1 Before the
FEDERAL COMMUNICATIONS COMMISSION
2 Washington, D.C. 20554

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In the Matter of:)
5)
)
6 DIXIE BROADCASTING, INC.) MM Docket No. 92-207
)
7 Decatur, Alabama)

8

9 Whereupon,
10 DANIEL VAN HORN
11 the witness, called for examination by Counsel for the Mass
12 Media Bureau, pursuant to notice and agreement of counsel as
13 to time and place, at 1050 Connecticut Avenue, Washington,
14 D.C., where were present on behalf of the parties:
15

16 ON BEHALF OF THE MASS MEDIA BUREAU:

17 JAMES SHOOK, ESQUIRE
Mass Media Bureau
18 2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
19 ON BEHALF OF THE DEPONENT:
20 GERALD P. MCCARTIN, ESQUIRE
21 THOMAS SCHATTENFIELD, ESQUIRE
Arent, Fox, Kintner, Plotkin & Kahn
22 1050 Connecticut Avenue, N.W.,
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24

25

DEPOSITION BEGAN: 9:30 a.m. DEPOSITION ENDED: 12:00 noon

1 P R O C E E D I N G S

2 (9:30 a.m.)

3 MR. SHOOK: All right, this is the deposition of Daniel
4 Van Horn. It's being taken in connection with the
5 proceeding -- the applications for renewal of license of Dixie
6 Broadcasting, Inc., for stations WHOS and WDRM FM. The file
7 numbers are BR881201W0 and BRH881201WN.

8 And, Mr. Van Horn, we've discussed off the record
9 beforehand that our notary is not capable of administering
10 oaths in the District of Columbia and it's our understanding
11 that your deposition answers will be given under the penalty
12 of perjury.

13 MR. VAN HORN: That is correct.

14 Whereupon,

15 DANIEL VAN HORN

16 under penalty of perjury, was called as a witness herein and
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SHOOK:

20 Q Now, Mr. Van Horn, would you state your full name,
21 please?

22 A My full name is Daniel Franklin Van Horn. The last
23 name is two words, capital-V-A-N capital-H-O-R-N.

24 Q And where do you presently work?

25 A I am an Assistant United States Attorney in the

1 District of Columbia.

2 Q And how long have you held that position?

3 A Since May 11th of this year.

4 Q All right. And where did you work prior to that time?

5 A Immediately prior to that time, I worked at Arent, Fox,

6 Kintner, Plotkin and Kahn.

7 Q In what capacity?

8 A I was a partner in the firm from January 1st, 1986,

9 until the end of April in 1992. I was an associate from 1979,

10 I forget the exact starting date, until the end of 1985.

11 Q And was Arent, Fox your first employment out of law

12 school?

13 A No, sir.

14 Q Okay, where did you work before that?

1 stations, and private radio work at times, and common carrier
2 work.
3 I represented the Capital Center on advertising
4 contracts that it entered into. I did work for the Bullets,
5 for the Capitals. I represented Ticketron and Ticket Center.
6 I did work for various financial institutions. That's, that's
7 about the clients that I had.
8 The work consisted of transactional type work,
9 litigation, primarily administrative hearings and Court of
10 Appeals work, day-to-day counseling of clients, and regulatory
11 matters before the FCC. The percentages devoted to each of
12 those varied over the years.
13 I guess when I first started, I did more regulatory-
14 oriented work. Toward the end of my career with the firm, I
15 would say it was about 60-70 percent transactional in nature.
16 There was a -- The rest was -- would be made up of litigation,
17 regulatory-type work, and some other odds and ends thrown in.
18 Q Well, focusing on your work for radio broadcast
19 stations and television stations, what period of time would
20 work for those clients have encompassed?
21 A The entire time.
22 Q From 1979 to 1992?
23 A Right. Although I didn't -- I never had too many
24 television clients. So it -- The last couple of years I don't
25 think I did any work for TV clients.

1 Q So the majority of your work for broadcast stations
2 during that period would have been for radio stations?
3 A Yes, the majority of the work was for radio.
4 Q Now, with respect to work for radio stations, what if
5 any involvement would you have had, as a general nature, in
6 respect to the filing and/or review of station annual
7 employment reports?
8 A That varied over time. When I first started at the
9 firm as a junior associate, I would have worked directly with
10 the radio stations to prepare and file those, those reports.
11 That work would have been delegated to me by one of the
12 partners. When I became a partner, the hands-on aspect of
13 that work really stopped and, and I, I gave it to younger
14 associates to do while I did the work that I had as a partner.
15 Q So, for example, prior to 1986, if a radio client had
16 sent to you an annual employment report, you would have looked
17 at it briefly before filing it with the Commission?
18 A Correct.
19 Q As a general matter, would there have been any
20 communication between yourself and the client at that time?
21 For example, commenting on what it was you saw in terms of
22 the, you know, make up of the work force?
23 A Only if there was something there that raised some kind
24 of a question in my mind. There wasn't, there wasn't any
25 systematic examination of reports. As I believe you know, the

1 reports are pretty factual in nature. You just list the
2 number of employees you have in the various job categories
3 that are shown.
4 I would not have had any direct knowledge about whether
5 the factual data there was right or not. I would just look at
6 the form and make sure that it had been filled out correctly
7 and that the totals all seemed to balance. And if that was
8 the case, then I would assume that it would be right and
9 forward it to the Commission.
10 Q Would it have been your practice to take out the prior
11 year's form or the prior year's filing for the station, for
12 example, and compare the two to see whether, you know, there
13 was some rough resemblance? And, if not, that that might
14 generate a question on your part?
15 A That, that was generally not done. Not because it

1 the time.
2 Q So roughly --
3 A I, I think it might be '84-85 time frame, but I'm not
4 confident of that. If I could find out the date on which WEZF
5 TV was purchased by I think it was Citadel Communications,
6 shortly after that transaction was consummated Dixie became a
7 client of Arent, Fox.
8 Q All right. Well, it's, it's our information from
9 materials that Arent, Fox has supplied to us that there was a
10 letter from Mr. Bramlett to yourself enclosing a copy of the
11 1985 annual employment report which took place about May 30,
12 1985. Would that -- That would roughly correspond --
13 A That's in the '84-85 time frame. That's about right.
14 Q Okay. All right. The document that I'm placing in
15 front of Mr. Van Horn is what we understand to be the 1985
16 annual employment report for the station. Now, this was the
17 employment report that was referenced in the letter that I
18 just mentioned, May 30, 1985, letter. Does this annual
19 employment report look familiar to you, Mr. Van Horn?
20 A I have seen reports of this type many times.
21 Q Right.
22 A If you're asking me whether I have a specific
23 recollection of seeing this particular report before, I do
24 not.
25 Q No, I'm not. I didn't yet, let's put it that way.

1 MR. SCHATTENFIELD: Well, don't.

2 MR. SHOOK: Tom, you're cutting me off.

3 BY MR. SHOOK:

4 Q If you would, please, open up, I guess it's to the

5 third page. Now, as a, as a general matter, we have discussed

6 what it was that you have looked at. And, basically, if I

7 recall what you said, it was that you would look to make sure

8 that there was internal consistency in the numbers, and my

9 math suggests to me that such internal consistency exists with

10 respect to this.

11 However, did you take note or do you recall having

12 taken note that the racial categories that the licensee did

13 not, you know, break down into employment work force by race?

14 Now, I guess this is something you're noting now?

15 A Yes.

16 Q If you, if you had noted it back in '85 -- I mean, do

17 you recall having, having any situations where this did come

18 to your attention and then you did, you know, tell the

19 licensee by the way, you know, you filled out part of this but

20 there's another part that you need to fill out?

21 A If -- The general practice at this company, I may have

22 made a call, but my assumption is that since the minority

23 groups are not listed that all station employees are white.

24 Q All right. And unless the licensee brought something

25 to your attention, otherwise you would have just proceeded

1 along with that assumption?

2 A Correct.

3 Q All right. Now, do you recall in 19-- in late 1988

4 having anything to do relative to the preparation or review of

5 the station's -- and by station's, I mean here WHOS/WDRM --

6 EEO program for their renewal application?

7 A I do not have a specific recollection. In 1988, most

8 of that work would have been done by an associate, Susan

9 Marshall, who worked with me. The renewals, as you know, are

10 prepared in a cycle and there are a number of them that come

11 due at periodic intervals during the renewal period.

12 MR. SCHATTENFIELD: Would it be helpful if you looked

13 at the --

14 MR. SHOOK: I was going to give it to him.

15 MR. SCHATTENFIELD: Cut me off.

16 MR. SHOOK: No, you're just anticipating where I'm

17 going.

18 MR. SCHATTENFIELD: I was going to give him one.

19 MR. SHOOK: Okay. Well, I --

20 MR. SCHATTENFIELD: Go ahead.

21 BY MR. SHOOK:

22 Q Mr. Van Horn, what I'm giving you is a copy of the

23 station's 1988 EEO program that was submitted with their

24 renewal application. Now, having seen the EEO program, let me

25 show you one other document, and this is a December 7, 1988,

1 letter signed I believe by yourself, but you can verify that,
2 to Mr. J. Mack Bramlett. All right, now, first of all, having
3 looked at the program and the letter, do you now have any
4 specific recollection of having either looked at the EEO
5 program at about the time that it was prepared and/or having
6 anything to do with its preparation?
7 A I am certain that I would have looked at it before it
8 was filed. I don't have any specific recollection of actually
9 preparing it. My -- And I'm speculating here a little bit,
10 based upon what the nature of my work was at that time and how
11 I worked with Ms. Marshall, that she would have prepared this
12 as part of her ongoing duties to assist in the license renewal
13 process for all of my clients, in effect, and then shown it to
14 me and I would have looked at it briefly before it was filed.
15 Q All right. So, in other words, the, the very last page
16 of the EEO program there's a, there's a narrative that's
17 written. Would it be your understanding that that narrative,
18 in the normal course, would have been prepared by someone at,
19 at this law firm?
20 A Yes.
21 Q And you don't recall specifically having anything to do
22 with the preparation yourself, but --
23 A I, I do not. And it is -- I can't point to this. It
24 is not written in, in exactly the style that I would use.
25 Q Okay.

1 A I can't tell you why, but it just -- the argot is not
2 the way that I would write it. This appears to be something
3 that was written by Susan Marshall, having seen similar things
4 that she has written in the past.
5 Q All right. Now, what, what would have been your normal
6 review of an EEO program? In other words, what was it that
7 you were looking for and, depending on what you saw, what are
8 you going to be telling the client?
9 A Essentially, it's, it's the information that's in the
10 narrative, what appears as attached Exhibit 1. I would have
11 looked at that and seen how the station's employment of women
12 and minorities compared with their respective participation in
13 the relevant labor force.
14 If that participation looked to be on the low side, I
15 then would have looked at what kind of recruiting results were
16 achieved. That's the information that is set forth in Section
17 3 of the EEO model program. And if that doesn't show some
18 relatively good applicant flow, then I would have called that
19 to the client's attention in a letter or a phone call, which
20 would have been similar to the letter that you handed me dated
21 December 7th, 1988, addressed to Mr. Bramlett.
22 Q Now, am I correct in assuming then that that December 7
23 letter represents your review of the Dixie EEO program and
24 then your comments on it?
25 A That is a fair characterization. It is, it is possible

1 that Ms. Marshall could have told me that she thought that the
2 station may have a, a -- an EEO problem that needed to be
3 looked at, and I then would have proceeded to talk with her
4 [illegible]

1 any mitigating information in case there is any follow-up
2 request from the FCC.
3 Q Okay. Now, that, that's the part that interests me
4 right now, the latter part. Do you recall in the next several
5 months after the sending of this letter whether you received
6 any feedback of any nature whatsoever from Mr. Bramlett in

1 A Yes, I do.

2 Q Okay, did it come to you directly from the petitioners

3 or did it come from the station, if you remember?

4 A I don't remember, and that's why I turned to the

5 certificate of service. I see that I am not listed on the

6 certificate of service.

7 Q A not unusual situation?

8 A So presumably, Mr. Hoenig saw fit not to serve me

1 the one that I would use to -- the associate I would use to
2 prepare a response to the petition. I would have set up a
3 conference call among myself, Mr. Bramlett, Ms. Marshall

1 to deviate from that in any way, that we identify that
2 deviation and, and explain why it is that the information in
3 the renewal application is different, and, generally, to
4 stress the, the obligation to be absolutely candid and
5 forthcoming in anything that we say in the Commission filing.
6 Q Was this the first petition to deny of this nature that
7 you ever had to deal with? In other words, the first petition
8 from the NBMC, NAACP, alleging discrimination or lack of an
9 affirmative action plan?
10 A I'm sure it wasn't, although if you ask me now what
11 ones did I have before this, I, I couldn't answer that
12 question. But this was received in 1989. I had been doing
13 communications work for, oh, since 1979 and I, I can't believe
14 that this was the first time that I ever got an NBMC petition.
15 Q Well, in other words, I mean, your reaction to
16 receiving this petition, if you have a standard litany, is
17 that standard litany -- was that something you developed
18 because of petitions alleging EEO deficiencies or was this
19 something that you had developed because, you know, you would
20 have petitions alleging any variety of, of deficiencies and
21 this was to tell the client that, you know, if you're going to
22 deviate from any information that you've given the Commission
23 before, et cetera?
24 A That would have been a standard response to any time
25 you, you're speaking with a client about something you're

1 going to submit to the FCC. It's particularly sensitive when
2 you're dealing with a client's renewal application. But it's
3 not just limited to that, certainly.
4 Q Okay. When petitions to deny alleging EEO deficiencies
5 were received, was it your practice or do you understand it to
6 have been the practice of the firm to do some kind of ~~back~~ fact
7 checking to make sure that the allegations that are made
8 against your client are in fact accurate?
9 A I'm not quite sure I understand what you mean by ~~back~~ fact
10 checking.
11 Q Okay. Well, let me, let me focus in the EEO area. The
12 EEO area basically, a petitioner would have to look at annual
13 employment reports and the EEO program itself. It's the rare
14 petitioner that would have information over and above those
15 documents. However, as both of us know, having looked at
16 these things more than a few times, petitioners sometimes make
17 mistakes and they'll allege that the station employed no
18 minorities out of a staff of 15, when, in fact, if you
19 actually looked at the annual employment report in question,
20 something else would be revealed.
21 So my question is when this petition or a petition of
22 this nature came in, would it have been standard practice to
23 go back and pull out the annual employment reports to take a
24 look at them, first of all, to make sure that whatever it is
25 the petitioner is saying here is accurate?

1 A Yes, we would have looked at the renewal application
2 itself, as well as the annual employment reports that we had
3 in our files for the station.
4 Q All right. Now, do you recall any such action taking
5 place with respect to this station? These stations?
6 A No. I did not do anything of that sort.
7 Q If --
8 A I don't know if Ms. Marshall did or not.
9 Q Okay. But, I mean, the standard practice would have --
10 I mean, had that been done, you wouldn't have done it; it
11 would have been done by the associate working with you?
12 A Correct.
13 Q Now, I want to backtrack a second. Prior to the
14 submission of the 1988 renewal application and EEO program, do
15 you have any recollection of EEO advice having been passed
16 along to Dixie in the normal course of your representation?
17 A No, I don't have any recollection of that.
18 Q All right. Now, we've received a number of documents
19 from your firm and I'm just -- The first one that I'm going to
20 show you is a rather thick one. It's dated July 14, 1987, and
21 it's -- it has as a title "Broadcast Stations New EEO Rules
22 and Reporting Requirements."
23 A Okay, I've looked at it.
24 Q All right. Do you have any recollection of whether the
25 document that you're looking at was sent to Dixie? And, if

1 so, what if any response from Dixie it generated?
2 A This is what I believe we referred to in the firm as an
3 all-client memorandum, which is distributed to clients and
4 others whose ~~name~~ names appear on a mailing list. I do not know if
5 this was sent to Dixie, or their name was on that list or not.
6 Nor would I have any knowledge, if it even were sent to them,
7 if they in fact received it.
8 Q All right. Well, in other words, this doesn't trigger
9 in your memory any --
10 A If you're asking me did I receive a call or a letter
11 from them saying, hey, I got a, a thick document from you
12 dated July 14th and I don't understand it, what's it all mean,
13 no, I have no recollection of that taking place.
14 Q Okay. Do you have any recollection of any discussion
15 with Dixie prior to 1988 about its EEO responsibilities or EEO
16 filing requirements?
17 A I have no recollection of any such discussions.
18 Q Okay. Just to follow up on that, however, briefly, do
19 you -- I'm going to give you -- It's a two-page letter dated
20 April 15, 1988, and it has as the title "Annual Employment
21 Report Reminder."
22 MR. SCHATTENFIELD: Could we for the record have --
23 When he's testifying as to -- When he says he has no
24 recollection, you mean --
25 WITNESS: I'm trying to say that I have no recollection

1 of that conversation. I'm not saying it this conversation did
2 not take place.
3 MR. SCHATTENFIELD: I'd like that to be made clear
4 because sometimes he's saying -- a witness could be saying it
5 never happened, I don't recollect it. At other times he could
6 say I just don't remember and the conversation might have
7 taken place.
8 MR. SHOOK: Well, I, I think it's fairly clear from
9 Mr. Van Horn's testimony that he's not asserting that no such
10 conversation ever occurred.
11 MR. SCHATTENFIELD: That's what I want to make clear.
12 WITNESS: That is, that is --
13 MR. SCHATTENFIELD: Unless he is asserting it.
14 WITNESS: No, I'm not asserting that no conversations
15 ever took place. I have no recollection of any such
16 conversations taking place.
17 MR. SHOOK: That's how I understood your answer.
18 MR. SCHATTENFIELD: Printed page sometimes doesn't
19 understand.
20 WITNESS: I, I've looked at the document you've given
21 me.
22 BY MR. SHOOK:
23 Q All right. Does the annual employment report reminder
24 jog your memory as to whether any -- first of all, any such
25 letter was sent to Dixie, and, secondly, whether it generated

1 any response from Dixie?

2 A Any such letter, you're referring specifically to the

3 document you've given me dated April 15th?

4 Q Correct.

5 A Again, that same answer that I gave you for the July

6 14th document, this is another all-client, so-called,

7 memorandum. I don't know if it was sent to Dixie, nor do I

1 little praise.

2 BY MR. SHOOK:

1 prior to its submission to the Commission, it was given to me.
2 I then reviewed it. I probably made some editorial changes of