

1 5805, Chicago, Illinois, 60606.

2 Q Mr. Gilbert, could you please describe briefly for  
3 the record your professional background?

4 A I am a lawyer. I graduated from Yale Law School  
5 in 1951; did a little legal work while I was in the Navy for  
6 40 months. Then practiced law in private law firms for 45  
7 years. Basically, I am a business lawyer, also a health  
8 care lawyer.

9 Q And you are an officer, director and shareholder  
10 in Adams Communications Corporation?

11 A Yes.

12 Q And Adams Communications Corporation has filed an  
13 application for a construction permit for a television  
14 station in Reading, Pennsylvania.

15 You are familiar with that, are you not?

16 A Yes.

17 Q Could you state for the record why Adams filed its  
18 application for the Reading station?

19 A We did it to obtain a construction permit and  
20 building station in Reading, Pennsylvania.

21 Q Did Adams file its application for the purpose of  
22 entering into any kind of settlement pursuant to which Adams  
23 would dismiss its application?

24 A No, we didn't. And at the time we filed that  
25 wasn't a legal possibility, as a matter of fact.

1 Q How did you know that it wasn't a legal  
2 possibility?

3 A We had been informed by our communications  
4 counsel, Bechtel & Cole, prior to that time.

5 Q Mr. Gilbert, you have up at the witness stand a  
6 blue notebook with an attractive label entitled "Phase III  
7 Exhibits."

8 Do you see that?

9 A Yes.

10 Q Could you open it to Exhibit No. 62, please?

11 Are you familiar with this document, which is a  
12 two-page memorandum from Harry F. Cole to Howard N. Gilbert?

13 A Yes.

14 Q Can you tell us what it is?

15 A It's a memorandum from Gene Bechtel -- no, I guess  
16 from Harry Cole to me dated August 15, 1991, discussing  
17 Federal Communications Commission rules regarding settlement  
18 in which it states that in 1989 certain rules had been  
19 adopted by the Commission which limited the possibility,  
20 which excluded actually the possibility of settlement in the  
21 case of competing applications.

22 Q And was this the basis for your understanding that  
23 no for-profit settlement of the Adams application would be  
24 possible?

25 A Yes.

1 Q Did you have any other basis for that  
2 understanding?

3 A This was everything. We may have discussed it,  
4 but basically this was it.

5 Q When you say "we may have discussed it," who are  
6 you referring to?

7 A Bechtel and Cole and myself.

8 Q And did you communicate the information set forth  
9 in this memorandum, which is Exhibit No. 62, to other  
10 members -- strike that -- other principals of Adams  
11 Communications Corporation?

12 A That was communicated to each shareholder before  
13 they invested in it, yes.

14 Q Could you tell me why Adams decided to file a  
15 comparative renewal application, that is, a challenge  
16 application against an incumbent renewal licensee?

17 A Because it was a low-cost way to obtain a  
18 television station. It's also a way that we could do what  
19 we wanted to do in the broadcast industry, which was to  
20 provide some public service.

21 Q Could you explain the last part of your answer,  
22 please?

23 A Well, we assumed that we would be replacing a Home  
24 Shopping Network station and it was a strong belief of a  
25 number of the principals that Home Shopping Network was, I

1 would say, a star in television, it had no real place  
2 either.

3 Q And how would the comparative renewal process have  
4 resulted in replacing home shopping programming with  
5 something else?

6 A The comparative renewal process would pit Adams  
7 against a station which presumably wasn't providing locally  
8 originated programming that dealt with community issues.

9 Q Could you explain why Adams was interested in home  
10 shopping programming?

11 A Adams was looking for a way to obtain a station  
12 and it appeared that the kind of programming that would be  
13 most vulnerable would be Home Shopping Network programming.  
14 A number of the principals, a significant number of them  
15 actually, had viewed Home Shopping Network in Chicago and  
16 around the country, and in general, they believed that it  
17 wasn't doing what they believed to be the job of broadcast  
18 stations; that it wasn't serving local communities as they  
19 saw it. So they felt that, in general, it would be  
20 vulnerable to a challenge.

21 Well, they also had followed the FCC proceeding  
22 and I had read the dissent of Commission Duggan and the very  
23 interesting concurring opinion of Commissioner Barrett. We  
24 also had been following the pleadings of the Media Access  
25 Project. I had been talking to Andy Schwartzman, with whom

1 I had a long-term relationship, about what was going on, and  
2 we thought that many, if not all, of the Home Shopping  
3 Network stations weren't following through on what they were  
4 supposed to be doing; that they weren't providing locally  
5 originated programming that dealt with community problems.

6 Q Mr. Gilbert, could you turn, please, to Adams  
7 Exhibit 63, which is a letter from Harry Cole to you dated  
8 August 31, 1993, which transmitted to you some materials?  
9 And look particularly at page 2 -- strike that -- at page 3,  
10 which is the first page of a pleading submitted by the Media  
11 Access Project in MM Docket No. 93-8.

12 A Right.

13 Q Do you see that? Could you tell me what this  
14 exhibit is?

15 A That's a submission by the Media Access Project,  
16 which I consider to be a public interest law firm concerned  
17 with the media, to the Federal Communications Commission in  
18 connection with the proceedings that were before the  
19 Commission on the Home Shopping Network station issue, which  
20 involved must carry and involved, in general, the nature of  
21 Home Shopping Network.

22 Q And from page 1 of this exhibit, that is, my  
23 letter to you dated August 31, can you state whether you  
24 received a copy of the Media Access Project pleading in  
25 early September of 1993?

1 A Yes, I did.

2 Q Did you review it at that time?

3 A I read it.

4 Q Now, if you would look over at Exhibit No. 64,  
5 which is another pleading for the Media Access Project.

6 Is Exhibit No. 64 familiar to you?

7 A Yes.

8 Q Did I also provide that to you along with this  
9 letter of August 31, 1993?

10 A Yes.

11 Q And did you review the Media Access Project  
12 pleading upon receipt in early September 1993?

13 A Yes.

14 Q Now, if you could look over to Exhibit No. 65,  
15 which is a one-page letter again from me to you dated  
16 September 1, 1993, accompanied by a document entitled  
17 Petition for Reconsideration filed by the Media Access  
18 Project in Docket No. 93-8.

19 Are these materials familiar to you?

20 A Yes.

21 Q Could you tell us what they are?

22 A This was the petition for reconsideration after  
23 their position was not accepted by the Commission.

24 Q And you reviewed this upon receipt of it from me  
25 in early September 1993?

1 A Yes.

2 Q Are these the materials the basis for your  
3 familiarity with home shopping programming?

4 A Well, we're familiar with home shopping  
5 programming by watching it.

6 Q Were these materials the basis for your  
7 understanding of the regulatory treatment of home shopping  
8 programming as far as the FCC was concerned?

9 A Yes.

10 Q Now, you indicated, I believe, that you viewed  
11 home shopping stations vulnerable; is that correct?

12 A Yes.

13 Q How did you identify what stations were home  
14 shopping stations?

15 A Well, we asked our communications counsel, Bechtel  
16 & Cole, to provide us with a list of those stations.

17 Q And could you please turn to Exhibit No. 66?

18 A Sixty-six. Yes.

19 Q And this is a letter from me to you dated July 16,  
20 1993, with certain attachments.

21 Are you familiar with all of these materials?

22 A Well, it consists of the list of stations, the FCC  
23 news action docket case and the opinion of Commissioner  
24 Barrett and Duggan. Let me see what else is in there.

25 Yes, I'm familiar with all of this.

1 Q Did you review these upon your receipt of them?  
2 Strike that.

3 You received these from me; is that correct?

4 A Yes.

5 Q And did you review them upon receipt some time in  
6 July of 1993?

7 A Well, I looked at the list and I read the news  
8 item, and I spend, frankly, a lot of time reviewing it a  
9 number of times, both analyzing carefully Commissioner  
10 Duggan's dissenting statement, and frankly, the separate  
11 statement of Commissioner Barrett, while it was a  
12 concurrence, I felt was as meaningful or really about as  
13 meaningful as the dissent.

14 Q And while we are talking about Commissioner  
15 Duggan's dissent, if you could look to Exhibit No. 76. Do  
16 you recognize this document?

17 A Yeah.

18 Q What is it?

19 A That's the opinion of Commissioner Duggan.

20 Q Would you agree that this is slightly different  
21 from the opinion of Commissioner Duggan which appears in No.  
22 66?

23 A This is the final opinion, yes.

24 Q Did you review the final opinion as you've just  
25 described it, that is, No. 67, did you review that?

1 A When it came in, yes.

2 Q Once you had identified -- strike that.

3 Now, you've mentioned, in connection with Exhibit  
4 No. 66, that is, page 2, which is a list of home shopping  
5 stations which was provided to you in July of 1993.

6 A Second, yes.

7 Q Do you see that list?

8 A Yes.

9 Q Was that the only list of home shopping stations  
10 that was provided to you, to the best of your recollection?

11 A No. I think I may have gotten a list or at least  
12 I knew that there were other stations which weren't owned by  
13 Home Shopping Network. If you gave me a list or not, I was  
14 aware there were other stations.

15 Q Once you had identified home shopping stations,  
16 what did you do next?

17 A Well, then we had to do a study of a station and  
18 see if there was indeed any merit to our general position  
19 and belief that in these specific cases a station wouldn't  
20 be serving the local public interest.

21 So next I looked at the expiration dates, and the  
22 date that competing applications were due.

23 Q And what time frame are we talking about when you  
24 say you looked for expiration dates? When were you looking  
25 for expiration dates, about?

1           A     It was in '93.  What's the date of this letter?  
2     It was the latter part of '93, the last six months of '93.

3           Q     And when you say you were looking for expiration  
4     dates, could you explain what that means?

5           A     We were looking for the date, the date the renewal  
6     application had to be filed, and secondly, the date that we  
7     would have to file a competing application.

8           Q     Adams was incorporated, I believe we have  
9     established for the record, in November of 1993.  We just  
10    stipulated to that earlier this morning.

11           Do you recall what the next station available in  
12    terms of the renewal expiration date or the next station  
13    available for challenge was in November of 1993?

14           A     When we started thinking about it, I think,  
15    Ontario, California was available, but we didn't have enough  
16    time in terms of the way we functioned to do an analysis.  
17    The first one that practically was available to us as we saw  
18    it was Marlboro, Massachusetts.

19           Q     What did you do, if anything, with respect to the  
20    Marlboro, Massachusetts station?

21           A     Did a bunch of things.  I went out there -- first,  
22    I went out there, hired a real estate firm to help us find a  
23    site for an antenna; did a study and a young man and his  
24    cohorts taped the programming.  I had watched the  
25    programming.  But I just only had a long-term period, I had

1     them tape, I think, two weeks tape and I had seen it myself  
2     and I knew that it looked like there was apparent merit to  
3     our position.

4             Talked to people in the -- this is an area west of  
5     Boston. I don't know if it's called a suburb of Boston or  
6     what but it's -- that part of Massachusetts is pretty  
7     heavily settled. Talked to people around there; found out  
8     that there were some -- some people knew about it actually.  
9     It wasn't like Reading. And found, you know, it looks like  
10    we -- in terms of program content, we had a sufficient  
11    amount to file a competing application.

12            However, to say that we combed Massachusetts, I  
13    had this broker doing it by himself, and when he found  
14    likely sites, I would be there, put in a lot of time, and we  
15    were never able to find a site that wasn't short spaced.  
16    That area of Massachusetts was just honeycombed by flying  
17    patterns of primarily military installations. Surely  
18    something beyond -- I had never seen something like that  
19    before; never had a station problem when we owned stations  
20    like this.

21            Q     Did you file an application for the Marlboro  
22    channel?

23            A     No. After all of this, the final site we had was  
24    100 yards short, it was short spaced. We didn't want to get  
25    into a discussion with the FCC. We figured it would be a

1 real battle to effectively wage a challenge and we didn't  
2 need that kind of an issue where we felt was a way to get  
3 ruled against.

4 Q And do you recall when you decided not to file for  
5 the Marlboro channel?

6 A Oh, boy. We probably made the final decision --  
7 it was probably at the end of February. We were trying  
8 desperately to find a site because we thought we had a good  
9 case there. So it was very close to looking at the date,  
10 March 1 that we finally waved off. We had put a lot of  
11 money into it.

12 Q After you decided not to file for Marlboro, what  
13 did you do next?

14 A Looked at the next site.

15 Q And what was that?

16 A That was Reading. We then -- we then decided to  
17 challenge the Reading licensee in its broadcasting Home  
18 Shopping Network.

19 Q And what did you do with respect to -- what, if  
20 anything, did you do with respect to preparing an  
21 application for the Reading channel?

22 A Basically the same things that we did in Marlboro  
23 except we now went down to the Reading area. Went out there  
24 and looked at the -- in the town; talked to people. There  
25 was absolute absence of knowledge of presence. It was

1 amazing. Talked to some 30 to 40 people; talked to the  
2 person at the Reading Eagle. We looked in the Reading Eagle  
3 because I hadn't seen it listed. It wasn't listed in the  
4 Reading Eagle as a television channel. And, you know,  
5 looked at Reading, saw the demographics of Reading.

6 Looked for a site, hired once again a real estate  
7 broker out of Philadelphia -- actually, I hired two real  
8 estate brokers. The first real estate broker was not in  
9 Philadelphia. It was closer to Reading and he came up, he  
10 just gave it a try. And then we retained a broker from one  
11 of the most prominent firms in Philadelphia for sites, and  
12 then he and I would go driving around looking at mountains  
13 and stuff.

14 And eventually we narrowed in on a site that we  
15 had -- towards the June 1st, although in May I hired a  
16 person to do the taping, or when I hired them, the things I  
17 had don in Massachusetts, I had a commitment there would be  
18 more than one person taped on June 10 -- 24 hours. Saw the  
19 24-hour tape.

20 At that time it appeared to be the feed on the  
21 Reading channel. It looked good. Then had him tape the  
22 last two weeks of June.

23 Subsequently I found out, as was pretty painfully  
24 evident, that what I thought was the tape was not the tape,  
25 although at the time I had him -- first I had to make sure

1 he had a TV set, and then he told me he had a set and he had  
2 the station on his television set. And later on, in  
3 September last year, we found out that what I thought was  
4 the tape which based my decisions on the nature of the  
5 programming was actually the broadcaster, not the local  
6 feed.

7 Q When you say it "was actually the broadcaster, not  
8 the local feed," --

9 A Well, it turns out Home Shopping Network has two  
10 separate kinds of programming, although for all practical  
11 purposes they are almost similar. I watched them the other  
12 night.

13 JUDGE SIPPEL: What year are we in?

14 THE WITNESS: 1994, Your Honor.

15 JUDGE SIPPEL: So it was March of '94 that you  
16 rejected Marlboro for the reasons that you gave?

17 THE WITNESS: February, actually, of 1994.

18 JUDGE SIPPEL: All right. And then you shifted  
19 gears to Reading?

20 THE WITNESS: Mm-hmm, at the very end of February  
21 because we were trying to find a site. I'm not sure -- it  
22 was the last couple of weeks with the engineer. You know,  
23 they way they respond it takes time to do these things. We  
24 were pretty intense in February.

25 JUDGE SIPPEL: Okay.

1 BY MR. COLE:

2 Q Did you ever make an effort yourself actually to  
3 watch Station WTBE's programming at any time prior to the  
4 filing of your application?

5 A Yes.

6 Q Could you describe those efforts?

7 A I went into a couple of places that had television  
8 sets, a restaurant and a bar, and tried to get it and they  
9 couldn't get it, either one.

10 Q When you say "they couldn't get it," what do you  
11 mean?

12 A It wasn't on the screen. They didn't have it.

13 Q Having done everything you have described, what  
14 did you do next in connection with the preparation of the  
15 Adams application?

16 A While all this was going on, we were preparing an  
17 application. It takes time to put an application in place,  
18 so we prepared an application.

19 Q Could you please look at Adams Exhibit 68 and 69  
20 and 70?

21 A Oh, yes.

22 JUDGE SIPPEL: Let me ask you this. Before you  
23 move off from 66, where does the Reading station show up on  
24 this list?

25 THE WITNESS: It doesn't, Your Honor. It wasn't

1 owned by Home Shopping Network.

2 JUDGE SIPPEL: But you had -- well, all right,  
3 never mind.

4 MR. COLE: Your Honor, what I asked him, I believe  
5 the record will reflect, that he received an additional  
6 list. We don't have the list, but there was an additional  
7 list of non-owned and operated home shopping affiliates.

8 JUDGE SIPPEL: Okay. You may proceed. Thank you.

9 MR. COLE: Thank you.

10 BY MR. COLE:

11 Q Again, Mr. Gilbert, do you have 68, 69 and 70 in  
12 front of you?

13 A Yes.

14 Q Could you tell us briefly what these documents  
15 are?

16 A These are the written evidences of the negotiation  
17 and the ultimate consummation execution of an option to  
18 lease a portion of the Gibraltar Hill site of Conestoga  
19 Telephone and Telegraph site for a transmission tower.

20 Q And who on behalf of Adams negotiated these  
21 arrangements with Conestoga?

22 A I did.

23 Q And am I correct that No. 69 and No. 70 both bear  
24 a date in their opening paragraphs of August of 1996, which  
25 would be --

1           A     Right.

2           Q     -- significantly after the filing of the  
3 application; is that correct?

4           A     Right.

5           Q     Why did you enter into agreements after the  
6 application was filed?

7           A     Well, what we -- I'm not sure. Well, I'm not sure  
8 of the dates that we reached agreement. The letter of  
9 intent is dated June 29, 1994, and it's at that point that  
10 we had an oral -- an agreement as set forth in the letter  
11 which wasn't reduced to writing. And at that point I think  
12 Conestoga and we believe we had an agreement. And the  
13 relationship now goes six years, and we talk to one another  
14 and so on, and it's been a pretty good agreement basically.

15                     It took us a long time to reduce to writing the  
16 option agreement and the license lease agreement. There  
17 are, you know, the drafted documents and it just took a long  
18 time. They, I would say, felt they -- my feeling is they  
19 never responded quickly. They knew we were going ahead. We  
20 had a very good relationship, and it just took awhile to get  
21 the documents written.

22           Q     And to wrap up the question of Conestoga, could  
23 you look at Exhibit No. 71 as well, please?

24           A     Yes.

25           Q     Could you tell me what the materials in Exhibit

1 No. 71 area?

2 A Well, the first one is a letter forwarding a check  
3 for \$3,000, the first payment on the option. Second is two  
4 copies of the executed -- execution copies of the documents  
5 from Steve Lubas.

6 Q Who is Steve Lubas (phonetic)?

7 A He's the person with whom I had the primary  
8 contact. His title is mobile service manager. I think  
9 he's -- my guess is in reality he's -- you know, you could  
10 say he's the executive vice president of the company. I  
11 don't know. He's the one I've dealt with extensively over  
12 the years. Dealt with John Bentz (phonetic) marginally.

13 Q Do you know who John Bentz is?

14 A I think John Bentz is the president, but I'm not  
15 sure. I think he's the president.

16 Q The president of what?

17 A Of Conestoga Telephone & Telegraph Company.

18 Q Thank you.

19 In addition to making arrangements for the  
20 availability of a tower site for Adams' proposed station,  
21 did Adams also arrange for financing of construction of the  
22 station? And let me refer you to Exhibit No. 72 in the blue  
23 notebook please.

24 A Yes, we arranged for the ability to obtain a loan  
25 of \$5 million.

1 Q Do you know what an "accommodation letter" is?

2 A Frankly, no. I may know what it is but not by  
3 that term.

4 Q To the best of your knowledge, was the American  
5 National Bank & Trust Company of Chicago serious in its  
6 statement that it was willing to provide a loan of \$5  
7 million to Adams in connection with its Reading application?

8 A I would say they were totally serious. A number  
9 of the principals here had a longstanding relationship with  
10 the bank and dealt with the president of the bank and maybe  
11 even the executive vice-president of the bank at that time,  
12 I'm sure. I was say they were pretty serious.

13 Q Now, a moment ago you mentioned the taping process  
14 for Channel 51. Do you recall --

15 A Yes.

16 Q -- that testimony?

17 A Yes.

18 Q When did you arrange to have tapes made?

19 A Prior to June 1.

20 Q And who on behalf of Adams made the arrangements  
21 to have the tapes made?

22 A I did.

23 Q How did you do that? What did you do in order to  
24 make arrangements to have the tapes made?

25 A I called a Mr. Sherwood in -- wherever he lived --

1 near Reading, near Philadelphia. And asked him if he would  
2 be willing to do some work for us, if he would be willing to  
3 commit to tape Channel 51 in Reading. I told him what it  
4 required. I've got a lot of experience in round-the-clock  
5 operations. That we would need two or more people who would  
6 be committed to doing it. One person couldn't do it because  
7 he might fall asleep and not get a total commitment. Would  
8 he be willing to do it?

9 And I forget, we probably negotiated or I asked  
10 him what he wanted an hour to do it, and he agreed to do it.

11 Q How did you find Mr. Sherwood?

12 A Earlier, I misstated. I confused the one who did  
13 the taping in Massachusetts for Mr. Sherwood.

14 I found him through my daughter, and I, frankly,  
15 don't remember much other than that I got them through my  
16 daughter.

17 Q Did you ask Mr. Sherwood what qualifications he  
18 had to do the taping as you wanted it done?

19 A Well, first I asked him if he was a college  
20 graduate. He said he was. I wanted somebody who I felt was  
21 responsible. And would he be willing to commit to this and  
22 did he have the time, et cetera. He said he did.

23 Q Did you know whether Mr. Sherwood was capable of  
24 receiving Station WTVE at whatever place he intended to do  
25 the taping from?

1 A At the time I thought I did, yes.

2 Q And how --

3 A I had him turn on the channel to make sure he was  
4 getting it. He said he was getting it. And I said, okay,  
5 you quality on that basis too. That was a mistake, of  
6 course.

7 MR. SOUTHARD: I'm sorry. I'm having just a  
8 little bit of difficulty hearing you. I just want to make  
9 sure it's on the record; that the court reporter is picking  
10 it up.

11 JUDGE SIPPEL: Speak more directly in the  
12 microphone.

13 MR. SOUTHARD: Thank you.

14 JUDGE SIPPEL: Okay, you're welcome.

15 BY MR. COLE:

16 Q After finding Mr. Sherwood and determining that he  
17 would be qualified to do the job as far as you were  
18 concerned, what did you do next?

19 A I hired him.

20 Q What did you hire him to do?

21 A I hired him to tape what I regard as the test  
22 program, the June 1 program. And he taped the June 1  
23 program and FedExed it to me.

24 Q The June programming of what?

25 A Of what I believed was Channel 51.

1 Q And when you say "June 1," how much of June 1?

2 A Twenty-four hours; always wanted 24-hour-a-day  
3 programming.

4 Q So Mr. Sherwood taped 24 hours of what you  
5 believed to be WTVE programming on June 1. Did he then send  
6 you the tapes?

7 A Yes.

8 Q Do you know how he sent you the tapes?

9 A FedEx was the way we were doing it. I may have  
10 even sent him either FedEx envelopes which we do with  
11 clients sometimes, or whatever it was, gave him my number.  
12 I don't know.

13 Q Mr. Gilbert --

14 A Firm number.

15 Q -- do you know what your firm number for Federal  
16 Express was at that time?

17 A No.

18 MR. COLE: Your Honor, may I approach the witness?

19 JUDGE SIPPEL: You may.

20 MR. COLE: I'm approaching the witness to show you  
21 a document which has been received into evidence as Adams  
22 No. 87. It's a page from Mr. Sherwood's notes, and I'm  
23 referring the witness's attention to the notation in the  
24 upper right-hand corner, which includes a nine digit number  
25 and a phone number.

1 BY MR. COLE:

2 Q Do you see that nine-digit number?

3 A Right.

4 Q 0606 --

5 A Right.

6 Q I believe it's 9312-1.

7 Is that your Federal Express number or your firm's  
8 Federal Express number as of 1994?

9 A I'm not sure if it's 4312, but that's it.

10 Q Do you recall giving Mr. Sherwood your Federal  
11 Express number?

12 A I don't recall it exactly, but I know that I did.

13 Q So you received the tapes from June 1.

14 What did you do next?

15 A Viewed them. Put them in machines in our office;  
16 sat down and watched the tapes.

17 Q What did you see on the tapes?

18 A Well, I saw 24 hours of programming, and strangely  
19 enough, in light of what happened, on the first six-hour  
20 segment, which is the one I watched most intensely, there  
21 were three Pennsylvania public service announcements. They  
22 were really dealing with missing children.

23 Q How did you know they were Pennsylvania?

24 A They said they were Pennsylvania.

25 Q What did you understand to be the importance of

1 the fact that missing children from Pennsylvania were on the  
2 tape that you were watching?

3 A It indicated that I was watching a Reading  
4 program.

5 Q Now, this morning you've testified that you hired  
6 Mr. Sherwood with the understanding that there would be at  
7 least two people working on the tapes.

8 Do you recall that?

9 A Yes.

10 Q And you believed that that is what you had in fact  
11 told him?

12 A That was a firm commitment on his part. I have --  
13 as I say, I have got an extensive background in 24-hour,  
14 seven-day-a-week service with hospitals, where it takes 4.2  
15 people to perform one person's job a week actually. And I  
16 wanted to make sure that we had enough people that somebody  
17 wasn't going to fall asleep and we would end up with 18-hour  
18 tapes or something else. So he committed that he would have  
19 other people do it besides himself.

20 Q Now, in testifying in Phase I back in January, I  
21 believe you testified that you saw PSAs from Reading.

22 Do you recall testifying about that?

23 A Yes.

24 Q Do you want to -- do you have any reason to revise  
25 that testimony at this time?

1 A Yes, it's incorrect.

2 Q In what respect is it incorrect?

3 A Well, I assumed that the Pennsylvania children  
4 wanted and the others were all originating in Reading. It  
5 turns out that they were part of the broadcast feed which  
6 was national, and it wasn't what I thought -- we weren't  
7 getting the Reading broadcasting station.

8 Q So when you referred to the Reading PSAs in  
9 January, you were referring to the -- you in fact meant the  
10 Pennsylvania PSAs you had seen?

11 A Yes.

12 Q Had you reviewed Mr. Sherwood's tapes prior to  
13 your January testimony?

14 A You mean immediately in the period shortly before,  
15 no.

16 Q Immediately before, in preparation --

17 A No.

18 Q -- for your January testimony?

19 A No.

20 Q So what was the basis for your testimony  
21 concerning the tapes in January?

22 A Recollection.

23 Q After you reviewed the June 1 tapes that Mr.  
24 Sherwood sent you, what did you do?

25 A Well, it then looked like the test was successful.

1 I then called him up and said, all right, what we want to do  
2 now is run two weeks of tape, and then had him run tape for  
3 approximately the 16th of June to the 30th of -- the 16th of  
4 June to the 30th of June.

5 Q Did you speak with Mr. Sherwood during the period  
6 of time of the second taping, that is, from approximately  
7 June 16 to approximately June 30?

8 A Yes.

9 Q How often?

10 A A number of times. I'm not sure now how many  
11 times I spoke to him, but I am a tight supervisor of people  
12 and I was checking with him to make sure that he was --  
13 first, what he was seeing, and secondly, you know, that the  
14 tapes were being run.

15 Q Did you --

16 A And he told me he was watching. He told me he was  
17 getting the tape and basically it was the same tape because  
18 he knew what I was looking for as he was getting on the June  
19 1 run.

20 Q When you say it was the same tape, what do you  
21 mean?

22 A Same amount of programming, same amount of  
23 programming content, the same amount of basically PSAs.

24 Q So you had asked Mr. Sherwood, in addition to  
25 doing the taping, to review the programming for PSAs as

1 well?

2 A Right. I did it for two reasons. One is I wanted  
3 to know that it was being done, and secondly, I wanted to  
4 ensure that somebody was awake and was watching it at the  
5 time. That was my way of doing both.

6 Q Did you ask Mr. Sherwood to send you the second --  
7 the two weeks worth of tape?

8 A Yes.

9 Q Did he send those to you?

10 A He sent it to me in two batches, I believe.

11 Q When did the first batch arrive, to the best of  
12 your recollection?

13 A Well, 15 - 16th through the 23rd, he sent it FedEx  
14 so it would have arrived shortly -- a day or two after the  
15 end of the first week's taping, I presume. A number of days  
16 before the end of June.

17 Q When the first batch of tapes arrived to you in  
18 Chicago, what did you do?

19 A Put them on the machine and watched them. What I  
20 would do is I would watch a tape, fast-forward, then you got  
21 this bleeping sound or musical, little -- whatever it is  
22 kind of sounds so you knew the PSA was coming, stop it,  
23 listen to the PSA, go to where I was on the counters, and I  
24 already had information as I recall, and then keep going,  
25 and was doing that at the time. I ran through the -- I ran

1 through the seven days.

2 Q And what did you see in that seven days worth of  
3 tapes?

4 A Basically the same thing that we had seen on the  
5 one day, but, you know, seven times as much. We were  
6 getting these short PSAs, which really were not live  
7 produced. That was clear. Which really, from my point of  
8 view, didn't have a lot to do with what I believed to be was  
9 the public service function of television stations.

10 Q Now, back in your January testimony, I believe you  
11 testified that you spoke with Mr. Sherwood every day or on a  
12 daily basis during the taping.

13 Do you recall that testimony?

14 A Yes.

15 Q Do you have any reason to wish to revise that  
16 testimony?

17 A Yes, sir. It's my understanding that I really  
18 didn't talk to him every day. I talked to him a couple of  
19 times a week.

20 Q Prior to your testimony in January, had you  
21 reviewed in detail any records concerning the taping process  
22 involving Mr. Sherwood?

23 A No.

24 Q So what was the basis for your January testimony?

25 A Once again, it was my recollection of what had

1 occurred six years prior.

2 Q Since then have you had the opportunity to review  
3 other information concerning the taping process?

4 A Yes, I have, and that information leads me to  
5 revise my answer.

6 Q I'm sorry. You said that Mr. Sherwood sent you  
7 the tapes by Federal Express, is that correct?

8 A Yes.

9 Q Do you know when the third batch of tapes arrived?

10 A After the time we filed the application; after  
11 June 30th because he taped through June 30th. But I don't  
12 know the exact date, but several days later.

13 Q Mr. Gilbert, would you please take a look at Adams  
14 Exhibit No. 76?

15 A Seventy-six?

16 Q Seventy-six, in the blue folder.

17 A Yes.

18 Q Do you recognize this document?

19 A Yes.

20 Q Could you tell us what it is?

21 A That's the June 1 tape; that's the letter from  
22 Paul Sherwood to me forwarding the June 1 tapes.

23 Q And the second page is what?

24 A The second page is the check that I sent him for  
25 the work done in taping one day's tapes, \$180 a day is what

1 he was being paid.

2 Q Now, if you could turn over to Exhibit No. 77,  
3 please, the next one in the folder.

4 A I have it.

5 Q Could you tell us what this is?

6 A This is the letter to me forwarding video tapes  
7 from 6-22 to 6-30, and which he once again requests payment  
8 for services rendered.

9 Q And what are pages 2 and 3, if you can tell me?

10 A Those are the days of the tapes, the number of the  
11 ads, the counter numbers, which is our way of checking where  
12 they were, and about the time of day that they ran.

13 Q And when you say "ads," what do you mean?

14 A Public service announcements actually. It's the  
15 way he printed it, I was reading the column headings, the  
16 number of ads.

17 Q But to your knowledge, that should refer to the  
18 number of PSAs?

19 A That's correct.

20 Q What is the final and fourth page of this  
21 document?

22 JUDGE SIPPEL: You mean the heading "Ads" should  
23 be -- to read "PSAs" or?

24 MR. COLE: Well, Mr. Sherwood apparently used the  
25 term "number of ads" as "number of PSAs." But I believe Mr.

1 Gilbert understood that to be PSAs.

2 THE WITNESS: I knew what he was doing. We were  
3 talking.

4 JUDGE SIPPEL: But from reading this document, I  
5 should just completely discount "ads" and insert "PSAs"?

6 THE WITNESS: That's correct, Your Honor.

7 JUDGE SIPPEL: All right.

8 THE WITNESS: And the fourth page you say?

9 MR. COLE: Yes.

10 THE WITNESS: That's a check for 10 days taping,  
11 \$180 a day. It's more than 10 days. It would be 1800, so  
12 I'm not sure what it is. But it's for the -- the \$80 is  
13 cost of tapes.

14 MR. COLE: Your Honor, if Mr. Booth could approach  
15 the witness with an exhibit.

16 JUDGE SIPPEL: Go right ahead, sir.

17 This is a Reading exhibit?

18 MR. COLE: This is a Reading exhibit, yes. I've  
19 run out of colors, Your Honor, so I'm going to go with  
20 white.

21 JUDGE SIPPEL: Oh, I can tell a Reading book when  
22 I see it. What number?

23 MR. COLE: Number 47.

24 JUDGE SIPPEL: Okay.

25 BY MR. COLE:

1           Q     Mr. Gilbert, Mr. Booth has just handed you a copy  
2 of Reading Exhibit No. 47, which is a statement of Mr.  
3 George Mattmiller.

4                     Have you seen that before?

5           A     Yes.

6           Q     In that exhibit Mr. Mattmiller describes the  
7 contents of the tapes produced by Mr. Sherwood.

8                     Is Mr. Mattmiller's description of the contents of  
9 those tapes consistent with what you saw on the tapes?

10          A     I think so.

11          Q     And in particular, if I could refer you to --

12                     MR. COLE: Your Honor, if I may approach because I  
13 don't have an extra copy.

14                     JUDGE SIPPEL: Go right ahead.

15                     BY MR. COLE:

16          Q     If I could refer you, Mr. Gilbert, to Attachment E  
17 to Mr. Mattmiller's exhibit, that is, Reading Exhibit 47,  
18 Attachment E, which is a listing of the breakdown of missing  
19 children announcements according to groups, and I believe  
20 we previously understood among the parties that Group A as  
21 defined on or as set forth on the top of this exhibit refers  
22 to the June 1 tapes.

23                     Would you confirm that three of the missing  
24 children announcements in the first taping Group A is  
25 Pennsylvania?

1 A That's correct.

2 Q That's consistent with your recollection, is it  
3 not?

4 A Yes.

5 Q Do I understand correctly that you understood the  
6 programming was Station WTVE in June of 1994 to be  
7 consistent or to consist of the programming described by Mr.  
8 Mattmiller in No. 47; is that correct?

9 A That is correct.

10 Q And what did you conclude from your review of Mr.  
11 Sherwood's tapes prior to June 30, 1994?

12 A I concluded that Channel 51 was not producing  
13 locally originated programming that dealt with community  
14 issues, neither in terms of content nor in terms of  
15 quantity.

16 Once again, I believed that the purpose was to  
17 have political discussions, political not in the partisan  
18 sense, but political discussions in the sense of airing of  
19 views in a society, and that requires more than two or  
20 three-minute snipes, and we weren't getting any of that,  
21 frankly.

22 Q Did your review of the tapes from Mr. Sherwood  
23 prior to June 30, 1994, influence Adams' decision to proceed  
24 with the filing of its application?

25 A Yes.

1 Q In what regard?

2 A Well, if the content had met what I regarded as  
3 the mandate of the statute, we wouldn't have filed. And we  
4 felt that it was egregiously short of the statutory  
5 requirements; that neither in content nor in the amount of  
6 time allocated were we getting anything of merit.

7 Q And how did that observation influence Adams'  
8 decision to proceed with the filing of its application?

9 A Well, at that point it was a final go-ahead. We  
10 talked about it, Mr. Haag and I, and decided that we as a  
11 competitor would be able to state that we would be able to  
12 provide programming which would be more responsive to the  
13 needs of the community.

14 Q Are you familiar with the term "renewal  
15 expectancy," Mr. Gilbert?

16 A Yes. Right.

17 Q Did the term "renewal expectancy" enter into your  
18 decision-making process prior to June 30, 1994?

19 A Yes. We felt that, in effect, they had lost the  
20 renewal expectancy by their basically total failure, in our  
21 opinion, to provide community service.

22 Q When you say "they," who are you referring to?

23 A The owners -- Reading Broadcasting Company.

24 Q Now, there came a time, I believe you've  
25 testified, that you learned that the tapes which Mr.

1 Sherwood had made did not include -- strike that.

2           There came time, I believe you testified, that  
3 you learned that the tapes that Mr. Sherwood had made did  
4 not in fact reflect the programming of Station WTVE, didn't  
5 you?

6           A     Yes.

7           Q     When did that happen?

8           A     It was about September of '99.

9           Q     Can you tell us how you came to learn that?

10          A     Yes. In preparation for the hearing, you asked me  
11 to send you the tapes. We always knew I had the tapes. And  
12 we transmitted the tapes once again by FedEx, and you had at  
13 that point started comparing the tapes to the program logs  
14 of the station, and they didn't match.

15                 And you investigated and found that we had made a  
16 mistake in taping what we had taped.

17          Q     I'm going to shift gears now.

18                 From the time that Adams filed its application in  
19 June of 1994 through April of 2000, did Adams ever consider  
20 entering into any settlement pursuant to which its  
21 application would be dismissed?

22          A     No, with one exception perhaps, and that's the  
23 mandate, you know, of the Commission attorney that we enter  
24 mediation negotiations. But other than that, no.

25          Q     Are you referring to the efforts initiated by Mr.

1 Shook within the last several weeks?

2 A Yes. Yes.

3 Q All right, that was subsequent to April of 2000,  
4 was it not?

5 A Right. Okay.

6 Q During the same time period, that's June of '94  
7 through April of 2000, so we're accepting out any efforts  
8 Mr. Shook might be making, was Adams ever approached about  
9 the possibility of dismissing its application in connection  
10 with any settlement?

11 A Yes.

12 Q Could you describe -- how many times did that  
13 happen?

14 A Two or three.

15 Q Okay, could you describe those?

16 A The first was a clear approach by Mr. Parker in  
17 which he called me out of the blue and asked me if we would  
18 be willing to settle for \$250,000.

19 Q And when you say Mr. Parker, is that Mr. Micheal  
20 Parker of Reading Broadcasting, Inc.?

21 A That's correct.

22 Q And how did you respond to Mr. Parker?

23 A I responded to him in a very brief conversation,  
24 which I'm sure lasted less than three minutes, saying we  
25 weren't interested.

1 Q Did you ever hear back from Mr. Parker in  
2 connection with his suggestion?

3 A No, I think the intensity of the response was  
4 clear.

5 Q What was the next time in which you or Adams were  
6 approached -- by the way, are all these approaches about  
7 settlement coming to you or are they coming to any other  
8 principal of Adams?

9 A Mr. Haag never told me he received any. No other  
10 person has ever told me they received any, so they only came  
11 to me.

12 Q The only ones you know about are the ones that  
13 came to you.

14 What was the second one then?

15 A The second one was this weird phone call by a man  
16 who calls and says, "We understand that you are involved in  
17 a challenge application for Channel 51. Do you want to  
18 settle the matter?" Not telling me his name or anything  
19 else, just -- I still don't understand that phone call,  
20 whoever made it.

21 Q Do you recall when that occurred?

22 A It occurred a number of months after the Parker  
23 phone call.

24 Q Do you recall when the Parker phone call occurred?

25 A Not really at this point. Several years ago.

1 Q And how did you respond to the unidentified man  
2 who called you?

3 A I was really taken aback, I have to tell you. I  
4 responded, "We're not interested," but it took me a little  
5 longer. I was just almost agasp of the fact that he doesn't  
6 even tell me his name and said, "Do you want to settle" in a  
7 significant matter.

8 Q Did you ever hear back again from the unidentified  
9 man?

10 A Oh, I didn't even ask -- I just said we're not --  
11 I didn't even ask to continue the discussion.

12 Q Did you ask Mr. Parker to continue the discussion?

13 A No.

14 Q Did you have any other contacts about potential  
15 settlement of the Reading proceeding after the unidentified  
16 man phone call?

17 A I have a third series of discussions which are  
18 somewhat ambiguous in nature as to were they discussions  
19 about settlement or not, but Ms. Swanson of Dow Lohnes  
20 called me and stated that she was interested in talking  
21 among the parties or -- I don't remember exactly what she  
22 said, and would I be interested in getting an appraisal.

23 Q And what did you tell Ms. Swanson?

24 A I didn't respond at all to whatever she was  
25 saying, and I'm not clear what she was saying about that. I

1 said I would be interested in getting an appraisal,  
2 particularly since she told me, and this is a correction of  
3 previous testimony that it would be \$5,000. I previously  
4 though it was \$10,000, which would be split three ways,  
5 between us, Reading and her client, and she refused to name  
6 who her client was.

7 Q Do you recall when this conversation with Ms.  
8 Swanson occurred?

9 A It was in the spring of '99.

10 Q So am I correct that you just stated that you  
11 agreed to join in the appraisal?

12 A Yeah, and I gave her a different -- I have a lot  
13 of respect for Dow Lohnes over the years. They are a first-  
14 class firm, and I knew a partner there would be somebody of  
15 substance and reality. Yes.

16 Q Did you -- in agreeing to join in the appraisal,  
17 did you tell Ms. Swanson that Adams was willing to become  
18 involved in settlement-related discussions?

19 A Never. I just wanted to get the appraisal for  
20 one-third of \$5,000.

21 Q Did Ms. Swanson provide the appraisal?

22 A Yes.

23 Q Do you recall when that happened?

24 A I think it occurred early in July, if I'm correct.

25 Q And did you speak with her at the time that the

1 appraisal arrived?

2 A Yes.

3 Q Do you recall -- call you tell us what that  
4 conversation concerned?

5 A Well, first, it was a short conversation as I  
6 recall. You may have been present, I'm not sure, Harry. I  
7 may have been in your office when it occurred. And it was  
8 something, "I got the appraisal and I see that your client  
9 is Telemundo," because the appraisal mentions Telemundo in  
10 it.

11 Q Did the conversation include any reference, to  
12 your recollection, of settlement?

13 A She may have said something but I'm not sure if  
14 she did or not, I just don't remember. But I surely said  
15 nothing on it, and if I did, I indicated we weren't  
16 interested in settlement. But I did, in several  
17 conversations with her, I told her I was interested in an  
18 affiliation agreement with Telemundo because I knew our  
19 people were interested in Hispanic broadcasting.

20 Q You told Ms. Swanson that Adams was interested in  
21 an affiliation agreement with Telemundo?

22 A Right.

23 Q Do you recall in your testimony in January you  
24 indicated that you had not engaged in any discussions  
25 concerning programming for Adams' proposed statement?

1 A Yes.

2 Q How can you say that when you advised Ms. Swanson  
3 that Adams was interested in an affiliation agreement with  
4 Telemundo?

5 A I don't think that that's -- that's not the --  
6 when I'm talking about programming, I'm discussing the  
7 nature of programs that you would have on a program, rather  
8 than an affiliation agreement.

9 Q Did Ms. Swanson ever -- strike that.  
10 What was Ms. Swanson's response to your suggestion  
11 that Adams would like an affiliation agreement?

12 A There was never any response. It was equivalent  
13 to my response about affiliation. There was never any  
14 response. It was a nonstarter.

15 Q So other than those three contacts, have there  
16 been any other conversations, apart from those initiated and  
17 suggested of Mr. Shook, had there been any other  
18 conversations involving possible settlement of the Reading  
19 proceeding pursuant to which Adams would dismiss its  
20 application?

21 A Other than the one I mentioned under the aegis of  
22 the FCC, no.

23 MR. COLE: I have no further questions, Your  
24 Honor.

25 JUDGE SIPPEL: It's twenty-five minutes of twelve.

1 Do you want to go forward or do you want to take a break?

2 I'm happy to go forward. If you're happy, okay.

3 Let's go off the record for just a minute.

4 (Whereupon, a recess was taken.)

5 JUDGE SIPPEL: We're back on the record.

6 MR. SOUTHARD: We're missing Mr. Shook.

7 JUDGE SIPPEL: We are missing Mr. Shook, yes.

8 Well, anybody have any idea where to look?

9 MR. COLE: He was up in his office the last time  
10 I -- he was heading for his office the last time I saw him.

11 JUDGE SIPPEL: We know he's not in the witness  
12 room.

13 MR. COLE: Well, we don't know that for sure.

14 (Laughter.)

15 JUDGE SIPPEL: Well, we'd better wait a few  
16 minutes. We'd better wait a few minutes. Go off the  
17 record.

18 (Whereupon, a recess was taken.)

19 JUDGE SIPPEL: We're on the record.

20 Are you ready to proceed, Mr. Southard.

21 MR. COLE: Your Honor, before Mr. Southard begins,  
22 could I -- a follow-up matter that you mentioned to me just  
23 at the end of -- just before the break. There are a couple  
24 of exhibits that I examined Mr. Gilbert about that I believe  
25 rulings had been withhold on, and I'd like at this point to

1 move them into evidence if I could. And I'm thinking  
2 particularly of Adams No. 62, which is the memorandum to Mr.  
3 Gilbert dated August 15, 1991.

4 MR. SOUTHARD: No objection, Your Honor.

5 JUDGE SIPPEL: All right. Mr. Shook, no  
6 objection?

7 MR. SHOOK: No, sir.

8 MR. COLE: Thank you, Your Honor.

9 JUDGE SIPPEL: Today is the 21st of June. It's  
10 received in evidence as Adams Exhibit 62.

11 MR. COLE: Thank you, Your Honor.

12 (The document referred to,  
13 previously identified as Adams  
14 Exhibit No. 62, was received  
15 in evidence.)

16 MR. COLE: The next one is Adams 67, which is the  
17 stand-alone copy of the final -- a second version of  
18 Commissioner Duggan's dissent in the Home Shopping must  
19 carry proceeding. I examined Mr. Gilbert about that and I  
20 believe he testified he had read that in 1993, and on that  
21 basis I move for the receipt into evidence of Adams 67.

22 JUDGE SIPPEL: Sixty-seven was identified on June  
23 12.

24 Any objection?

25 MR. SOUTHARD: Not really, Your Honor, no.