

1 reasonable request for discovery, and by reasonable I mean
2 that you would have to have a very, very specific document
3 that you wanted from the, from the Bureau that you don't
4 already have. You would have to put that in writing by June
5 5th.

6 MR. BROWN: All right, sir.

7 JUDGE SIPPEL: And anything after that that you need
8 again, I'm expecting that there is going to be an element of
9 cooperation here, and that--

10 MR. BROWN: I will do everything I can, sir.

11 JUDGE SIPPEL: Well, I understand that, but I'm
12 expecting that from the Bureau's side, too, and I'm sure that
13 there will be cooperation so long as it's reasonable, anything
14 that's requested is reasonable, and that it's not--and by
15 reasonable, I mean that it also, that the request is not made
16 too, too late in time, that is, too close to the hearing date.

17 MR. BROWN: Yes, sir.

18 JUDGE SIPPEL: But I'm going to give you a June 5 as
19 cutoff date. In other words, after June 5, you're really
20 going to have to make a very strong showing as to why you need
21 anything more in terms of discovery.

22 MR. BROWN: Well, at this time, I don't know that I

1 need anything else other than I can come up with myself.

2 JUDGE SIPPEL: All right. Well, the Bureau is going
3 to be required to also submit a trial brief. Ms. Laden, that
4 trial brief would also have, basically would have the, all the
5 documents you're going to introduce into evidence.

6 MS. LADEN: That's right, and Your Honor, I did want
7 to say if it will help things a little bit, that 99 percent of
8 the exhibits that I am presently intending to introduce into
9 evidence are documents from the Commission's files which were
10 attached to our request for admissions, so Mr. Brown already
11 has copies of those.

12 The only exception are two or three documents that
13 have to do with addresses, return receipts, and notices of
14 changes of address, which I will be glad to provide if Mr.
15 Brown wants them, but they are documents that he has either
16 submitted to the Commission for change of address or return
17 receipts that he has signed of things that we have sent.

18 JUDGE SIPPEL: Yeah. I think at a minimum, those
19 should go with your trial brief.

20 MS. LADEN: Oh, certainly.

21 JUDGE SIPPEL: If not before.

22 MS. LADEN: They will be part of the trial brief

1 certainly.

2 JUDGE SIPPEL: If not before, but if there are just
3 a few pieces of paper, you're describing them, you might just
4 ship them to him with a cover letter in advance and then these
5 also would be with your trial brief. The more advance time
6 that he has--

7 MS. LADEN: Absolutely.

8 JUDGE SIPPEL: The better all of us are going to be.
9 Go ahead, Mr. Brown.

10 MR. BROWN: For purpose of what I send you and Ms.
11 Laden, copies will be sufficient for my part of the evidence
12 whatever, of whatever I intend to file, correct?

13 JUDGE SIPPEL: That's correct, as long as--as a
14 general rule, that's correct. Now I want to be careful about
15 that. So long as they are legible; in other words, they have
16 got to be very clear and readable.

17 MR. BROWN: Yes, sir.

18 JUDGE SIPPEL: Now if there is a question, however,
19 about whether somebody's signature is accurate or there is
20 some question about a date on a document, like a return
21 receipt or Ms. Laden would have those, it's--let me finish.
22 Mr. Brown?

1 MR. BROWN: It seems to me, with the Post Office in
2 Alabama, and I know we got some of the other station's mail,
3 and I don't know whether the other stations got part of our
4 mail or not, but there are times the mail did go, you know, to
5 the wrong station in Jasper, so I may ask Ms. Laden for a copy
6 of all that to see if somebody at one of the other stations
7 may have signed a letter for us or something of that nature.

8 JUDGE SIPPEL: Well, Ms. Laden said she is going to
9 have certainly minimum, she will have all those documents for
10 you with her trial brief.

11 MR. BROWN: Yes, sir.

12 JUDGE SIPPEL: I asked her to send them to you in
13 fact in advance of her trial brief so that you can check that
14 out.

15 MR. BROWN: All right, sir.

16 JUDGE SIPPEL: Now I mean that--what I was trying to
17 get at is that if you're going to rely on something which
18 requires a signature or something of that nature, if it's
19 coming from you, you better--I would suggest that you bring
20 with you originals, not that you would have to put them in the
21 record, but that you have originals with you.

22 MR. BROWN: Yes, sir.

1 JUDGE SIPPEL: So in case some question comes up
2 about whether or not in fact there was, there was any
3 alteration to a copy or something that we will have the
4 original right here in the courtroom.

5 MR. BROWN: Yes, sir. Yes, sir.

6 JUDGE SIPPEL: But so you can just pack those up in
7 a separate envelope and hopefully we won't have to use them.

8 MR. BROWN: Yes, sir.

9 JUDGE SIPPEL: Okay?

10 MR. BROWN: Yes, sir. I understand.

11 JUDGE SIPPEL: If you're talking about some kind of
12 an unusual event like you just outlined about Parrish mail
13 going into Jasper or some such thing as that, you may want to
14 again think of how you're going to prove that. There should
15 be somebody with first-hand knowledge of that coming in to
16 testify.

17 MR. BROWN: Well, I have, I will have to look into
18 it and see if I can find someone that knows that. You know,
19 as many people is at the Post Office, I don't know who I would
20 go to to, to, to get that information. I just don't know of
21 anything at the time, but something might come up or come to
22 me later.

1 See, I know all the people at the Post Office,
2 Postmaster and everybody, so I will just have to look at that.

3 JUDGE SIPPEL: Well, yeah. You might want to look
4 at that, but unless you have got a pretty good idea that there
5 is something there to look at, I wouldn't, you know, waste a
6 lot of time.

7 MR. BROWN: I won't do anything with it if, you
8 know, if it is not any, if it's not an advantage of, you know,
9 I wouldn't have anything on that.

10 JUDGE SIPPEL: If you're going to go down that line,
11 if you're going to come up with that kind of an explanation,
12 in light of the fact that we are this close to the hearing,
13 and how important that kind of evidence would be, I don't know
14 how to tell you to do this, but you're going to have to rely
15 on getting a live witness into this courtroom to testify to
16 it.

17 MR. BROWN: Yes, sir.

18 JUDGE SIPPEL: So I mean you could, you can file an
19 affidavit, but the affidavit is not really going to be
20 convincing evidence in a situation like that.

21 MR. BROWN: A-ha.

22 JUDGE SIPPEL: But you make your record as best you

1 can, but certainly lay that out in your, in your trial brief.

2 MR. BROWN: Yes, sir. I will do that.

3 JUDGE SIPPEL: Now if it did come to that, you
4 could--let me take this hypothetical. Let's say that you did
5 find a clerk in a Post Office down there who came up with some
6 very significant information about mail deliveries.

7 MR. BROWN: Yes, sir.

8 JUDGE SIPPEL: All right? You could explore this.
9 I'm not going to ask for a commitment on the record today, but
10 you may, you could approach that kind of evidence with this,
11 this in mind. You could get the affidavit from that person.

12 MR. BROWN: Yes, sir.

13 JUDGE SIPPEL: Submit the affidavit with your trial
14 brief, and then ask that that person's testimony be taken by
15 speaker phone as we are doing it here.

16 MR. BROWN: Yes, sir.

17 JUDGE SIPPEL: Now I don't know. I think Ms. Laden
18 would certainly want to give that some serious thought before
19 she would, she committed to that, but--and it would be very,
20 my ruling would depend very, very, to a great extent on the
21 nature of the information and the, and what is in the
22 affidavit.

1 That affidavit would also have to be very clear that
2 the person is not related to you and does not have any
3 business dealings with you.

4 MR. BROWN: Yes, sir.

5 JUDGE SIPPEL: I'm just using that as a
6 hypothetical. I'm just simply saying that if you're going to
7 put your case together down there, you want to use as much
8 imagination as you can, but you do have to understand.

9 MR. BROWN: Yes, sir.

10 JUDGE SIPPEL: As much as I'm willing to bend over
11 backwards to accommodate you on costs and expense--

12 MR. BROWN: Yes, sir.

13 JUDGE SIPPEL: If it comes down to a critical fact,
14 and you have got, you know, something that would be like an
15 alibi witness, to use an analogy, and if something that,
16 somebody that's going to have some very, very critical
17 evidence to your case, you best think about bringing them up
18 here to Washington with you.

19 MR. BROWN: Yes, sir.

20 JUDGE SIPPEL: Okay?

21 MR. BROWN: If any of that, if I can think of
22 anything that would be of value, I would do that. I would do

1 that. I don't think I have any problem getting somebody to
2 come, you know, by paying their expense. Most people haven't
3 seen the place, so I wouldn't think that hard to do, but is
4 there anything else that you want, that you think I might
5 ought to know to be prepared for under your--

6 JUDGE SIPPPEL: No. You know the elements of the
7 trial brief. We went over that in great detail.

8 MR. BROWN: Yes, sir.

9 JUDGE SIPPPEL: As I say, when you come up here to
10 testify, when you come up here to testify--

11 MR. BROWN: Yes, sir.

12 JUDGE SIPPPEL: Your trial brief, it may be that it
13 may--be prepared to come up with a couple of copies of your
14 trial brief because it may be that that would be the time to
15 put it in the record as an exhibit.

16 MR. BROWN: Yes, sir.

17 JUDGE SIPPPEL: So that the Bureau will have
18 something to testify--to cross-examine you on.

19 In addition, every document that you're going to
20 bring up, let me say, for example, like your limited
21 partnership agreement, which I would like to see, any other
22 documents that you yourself are going to bring up that the

1 Bureau is not going to put in evidence, be prepared to come up
2 with at least two copies. You will have your own copies for
3 yourself, but two copies need to come up for the court
4 reporter. Okay?

5 MR. BROWN: Yes, sir.

6 JUDGE SIPPEL: And you should also have, to make it
7 easier for you, you should also have the original of those
8 documents in a separate envelope in case we have to go into
9 the originals because of an inability to read them or there is
10 something about the document that, the copy that looks
11 suspicious, but aside from that, you would be able to work
12 with your copies.

13 MR. BROWN: Yes, sir.

14 JUDGE SIPPEL: All right. Now the burden of proof
15 and the burden of proceeding in a revocation case is with the
16 government. The Bureau has the obligation of going forward
17 first.

18 MR. BROWN: Yes, sir.

19 JUDGE SIPPEL: From what the Bureau has indicated,
20 what it intends to do is to put, basically to put their
21 documents in.

22 You don't have any witnesses in mind, do you, Ms.

1 Laden?

2 MS. LADEN: No, Your Honor.

3 JUDGE SIPPEL: So they are not even going to put a
4 witness on. They will simply put these documents in. You
5 will be sitting in the courtroom. Ms. Laden will come
6 forward, and you watch her very closely because you will be
7 able to see how these documents go into evidence. She will
8 have them marked. You will have a copy in front of you. She
9 will offer it into evidence. I'll rule that it's in or out.
10 The reporter will mark it, and we will just move on to the
11 next document.

12 MR. BROWN: Yes, sir.

13 JUDGE SIPPEL: Ms. Laden will explain her case.

14 MR. BROWN: Yes, sir.

15 JUDGE SIPPEL: And then she will rest. That's a
16 technical term meaning she will say okay, that's my case. Now
17 it's up to him.

18 MR. BROWN: Yes, sir.

19 JUDGE SIPPEL: I have to make a determination as to
20 whether or not she has met her burden of going forward, and in
21 all likelihood, I'll, I will rule that she has met her burden.
22 Then the burden shifts to you to come in with your evidence.

1 MR. BROWN: Yes, sir.

2 JUDGE SIPPEL: That's when you come up and you take
3 the stand and you're going to be acting as your lawyer and
4 your witness.

5 MR. BROWN: Yes, sir.

6 JUDGE SIPPEL: But I will permit you to operate
7 pretty much from the witness stand. So that it's clear to
8 you, you will be, the oath will be administered to you.

9 MR. BROWN: Yes, sir.

10 JUDGE SIPPEL: And you will then be asked, I will be
11 asking you some preliminary questions as we did this morning

12 MR. BROWN: Yes, sir.

13 JUDGE SIPPEL: Then you will be given an opportunity
14 to put your case on as you laid it out in your trial brief.

15 MR. BROWN: Yes, sir.

16 JUDGE SIPPEL: And that means telling your story as
17 you have summarized your testimony.

18 MR. BROWN: Yes, sir.

19 JUDGE SIPPEL: And putting in the documents that
20 you've identified in your trial brief, and then as I say, I
21 would even anticipate putting your whole trial brief in as an
22 exhibit.

1 MR. BROWN: Yes, sir.

2 JUDGE SIPPEL: So be very careful of what you put in
3 it.

4 MR. BROWN: Yes, sir. I will.

5 JUDGE SIPPEL: Then all of that evidence would then
6 be turned, then it would be turned over to Ms. Laden for
7 cross-examination with respect to all of that evidence so she
8 can cross-examine you with respect to everything that you put
9 in.

10 MR. BROWN: Yes, sir.

11 JUDGE SIPPEL: Plus everything that she has put in.

12 MR. BROWN: Yes, sir.

13 JUDGE SIPPEL: And that would be, the bulk of the
14 time would be spent in that kind of an examination. I would
15 ask you any questions that I wanted to ask you to clarify the
16 record.

17 My main concern is being sure that all the
18 information that's relevant to a decision gets in the record
19 so if I'm bothered by something, I'm going to ask questions.

20 MR. BROWN: Yes, sir.

21 JUDGE SIPPEL: And then after Ms. Laden and I get
22 finished asking all of our questions of you, you would then

1 have a chance to think about everything that happened, and
2 then you can make, you can give final testimony with respect
3 to things that might have come out on cross-examination that
4 you hadn't thought of before.

5 MR. BROWN: Yes, sir.

6 JUDGE SIPPEL: Then you can make a closing argument
7 of sorts on the record. I mean--

8 MR. BROWN: Yes, sir.

9 JUDGE SIPPEL: That's it. That's--the record gets
10 packed up after it gets typed and certified and sent to you.
11 There will then be a period of time that you will have to
12 write proposed findings, and the Bureau will be doing the same
13 thing, and then there will be a period of time to look at each
14 other's. Then you file reply findings.

15 MR. BROWN: Yes, sir.

16 JUDGE SIPPEL: And all of that is going to take--I
17 don't want to give a precise period of time, but it is
18 probably going to take about two to two and a half months
19 after the trial date because you have to wait until you get
20 the transcript from the reporter before you can even start the
21 process. All right.

22 Now I would advise you that somehow or other,

1 somehow if you can get hold of a copy of other proposed
2 findings so you have an idea as to what the format looks like,
3 or you could hire an attorney to do that for you if you had
4 the money, if you were interested in doing that--

5 MR. BROWN: I think I can come up with something on
6 that, in that, in that line. I did a little bit of study on
7 the law since I have been in this, and went and looked up some
8 of those type of things. I'll have something in that line on
9 June the 29th.

10 JUDGE SIPPEL: Well, as I say, you don't have to.
11 The only thing--I'm talking about proposed findings and
12 conclusion, which is after the trial is over.

13 MR. BROWN: A-ha.

14 JUDGE SIPPEL: It's something you wouldn't have to
15 approach that until after the trial is over.

16 MR. BROWN: Yes, sir.

17 JUDGE SIPPEL: But as I say, it's a very, very, it's
18 a very important part of the process, and it involves writing
19 up what would be called a legal brief but--or what they are
20 called is proposed findings of fact and conclusions of law,
21 and it means going through that trial record, meaning all the,
22 all the testimony and all of the exhibits, and then lining

1 that evidence up along with your theory of the case.

2 MR. BROWN: Yes, sir.

3 JUDGE SIPPEL: And it's a very, it's a very, very--
4 lawyers pride themselves on having years of experience and
5 being able to do that well, so you know, you really are at
6 quite a disadvantage doing that as a lay person without
7 having--

8 MR. BROWN: When we get, after we get the
9 transcript, I'll probably obtain an attorney to do that.

10 JUDGE SIPPEL: That would be, I think that would be
11 money well spent. At least a person could guide you in terms
12 of how you're supposed to do it.

13 MR. BROWN: Yes, sir.

14 JUDGE SIPPEL: I would say, I would even go beyond
15 that and say that would be money well spent for you to have a
16 lawyer up here with you at the hearing, but you know, I can't,
17 I can't--

18 MR. BROWN: You know, \$10,000 is quite a bit, a
19 little change to--

20 JUDGE SIPPEL: I understand. I understand.

21 MR. BROWN: Yes, sir.

22 JUDGE SIPPEL: I can't make that judgment for you.

1 MR. BROWN: Yes, sir.

2 JUDGE SIPPEL: But that, that basically, that covers
3 everything that I wanted to cover today. Bear in mind again
4 that June 5 discovery date.

5 MR. BROWN: Yes, sir. I have got a note on that.

6 JUDGE SIPPEL: I want to ask Mrs. Laden do you have
7 any more discovery in mind? I take it you don't?

8 MS. LADEN: No, Your Honor.

9 JUDGE SIPPEL: Is there anything that you wanted to
10 add to this discussion this morning?

11 MS. LADEN: No, Your Honor.

12 JUDGE SIPPEL: Again, I, you know, I'm going to
13 repeat this again. Maybe this is the fifth or sixth time I
14 have said it, but I asked you some questions this morning,
15 what I would call my background questions, to find out exactly
16 how that station was operated, and in other words, the history
17 of the station, who owns it, who works at it, and what their
18 jobs are, the limited partnership agreement itself, which
19 would be the legal document that would tell us exactly what is
20 involved. I want to see all that in the record in some way,
21 shape or form.

22 MR. BROWN: Yes, sir. I will have that for you.

1 JUDGE SIPPEL: Okay. Because it's good background
2 information, and I think it helps your case.

3 Ms. Laden made reference to mitigation. Let me
4 explain a little bit about that.

5 Let me say--let's say if hypothetically if I find
6 that everything that's alleged against you in the hearing
7 designation order actually happened, in other words, that all
8 the negative things that is stated in that designation order
9 happened exactly the way the Commission says it happened,
10 okay?

11 MR. BROWN: Yes, sir.

12 JUDGE SIPPEL: And if I find--however, you come in
13 with other evidence such as, for example, the fact that one
14 particular letter was sent to Pittsburgh, and how you reacted
15 to other points of information as you have already indicated
16 this. I'm not telling you anything new. I know this is how
17 you're going to handle your case anyway, but I look at
18 evidence like that and I look at other evidence that you may
19 bring in, and I look--and I may want to take a look as to
20 whether or not a revocation in light of all of the facts and
21 circumstances would be appropriate.

22 The Bureau may not agree with me and take me up to

1 the Commission on appeal and you may end up looking at another
2 level, but it's very important at this stage what I find and
3 how I find it.

4 MR. BROWN: Yes, sir.

5 JUDGE SIPPEL: I'm saying it would make it, would
6 make my job easier and I think I could do a better job if I
7 had a good understanding in terms of how that station came
8 about and how it was run and who the personalities were
9 involved with it and why it just happened to go down and go
10 off the air and why were, what were all those people doing at
11 the time that it went off the air?

12 Now as I say, it doesn't mean that that's going to
13 convince me, that kind of information is going to convince me
14 that the Commission was wrong in citing you for revocation.

15 MR. BROWN: Yes, sir.

16 JUDGE SIPPEL: But it would mitigate, it would help
17 me to understand all the facts and circumstances, some of
18 which may go to mitigating the violation that the Commission
19 is concerned about.

20 The record, as far as the Commission record is
21 concerned, the Commission record in this case doesn't know
22 anything about that, so I would like to see that be brought

1 in, and it gives you something to prepare for in your trial
2 brief and when you come up to testify.

3 MR. BROWN: Yes, sir.

4 JUDGE SIPPEL: Again, your trial brief does not have
5 to lay out sentence by sentence exactly what your testimony is
6 going to be.

7 MR. BROWN: Yes, sir.

8 JUDGE SIPPEL: But it has last to lay out in a
9 general way what it is that you're going to testify to.

10 MR. BROWN: Yes, sir.

11 JUDGE SIPPEL: So that we are not taken--there is
12 not going to be any surprises. And again, I'm going to
13 emphasize again if you have a critical fact, and you know what
14 the critical facts are, I'm convinced of that, and you have
15 another witness to either corroborate your testimony, meaning
16 that person would agree with your side of the story, or even
17 more importantly, you have somebody who, who had a, a better
18 view of an event, in other words, somebody who has first-hand
19 knowledge of a fact such as a mail delivery that you don't
20 have, then it would be wise to bring that person up to
21 testify.

22 MR. BROWN: Yes, sir.

1 JUDGE SIPPEL: And so it's, again, that's the kind
2 of judgment call that you have to make between now and the
3 time you put your trial brief together.

4 Again, I want to emphasize it has got to be done by
5 the 22nd of June, and I want those trial briefs, particularly
6 your trial brief air couriered so that it's received by Ms.
7 Laden and myself on the 22nd of June

8 Now if--you said something about doing it earlier,
9 and I think that's--I mean I commend you for doing that. Same
10 thing with Ms. Laden; she has--I don't know what process the
11 Bureau might use, but her brief, her trial brief has to be in
12 your hands no later than June 22nd.

13 MR. BROWN: Yes, sir.

14 JUDGE SIPPEL: And I have given you, in my orders
15 you can see I don't need it as early as you all need it. You
16 have until the 24th to get it to me.

17 MR. BROWN: Yes, sir.

18 JUDGE SIPPEL: So as long as I have it by mid-day on
19 the 24th, that will give me enough time to get ready for the
20 hearing, and that's it.

21 If you have anything more, if you have any other
22 questions, I can't really talk to you away from Ms. Laden. In

1 other words, if we talk about the case between now and the
2 trial, you would have to really call my office and ask for a
3 conference call. It could be by way of conference telephone
4 call outside of the courtroom, but I don't want to talk to you
5 between now and the trial date without Ms. Laden being a
6 participant to the conversation.

7 MR. BROWN: Yes, sir.

8 JUDGE SIPPEL: If you do have a question on it,
9 again, on directions how to get to the courtroom or you know,
10 where do I send this or that kind of thing, you can always
11 call my office and ask Ms. Myles for information.

12 MR. BROWN: Okay.

13 JUDGE SIPPEL: Or as you have been doing, deal with
14 Ms. Laden directly. She will be very straightforward with
15 you.

16 MR. BROWN: I found Ms. Laden to be very helpful.

17 JUDGE SIPPEL: Well, that's good to hear. Okay.
18 Again, if you can initiate, if you have something that you
19 want to get to me, you know how to initiate a conference
20 recall, and that I'll take this right in my office so long as
21 Ms. Laden is patched into the call.

22 MR. BROWN: Yes, sir.

1 JUDGE SIPPEL: And if I'm, if it's too important an
2 item to handle on the telephone, I'll stop the conversation
3 and then we will set it up for a conference like this.

4 MR. BROWN: Yes, sir.

5 JUDGE SIPPEL: I want you to know what your options
6 are.

7 MR. BROWN: Yes, sir.

8 JUDGE SIPPEL: This has been I think a very fruitful
9 prehearing conference in light of what is at stake here, and I
10 have nothing further to say. Ms. Laden?

11 MS. LADEN: I don't have anything, Your Honor.

12 JUDGE SIPPEL: Mr. Brown?

13 MR. BROWN: Nothing, Your Honor. I don't have
14 anything.

15 JUDGE SIPPEL: All right, then. We will be in
16 recess until 9:30 on the 29th of June of this year.

17 Thank you very much.

18 MR. BROWN: Thank you.

19 (Whereupon, at 10:20 a.m., the prehearing conference
20 was adjourned.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

Parrish, Alabama
Name of Hearing

92-35
Docket No.

Washington, D.C.
Place of Hearing

May 27, 1992
Date of Hearing

I, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 72, inclusive, are the true, accurate and complete transcript prepared from the reporting by Catherine S. Boyd in attendance at the above identified hearing, in accordance with applicable provisions of the contract, and have verified the accuracy of the transcript.

May 27, 1992


Name and Signature of
Reporter, Transcriber,
and Proofreader
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Reporting Services, Inc.