

1 Appreciate your testimony.

2 (Witness excused.)

3 JUDGE STEINBERG: Okay, now, let's --

4 MR. ARONOWITZ: Your Honor?

5 JUDGE STEINBERG: Yes?

6 MR. NAFTALIN: Seeing that Mr. Weis is excused, I  
7 think I could -- we have not yet had an opportunity to sit  
8 amongst ourselves, and if you want to take about five  
9 minutes for us to do that, we will --

10 JUDGE STEINBERG: Well, let's get the supplemental  
11 exhibit.

12 MR. ARONOWITZ: Identified?

13 JUDGE STEINBERG: Yes.

14 MR. ARONOWITZ: I mean, we just haven't had a  
15 chance yet.

16 JUDGE STEINBERG: I gave you a couple of three-  
17 minute breaks. I don't --

18 MR. ARONOWITZ: Well, are we on the record?

19 JUDGE STEINBERG: Let the record reflect humor.  
20 Sure.

21 MR. ARONOWITZ: Oh. We were all going to the  
22 bathroom at the time.

23 JUDGE STEINBERG: Okay, do you want to give it a  
24 separate number?

25 MR. NAFTALIN: I think that's advisable. It makes

1 sense.

2 JUDGE STEINBERG: Thirty-two is the next one.

3 MR. NAFTALIN: Yes, we're up to 32.

4 JUDGE STEINBERG: Let's go off the record and get  
5 everybody settled.

6 (Whereupon, a recess was taken.)

7 JUDGE STEINBERG: Let's go back on the record.  
8 Let's do the supplemental statement first, and I think I  
9 have already seen a typo or a misstatement in the first line  
10 of substance. Why don't you look at it?

11 MR. NAFTALIN: Oh, yes. It should be 1994.

12 JUDGE STEINBERG: So why don't you make the  
13 change.

14 MR. NAFTALIN: How did we do that? Thank you,  
15 Your Honor. This is what you get for the middle of the  
16 night.

17 JUDGE STEINBERG: Well, you're just testing me, I  
18 can see.

19 MR. NAFTALIN: No, I failed my own test is what  
20 happened here

21 JUDGE STEINBERG: Okay, why don't you identify the  
22 exhibit, please?

23 MR. NAFTALIN: Your Honor, I have with me what we  
24 would like to identify as Turro Exhibit No. 32. It is a  
25 four-page document entitled "Supplemental Statement of

1 Gerard A. Turro."

2 Your Honor has been kind enough to point out that  
3 on the very second line of this exhibit a date of 1995  
4 should be corrected to 1994.

5 This statement has been prepared by Mr. Turro and  
6 his counsel over the last -- scattered over a recent evening  
7 and briefly during lunch today, to try and provide on paper  
8 and provide in advance to opposing counsel on paper what  
9 would otherwise be his live oral testimony tomorrow  
10 concerning, for want of a better word, the history of what  
11 facilities he has had installed at the Fort Lee translator  
12 which were involved in receiving a signal off the air from  
13 the Monticello station.

14 We scrambled around to prepare this in an effort  
15 to, we hope, reduce the amount of time taken up by live  
16 testimony during the hearing, and confine it as much as  
17 possible, and to give opposing counsel, we think, a more  
18 efficient and better opportunity to cross-examine rather  
19 than having to hear it for the first time live and then  
20 figuring out what to do on the fly.

21 JUDGE STEINBERG: Okay, the document described  
22 will be marked for identification as Turro Exhibit No. 32.

23 (The document referred to was  
24 marked for identification as  
25 Turro Exhibit No. 32.)

1 JUDGE STEINBERG: And what I would suggest is not  
2 offering it today, let everybody sit on it overnight and  
3 then offer it tomorrow morning and that way everybody will  
4 have an opportunity to read it and formulate whatever  
5 objections they have, but at least it's identified and  
6 distributed.

7 Do you have two copies?

8 MR. NAFTALIN: I haven't given the original copy  
9 to the reporter, Your Honor.

10 JUDGE STEINBERG: Okay.

11 MR. NAFTALIN: Everyone else has received it.

12 THE COURT REPORTER: Thank you.

13 JUDGE STEINBERG: Okay, we'll just put off  
14 offering it until tomorrow. And I appreciate your preparing  
15 it in this way because that makes everybody's job easier.

16 Now, Mr. Aronowitz, you're going to have an  
17 engineer here in the courtroom tomorrow morning?

18 MR. ARONOWITZ: Yes, we're going to have an  
19 engineer here in the courtroom tomorrow.

20 JUDGE STEINBERG: Okay, is there any way to get a  
21 copy of Turro Exhibit 32 to the individual tonight?

22 MR. ARONOWITZ: I'm hoping that is the case.

23 JUDGE STEINBERG: Okay.

24 MR. ARONOWITZ: I imagine that is dependent in  
25 large measure in our getting out of here and being able

1 to -- I don't know what time the engineer leaves for the  
2 day.

3 JUDGE STEINBERG: Okay.

4 MR. ARONOWITZ: I will walk from here over to the  
5 main building and try to put this in his hands, a copy in  
6 his hands.

7 JUDGE STEINBERG: Okay. Now, there is another  
8 matter that requires my consideration, and let me turn the  
9 floor over to Mr. Aronowitz, and it concerns Mr. Luna,  
10 right?

11 MR. ARONOWITZ: That's right, Your Honor.

12 As we understand the purpose of the process of  
13 authentication that we will be going through, Mr. Turro will  
14 be trying to establish what the equipment was and how it  
15 worked and what results it produced during October of '94  
16 through approximately, let us just say for purposes of this  
17 July '95, August '95, some date like that. I don't know  
18 offhand.

19 Inasmuch as Mr. Luna -- we are concerned about Mr.  
20 Luna as a possibility of a rebuttal witness. Of course, he  
21 has been sequestered and has not been involved beyond the  
22 Judge's admonition thus far.

23 But Mr. Luna during his testimony testified as to  
24 the equipment in place in Dumont and what he did relative to  
25 the operation of that equipment. We believe that Mr. Luna

1 would be a relevant potential rebuttal witness.

2 It was with that thought in mind that we  
3 approached counsel to see if counsel would consent to Mr.  
4 Luna being in the room for any demonstrations inasmuch as he  
5 is the one with knowledge as to what he did when he was  
6 there, using what equipment, and would be there, and we  
7 would ask that Mr. Luna be permitted to attend the  
8 authentication and verification -- authentication and  
9 demonstration aspects of tomorrow's festivities.

10 JUDGE STEINBERG: Mr. Helmick, do you want to  
11 comment?

12 MR. HELMICK: I think Mr. Aronowitz has stated our  
13 position.

14 JUDGE STEINBERG: Okay. Mr. Naftalin?

15 MR. NAFTALIN: Your Honor, let me first take a  
16 moment and describe specifically for the record what we have  
17 in mind. I'm not sure we've done this before. I know we've  
18 talked about informally off the record with everyone.

19 JUDGE STEINBERG: Yes. Sort of show and tell.

20 MR. NAFTALIN: Exactly. And it's a show and tell  
21 of the following things. Mr. Turro has brought to  
22 Washington, it's sitting on a sofa in my office, a TC-8  
23 remote control unit, and he is prepared to testify that it  
24 is the identical model TC-8 remote control unit to the one  
25 that has been discussed in this proceeding and about which

1 there is testimony in this proceeding. He is so prepared to  
2 testify. He couldn't bring the one that's actually in  
3 operation because it's in operation.

4 A TC-8 remote control unit consists essentially of  
5 two pieces; a piece that lives in the studio, in the Dumont  
6 studio, and its corresponding piece that's connected out  
7 there to the transmitter.

8 In addition, Mr. Turro has brought the famous  
9 strobe light, the exact same famous strobe light which has  
10 been testified about by several witnesses. It has not been  
11 in operation for quite some time. Fortunately, he still  
12 owned it so he was able to bring exactly that.

13 And he has also with it a small, I will describe  
14 it in my own words because I have seen it, a little red  
15 light which would show when something is turned on or off.

16 JUDGE STEINBERG: Oh, okay, just the circuit  
17 thing.

18 MR. NAFTALIN: Exactly. That would represent like  
19 a transmitter or anything else on/off. Plus he's got a  
20 small handful of tools.

21 JUDGE STEINBERG: Because I was going to bring my  
22 little screwdriver and wire.

23 MR. NAFTALIN: Mr. Turro, in fact, has brought  
24 three or four small tools and an extension cord and some  
25 odds and ends to make this thing work.

1           So he's prepared to state as of his own personal  
2 knowledge, which shouldn't be disputed, the exact same model  
3 of TC-8 about which we've had testimony by more than one  
4 witness.

5           And then we would propose to admit it through him,  
6 admit it for demonstration purpose. He would then like to  
7 demonstrate pushing the buttons, turning things on and off,  
8 show the channels, the buttons, the indicator lights, and  
9 also while it's here provide testimony that at least in part  
10 would resemble rebuttal testimony about what's been said  
11 about TC-8 units by other witnesses. I think a reasonable  
12 part of his case.

13           That's what we plan to do, that's what we -- and  
14 to answer Your Honor's questions and be available for cross-  
15 examination once he's finished from everyone and anyone.

16           Now, Mr. Aronowitz has suggested to me privately a  
17 few minutes ago and now on the record that Mr. Luna should  
18 be present for that demonstration because it would be more  
19 efficient to have him here since he's a potential rebuttal  
20 witness to Mr. Turro's demonstration and testimony related  
21 to his demonstration about the TC-8.

22           Now, I believe --

23           JUDGE STEINBERG: Let me just --

24           MR. NAFTALIN: Sure.

25           JUDGE STEINBERG: -- understand this. Mr. Turro

1 is going to demonstrate how the TC-8 operates.

2 MR. NAFTALIN: We will put it down here.

3 JUDGE STEINBERG: So if you push the up button,  
4 see if it goes to number five. If you push the down button,  
5 we will see if it goes to number one, or if has to go  
6 through two, three and four to get to five.

7 MR. NAFTALIN: I would ask Your Honor to withhold  
8 that kind of thought until you actually see it in use.

9 JUDGE STEINBERG: Okay.

10 MR. NAFTALIN: But, yes, he will push buttons,  
11 answer questions, show lights

12 JUDGE STEINBERG: That's one of the things I would  
13 like to know.

14 MR. NAFTALIN: Exactly.

15 JUDGE STEINBERG: You know, inquiring minds and  
16 all that.

17 MR. NAFTALIN: You bet.

18 JUDGE STEINBERG: And my understanding is that the  
19 Bureau and Universal want to have Mr. Luna here to observe  
20 what Mr. Turro is doing to see if Mr. Turro is accurately  
21 describing the way those things functioned in operation.  
22 And so he -- okay. So am I correct in both -- did both of  
23 my statements so far, that Mr. Luna is going to be here to  
24 watch Mr. Turro?

25 MR. ARONOWITZ: I would only add, Your Honor, that

1 because Mr. Luna was employed there in the years in  
2 question, he could also potentially testify as or be there  
3 to rebut testimony as to what was located in the studio at a  
4 particular time in addition to the way it may or may not  
5 have functioned.

6 JUDGE STEINBERG: Okay.

7 MR. NAFTALIN: Now, is Bureau counsel suggesting  
8 that Mr. Luna is some kind of an expert with respect to this  
9 sort of equipment? That's what I don't understand.

10 MR. ARONOWITZ: Mr. Aronowitz is suggesting that  
11 Mr. Luna testified as to the equipment that was in the  
12 studio in '94, and how he used it.

13 JUDGE STEINBERG: Okay.

14 MR. NAFTALIN: I don't imagine that that Mr. -- I  
15 can't imagine that Mr. Luna would be offering any expert  
16 testimony.

17 MR. NAFTALIN: That's not what I asked.

18 Do you anticipate treating him as an expert on  
19 TC-8 remote control units and the things connected to it? I  
20 just need to know that to be able to respond.

21 MR. ARONOWITZ: I can't conceive of -- let me  
22 check with co-counsel and see if he has any conceptions.

23 (Pause.)

24 MR. ARONOWITZ: Oh, his experience is limited to  
25 what he saw. But in terms of what he might testify to, if a

1 proper foundation would be laid, if not, it would be  
2 excluded.

3 MR. NAFTALIN: Does that --

4 MR. ARONOWITZ: I can't imagine -- he will be  
5 testifying as to what he saw and what he operated.

6 MR. NAFTALIN: So he would be testifying as a fact  
7 witness; is that correct? Not an expert witness?

8 MR. ARONOWITZ: Well --

9 MR. NAFTALIN: I mean what he saw --

10 JUDGE STEINBERG: That's what his testimony -- if  
11 he was allowed to testify further, that's what his testimony  
12 would be limited to unless he was qualified as an expert,  
13 which he may -- well, we know what his technical background  
14 is because we heard it.

15 MR. NAFTALIN: Okay Right.

16 Well, Your Honor, let me make these points then.  
17 I object to having Mr. Luna present for Mr. Turro's  
18 testimony about the TC-8 unit unless Your Honor is going to  
19 rule that he would be available -- that he would be a  
20 rebuttal witness afterwards.

21 If he was going to be a rebuttal witness anyway,  
22 then I agree, there would be some efficiency about letting  
23 him see it rather than just having to do it twice.

24 However, now let me address the point of whether  
25 Mr. Luna should be a rebuttal witness ultimately or not on

1 the subject of TC-8s, and if there are any other subjects, I  
2 would like to address that later.

3 Mr. Luna is a direct witness of the Bureau. Mr.  
4 Luna was available to them over a lengthy period of time to  
5 provide direct testimony, obviously including his  
6 observations and experiences in the Dumont studio in  
7 whatever way the Bureau wanted to use his experience and his  
8 statement, in fact, both statements that he's provided in  
9 this proceeding, the 1995 statement and the 1997 statement,  
10 which adopts it and amplifies upon it, recount Mr. Luna's  
11 observations and experiences

12 The Bureau and Universal had a full and fair  
13 opportunity to include as much or as little of his knowledge  
14 in his direct statement as they chose. Their opportunity  
15 for providing his knowledge and experience of anything in  
16 the Dumont studio, be it equipment or be it observations,  
17 has passed, and he has had a chance to look at the technical  
18 manual. He, in fact, observed pictures. I mean, all that  
19 is here. He has said everything that they have had an  
20 opportunity to have him say about what he understood and how  
21 he understood it. Therefore, that part of the case should  
22 be done.

23 We now have Mr. Turro's rebuttal of what Mr. Luna  
24 said, which could not have been done until we finished Mr.  
25 Luna's cross-examination. I have not heard anything the

1 Bureau -- Bureau counsel to say now which would justify the  
2 extraordinary, or satisfy the extraordinary burden of  
3 bringing this witness back as a rebuttal witness to  
4 essentially recount his knowledge and experience which he  
5 has already recounted, or at least had a full and fair  
6 opportunity to have recounted

7 It's a burden, it's unnecessary, and I think it's  
8 procedurally inappropriate.

9 JUDGE STEINBERG: Response and then I will rule.

10 MR. ARONOWITZ: Your Honor, if -- point one, if --

11 JUDGE STEINBERG: You wanted to add something?

12 MR. NAFTALIN: I would not object if they had a  
13 true expert who wanted to come in and observe. I mean, if  
14 Mr. LaFollette or Mr. Cohen were here, they are free to  
15 observe that. I don't have a problem with that testimony,  
16 someone we would recognize as a technical expert who might  
17 want to speak to the technicalities, as necessary. That's  
18 something we don't recognize Mr. Luna as.

19 JUDGE STEINBERG: Okay.

20 MR. ARONOWITZ: First of all, Mr. LaFollette  
21 cannot testify to what was in place at the time. Second of  
22 all, if we are closing -- if we are sticking to our guns,  
23 then I would move for this statement to be excluded from the  
24 record because certainly Mr. Turro, in the presentation of  
25 his rebuttal case, or at any time, could come in with a

1 showing as to what was in place at the time. In fact, some  
2 exhibits were accepted subject to verification, which was  
3 not done, and tomorrow will be the first time that is done.

4 So to say that, you know, in the absence -- that  
5 we need to go through every piece of equipment in existence  
6 to determine --

7 JUDGE STEINBERG: You're talking to Mr. Naftalin.

8 MR. ARONOWITZ: -- whether it was in place at  
9 Dumont through Mr. Luna, I mean. If we're doing this  
10 efficiently, you know, we can wait. We can have Mr. Luna  
11 sit outside. We can then have it, you know, at the point  
12 where somebody say this was in place at the time. Mr.  
13 LaFollette certainly can't answer that question, and he  
14 can't address authentication issues. That to turn around  
15 and suggest that we accept this piece of paper --

16 JUDGE STEINBERG: That paper hasn't been offered  
17 yet, and that's -- what do you mean by authentication?

18 MR. ARONOWITZ: Okay, as I understand the  
19 authentication process --

20 JUDGE STEINBERG: The authentication is -- do you  
21 mean by authentication Mr. Turro is going to put a TC-8  
22 somewhere in a room and he's going to say this is the exact  
23 same model that was in the studio from 1994 till today, and  
24 Mr. Luna is going to watch that and say this is or isn't the  
25 same model that was in the studio? Is that what you mean by

1 authentication?

2 MR. ARONOWITZ: If, as Mr. Turro -- if, as counsel  
3 to Mr. Turro suggests, that it is the exact same piece of  
4 equipment and he comes in here --

5 JUDGE STEINBERG: Same model. Same model.

6 MR. ARONOWITZ: Same model.

7 JUDGE STEINBERG: Not the same piece of equipment.

8 MR. ARONOWITZ: All right, the same model.

9 Certainly Mr. Luna would be able to agree whether that's the  
10 same model or not, and would need no expertise in doing  
11 that.

12 JUDGE STEINBERG: Let's forget about expertise.

13 MR. ARONOWITZ: Okay, as I --

14 JUDGE STEINBERG: That's a term of art. Don't use  
15 that again.

16 MR. ARONOWITZ: As I understand authentication,  
17 there are two elements of authentication. There is the fact  
18 that the equipment was in place at the time it was claimed,  
19 where it was claimed; and second, that it operated in a  
20 fashion as claimed by the proponent.

21 I suspect both of those elements will be brought  
22 to bear -- will be discussed tomorrow during this  
23 authentication process, and certainly we wouldn't expect Mr.  
24 Luna to be testifying as an expert, but merely as a rebuttal  
25 witness, if appropriate, as to whether --

1 JUDGE STEINBERG: Okay.

2 MR. ARONOWITZ: -- that piece of equipment existed  
3 and that piece of equipment worked that way on that  
4 particular day as claimed.

5 JUDGE STEINBERG: Okay, here is what I'm going to  
6 do. I think, as of this moment I'm not going to ask you to  
7 commit to putting anyone on as a rebuttal witness, actually,  
8 surrebuttal. And surrebuttal, I don't usually allow  
9 surrebuttal because that's just too far down the road. But  
10 I think that it would not be unreasonable to have Mr. Luna  
11 observing the way Mr. Turro demonstrates the operation of  
12 the equipment sort of as a check, because I'm supposed to  
13 decide based upon what I heard. If we have, to put it  
14 mildly, some differences in testimony here relating to  
15 facts, and I'm going to have to be the one to decide that,  
16 and I'm not an expert. You push the up button, something  
17 goes up. You push the down button, something goes down.  
18 And I don't think it would be unreasonable to have Mr. Luna  
19 sitting and observing the demonstration part of the  
20 testimony as to how this thing operated.

21 And if -- and then after the demonstration part of  
22 it, this is how it -- this is what was there, this is how it  
23 worked, maybe we can just separate the examination into, if  
24 you can separate the examination to demonstration, then we  
25 can have the direct and all the cross and redirect and

1 recross, and then we excuse Mr. Luna, and get on with the  
2 rest of it. I don't think that's unreasonable.

3 Mr. Riley, I apologize. Did you --

4 MR. RILEY: I have no comments on this. I don't  
5 even understand the subject matter, Your Honor.

6 JUDGE STEINBERG: It will be a box here with  
7 buttons on it that we push --

8 MR. RILEY: I understand that much.

9 MR. NAFTALIN: I have a question, procedural  
10 question.

11 JUDGE STEINBERG: Sure.

12 MR. NAFTALIN: If we had never mentioned a  
13 demonstration of bringing in the equipment to make it easier  
14 to understand, would Mr. Luna still have a right to listen  
15 to Mr. Turro's testimony if it was simply oral testimony?

16 MR. HELMICK: That's an interesting question, Your  
17 Honor.

18 JUDGE STEINBERG: It's hypothetical.

19 MR. NAFTALIN: Well, it's not. We don't have to  
20 bring this in. We can withdraw the demonstration.

21 JUDGE STEINBERG: Well, what's going to happen,  
22 let me tell you what's going to --

23 MR. NAFTALIN: It hasn't happened.

24 JUDGE STEINBERG: I want to see the demonstration  
25 as long as you -- I mean, you've built this up for two weeks

1 and now I don't want to be disappointed.

2 Okay, Mr. Turro, let's say you go home tonight and  
3 prepare a statement, and you say this is how the TC-8  
4 operated, the pictures in the exhibit, whatever. Did United  
5 States have the digital readout?

6 MR. TURRO: May I say something?

7 MR. NAFTALIN: He's very anxious to say something.

8 MR. HELMICK: I don't think so.

9 JUDGE STEINBERG: You know, let's say you go home  
10 and reduce all this to writing. What's going to happen is  
11 they're going to call up Mr. Luna and in essence say is this  
12 the way it worked. So what difference does it make? We may  
13 has well have the demonstration and have him here watching.

14 Did you want to add something?

15 MR. NAFTALIN: Well, Your Honor --

16 JUDGE STEINBERG: I just don't think that what --  
17 I don't think that what they are asking to do is  
18 unreasonable.

19 MR. NAFTALIN: Let me ask one more question.

20 JUDGE STEINBERG: And I think it is more  
21 efficient. And if there is rebuttal to that, I would like  
22 to do it immediately.

23 MR. NAFTALIN: Let me ask what the grounds for  
24 rebuttal would be. Mr. Luna had a statement, he's had his  
25 cross-examination. Mr. Turro puts in his statement, he puts

1 in his statement. Let's say there is a very likely chance  
2 that Mr. Turro is going to explain something about the TC-8,  
3 the way it did something or didn't do something, which Mr.  
4 Luna either would say he didn't know about or he might say  
5 that's not what I understood

6 Now, would he just be able to hop up on the stand  
7 and then say some more? I mean that's what I don't  
8 understand. Does this automatically mean if he has in his  
9 mind some disagreement with what he sees, bang, he gets to  
10 be a witness again? That's what I don't understand.

11 JUDGE STEINBERG: Well, I would think if it's  
12 something that he hasn't seen or that he doesn't understand,  
13 that you would be able to rip him to shreds.

14 MR. NAFTALIN: Well, that's what I'm asking. He's  
15 going to get an automatic right to stroll up to the stand  
16 and testify some more?

17 JUDGE STEINBERG: Well, it depends on what he's  
18 got to say.

19 MR. ARONOWITZ: How do we know that?

20 JUDGE STEINBERG: Well, we will ask him.

21 MR. ARONOWITZ: We don't know what is going to  
22 be --

23 JUDGE STEINBERG: Talk to me. Don't talk to each  
24 other.

25 MR. ARONOWITZ: Your Honor, this is speculative.

1 We don't know what -- we don't know what is going to be  
2 said.

3 MR. NAFTALIN: Exactly, it is speculative. That's  
4 my point.

5 JUDGE STEINBERG: Okay. You have my ruling.

6 MR. NAFTALIN: Okay

7 JUDGE STEINBERG: Nobody likes it, so it must be a  
8 good ruling

9 (Laughter.)

10 JUDGE STEINBERG: Except Mr. Riley --

11 MR. RILEY: That's okay, with me.

12 JUDGE STEINBERG: And you are absolutely right.  
13 If you decide overnight that you don't want to haul the  
14 equipment in and you want to do it orally, then we have  
15 another question. And at that stage of the game I would say  
16 maybe Mr. Luna wouldn't be allowed to stay in the room.

17 MR. NAFTALIN: I mean we truly thought this would  
18 be helpful for Your Honor to see this here thing, you know.

19 JUDGE STEINBERG: Well, I think it would be,  
20 because I like to push buttons

21 MR. NAFTALIN: But if it opens the door for  
22 another round of testimony --

23 JUDGE STEINBERG: It will be one witness. The  
24 most you will have is one witness.

25 MR. HELMICK: Your Honor, can I open the door to

1 one other thing?

2 JUDGE STEINBERG: Sure.

3 MR. HELMICK: As long as Mr. Luna is going to be  
4 here for the demonstration, I would take the position that,  
5 you know, not that he get up and testify that day, but it  
6 would be more economical and efficient that he should be  
7 able to hear all of Mr. Turro's testimony.

8 I remind Your Honor that yesterday they brought in  
9 essentially as part of their case various rebuttal witnesses  
10 that had been given Mr. Luna's statement.

11 JUDGE STEINBERG: Okay. I know where you are  
12 going and I'm going to deny that request, the same reason I  
13 did yesterday at the time that the statements were shown to  
14 the -- no sequestration -- shown to the witnesses,  
15 particularly Mr. Garland, that the specific objection and  
16 motion to strike related to Mr. Garland's testimony, there  
17 was no objection or motion to strike relating to other  
18 individuals. I suppose there could have been, but there  
19 wasn't. And at the time that Mr. Garland viewed Mr. Luna's  
20 statement and prepared his own statement was several days  
21 prior to the filing of the -- even of the first piece of  
22 paper that -- I guess, the motion for protective order or  
23 something, and there was no sequestration order in effect.

24 There is now and this is -- this little narrow  
25 portion is an exception to it. And I mean, I'm just having

1 second thoughts as to whether I'm going to permit  
2 surrebuttal to begin with because this is just opening  
3 possibilities that I hadn't even thought of.

4 But I think it would be helpful to the record to  
5 have the demonstration along the lines of the way you've  
6 described it. But it's your call. I'm certainly not going  
7 to hold -- if you decide that you want to do it some other  
8 way, I'm certainly not going to take it out on you in an  
9 initial decision. I'm not saying what a reviewing body  
10 would do.

11 MR. NAFTALIN: I understand, Your Honor.

12 JUDGE STEINBERG: But, I mean, it's your shot.  
13 It's your call. You do whatever you think is best in the  
14 best interest of your client in your case. But I'm just --  
15 the ruling that I am making with respect to Mr. Luna is  
16 basically for efficiency purposes; that I think it will be  
17 far more efficient for him to see, especially when you're  
18 having a hands on demonstration with buttons and everything,  
19 than it would be to have somebody talk to him or call him up  
20 on the phone and say, "Hey, you know, that little button,  
21 that little white button with the up arrow to the right of  
22 the digital readouts, this is what Mr. Turro said it did.  
23 Is that what you think it did?" It's just easier to do it  
24 the other way, in my opinion.

25 Okay, anything further?

1 MR. NAFTALIN: No, Your Honor.

2 JUDGE STEINBERG: Okay. Then how about 9:00  
3 tomorrow again? So we will be in recess until then.

4 MR. RILEY: Thank you Your Honor.

5 (Whereupon, a recess was taken.)

6 JUDGE STEINBERG: Back on the record. I decided  
7 to go back on the record because there is another statement  
8 that I want to make. And that is, that if I do allow the  
9 surrebuttal, it's not going to open up -- if I do allow the  
10 surrebuttal and it's been a witness that's appeared here  
11 before, that that does not thereby open up his entire  
12 statement for reexamination.

13 What the surrebuttal, if any, will be strictly,  
14 strictly, strictly limited to things that were not, things  
15 that were new since the examination and cross-examination of  
16 that witness. It's very narrow. So that you can't, you  
17 can't start saying, well, is this the button that you were  
18 referring to in your -- well it's got to be new stuff. We  
19 are not going to re-plow old ground. Understood?

20 MR. ARONOWITZ: Absolutely, Your Honor.

21 JUDGE STEINBERG: Mr. Helmick?

22 MR. HELMICK: No reason why we would want to do  
23 that.

24 JUDGE STEINBERG: Okay. Mr. Naftalin?

25 MR. NAFTALIN: Thank you. It's understood.

1 JUDGE STEINBERG: Okay. In recess. We can go off  
2 the record now.

3 (Whereupon, at 3:38 p.m., the hearing was  
4 recessed, to resume at 9:00 a.m., on Wednesday, December 10,  
5 1997.)

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**REPORTER'S CERTIFICATE**

**FCC DOCKET NO.:** MM Docket No. 97-122

**CASE TITLE:** Gerard R. Turro

**HEARING DATE:** December 9, 1997

**LOCATION:** Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 12/18/97

Shawn R. Brown  
Official Reporter  
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**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 12/18/97

Gregory S. Sosa  
Official Transcriber  
Heritage Reporting Corporation

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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 12/18/97

Karen Adams  
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