

1 a failure to make additional capital contributions.

2 Again, just a very difficult time within the
3 partnership organization. We could have filed an ownership
4 report, but we selected collectively, meaning the team, the
5 group of experts, recommended that we file the letter and I
6 signed the letter. To tell you the truth, again, Mr. Cole,
7 you haven't asked this question, but I actually did not
8 prepare this letter. I signed it but it was not prepared by
9 me.

10 Q Mr. Hart, who prepared this letter?

11 A I honestly don't recall who prepared it. It was
12 prepared in our office. I suspect it was Dale Harburg and
13 Jack Whitley, but I'm not sure. I can suggest to you -- I
14 can tell you that I didn't prepare it, because the typist,
15 BJL, is not, are not initials that I can -- that I'm
16 familiar with.

17 And, as you've seen earlier letters, have other
18 initials by it. This BJL was somebody else's secretary, I
19 guess, at the time who typed this letter. I signed it and I
20 felt comfortable doing so. I did feel comfortable insofar
21 as this was a sufficient statement of ownership, you know,
22 set forth who the owners were and what percentages they had
23 and so forth and so. We did say we were going to file a
24 more complete report on the form as soon as possible
25 thereafter.

1 Q Did you file a more complete copy of the form on
2 the form thereafter?

3 A Yeah, we did. I understand we did.

4 Q Do you know when?

5 A It was some months after. I'm not sure of exact
6 dates, but it was a number of months after that.

7 Q Could it have been as much as 15 months after?

8 A It could have been, I guess. I left the firm -- I
9 left the firm a year later, or a little more than a year
10 later.

11 Q You indicated at some point in your response on
12 the last question, I believe, and please feel free to
13 correct me if I'm wrong, that, in your view, the partnership
14 structure of Astroline was in flux as a result of the June
15 25, 1987 D.C. Circuit order which appears as Shurberg 90.
16 Is that a correct characterization?

17 A Well, it's disarray, very contentious among the
18 partners, as I recall it.

19 JUDGE FRYSIK: Is the answer yes?

20 THE WITNESS: The answer was a yes, Your Honor.

21 BY MR. COLE:

22 Q But, the partners remained the same, did they not?

23 A They may have been locked into this bad deal.
24 They couldn't get out.

25 Q So, they were the same, with the exception of Mr.

1 Joel Gibbs, who probably took the easy way out.

2 A Well -- yeah, I think that the group remained
3 essentially the same. Apparently, some of these -- I don't
4 know. I guess the group did stay substantially the same.

5 Q So, while you might have perceived tension within
6 the organization, there were no changes, were there?

7 A They couldn't get anybody to come in. Nobody
8 wanted to invest in this deal, particularly after we had
9 lost --

10 JUDGE FRYSIAK: Just answer the question.

11 THE WITNESS: No, no one left and -- well, no one
12 else, substantial investors, came into the deal at that
13 time.

14 BY MR. COLE:

15 Q Did any substantial investors come into the deal
16 at any time?

17 A Well, ultimately, the licensee had to file for
18 bankruptcy.

19 Q So, the answer is no?

20 A I really don't know that question, what happened
21 after the bankruptcy and things like that. I'm not clear on
22 it.

23 Q So, when you refer in your August 3 letter, in the
24 first paragraph, to some internal reorganization, no
25 internal reorganization had occurred as of August 3, 1987,

1 had it?

2 A There were discussions, but nothing that occurred,
3 no.

4 Q Nothing occurred thereafter, did it?

5 A Not in terms of consummation. There were
6 discussions, negotiations, but no deal was ultimately made,
7 unfortunately.

8 Q You also mentioned the concern about Mr. Gibbs and
9 the death of Mr. Gibbs as having some adverse impact on your
10 ability to prepare the 323 form. Do you remember that
11 testimony?

12 A Yes, I thought we just went over that.

13 Q Did you ever mention that to Ms. Harburg?

14 A That Joel Gibbs had died?

15 Q No, that Mr. Gibbs' death created problems for
16 preparing an ownership report?

17 A I think she was aware of his passing and was also
18 aware, probably better than I, of not being able to get
19 information from Joel Gibbs' estate. I remember that being
20 an issue within the firm.

21 Q Can you explain to me then, why, Mr. Hart, Ms.
22 Harburg sent Mr. Ramirez a copy of a draft ownership report,
23 suggesting that he sign it and date it and send it back?

24 A I told you we could have approached this situation
25 that way.

1 Q Excuse me, Mr. Hart, that's not my question. My
2 question is, can you explain to me why if Ms. Harburg
3 believed the form was inadequately completed, if there was
4 information which had been left out or was not available,
5 why she, as the expert ownership report person, felt it
6 appropriate to send to Mr. Ramirez a form completed with a
7 request that he review it and sign it and date it and send
8 it back to her for filing? That's my question.

9 A The true answer is, I don't know, because I don't
10 recall Ms. Harburg telling me that. It was still a draft
11 document, that is for sure.

12 Q I believe you testified you spoke with Carter
13 Bacon about the ownership report form which had been drafted
14 by Ms. Harburg and sent out on 7/31, did you testify to
15 that?

16 A Mr. Bacon was in the loop all along, as your
17 documents reflected, it's my recollection. You know, it's
18 nothing more -- that these documents would still be
19 prepared, still be -- he's involved in the process. The
20 answer to your question is yes, I did speak to him.

21 Q Do you know whether Mr. Bacon was concerned about
22 the possibility that the ownership report might be deemed to
23 be, to constitute an admission that certain entities
24 controlled Astroline that shouldn't have controlled
25 Astroline?

1 A Upon review of the letter that he wrote me, it
2 indicates his concern about a misimpression or an erroneous
3 interpretation that some information that might be lead one
4 to believe that, but that was just his view and that wasn't
5 my view. It was obviously very clear to me that Rich
6 Ramirez was always in control, total control, of this
7 enterprise.

8 Q Now, did you notify Mr. Bacon that you were
9 correct and his view was incorrect?

10 A I'm not sure. I can't really tell you what his
11 state of mind was. I know I was very clear on that and I
12 think --

13 JUDGE FRYSIAK: No, the question was whether you
14 related to him your view as opposed to his view?

15 THE WITNESS: Oh, yes, yes, I assessed Mr. Bacon
16 that I felt comfortable with the structure of the
17 organization, with the documents, and everything else. I
18 mean, I was the person responsible for the FCC's activities.
19 I knew about the ongoing process we talked about earlier at
20 the FCC involving limited partners, and I also knew the
21 facts, ultimately, that Rich Ramirez was always in control.
22 It was not a sham, never was, never supposed to have been a
23 sham.

24 BY MR. COLE:

25 Q When you refer to the ongoing process at the FCC,

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1 are you referring to the FCC's development of the FCC's
2 policies concerning insulation of limited partners from
3 general partners and limited partnerships?

4 A Right, right, that's what we talked about earlier,
5 and that's what I know.

6 Q Isn't that, Mr. Hart, what the certification
7 statement, which is required by the ownership report form in
8 paragraph five that we've discussed, what that certification
9 statement addresses, the insulation?

10 A That's what I -- I'm really not that clear on
11 that. You know, I don't really know what they were talking
12 about there, the certification statement.

13 Q Would you have been clear about it in July of
14 1987, when you were reviewing this report and advising your
15 client as to whether or not to sign it?

16 A I may have been, but again, this ownership form,
17 the report itself, was not something that I was, you know, a
18 real expert on.

19 Q Ms. Harburg was an expert on this, am I correct?

20 A Well, she and Mr. Whitley had prepared a lot of --
21 this particular matter, this particular matter on behalf of
22 the client.

23 MR. COLE: Just a moment, Your Honor.

24 (Pause.)

25 //

1 BY MR. COLE:

2 Q Mr. Hart, in August of 1988, a year down the line
3 from what we've been talking about, did Mr. Boling advise
4 you that Baker & Hostetler was to do no more work for
5 Astroline unless it was specifically authorized by Boling
6 himself?

7 A I don't remember that specific instruction, sir.

8 Q Let me try to refresh your recollection by
9 referring you to Shurberg Exhibit 134, which is the letter
10 from you to Mr. Boling dated August 8, 1988.

11 A Shurberg Exhibit 134?

12 Q Shurberg Exhibit 134. It's in the white book.

13 A Mm-hmm.

14 Q And, please review that and correct me if I
15 mischaracterized this, but it appears that the controller of
16 Astroline Corporation had asked you to prepare an audit
17 questionnaire for Arthur Andersen, a project which you
18 believe would take up less than \$300 worth of time. Is that
19 in light of your recent conversation with Mr. Boling, that
20 you did not want to commence work prior to informing him and
21 that if you did not hear from him before Wednesday, August
22 10 -- that was two days after this letter was sent out --
23 you would assume that the assignment was authorized by him?

24 Now, did you need Mr. Boling's authorization to
25 undertake projects of \$300 or more?

1 A No. The company -- this isn't even the same
2 enterprise, as you distinguished, Astroline Corporation and
3 Astroline Company. This involves the corporation, which was
4 not Astroline Communications Company, I don't believe, I
5 don't think. But, I continued and the firm continued to do
6 work on behalf of the communications company, under the
7 direction of Rich Ramirez, and we were doing some very
8 significant work then, relating to the Supreme Court. They
9 were big ticket items.

10 However, it was a reality that, you know, cash was
11 tight. The company was either in bankruptcy or very close
12 to going into bankruptcy then and it wasn't just Mr. Boling.
13 It was Mr. Ramirez and other people working at the station
14 that wanted to be very cost conscious.

15 Q Mr. Hart, just let me clarify in way of
16 correction. This letter is dated August of 1988. The
17 Supreme Court did not grant certiorari until January of
18 1990. The Court of Appeals decision was not handed down
19 until March of 1989.

20 A When did we file our request for certiorari?

21 Q Again, the Court of Appeals decision, I believe
22 the record will show and I'd be happy to stand corrected if
23 anyone has contrary information, I believe the Court of
24 Appeals decision was handed down in late March of 1989.
25 Astroline's rehearing, after that was denied, Astroline

1 filed the cert in the fall of 1989. The cert was granted in
2 January of 1990. I'd be happy to provide the documents
3 confirming those dates.

4 So, assuming that the dates I just recited are
5 accurate, would it be correct, then, that your remarks about
6 the Supreme Court as of August, 1988 were inaccurate?

7 A It was still ongoing Appellate litigation or
8 Appellate review, as far as that period of time. But, I
9 mean, for any firm, a lot of work for Astroline during that
10 period of time. If you want to talk about my bills, which
11 you have access to, you'll see what we were doing at that
12 time. We did not shut down our services to this client. We
13 may have curtailed them a bit, trying to be more
14 conservative, which, you know, is a normal business practice
15 when a company is hemorrhaging for cash. But, we continued
16 to work for them and we did so under the authorization of
17 Rich Ramirez.

18 Q Now, refer, please, to the next exhibit, Shurberg
19 135, which is a memorandum from David Dudley to you, dated
20 August 2, 1988. The memorandum infers or suggests or states
21 that you had recently informed him that Fred Boling had
22 requested that we perform no further services unless he
23 specifically authorized the same. Mr. Dudley was not to
24 respond to any telephone calls from either John Jordan or
25 Rich Ramirez.

1 Do you recall having any conversations with Mr.
2 Dudley about this matter?

3 A Not specifically, but what I do recall is that a
4 number of people at the station, a number of employees, a
5 number of staff members, from Mindy Vazquez, who was frankly
6 no more than an administrative assistant, to John Jordan,
7 who may have a co-worker of Terry Planell, to people in
8 sales, people in engineering, would call the law firm and
9 say, well, I have this question about this engineering
10 matter? We want to move our tower, we want to increase our
11 power, we want to put lights on the tower or we want to
12 build a fence around it? What about us having a give away
13 game show, where we give away tickets to the Hartford
14 Whalers? What about hiring this person or firing this
15 person?

16 So, the law firm was getting indulged by
17 independent calls from staffers at the station, asking us
18 for, you know, questions and legal advice. In most of the
19 instances, we were responsive.

20 When it became a matter of concern, when the bills
21 kept going up and a lot of these calls, you know, were not
22 authorized by Rich Ramirez, who was the general manager,
23 Fred and Rich and others said, hey, have those calls come
24 through Rich or, you know, let's not burden the law firm
25 with all these day to day activities. You know, let's try

1 to keep our legal bills down, and, you know, let's not do
2 that. And, apparently, I, at the time, informed David
3 Dudley and probably a few other people that were getting
4 these calls that hey, you know, we just can't take all these
5 outside calls because they're running up the bill and the
6 client has a concern about it.

7 Q So, if Mr. Dudley understood you to advise him
8 that he was not to take phone calls from Mr. Ramirez, Mr.
9 Dudley would have been wrong?

10 A I don't think anybody, you know, I don't think
11 anybody refused to take a call from Mr. Ramirez.

12 Q That wasn't my question, Mr. Hart. My question
13 was, if Mr. Dudley understood you to have told him, Mr.
14 Dudley, that he was not to take any calls from Mr. Ramirez
15 or not to respond to any calls from Mr. Ramirez, that Mr.
16 Dudley's understanding in that regard would have been
17 incorrect, is that your testimony?

18 A That is correct. Mr. Ramirez, I took his calls.
19 Other people did, you know. He was the boss.

20 Q Was Mr. Boling involved in these decisions, as
21 well, to curtail the usage?

22 A He was concerned about the money, yeah. He didn't
23 have the ultimate decision. Rich Ramirez spent so much
24 money at the station, it was not funny. If Mr. Boling was
25 running the show, Richard Ramirez wouldn't have spent all

1 that money. That's the best evidence of who was in charge
2 is, you know, who was spending the money. Rich Ramirez
3 spent the money and frankly, unfortunately, overspent in
4 many instances and it drove the station into bankruptcy.
5 But, he was in charge. Rich Ramirez was in charge.

6 Q In August of 1988, it's true, isn't it, that you
7 were preparing a further ownership report on behalf of
8 Astroline?

9 A August of 1988?

10 Q August of 1988? And, let me refer you to Shurberg
11 92 in the white album. This is a letter from Carter Bacon
12 to you, dated August 31, 1988.

13 A What tab is this?

14 Q I'm sorry, 92, Shurberg 92.

15 A Okay.

16 Q Am I correct that, as of August 31, 1988, you were
17 in the process of preparing an FCC ownership report?

18 A I guess so, yes, sir.

19 Q Mr. Bacon, according to his letter, at least, was
20 sending to you a copy of the December 31, 1985 Astroline
21 Amended Partnership Agreement, isn't that correct?

22 A Yes, sir.

23 Q Why was he sending you a copy of that?

24 A Like the other one he sent down. I don't know why
25 he did it. I don't know whether we requested him to do it

1 or he just wanted to make sure we had another copy or a
2 copy. This is, you know, obviously a document that's been
3 around for awhile. Maybe we had lost it. But, to answer
4 your question, I don't know.

5 Q Why were you preparing an ownership report in
6 August of 1988?

7 A I guess we were finally at a point of preparing
8 the ownership report that we had referenced in the August,
9 1987 letter.

10 MR. COLE: Your Honor, I have not previously
11 offered Shurberg 92. Based on my examination of Mr. Hart,
12 I'd like to offer it now.

13 MR. TOPEL: No objection.

14 JUDGE FRYSIAK: Received.

15 (The document referred to,
16 having been previously marked
17 for identification as Shurberg
18 Exhibit 92, was received in
19 evidence.)

20 MR. COLE: Thank you, Your Honor.

21 BY MR. COLE:

22 Q Now, in attempting to prepare an ownership report
23 in August of 1988, you ran into some problems, isn't that
24 right? Do you remember that?

25 A I really don't have a clear recollection of that.

1 I mean, the ownership report process is always difficult
2 with regard to this client, but what exactly are you
3 referring to?

4 Q Why was the ownership report process difficult
5 with respect to this client, Mr. Hart?

6 A It's just, you know, for some of the same matters
7 that were reflected in the August 3 letter of '97 -- '87.
8 But, I'm trying to think of what was going on in '88, but
9 let me let you ask me specific questions about that.

10 Q Right. You mentioned the August 3, 1987 letter.
11 Are you saying that the Court of Appeals June 25, 1987
12 decision continued to make it practically difficult for you
13 to prepare an ownership report for Astroline in August of
14 1988?

15 A No, I don't think that was one of the
16 considerations.

17 Q Mr. Gibbs had died in, it's now stipulated, May of
18 1986, so that is now almost two and a half years prior to
19 August, September '88. Was that still presenting some
20 impediment to preparing an ownership report for Astroline?

21 A I really don't know. I don't know whether that
22 estate had been closed even in 1988. Mr. Gibbs was a very
23 wealthy guy, had a lot of various assets, and a fairly
24 complex estate, as I understand it. I don't know whether
25 that factored into the ownership report of 1988, but you

1 know, I just don't know what impact, if any, Mr. Gibbs'
2 estate had in preparing that document at that time.

3 Q Okay, now, let me refer you to Shurberg 96 in the
4 white album, to a letter from you to Mr. Ramirez, which
5 purports to confirm a conversation with Mr. Ramirez about
6 certain matters which had to be addressed, which must be
7 addressed before you could prepare Astroline's ownership
8 report. And, the matters that are listed by you are the
9 dissolution of WHCT Management, Inc. and the matter of
10 updating the partnership report, do you see that?

11 A Yes, sir.

12 Q Could you explain what the matter of updating the
13 partnership report refers to? That would be the third
14 paragraph of your letter to Mr. Ramirez that is Shurberg 96?

15 A I think we're talking about the insulation
16 provision that you and I discussed earlier today and
17 possibly the need to amend the partnership to include some
18 of that language.

19 Q Some of which language?

20 A The language relating to the insulation of limited
21 partners.

22 Q Because the partnership as of September 7, 1988
23 did not have that language, did it?

24 A I don't really know.

25 Q Well, you wouldn't have suggested it needed a

1 change if it already had that language, would you, now?

2 A It probably had some of the language and maybe
3 needed some more. The FCC's language was fairly technical,
4 as I recall, and although the general insulation provisions
5 in the limited partnership agreement would probably suffice,
6 particularly Carter Bacon and his careful counsel approach,
7 might have requested or encouraged even more insulation than
8 may have been necessary, I don't know.

9 Q Mr. Bacon was not an FCC expert, was he?

10 A No.

11 Q You were the FCC expert, weren't you?

12 A I wasn't, but the firm provided FCC counsel. I
13 was part of that team.

14 Q So, when you wrote to Mr. Ramirez and said it is
15 imperative that we amend the partnership agreement so that
16 it accords with recent case law, wasn't that your advice,
17 based on FCC case law, and not Mr. Bacon's advice based on
18 some other case law?

19 A Well, I think that both Mr. Bacon and I shared
20 those concerns.

21 Q Shared what concerns?

22 A The concerns about being very clear that Richard
23 Ramirez was always in control and that the limited partners
24 were insulated from the day to day operation of the station
25 and they were not, in reality, or even perceived to be

1 involved in the day to day operation of that station.

2 Q But, doesn't this letter that you wrote to Mr.
3 Ramirez on September 7, 1988, indicate precisely the
4 contrary, that is, that in order for the partnership
5 agreement to accord with recent case law, it had to be
6 amended? Isn't that what that says?

7 A It recommends that we amend the agreement to
8 comply with some recent case law. It doesn't mean that it
9 is not -- we weren't in compliance, but just to make sure,
10 and out of the abundance of caution of an amendment, it
11 would be appropriate or I recommended it at that time.

12 Q So, you used the term "it is imperative" as being
13 a suggestion and not an indication of necessity?

14 A Imperative could have been replaced with
15 important.

16 Q But, it wasn't, was it? You used the term
17 imperative, did you not?

18 A Yeah, I used the term imperative, but it wasn't
19 like, you know, in my opinion, to be a matter of crisis.
20 It's important that we amend the partnership agreement. We
21 tighten up a few things because of some recent decisions by
22 the FCC. It's no more or less than that.

23 JUDGE FRYSIAK: Is this a good time for a break?

24 MR. COLE: Sure, yes, Your Honor.

25 JUDGE FRYSIAK: Let's take five minutes.

1 (Whereupon, a short recess was taken.)

2 JUDGE FRYSIAK: We're back on the record.

3 BY MR. COLE:

4 Q Mr. Hart, let me also refer you, sir, to Shurberg
5 97, which is a letter from Ms. Bocchi to Mr. Ramirez, dated
6 September 8, which I'm showing a copy to you. Do you see
7 that?

8 A Yes.

9 Q She was transmitting, according to her letter, a
10 transfer of control application to Mr. Ramirez for his
11 signature and for Mr. Boling's signature. She also notes
12 there that, "It is imperative that the form be returned as
13 soon as possible with a \$70 check made out to the FCC." You
14 were aware that she was sending that application to Mr.
15 Ramirez, weren't you?

16 A At that time, I'm not sure. Probably so. Linda
17 was probably following some direction from me.

18 Q Is it also correct that you are also aware that
19 Ms. Bocchi advised Mr. Ramirez that it was imperative that
20 the application be signed and filed as soon as possible?

21 A There's that word imperative again. I'm not sure
22 that I was, you know, familiar with the urgency of it, as
23 she's reflecting in this letter. I'm just, I'm not sure
24 right now about the urgency and the timing of the whole
25 thing. I don't know whether it was, in fact, "imperative"

1 or just important.

2 Q And, am I correct that the application that was
3 sent out by Ms. Bocchi for signature in September of 1988
4 was not, in fact, filed?

5 A It was kind of -- that kind of struck me as a
6 little bit unusual, also, when I saw that. I'm not sure if
7 the 316 was filed or not.

8 Now, let me point out to you, Mr. Cole, that in
9 September of '88, I was beginning to work a lot with the
10 Dukakis campaign and ultimately left the firm, I think, a
11 month later to work with him almost on a full-time basis.
12 And, so, I was not as actively involved with Astroline or
13 any clients at that time as I had been in the past. So, I'm
14 not sure what was going on with regard to this 316 in my own
15 memory. At this point right now, today, I don't recall.

16 Q Was Ms. Bocchi aware on approximately September 8,
17 1988, that you were planning on leaving and therefore,
18 leaving the firm, and therefore were phasing our your
19 involvement with client activities?

20 A I'm not sure whether she was aware of that or not.
21 I was spending a lot of time out of the office and she
22 obviously would be aware of that. But, whether she knew
23 what I was doing or whatever, I'm just not sure.

24 Q Let me focus your attention, Mr. Hart, on the last
25 sentence of her September 8 letter, which is Shurberg 97,

1 which says, "If you have any questions, please call Thomas
2 Hart."

3 A Mm-hmm.

4 Q If she thought that you were phasing yourself out
5 and might not be available, would she not more likely have
6 said, if you have any questions, please call me?

7 A Well, she seems to reflect that she's going to be
8 out of the office on Friday and maybe I was going to be in
9 on that Friday when she was out. I just don't recall.

10 Q And, please refer now to Shurberg 98, which is a
11 letter from Ms. Bocchi to Mr. Bacon, a copy to you, sending
12 to him a copy of the ownership report that she says she was
13 planning to file for Astroline. Do you see that?

14 A Yes.

15 Q Were you aware that she was sending out to Mr.
16 Bacon this report, which had been prepared by somebody?

17 A I can't recall whether I was aware of that. It's
18 not uncommon, as you know, that Carter would have received a
19 copy of this document.

20 Q Do you know who prepared the draft ownership
21 report?

22 A No, I don't. No, I don't, to answer your
23 question. I don't know if Dale Harburg was still at the
24 firm. Jack Whitley, I don't know who did this particular
25 one.

1 Q That report wasn't filed with the Commission, to
2 your knowledge, was it?

3 A The August 31, 1988 one?

4 Q The report, yes, that Ms. Bocchi, that was
5 attached to Ms. Bocchi's September 12, 1988 letter?

6 A I don't know whether it was or not, but I'm sure
7 you've already -- well, I don't know whether you all have
8 stipulated to it or not.

9 MR. COLE: Your Honor, just as a matter of
10 housekeeping, Ms. Withers reminds me that with respect to
11 Shurberg 87, which is the Harburg memorandum with Mr. Hart's
12 handwriting in the upper right hand corner, I had deferred
13 offering that, I think, pending Mr. Hart's testimony
14 concerning his handwritten notes. Now that he has had a
15 chance to testify about it, I would offer Shurberg 87.

16 MR. TOPEL: No objection.

17 JUDGE FRYSIK: Received.

18 (The document referred to,
19 having been previously marked
20 for identification as Shurberg
21 Exhibit 87, was received in
22 evidence.)

23 MR. COLE: Thank you, Your Honor. With respect to
24 Shurberg 134 and 135, which is the letter from Mr. Hart to
25 Boling and then the memorandum from Mr. Dudley to Mr. Hart,

1 I had reserved offering those and based on Mr. Hart's
2 testimony today, I'd like to offer both of those.

3 MR. TOPEL: No objection.

4 JUDGE FRYSIAK: Received.

5 (The documents referred to,
6 having been previously marked
7 for identification as Shurberg
8 Exhibits 134 and 135, were
9 received in evidence.)

10 MR. COLE: Thank you, Your Honor.

11 BY MR. COLE:

12 Q Now, Mr. Hart, Mr. Ramirez has testified that
13 Astroline was advised by counsel over a period of years that
14 the Shurberg case stood virtually no chance of winning on
15 the non-constitutional issues. Did you give that advice?

16 MS. SCHMELTZER: Objection, Your Honor. Mr.
17 Ramirez' testimony will speak for itself, but I don't know
18 that that's an accurate characterization of his testimony.

19 JUDGE FRYSIAK: Well, he can answer the question
20 yes or no.

21 THE WITNESS: Well, Your Honor, I have in the past
22 asserted an attorney-client privilege in this matter and I
23 do feel compelled on that specific issue of counsel advice,
24 to assert a privilege.

25 MR. COLE: Your Honor, the attorney-client

1 privilege is to be asserted, as I understand it, by the
2 client, not by the attorney. It's my understanding that Ms.
3 Schmeltzer and Mr. O'Connell have waived that privilege, but
4 they can speak for themselves at this point.

5 In any event, Mr. Ramirez himself testified
6 repeatedly about the advice he was being given. It was a
7 loser and that they were surprised it was taking as long as
8 it was to get out of the Court of Appeals and so forth and
9 I'm trying to track it down from this end.

10 MS. SCHMELTZER: Ramirez will waive the privilege.

11 MR. TOPEL: And, similarly, the trustee will waive
12 it.

13 JUDGE FRYSIAK: Yes or no?

14 THE WITNESS: The question is whether I advised
15 Ramirez that Mr. Shurberg had a, did not have a very good
16 chance of success on the non-constitutional claim?

17 BY MR. COLE:

18 Q That's correct.

19 A Yes, I did provide him with that advice.

20 MR. COLE: Your Honor, may I approach the witness?
21 I'll provide two copies -- I don't have a cover sheet for
22 this, but I'll provide two copies for the reporter. I've
23 run out of copies and I apologize.

24 THE WITNESS: As a supplement to my prior
25 response, Your Honor, I just want to make the point that I

1 never provided Mr. Ramirez with a legal opinion on that
2 issue.

3 JUDGE FRYSIAK: There is no question pending.

4 MR. COLE: Your Honor, I apologize, I didn't have
5 enough copies with me, so I do want to make sure Mr. Hart's
6 counsel has copies.

7 BY MR. COLE:

8 Q Mr. Hart, I've handed you a copy of the document
9 which bears across the top a legend, "For official use only,
10 unauthorized disclosure of the contents of this document is
11 prohibited by certain sections of the FCC rules," and it's
12 an agenda item dated August 29, 1984. Do you see that?

13 A Yes, sir.

14 Q Have you ever seen that document before?

15 A I don't recall. You showed it to me during the
16 deposition, but at that time, I don't -- prior to that, I'm
17 not sure that I ever saw it before. I have no recollection
18 of it when you showed it to me at the deposition. I have no
19 recollection of it now, other than the fact that you showed
20 it to me a week or two ago.

21 MR. COLE: Your Honor, I will state for the record
22 that this is located in the files of Baker & Hostetler and
23 was turned over, of course, in discovery in response to a
24 motion produced by me.

25 //

1 BY MR. COLE:

2 Q And, Mr. Hart, I'd like to ask you if you have any
3 idea whatsoever as to how this document came to be in the
4 files of Baker & Hostetler?

5 MR. TOPEL: I objection, Your Honor. The document
6 is irrelevant on its face. You know, we began this hearing
7 with Mr. Cole calling Mr. Hoffman down from Hartford,
8 Connecticut for five minutes of examination on a theory that
9 Shurberg was arguing in a different proceeding about whether
10 there are physical assets in the estate. And, now, it looks
11 like we're wrapping it up with something that has nothing to
12 do with -- this case began with a designation order that
13 spoke about who controlled Astroline and information on tax
14 returns. We spent about 95 percent of the hearing time on
15 other matters. I think this one goes too far. I really
16 don't think this has any pertinence to this case.

17 MR. COLE: Your Honor, the connection is that this
18 is the draft report prepared by the General Counsel's Office
19 and referred to the Commission as an agenda item, prepared
20 in August of 1984 in connection with Shurberg's initial
21 petition to deny the Astroline assignment application, that
22 is, where the non-constitutional issues about which Mr.
23 Ramirez spoke were raised by Shurberg.

24 This document indicates that the General Counsel's
25 Office had recommended to the Commission that contrary to

1 what they did, the General Counsel's Office believes that
2 now that it would be appropriate to reject the Astroline
3 application and open up the Channel 18 proceeding for
4 competing applications as early as 1984.

5 Now, I recognize that that recommendation was not
6 taken by the Commission, but I think it's important that if
7 the General Counsel's Office had at least made the
8 recommendation and if Mr. Hart had known about the
9 recommendation, that that raises questions as to whether or
10 not Mr. Ramirez' testimony that he was getting all this
11 advice that the Shurberg case was going to go away very
12 quickly might be impeached.

13 MR. TOPEL: I think that's beyond peripheral
14 rebuttal.

15 MS. SCHMELTZER: Your Honor, that is pure
16 conjecture.

17 MR. TOPEL: That is such a stretch. That is
18 virtually disingenuous and I don't use that word usually.

19 JUDGE FRYSIAK: All right, your original question
20 was whether Mr. Hart advised Mr. Ramirez what the potential
21 possibility of being --

22 MR. COLE: That's correct.

23 JUDGE FRYSIAK: He said he did. I mean, where are
24 we going to go from there? Bad advice, or what?

25 MR. COLE: Well, no, if he knew that this was

1 there, then I think that he cannot reasonably be said that
2 any advice he gave to the effect that the non-constitutional
3 issues were absolute losers, I think, has got to be --

4 JUDGE FRYSIAK: That's just too speculative.

5 MR. COLE: Fine, Your Honor. I had not even had
6 that marked, but I withdraw it, and I have no further
7 questions, Your Honor, and no witnesses available.

8 JUDGE FRYSIAK: Thank you, Mr. Cole.

9 Any questions?

10 MS. WITHERS: The Bureau has some questions. I
11 don't know whether you have questions, as well? I'll be
12 happy --

13 MR. TOPEL: We defer to the Bureau, initially.

14 MS. WITHERS: Okay.

15 MR. TOPEL: We'll do our questioning after, if we
16 have any.

17 CROSS-EXAMINATION

18 BY MS. WITHERS:

19 Q Hi, I'm Cathy Withers and I represent the Mass
20 Media Bureau. We met a few times on this case, but for the
21 record, I state that. I just have a couple follow up
22 questions.

23 A Okay.

24 Q You testified today with regard to ownership
25 agreements, where there was no reference or you testified

1 that you could find no reference to the amended and restated
2 partnership agreement of December 31. Do you recall that
3 testimony?

4 A Yes.

5 Q Do you recall whether there was any discussion
6 about whether or not to provide the FCC with a copy of that
7 partnership agreement or amended and restated partnership
8 agreement?

9 A No, I don't recall there being any discussion on
10 whether to disclose it or not. If we would have filed a
11 report, I mean, the form, we probably would have included
12 all the pertinent documents.

13 The fact that we did the letter in lieu of the
14 form, we didn't include any documents that didn't identify
15 any. But, it was no -- I don't recall any discussion with
16 counsel on that subject.

17 JUDGE FRYSIAK: How did you make a determination,
18 then, to go in lieu of?

19 THE WITNESS: What do you mean, in lieu of?

20 JUDGE FRYSIAK: Well, if you did not discuss about
21 not filing an ownership report, how did you make filing the
22 letter, then?

23 THE WITNESS: Oh, no, we did discuss whether to
24 file the report or not. I thought she was asking whether we
25 were going to file the partnership agreement or amended

1 agreement. I think that was the specific question.

2 BY MS. WITHERS:

3 Q Right, I was asking as to whether there was any
4 discussion regarding whether or not to file a copy of the
5 1985, December, 1985, restated and amended agreement, and
6 Mr. Hart has answered that question.

7 As a follow up, was there any --

8 A I just want to make sure the Judge is clear about
9 my response. I was responding to the question about the
10 restated limited partnership agreement, not whether there
11 was a discussion about the ownership report. There
12 definitely was discussion about the ownership report, and we
13 did decide to file a letter in lieu of the report. But, not
14 a discussion about this amended, restated limited
15 partnership agreement.

16 Q Okay. Can you take a look at Shurberg Exhibit 73,
17 which is in the red binder?

18 A Yes, let me just find it.

19 Q This was a letter dated April, '86, signed by you
20 and directed to Mr. Ramirez and Mr. Sostek?

21 A Yes, ma'am.

22 Q With regard to instruction permit application to
23 modify and a recent FCC decision. Can you recall why it was
24 directed to both Mr. Ramirez and Mr. Sostek?

25 A I'm -- no, I don't recall. It's probably an

1 error, because this is so, sort of technical and stuff. I'm
2 sure Mr. Sostek didn't even know what it was about.

3 I don't know why it was sent to him, in addition
4 to Mr. Ramirez. It would be something sent to Ramirez to go
5 in the public file. Sostek probably didn't even know where
6 the public file was, so I don't know why it was sent to him.

7 Q Was it your practice to send documents to both Mr.
8 Ramirez and Mr. Sostek?

9 A Not a standard practice. On occasion, I would
10 send documents to Mr. Sostek, but very rarely would I do
11 that. Only real important documents, like a major decision
12 or a major filing, I would send them a courtesy copy. But,
13 something like this, definitely, you know, a public notice
14 of a mundane nature, I would not regularly send to Mr.
15 Sostek or Mr. Boling. There were a few instances where I
16 sent them things, but very rarely.

17 Q You talked today about Shurberg Exhibit 118, which
18 is in the white binder. It was the letter directed to Mr.
19 Sostek from you, with regard to the STA.

20 A Yes.

21 Q 118?

22 A Mm-hmm.

23 Q You conclude with the sentence that, "You would be
24 happy to discuss the matter with you and Fred," and I assume
25 you meant Mr. Boling, in greater detail?

1 A Yes.

2 Q I'm curious as to why you would be discussing this
3 matter with Mr. Sostek and Mr. Boling?

4 A Well, you know, he had raised some question about
5 the STA and I answered his concern. And, I just wanted to
6 be responsive that if he wanted additional discussion on the
7 subject, that he could give me a call and we could talk
8 about it further.

9 My recollection is that he did not call me and we
10 never went into it any further. Mr. Sostek was very far
11 removed from the day to day operations. Mr. Boling was
12 removed, as well, but Mr. Sostek, between the two of them,
13 Mr. Sostek was the furthest removed. And, I don't think we
14 had any further conversation about it.

15 Q Were there other instances aside from this STA
16 where Mr. Sostek brought a station matter to your attention?

17 A I can honestly tell you, I don't think so. He was
18 way removed. I can't recall any at this time.

19 Q What about Mr. Boling? Were there some instances
20 where he brought station matters to your attention?

21 A Mr. Boling would occasionally call about financial
22 matters. He was, you know, he was aware and personally
23 concerned about the financial status of the operation, even
24 more than Mr. Sostek was. He was more in touch with me, but
25 even that was very rare. Like, Mr. Boling and I may have

1 talked about how difficult the financial situation was and
2 how much of a financial drain the operation of the station
3 was, how -- frankly, how Rich was spending a whole lot of
4 money. But, Fred, you know, Fred kept putting money into
5 the deal. Rich was spending the money.

6 Q So, when you said that Mr. Boling phoned you more
7 regularly to discuss financial matters, you were saying to
8 that degree that you just discussed the amount of money that
9 was being spent by Mr. Ramirez?

10 A Yes, primarily.

11 Q Were there any additional things that you
12 discussed in that regard, with regard to financial matters?

13 A I was looking at trying to find investors in the
14 station and Mr. Boling might call me to ask, well, how did
15 the meeting go with UNC Ventures, for example, which was a
16 venture capital firm that he approached, you know, kind of
17 get the status of how my discussions with potential
18 investors was coming. He might call and ask me about that.

19 But, these matters really weren't station related.
20 They were finance investment related.

21 Q Do you recall whether Mr. Ramirez was involved in
22 your search for additional investors?

23 A Yeah, he was very much involved in that.

24 Q In what way?

25 A Well, that you'd have to prepare a business plan.

1 You'd have to prepare the financials of the organization,
2 you had to -- Rich was, you know, the principal spokesperson
3 for the station. Rich would be involved in that, yes,
4 preparing the documentation to go to a prospective investor.
5 Rich would be involved in that.

6 Q And, who identified potential investors?

7 A I did on a couple of occasions. I worked in the
8 finance area and had since been appointed to the board of
9 the Telecommunications Development Fund. Access to capital
10 is something that I've been involved with over the years.
11 Trying to find investors for minority-owned enterprises is
12 something that I've been involved in for the bulk of my
13 career.

14 So, I knew of the very few sources that are
15 available to minorities and small businesses, and I made
16 outreach to a number of those on behalf of Astroline.

17 Q Did any of the partners identify sources, as well?

18 A Well, I can't think of any. I can't think of any
19 particularly that they gave me to fill out and explore. I
20 know that, you know, people were exploring things
21 independently of me. I just tried to help with the
22 resources and contacts that I had.

23 MS. WITHERS: I have no further questions.

24 JUDGE FRYSIK: Thank you.

25 MR. TOPEL: Your Honor, may I have just one

1 minute?

2 (Pause.)

3 MR. TOPEL: Your Honor, I have no questions.

4 MR. COLE: Your Honor, I have one.

5 JUDGE FRYSIAK: All right, Mr. Cole.

6 REDIRECT EXAMINATION

7 BY MR. COLE:

8 Q Mr. Hart, in response to questions from Ms.
9 Withers, you indicated that Mr. Boling and Mr. Sostek were,
10 I believe you used the term removed from the operation of
11 the station, is that your testimony?

12 A Yes, I think I used that term.

13 Q How often, to the best of your knowledge, did Mr.
14 Boling and/or Mr. Sostek communicate with Mr. Ramirez?

15 A I don't know.

16 MR. COLE: I have no further questions, Your
17 Honor.

18 JUDGE FRYSIAK: All right. That's it, Mr. Hart.
19 Thank you very much.

20 THE WITNESS: Thank you, sir.

21 (Witness excused.)

22 JUDGE FRYSIAK: All right, is there anything else?

23 MS. SCHMELTZER: Your Honor, we have one exhibit
24 that's been identified as Trustee Ramirez TIBs Exhibit 12.
25 It's a list of personnel at WHCT-TV and it was previously

1 Bankruptcy Exhibit 197 in the Connecticut bankruptcy
2 proceeding, and we would ask that that be received in
3 evidence?

4 MR. COLE: No objection, Your Honor.

5 JUDGE FRYSIAK: It's not marked, but you can have
6 it marked as Exhibit 12.

7 MS. SCHMELTZER: It has a cover sheet.

8 JUDGE FRYSIAK: But, I don't think there --

9 MS. SCHMELTZER: It was not identified? I'm
10 sorry, okay. This is a ten-page document on the stationery
11 of WHCT-TV, headed Personnel, and we ask that it be
12 identified as Trustee Ramirez TIBs Exhibit 12 and received
13 in evidence.

14 (The document referred to was
15 marked for identification as
16 Trustee Ramirez TIBs Exhibit
17 12.)

18 JUDGE FRYSIAK: Do you have any objections?

19 MR. COLE: None.

20 JUDGE FRYSIAK: Received.

21 (The document referred to,
22 having been previously marked
23 for identification as Trustee
24 Ramirez TIBs Exhibit 12, was
25 received in evidence.)

1 MS. SCHMELTZER: The reporter had a question for
2 you, Mr. Cole.

3 JUDGE FRYSIAK: Is there anything else?

4 MR. COLE: Your Honor, I had one further, I guess,
5 in the nature of supplemental item from the bankruptcy
6 proceeding that I would like to exchange and have marked and
7 this is an outgrowth of Mr. Ramirez' testimony. I'll give
8 Your Honor a copy and two copies for the reporter. This is
9 a collection of invoices from the law firm of Thelan, Marin,
10 Johnson & Bridges and checks made in payment of those
11 invoices. These were items which were taken from the
12 bankruptcy exhibits, and I can provide counsel with the
13 exhibit numbers, if they wish. I have compiled these from a
14 number of Bankruptcy Court exhibits.

15 I'm offering these or I'd like to have these
16 marked for identification, please, as Shurberg Exhibit 147 -
17 -

18 JUDGE FRYSIAK: I don't believe 146 was ever --

19 MR. COLE: Okay, 146, that's fine. I would like
20 to offer this into evidence based on its admission up in,
21 the admission of the various documents, and I would be happy
22 to read into the record where the documents appear in the
23 bankruptcy exhibits.

24 MS. SCHMELTZER: Your Honor, we're going to object
25 to this. Mr. Cole had ample time to ask Mr. Ramirez about

1 this material, ask somebody else about this material, have a
2 sponsoring witness, and we would object to this.

3 MR. TOPEL: We would join in the objection, Your
4 Honor. It's highly inappropriate to raise this at the
5 instant of closing of the record, when we've had witnesses
6 down all week who could have added some enlightened
7 testimony. This is far too late and inappropriate
8 procedurally to receive into the record.

9 MR. COLE: Your Honor, I'm offering this
10 essentially in the nature of rebuttal. Mr. Ramirez
11 testified that he had, that the law firm was retained, I
12 believe, on behalf of Astroline Communications Company.
13 While he had not retained Peabody & Brown, he had retained
14 the Hartford firm of Schatz & Schatz and the Los Angeles
15 firm that was representing Astroline Communications in its
16 litigation against Faith Center.

17 I went back and reviewed the bankruptcy records
18 and found that these bills, which spanned a period of 1984
19 to 1988, from Thelan, Marin, all of which relate on their
20 face to the Faith Center litigation, all of which are
21 addressed to Astroline Communications Company at the Reading
22 address of, Reading, Massachusetts address of Mr. Boling and
23 Mr. Sostek, and all of which appear to have been paid by
24 checks signed by Mr. Boling or Mr. Sostek, with one possible
25 exception. There's a check dated September 17, 1985, signed

1 by Mr. Ramirez.

2 It seems to me that this, at a minimum, impeaches
3 to some degree Mr. Ramirez' testimony concerning his hiring
4 of that particular law firm.

5 MR. TOPEL: Your Honor, I don't recall that
6 testimony. Mr. Cole may be right, but I'm not sure that Mr.
7 Ramirez said what Mr. Cole represents.

8 But, these documents prove no such thing. They
9 don't say anything about who retained the law firm. If his
10 point is to rebut Mr. Ramirez' testimony about who retained
11 the law firm, these documents don't say anything about it.

12 MS. SCHMELTZER: Furthermore, Mr. Cole had the
13 opportunity to have Mr. Ramirez back and specifically said
14 that he was not calling Mr. Ramirez back.

15 MR. TOPEL: Your Honor, there's so much about
16 this, because I'm looking also, I mean, the reference to
17 Astroline Communications Company. There's no record on who
18 the parties to that lawsuit were. Astroline Communications
19 Company may, itself, have been a party. I mean, this is
20 just way out of --

21 JUDGE FRYSIK: My only recollection is that it
22 was with regards to land.

23 MR. COLE: That was the Schatz & Schatz law firm,
24 I believe, indicating he mentioned a Los Angeles firm,
25 because Faith Center ultimately sued Astroline for non-

1 payment of the note and the law firm, I believe, was
2 retained to represent Astroline in that --

3 (Multiple voices.)

4 MR. TOPEL: Your Honor, as Mr. O'Connell points
5 out to me that on page that has a Bates stamp 2906 of this
6 document, the lawsuit is captioned Jones v. Astroline
7 Company and Astroline Communications Company. So, Astroline
8 Company was an independent party to that suit and these
9 checks are drawn on the account of Astroline Communications
10 Company, undoubtedly to pay its own bills. This is totally
11 non-probative.

12 MR. COLE: Well, that's the first bill. The
13 second bill is May 22, 1985 addressed to Astroline
14 Communications Company, Reading, Massachusetts, and relates
15 to the Faith Center, Inc. lawsuit.

16 MS. WITHERS: Actually, it seems to relate to the
17 Jones lawsuit.

18 MR. COLE: Are you looking at the second bill or
19 the first bill?

20 MS. WITHERS: If you look right after 2906, it's
21 not numbered at all, except at the top it says Exhibit 5 and
22 in the description, Joseph P. Jones action.

23 MR. COLE: I'm sorry, and that is November 30,
24 1984 bill. I'm referring to the following bill, which is
25 May 22, 1985, which is a Faith Center, Inc. issue.

1 MS. SCHMELTZER: I think that what this discussion
2 is revealing is that there were so many questions raised,
3 that this document just can't come in the record without
4 authentication and corroboration by some witnesses.

5 JUDGE FRYSIAK: Well, I think the point is well
6 taken. Mr. Cole, I'll tell you what. If you believe in
7 these things and once you think it through, I'll give you a
8 chance to come back with a rebuttal.

9 MR. COLE: Okay. Time frame, Your Honor?

10 JUDGE FRYSIAK: What?

11 MR. COLE: Time frame?

12 JUDGE FRYSIAK: Well, you have to make out a case
13 in your motion for --

14 MR. COLE: For rebuttal?

15 JUDGE FRYSIAK: Right.

16 MR. COLE: May I have until tomorrow to prepare
17 that?

18 JUDGE FRYSIAK: Well, I'll give you ten days.

19 MR. COLE: Okay, thank you.

20 JUDGE FRYSIAK: And, for all other purposes, the
21 record is closed, except for the limited purpose at looking
22 at rebuttal. That was Exhibit 146?

23 MR. COLE: Yes, Your Honor.

24 JUDGE FRYSIAK: Before I close, I want to address
25 your attention to your proposed Exhibits 143, 144 and 145.

1 You had them marked, but I don't think you ever offered
2 them.

3 MR. COLE: I would like to offer them. 143 is the
4 June 2, 1988 letter from Mr. Planell to Mr. Bacon, and I
5 would like to offer that.

6 JUDGE FRYSIAK: Any objection to 143?

7 MR. TOPEL: Your Honor, can we have a second?

8 JUDGE FRYSIAK: Sure.

9 MR. COLE: I apologize, Your Honor.

10 (Pause.)

11 MS. SCHMELTZER: Which one are we talking about,
12 143?

13 MR. COLE: 143, which is Planell to Bacon, June 2,
14 1988.

15 JUDGE FRYSIAK: 143, 144, 145.

16 MS. SCHMELTZER: We have no objection to 143, Your
17 Honor.

18 (The document referred to,
19 having been previously marked
20 for identification as Shurberg
21 Exhibit 143, was received in
22 evidence.)

23 MR. COLE: There's a cover sheet, the fax cover
24 sheet, from Ms. Bocchi to Mr. Bacon, accompanied by an
25 excerpt from the FCC's rules and a copy of one page of a 316

1 form.

2 In all honesty, I don't think anybody
3 authenticated this. Mr. Bacon didn't claim to recognize it
4 and I don't believe Ms. Bocchi did.

5 MS. SCHMELTZER: And, you withdrew it.

6 MR. COLE: I did withdraw it? Then, I withdrew
7 it. I was going to suggest, even though it has been marked,
8 that we just leave it so that anybody who wants to look at
9 it can see it, but it's been described in the record and I
10 do not propose to rely on that.

11 And, the same would be true of 145, which is the
12 fax copy of the FCC decision. Again, my recollection is
13 that Mr. Bacon offered no information about this, did not
14 recognize it and did not recognize any of the notations on
15 it. And, on that basis, we withdraw it. I'll leave it
16 identified in the record, just in case anybody needs to
17 refer to it in the future, it's there. There was some
18 examination about it, but not especially fruitful
19 examination.

20 (The documents referred to,
21 having been previously marked
22 for identification as Shurberg
23 Exhibits 144 and 145, were
24 withdrawn from evidence.)

25 MS. SCHMELTZER: Yes, the witness did not recall

1 it.

2 MR. COLE: Right, exactly. And, Your Honor, just
3 going through my notes and to clean things up, there is
4 Shurberg 49, which I don't believe I offered, but I
5 identified on the record, and I'll withdraw that at this
6 time. It's a document dated February 27, 1986.

7 (The document referred to,
8 having been previously marked
9 for identification as Shurberg
10 Exhibit 49, was withdrawn from
11 evidence.)

12 JUDGE FRYSIK: If I find it.

13 MR. COLE: I'm sorry, 49, I believe would be in
14 the -- And, similarly with Shurberg 35, a letter from a
15 woman whose name I cannot pronounce. I'll withdraw that, as
16 well.

17 And, I believe that takes care of all of my
18 exhibits.

19 (The document referred to,
20 having been previously marked
21 for identification as Shurberg
22 Exhibit 35, was withdrawn from
23 evidence.)

24 MS. SCHMELTZER: Was 70 received?

25 MR. COLE: I'm showing it received.

1 MR. TOPEL: I have it marked received.

2 JUDGE FRYSIAK: Do you want the whole page?

3 MS. SCHMELTZER: I don't have 121, Mr. Cole.

4 MR. COLE: You don't have 121?

5 MS. SCHMELTZER: I think you withheld that.

6 MR. COLE: Yes, that was withheld. It was
7 received, it was offered on the 23rd and withheld pending
8 cross-examination of Mr. Ramirez. I withdraw that one, Your
9 Honor.

10 (The document referred to,
11 having been previously marked
12 for identification as Shurberg
13 Exhibit 121, was withdrawn
14 from evidence.)

15 JUDGE FRYSIAK: Do you want to discuss filings?

16 MR. TOPEL: Do you want to do this on the record,
17 Your Honor, or off the record?

18 JUDGE FRYSIAK: We can go off the record.

19 (Discussion held off the record.)

20 JUDGE FRYSIAK: Back on the record. Proposed
21 findings will be filed on November 24 and replies thereto on
22 December 15. The record is closed for all purposes except
23 for the item of rebuttal by virtue of Shurberg Exhibit 146.

24 MR. COLE: Thank you, Your Honor, and I will
25 notify the parties as soon as possible if I do decide not to

1 do that.

2 JUDGE FRYSIAK: All right, thank you. We're off
3 the record.

4 (Whereupon, at 3:15 p.m., the hearing was
5 concluded.)

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REPORTER'S CERTIFICATE

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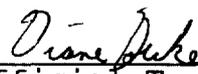
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