTALIN: We recited them.

25 JUDGE STEINBERG: You recited them, and don't

1 forget No. 3 which is off on a line by itself.

2 MR. ARONOWITZ: Your Honor, I hear what you're
3 saying and certainly I was re-read Mr. Loginow's statements.
4 Maybe Mr. Naftalin can help me in this word search that if
5 he sees the words and I miss the words, I will stipulate
6 that the words are there. But, let me suggest, for example,
7 admission No. 16, and this is going to guide me. I'm going
8 to use this as an example question for the following
9 question.

10 "On May 15 Mr. Loginow did not specifically -- did
11 not know specifically the location of the Fort Lee
12 translator receiving equipment, which was actually tuned to
13 receive the Pomona's translator's frequency." Now, unless
14 Mr. Loginow's statement says that he did not specifically
15 know the location of the Fort Lee translator receiving
16 equipment, isn't that just a follow-up Interrogatory, number
17 one. Number two, whether he knew the location of the
18 translator equipment, which was also actually tuned to the
19 Pomona's translator, seems to be a compound question that
20 assumes. It just makes assumptions that he Bureau can't
21 admit and, frankly, can't stipulate to. This is a question
22 for Mr. Loginow on the stand.

23 JUDGE STEINBERG: Is this a quote from one of his
24 reports?

25 MR. NAFTALIN: No, not entirely.

1 JUDGE STEINBERG: Is a part of it a quote from one
2 of his reports?

3 MR. NAFTALIN: This particular one, I don't think
4 so.

5 JUDGE STEINBERG: So then you object when you say
6 it's not a legitimate admission request, it's a follow-up
7 Interrogatory and if there's a motion to compel, I'll rule
8 on it and I'll probably --

9 MR. ARONOWITZ: I mean --

10 JUDGE STEINBERG: I mean, that's as far as I'm
11 willing to go.

12 MR. ARONOWITZ: To do some of these admissions --
13 let me rephrase that -- some of these admissions are not
14 admissions, they are just Interrogatories. So on the basis
15 of admission, the Bureau just can't admit or deny. It has
16 to -- these are more in the nature of Interrogatories and --
17

18 MR. NAFTALIN: Your Honor, we sought
19 Interrogatories on Mr. Loginow, the August 20th
20 Interrogatories were Mr. Loginow's responses, and in those
21 Interrogatories -- in our instructions with those
22 Interrogatories we asked, to sum it up, tell us every
23 possible thing that was involved with your inspection. And
24 he said what he said, and he didn't tell us -- excuse me --
25 where he was standing, what, you know, where he was. So,

1 rather than go round and round with this, if counsel asks
2 Mr. Loginow, "Did you know where this stuff was?" and he
3 says to him, "No, I didn't know where this stuff was," that
4 would be pretty good grounds for an admission response.

5 JUDGE STEINBERG: No.

6 MR. ARONOWITZ: No.

7 JUDGE STEINBERG: No. I mean, if he didn't tell
8 you where he was standing --

9 MR. NAFTALIN: Well, he did. He did tell us that.

10 JUDGE STEINBERG: Well, on the roof. Not in a
11 helicopter. I mean, if he didn't tell you where he was
12 standing, how can the Bureau admit -- that's a question, not
13 a -- maybe I'm confusing what admissions are, but I think
14 that's something you ought to ask Mr. Loginow when you have
15 an opportunity to ask him.

16 MR. NAFTALIN: Well, we asked -- we haven't gotten
17 it through Interrogatories.

18 MR. ARONOWITZ: But that doesn't mean that --

19 JUDGE STEINBERG: I offered you a second set of
20 Interrogatories and you didn't want it.

21 MR. NAFTALIN: That's true.

22 JUDGE STEINBERG: And you poo-pooing it today, too
23 because you want to confront him personally, and that's your
24 call.

25 MR. ARONOWITZ: And it's the Bureau's position

1 that that can't be done through admissions. It can be done
2 through Interrogatories, it can be done through hearing
3 testimony, but we can't in the form -- just because we're
4 calling them admissions, we're still in the position of
5 regurgitating the same questions and answers. They are, in
6 fact, Interrogatories, not admissions. The Bureau can't
7 admit to them.

8 JUDGE STEINBERG: Well, you know what my feelings
9 are about them. Let's revisit those admissions requests and
10 then we'll see where we go from there. I mean, we're
11 getting to the point where we've got to do -- do preparation
12 for the hearing and exhibits and everything, and I think
13 we've gotten all the factual information out that's going to
14 come out absent a deposition of Mr. Loginow. But you're
15 really -- you're entitled to responses. You know, responses
16 that don't say "unknown to Bureau," and if you need to go to
17 Mr. Loginow to get some of these answers, then go to Mr.
18 Loginow.

19 MR. ARONOWITZ: Well, then, these are, in fact,
20 Interrogatories and not admissions.

21 MR. RILEY: Your Honor, this isn't -- this isn't
22 my game because I don't have a motion to compel pending.
23 But we did respond to the Bureau's request for admissions
24 earlier and I have to say that I think Mr. Aronowitz, and it
25 may be the nature of the institution that leads him to this

1 response, but I could not have responded to the request for
2 admissions submitted by the Bureau by limiting it to my
3 knowledge. That is to say I had to go to the principles of
4 Monticello Mountaintop, the people with the personal
5 knowledge in order to formulate our responses, and I did so.
6 I assumed that was my burden.

7 In some of the requests for admissions submitted
8 by the Bureau which was their first document were in the
9 nature of questions. That is, "when did" -- not when did
10 but it would be did stated "WJUX began programming on X
11 date." Now, I surely did not know that, but Mr. Weise did
12 not know that either without checking his records. We then
13 responded to Bureau's request. To state a fact that counsel
14 believes to be true from other documents counsel has had in
15 front of him in order to bring it together in one summary
16 fact is really what I think request for admissions do. You
17 state in good faith what you believe to be the fact, and
18 opposing counsel then needs to determine whether it should
19 be admitted, denied or explained.

20 Mr. Aronowitz can't limit his response to his
21 personal knowledge, I think, unless he takes the view that
22 Mr. Loginow is a private witness. I think I could have
23 avoided admitting things if, in deed, the only way
24 Monticello Mountaintop would have had knowledge was to go to
25 a private witness who is not an employee of Monticello

1 Mountaintop but within the range of people who are
2 principles or employed by Monticello Mountaintop -- not
3 Monticello Mountaintop uniquely but any part of the
4 Commission proceeding has an obligation to determine whether
5 something is admissible or not.

6 JUDGE STEINBERG: Well, I would urge you to go to
7 Mr. Loginow, and if these are additional questions and you
8 can admit them, then admit them or stipulate to them.

9 MR. ARONOWITZ: Maybe my objection can be overcome
10 by just stipulating to them.

11 JUDGE STEINBERG: Okay. That's fine.

12 MR. NAFTALIN: We are trying to reach
13 stipulations, and I'd be delighted to bypass another round
14 on admissions if we reach stipulated responses. That's
15 great.

16 JUDGE STEINBERG: Well, why don't we make your
17 amended responses or further responses due a week from due a
18 week from today. Wait. Monday is a holiday. Is that going
19 to give you enough time, Mr. Aronowitz? I don't want to --

20 MR. ARONOWITZ: I believe so, but there's -- I
21 believe so. And, if not, I will be prompt in my advising
22 people, and any additional time I might need could probably
23 be counted in hours.

24 JUDGE STEINBERG: Is that the 15th?

25 MR. NAFTALIN: And, Your Honor, we wouldn't object

1 to a couple of more days than that right now. I mean,
2 that's just not a problem.

3 JUDGE STEINBERG: I mean, if you need more time,
4 ask the parties for more time and just write me a letter or
5 something. You don't have to file a motion.

6 MR. ARONOWITZ: The only wild card here is
7 literally finding Serge.

8 MR. NAFTALIN: We understand that he's hard to get
9 a hold of because he goes out on tug boats or something all
10 the time.

11 MR. ARONOWITZ: Extremely, and this is part of my
12 problem, you know, with the very disruptions. I mean, it
13 takes an enormous amount of time and effort. If it's
14 written Interrogatories I can send them to him, but to just
15 put him --

16 JUDGE STEINBERG: Well, --

17 MR. NAFTALIN: We would have no objections to
18 whatever.

19 JUDGE STEINBERG: Maybe you can get the Bureau to
20 hire a helicopter to take you out to his tug boat.

21 MR. ARONOWITZ: Oh, cool.

22 JUDGE STEINBERG: Anything else in the Motion to
23 Compel and related relief that we haven't covered, Mr.
24 Naftalin?

25 MR. NAFTALIN: I think that gets us to the end of

1 that road, Your Honor.

2 JUDGE STEINBERG: Okay. I'm going to issue an
3 Order just saying for the reasons stated on the record,
4 granted in part and denied in part and just say something
5 about the Bureau's further responses.

6 MR. RILEY: Your Honor, at the last prehearing
7 conference, you directed that Monticello Mountaintop by
8 October 15 report on Mr. Weise's progress and recuperation.

9 JUDGE STEINBERG: Right.

10 MR. RILEY: I can tell you now that unless
11 something wholly unexpected occurs between now and the 15th
12 the report will be good. He's recuperating well. He is
13 able to go back into his office now part-time and his
14 activity level is picking up, so I wholly anticipate giving
15 a good report.

16 JUDGE STEINBERG: Please give him our best and
17 it's remarkable.

18 MR. ARONOWITZ: He's probably healthier than all
19 of us. I have something that I'd like to bring up on the
20 record, Your Honor and then I'd like to bring up something
21 off the record that might be helpful for all of us. But,
22 first, on the record, I became aware of some knowledge
23 yesterday. I'm not really entirely sure of the significance
24 of it, but I would rather bring it out and we'll deal with
25 it however it needs to be dealt with. This is with respect

1 to transcripts.

2 By way of background, Mr. Luna and Mr. Gaghan and
3 Mr. Warshaw were deposed while I was out of town. When I
4 came back into town, apparently the transcript company had
5 talked to the Mass Media Bureau front office, which
6 apparently there were some discussions regarding the
7 transcripts for Mr. Luna and Mr. Gaghan. As best as I could
8 tell the Commission then ordered a copy of the transcripts.
9 As best as I can tell, the transcript people -- there was
10 some confusion -- I'm confused to this day what happened.
11 But apparently there was some misunderstanding or there was
12 something -- the transcript company was, I believe, hired by
13 Mr. Naftalin. I'm not sure.

14 MR. NAFTALIN: Yes, it was.

15 MR. ARONOWITZ: Called, and they were concerned
16 about our copies and they were going to send us a bill. My
17 front office got ridiculously concerned. I read the Rules
18 which say that the transcription service must file with the
19 Commission. So, I told the transcription --

20 JUDGE STEINBERG: Now, if you take a deposition,
21 the party that takes the deposition buys enough transcripts
22 to file them with the Commission. It's not the transcript
23 company.

24 MR. NAFTALIN: We paid the transcript company
25 whatever it was they asked for. Are you saying you need

1 copies?

2 MR. ARONOWITZ: No, no, no. Have they been filed,
3 the Luna and Gaghan transcripts been filed?

4 MR. NAFTALIN: I don't believe they have been
5 signed yet. Not to my knowledge. Have they been signed?

6 MR. HELMICK: From what I understand copies were
7 sent to them to review and if they had any changes, they
8 could make them. If they didn't have any changes and they
9 waived signing them and they were within 30 days they were
10 supposed to have been filed. To my knowledge, there has
11 been no changes.

12 MR. ARONOWITZ: It's my understanding from the
13 lady at the transcription service whose name is Annette
14 Thrasher -- please, you don't even want to ask -- that
15 apparently she sent us copies. I was talking day. She was
16 talking night. I sent her a copy of 1.318(f) of the Rules
17 that says he -- the officer which would be the transcription
18 company shall then securely seal the deposition in an
19 envelope, endorse with the title of the action, blah, blah,
20 blah together with notice and send it by certified mail to
21 the Secretary of the Commission. So she then sent me copies
22 and I then said fine, I've got copies. It ends up that
23 those were copies. Those weren't the official transcripts.

24 It's my understanding that the transcription
25 service is going to be contacting you to do whatever needs

1 to be done to get these filed. I am not sure that either I
2 or my front office confused this matter. This is a big
3 Bureau. You've got many chiefs and very few Indians.

4 I don't understand -- to this day, I don't
5 understand what this confusion is, but I will tell you that,
6 and I don't even know that this is germane to anything or
7 relevant. I just wanted to bring it up so everybody knew.
8 I learned yesterday that she has them ready to do, and I
9 don't know why she hasn't filed them, whether she's going to
10 go to you first, whether she's going to --

11 MR. NAFTALIN: I don't either.

12 MR. ARONOWITZ: Everybody wants those transcripts,
13 so I just wanted you to know what I know.

14 MR. HELMICK: I will bring up on other related
15 thing. I got a copy of the letter from the transcription
16 service indicating that they had sent Mr. Warshaw a copy of
17 his deposition to review, and he has never received it.

18 MR. RILEY: Since we're on the record --

19 MS. FRIEDMAN: You have it.

20 MR. RILEY: Similarly with Mr. Weise, I for a
21 number of weeks, I didn't want him digging into this case,
22 but last week I asked Mr. Weise whether he had received and
23 reviewed his transcript of his deposition, whether he had
24 noted any changes and would he send it through me because I
25 have not yet seen it and he hasn't received a transcript of

1 his deposition.

2 MS. FRIEDMAN: He has not?

3 MR. ARONOWITZ: I got one.

4 MS. FRIEDMAN: We have them.

5 MR. RILEY: Well, I don't doubt that you do. I'm
6 just telling you that Mr. Weise has never seen his
7 deposition. You don't have a -- you don't have a signed,
8 returned --

9 MR. ARONOWITZ: I'm feeling a lot better right
10 now, because I'll be honest with you. I apparently have
11 everybody's transcript except for Mr. Warshaw's.

12 MR. RILEY: Mr. Warshaw does not have that one.

13 MR. ARONOWITZ: No, and that's the one I'm dying -
14 - I heard the exchange between you two guys was great.
15 That's the one I'm dying to read. Again, I was away during
16 this, which is not a defense in my Bureau. That said, I am
17 concerned that everybody has transcripts. I mean, you know,
18 I don't control the transcription service as best I can
19 tell.

20 JUDGE STEINBERG: Other duties as assigned in your
21 job description. You're in charge of transcripts for the
22 Commission now.

23 MR. ARONOWITZ: But, in any event, and I'm now
24 glad that I brought it up because I don't know what we
25 should do. I don't know if we're permitted to get Xerox

1 machines cranking.

2 MR. RILEY: You have all the depositions.

3 MR. ARONOWITZ: I have everybody's except Mr.
4 Warshaw.

5 MS. FRIEDMAN: We don't have Warshaw's.

6 MR. RILEY: Mr. Weise's deposition was taken by
7 the Bureau's usual recording services. Is it Heritage?

8 MS. FRIEDMAN: Heritage.

9 MR. RILEY: It's interesting to me because the
10 only two that seem to come off without a hitch were Blavey
11 and Montana and they were taken by some guy from
12 Philadelphia that came down here.

13 MR. NAFTALIN: He couldn't swear the witness.

14 JUDGE STEINBERG: He didn't swear the witness.

15 MR. NAFTALIN: They had to bring in somebody else
16 to swear the witness.

17 MR. RILEY: He's not a notary in the District, but
18 his transcripts got to Blavey in Montana.

19 MS. FRIEDMAN: Does Turro has his?

20 JUDGE STEINBERG: Does this really have to be on
21 the record?

22 MR. ARONOWITZ: Apparently not. I just went on
23 the record to straighten it out.

24 JUDGE STEINBERG: Yes. You all can straighten
25 that out. Fortunately, I don't get involved in that.

1 MR. ARONOWITZ: Can I do one off the record?

2 JUDGE STEINBERG: Okay. Mr. Aronowitz, anything
3 further on the record?

4 MR. ARONOWITZ: No, I don't believe so, Your
5 Honor.

6 JUDGE STEINBERG: Mr. Naftalin?

7 MR. NAFTALIN: No, Your Honor.

8 JUDGE STEINBERG: Mr. Helmick?

9 MR. HELMICK: No, Your Honor.

10 JUDGE STEINBERG: Mr. Riley?

11 MR. RILEY: No, Your Honor.

12 JUDGE STEINBERG: Okay. I've got nothing further,
13 so we'll conclude the conference and we'll go off the record
14 now. Thank you very much.

15 (Off the record from 11:40 a.m. to 11:55 a.m.)

16 JUDGE STEINBERG: We're back on the record now.
17 While we were off the record, we were discussing some pretty
18 important procedural stuff, and I'd like to sort of
19 summarize. When we had the May 20, 1997 prehearing
20 conference everyone agreed that the parties would present
21 their entire direct cases in writing, and while we were
22 having a discussion off the record, I admitted that I kind
23 of blew that one in terms of what the Order should have said
24 was, to the extent that witnesses are within a party's
25 control the direct written cases will be in writing.