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Nona G. Bradshaw

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TRANSCRIPT OF PROCEEDINGS

MAR - 8 1994

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 93-94

**SCRIPPS HOWARD BROADCASTING COMPANY
and
FOUR JACKS BROADCASTING, INC.
Baltimore, Maryland**

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In the matter of:
SCRIPPS HOWARD BROADCASTING COMPANY
and
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Baltimore, Maryland

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The above-entitled matter came on for prehearing conference pursuant to notice before Judge Joseph L. Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom Number 4, on Tuesday, February 15, 1994 at 9:30 a.m.

APPEARANCES:

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P R O C E E D I N G S

1
2 JUDGE SIPPEL: We're on the record. We've finally
3 been able to get a mutual date to hold this conference in
4 light of weather conditions and whatnot. I've got some
5 preliminary remarks to make. With respect to the renewal
6 comparative case, there will be no requirement to submit
7 findings on those issues until these post-hearing issues are
8 litigated. In the meantime, there may be some guidance from
9 the Commission on Bechtel which may have a bearing on those
10 findings, so there's a dual purpose in terms of deferring on
11 those for this -- at this point in time.

12 In addition, if any party is found to be basically
13 unqualified to hold Baltimore Channel Two license -- a
14 Baltimore Channel Two license, that would -- that would moot
15 -- that could moot the comparative issue and I refer you to
16 the Court of Appeals decision in the Garden State Case, WWOR-
17 TV. That's the point number one.

18 And point number two, we'll get to this question of
19 counsel's availability. But if Mr. Greenebaum's going to be
20 tied up in trial between now and the springtime, discovery on
21 the issue is still going to have to -- would still have to go
22 forward. That's a given. My concern -- I'm going to state
23 this upfront, that my concern about the discovery issues
24 against Scripps Howard was grounded in part from the problems
25 that the Commission had encountered in the WWOR-TV case which

1 I had personal familiarity.

2 On the other hand, I am also concerned -- I am
3 equally concerned about the intrusion into counsel's
4 preparation and that the discovery on this issue could
5 engender and for that reason, I do favor pursuing, at least in
6 the first instance, the Motion for Summary Decision.

7 The gist of the matter seems to be, at least as for
8 -- as Scripps Howard presents it, is did Four Jacks actually
9 ask for the documents and/or was there any materiality with
10 respect to that discovery which would affect the outcome of
11 the case. That's -- I'm paraphrasing, but that's how I
12 basically read what your position is. If it can be resolved
13 -- if it can be resolved on the papers, it certainly is going
14 to be a far superior way to doing it, than having to go into
15 discovery with respect to counsel's preparation -- practices.

16 That's it. That's all that I wanted to say upfront.
17 The main point for being here today is to set some dates and I
18 think the first question that we -- well, let me ask this,
19 does anybody have a -- either side have a preliminary matter
20 that they wanted to raise at this point?

21 MR. LEADER: Could I follow up on your comment?
22 Because I think it bears on the dates.

23 JUDGE SIPPEL: Briefly.

24 MR. LEADER: We'll be brief.

25 JUDGE SIPPEL: All right.

1 MR. LEADER: It seems to me that if you want to
2 resolve these on the papers, shouldn't you do that before we
3 commence the expense and aggravation of discovery?

4 JUDGE SIPPEL: Well, discovery with respect to the
5 issue against Scripps Howard?

6 MR. LEADER: Yeah.

7 JUDGE SIPPEL: That's exactly -- that's precisely
8 the point. There would need to be no or limited discovery
9 with respect to Scripps Howard.

10 MR. LEADER: Well, wouldn't you want to resolve --
11 give the parties -- give us -- well, we will take the
12 opportunity to file a pleading with respect to their petition.
13 But shouldn't that be resolved before we begin discovery
14 against Scripps Howard or against our client, Four Jacks?

15 JUDGE SIPPEL: Well, the first part of your point is
16 -- the answer is yes, against Scripps Howard, yes, and the
17 reason being, I said, as I view that issue, there's a
18 distinction between how the two issues are going to be
19 discovered insofar as the requirement for counsel's trial
20 preparation to be a subject matter of the discovery. As I
21 view these issues, there's -- that's a critical distinction
22 because I am very reluctant to go into that aspect of
23 discovery unless it's shown to be absolutely necessary for
24 reasons that are self-evident.

25 So I'm saying I'm drawing the distinction between

1 the discovery needs and the discovery procedures with respect
2 to those issues which can be circumvented -- assuming that
3 there is merit to the motion, which can be circumvented by a
4 decision on the papers as opposed to the situation with
5 respect to Four Jacks. So there's no reason to delay going
6 forward with discovery of the Four Jacks issue while there's a
7 round of pleadings on the issue -- on the Motion for Summary
8 Decision. That's basically all I'm saying. All right.

9 Well, having said that, I think we ought to get into
10 the question of some dates and first, with respect to -- with
11 respect to the summary decision motion, I'm going to set the
12 28th of February as the date for Four Jacks to file its
13 opposition and/or any cross motion and also that would be the
14 date for any Bureau comment and March 31st would be the date I
15 would set -- I'm going to set for any opposition to any cross
16 motion that Scripps Howard would want to file. Now, that
17 doesn't require you to file a cross motion for summary
18 decision. I'm simply saying is, is that procedure is
19 available to you, Mr. Martin. Do you understand?

20 MR. LEADER: Yes, sir.

21 JUDGE SIPPEL: Now, having set those dates with
22 respect to the motion, I now have to turn to -- well, before I
23 do that -- before I do that, there is -- there are two
24 documents that are still to be delivered with respect to that
25 motion. One is the affidavit that would explain the Covington

1 documents. You've indicated that in, I think, in Footnote Six
2 to your motion, that that's forthcoming.

3 MR. HOWARD: We have those affidavits this morning.

4 JUDGE SIPPEL: Well, that can be -- those can be
5 exchanged today?

6 MR. HOWARD: (Nods head yes.)

7 JUDGE SIPPEL: And there was a reference, I believe,
8 in Footnote Four to documents that would explain the shortness
9 -- the brevity of time between the -- the turn-around on -- I
10 believe it was the 26th and the 27th of April on the document
11 that had come up from N.B.C.

12 MR. HOWARD: Yes, Your Honor.

13 JUDGE SIPPEL: How extensive would those documents
14 be and what would be the nature of the documents?

15 MR. HOWARD: They would be copies of the documents
16 that were produced with the facsimile information at the top
17 indicating that they were FAX'd after the close of business on
18 the day before the prehearing conference.

19 JUDGE SIPPEL: Well, I certainly would like to see
20 those and I understand, though, these are being produced under
21 -- the condition would be that these do not waive any --
22 there's no general waiver of attorney/client privilege or work
23 product. Is there any objection to that, Mr. Martin?

24 MR. LEADER: I'm not sure what was discussed.

25 JUDGE SIPPEL: Well, we -- what -- we're talking

1 about the document that's referred to in Footnote Four of
2 their motion and they've indicated in that footnote that they
3 would produce supporting documentation explaining that away
4 and they want to do that without any waiver of attorney/client
5 privilege or work product and I'm prepared to give them that
6 -- I'm prepared to do it under those conditions. I just would
7 like to get a response from you, sir.

8 MR. LEADER: I guess -- how do we test the veracity
9 of the statement if they're going to -- if they want us to
10 waive the attorney/client privilege? I mean, they're either
11 submitting it for evidence and part of the record here or
12 they're not.

13 JUDGE SIPPEL: Well, it would be accompanied by an
14 affidavit explaining exactly what it is.

15 MR. LEADER: But that's a self-serving ex-party
16 affidavit.

17 JUDGE SIPPEL: Well, I understand that. I
18 understand that, but there are --

19 MR. LEADER: What I want to know is how are you
20 going to treat it? Are you going to treat it as evidence?

21 JUDGE SIPPEL: I'm going to treat it as being
22 relevant to the -- to the issue with respect to the Motion for
23 Summary Decision, I am, yes. Now, how much weight to afford
24 to that, I don't know. But I -- I think I made this plain in
25 how I wrote the order designating the issue against them. I

1 am very much interested in learning as much as I can about
2 what had transpired between the day before the conference and
3 the day of the conference when this document was able to be
4 turned over so quickly.

5 I mean, that comes through very loud and clear, I
6 think, and here's another way of trying to bring that issue to
7 a head, as far as the facts are concerned. So I want the
8 document. I want to see it and if I'm going to see it, even
9 if I was going to take it in camera, I think you'd want to see
10 it, too.

11 MS. SCHMELTZER: We want to see it. We just don't
12 want to waive any rights that we might have with respect to
13 cross examination on that point.

14 MR. LEADER: Yeah, we don't want to waive -- right.

15 JUDGE SIPPEL: That's a different issue. That's a
16 different issue. What Mr. Howard is saying is, is that they
17 want a ruling from me before it's turned over, that it will
18 not waive -- it will not be constituted as a matter of law as
19 a waiver of the privileges that they may have with respect to
20 the other documents.

21 MR. LEADER: But why? I mean, is that appropriate
22 given the fact that they want you to rely on it, they want the
23 world to rely on it? Is there an explanation? To me it's --
24 to me it's testimony and they either waive the privilege and
25 it goes in for all purposes or they run the risk of not

1 | fulfilling the commitments they made in Notes Four and Six.

2 | JUDGE SIPPEL: Well, no. Either you're hearing me
3 | wrong or I think you're reading it wrong. The waiver would be
4 | with respect to a general waiver of the privilege. Obviously
5 | if the document is going to be turned over to me and you're
6 | going to get a copy of the document, the privilege is being
7 | waived for purposes of that document.

8 | MR. LEADER: Only for purposes of that document.

9 | JUDGE SIPPEL: That's correct. Is that --

10 | MR. LEADER: I misunderstood. I thought that
11 | somehow we were being restricted in our use of it because they
12 | were not waiving the privilege. The privilege is not being
13 | waived with respect to what they will turn over in response to
14 | Footnotes Four and Six.

15 | JUDGE SIPPEL: Well, I'm just focused right now on
16 | Footnote Four.

17 | MR. LEADER: Okay. Well, Footnote Four.

18 | JUDGE SIPPEL: Footnote Six has to do with a non-
19 | attorney's -- with Ms. Covington's notes. I'm not sure -- and
20 | there's an affidavit that's coming in with respect to that.
21 | This -- so that -- again, I'm trying to keep this as narrowly
22 | focused as I possibly can, only with respect to the document
23 | in Footnote Four. Mr. Howard has explained what the document
24 | is. It's not going to be a cumbersome document and it's not
25 | going to add to the -- significantly to the volume of the

1 case. But it will more clearly specify precisely what had
2 transpired between -- in that 28-hour period.

3 MR. LEADER: Well, we don't know what it's -- I
4 mean, I don't -- with all due respect, I don't think you can
5 say what it did say. It would be an attempt to do that. I
6 mean, nobody's seen it, so we don't know what it says. But
7 given the fact that whatever it says, that information is non-
8 privileged and in the event that you do not grant the Motion
9 for Summary Decision, that we will be able to cross examine on
10 it.

11 JUDGE SIPPEL: That's correct. That's essentially
12 it.

13 MR. LEADER: That's fine. I'm sorry we went through
14 this, but I wanted to understand it because I didn't in the
15 beginning.

16 JUDGE SIPPEL: That's perfectly understandable. All
17 right, now, I would -- I'll set a time then for the production
18 of that document with an affidavit and that would be by this
19 -- I think by four p.m. on Thursday, the 17th, end of business
20 on the 17th. Does anybody have any questions now with respect
21 to the summary decision motion, procedurally or datewise?

22 MR. HOWARD: I'm sorry, Your Honor. I do have a
23 question about the -- you noted that they would have the
24 opportunity to file a cross motion for summary decision on the
25 -- I presume asking for summary decision against Scripps

1 | Howard on the Scripps Howard issue. I don't understand.

2 | MR. LEADER: He's giving us the opportunity by the
3 | 28th to file our own and then he gave you the opportunity to
4 | oppose it as he gave us the opportunity to oppose yours and
5 | the day we have to file.

6 | JUDGE SIPPEL: That's correct.

7 | MS. SCHMELTZER: The only question I have is --

8 | JUDGE SIPPEL: Wait just a minute. I'm sorry. Are
9 | we finished with you, Mr. Howard?

10 | MR. HOWARD: Would there be replies filed -- do you
11 | contemplate that replies would be considered --

12 | JUDGE SIPPEL: No, the rules don't contemplate reply
13 | filings and I don't see the need for them. I'm sorry, Ms. --

14 | MS. SCHMELTZER: The only question I have is the
15 | date for Scripps Howard to file their opposition is a month
16 | which seems longer than the time that we're getting.

17 | JUDGE SIPPEL: The 28th -- from the 28th to the --
18 | from the 28th of February to the 14th of March.

19 | MS. SCHMELTZER: Oh, I'm sorry. I thought you said
20 | the 31st of March.

21 | JUDGE SIPPEL: I -- I'm sorry. I did say the 31st
22 | of March. I did, but I misspoke myself on that. Again, it
23 | would be February the 28th, that there would be the filing of
24 | the opposition and cross motion -- any cross motion by Four
25 | Jacks and it would be the 14th of March within which Scripps

1 | Howard would oppose. And I do note also that you have -- that
2 | Four Jacks has had the service of this motion for summary
3 | decision as of, I guess, the tenth of February.

4 | Now, I'm setting -- I'm setting this motion schedule
5 | up in such a way or the pleading cycle in such a way so that
6 | discovery will not have to commence with respect to the Four
7 | Jacks issue -- that is the issue against Four Jacks until
8 | after all those -- that pleading cycle is completed and that's
9 | so that counsel would be able to focus on this issue and not
10 | have to be doing two things at one time.

11 | I guess the first -- the first issue that I really
12 | should raise is with respect to the need to defer the hearing
13 | on this issue until some period of time while Mr. Greenebaum's
14 | engaged in another trial. Is there going to be -- first of
15 | all, is there any objection to that? Mr. Leader?

16 | MR. LEADER: I'd just like to state what I stated
17 | earlier in this proceeding and that is this is a renewal case.
18 | While I have the highest respect for Mr. Greenebaum's ability,
19 | he's not the only litigator at Baker and Hostetler. Mr.
20 | Howard did a very able job during the proceeding and I think
21 | we ought to get on with the business and get this concluded.

22 | JUDGE SIPPEN: Well, as I see it --

23 | MR. LEADER: And Mr. Greenebaum's schedule -- excuse
24 | me. You know, we're not asking, "I can't make it this week or
25 | that week." He's asking you to block out an eight to twelve

1 week period which, to me, seems a little excessive.

2 JUDGE SIPPEL: Well, it's a long -- I agree with
3 you, it's a long -- it is a long period of time. But let me
4 -- let me first say -- let me ask -- I'll ask Mr. Greenebaum,
5 what are the prospects or what are the projections for the
6 length of the case at this point?

7 MR. GREENEBAUM: Your Honor, it's the case of the
8 United States versus Johnson which you -- is in the Eastern
9 District -- in the United States District Court in Baltimore.
10 It's before Judge Motz. It's a case involving numerous
11 defendants, so there's been a preliminary matter related to it
12 tried in Montgomery County that you probably saw some
13 publicity about a couple of weeks ago and this case has been
14 -- the government has projected eight weeks for its case in
15 chief.

16 I don't know how many people are going to plead.
17 I've got the first-named defendant. I wish he wasn't, but he
18 is and the corporation has pled. It's a case of some interest
19 to the government because of possibly other investigations
20 they're doing. I'm not sure. But the indication is, at this
21 time, that we're going to try it.

22 JUDGE SIPPEL: There will be -- well, obviously I'm
23 not going to ask you what it is. But this is the type of case
24 that seems to me that there will be the possibility for plea
25 bargaining going on right up until the time of trial.

1 MR. GREENEBAUM: Well, I'm certainly not going to be
2 the first one -- I mean, if that was my plan, I'd have been
3 there. I mean, other people have done that and --

4 JUDGE SIPPEL: Right, I hear you. No, I understand.
5 I understand.

6 MR. GREENEBAUM: I've got the president of the
7 company, so it's -- you know.

8 JUDGE SIPPEL: I'd be -- I'm inclined at this point
9 to set the hearing date down in this case for the 12th of July
10 and the reason I -- I want to state this reason right up
11 front. I was here when this -- in the first phase of this
12 case and Mr. Greenebaum conducted the cross examination for
13 Scripps Howard of the witnesses which -- in which that cross
14 examination was -- of course was material to developing the
15 issue that was added. So he certainly has -- he has the
16 first-hand familiarity with that issue. Yes, Mr. Leader?

17 MR. LEADER: But you're in effect saying then that
18 his case in Baltimore is more important than this case and I
19 think that's a terrible judgement to make given the -- given
20 the fact that we filed an application in 1991. It took us
21 almost two and a half years to get to hearing and now we've
22 got to wait, you know, another six months, seven months, eight
23 months, ten months since the original hearing. I think -- you
24 know, I just can't imagine that. I can't imagine that.

25 JUDGE SIPPEL: Mr. Greenebaum, those trial dates

1 | have been set. Is that correct? They're firm dates?

2 | MR. GREENEBAUM: I tried to make them later and
3 | there are a lot of reasons why I wanted them later. Judge
4 | Motz thought he had a Constitutional obligation to give these
5 | defendants a speedy trial whether they wanted it or not and I
6 | find it kind of odd to have somebody talking about me being
7 | excessive on a case set by a District Court judge in a major
8 | criminal case. I didn't do it. I'd rather not be there. I
9 | think it's a non-argument.

10 | MR. LEADER: Well, you missed my point. I mean --

11 | MR. GREENEBAUM: No, I didn't miss your point.

12 | MR. LEADER: You're mistaking --

13 | JUDGE SIPPEL: Don't talk to one another. Mr.
14 | Leader, I've heard -- Mr. Greenebaum's point is -- the fact
15 | remains is that it's true, that there is a right to a speedy
16 | trial in a criminal case and we all know that. The same
17 | considerations do not apply in a situation like this. This is
18 | not a situation either where there's a vacant frequency out
19 | there ready to be designated. This station is being operated.

20 | MR. LEADER: By the renewal incumbent who's being
21 | challenged and it seems to me that there's -- that the
22 | challenging party has some right to see that this matter is
23 | brought to a resolution and that the government's role is not
24 | to keep the incumbent on Channel Two operating.

25 | JUDGE SIPPEL: I hear you. I understand that. I'm

1 saying I might be more inclined to listen to what you're
2 saying more -- to favor more what you're saying had Mr.
3 Greenebaum not been so actively involved in pursuing that
4 issue. But I was sitting right here when the issue was
5 developed and I think that there is -- there's a distinction
6 to be made in that kind of a situation. It's going to be --
7 it's going to facilitate the litigation of this issue the
8 second time around and I think that, again, Scripps Howard has
9 its right to counsel.

10 I don't think, under these circumstances, that the
11 delay is going to be -- is unreasonable. I don't think that
12 that trial date is an unreasonable delay. In addition to the
13 points that I have made, there still has to be discovery.
14 This issue still has -- is subject to discovery. This case is
15 not going to be heard in a month in any event.

16 MR. LEADER: Well, what happens if Mr. Greenebaum's
17 case is settled or he plea bargains his client? Are you going
18 to ask for some commitment from him to let you know so perhaps
19 we can kick the dates forward?

20 JUDGE SIPPEL: I will -- certainly will do that. I
21 will -- and I will require that I be apprised at such time as
22 your responsibilities in that case -- in that criminal case
23 cease, Mr. Greenebaum.

24 MR. GREENEBAUM: That's no problem, Your Honor.

25 JUDGE SIPPEL: And we will then have another

1 conference and we'll work around that. I have no interest
2 myself personally in deferring the hearing of this case. So I
3 --

4 MR. GREENEBAUM: I can assure you I have better
5 plans for the summer, Your Honor.

6 JUDGE SIPPEL: Well, there you go.

7 MR. ZAUNER: Your Honor, I'd just like to go on the
8 record as saying I find this to be an excessive extension of
9 time myself. I understand what you're saying and I understand
10 Mr. Greenebaum's past participation in the issue. But it
11 seems to me that the issue is not so complex that there can't
12 be another lawyer at Baker and Hostetler that could pick it up
13 without a great deal of difficulty and try the case. This
14 isn't an issue that requires any special expertise on the part
15 of the attorney that's trying it and I think that to set this
16 thing back into July is really an excessive delay in the
17 proceeding.

18 MR. HOWARD: May I just --

19 JUDGE SIPPEL: Yes?

20 MR. HOWARD: May I note that there's the additional
21 factor in this case, though, of the whole uncertainty about
22 the Bechtel impact on this case and there's -- that is a
23 factor that should be considered in whether there's a rush to
24 have this proceeding resolved on the comparative issues while
25 there's that drastic uncertainty about the impact of Bechtel

1 on this very proceeding.

2 JUDGE SIPPEL: Well, you know, I understand the
3 positions of all the parties. I understand exactly where
4 they're coming from. But I do have the discretion, in terms
5 of how to handle these issues, all of these of which I am
6 taking into consideration and Mr. Zauner, I'm not -- I'm not
7 particularly happy about setting this case down into July,
8 either.

9 But under all the circumstances here -- and again, I
10 go back to my observation that when this case starts getting
11 into discovery -- and I think that the parties are entitled
12 certainly to have time before discovery to complete the
13 briefing on these motions. I don't think that this -- the
14 time -- the extension of the time is not going to be looking
15 that unreasonable.

16 We do have a commitment from Mr. Greenebaum that if
17 his responsibilities in that criminal case terminate, which
18 certainly could happen at any time, he's going to notify me
19 and we're going to have another conference and we can move the
20 schedule up. Mr. Leader?

21 MR. LEADER: I just want to focus on the word
22 "terminate" that you used. I hope Mr. Greenebaum doesn't
23 interpret that, that he's no longer in the case. I was
24 speaking as if the case had -- he would still be involved, he
25 had not been terminated. He was involved, but if for some

1 | reason the case would be either settled or it was pushed back.
2 | I don't want him to come back at a later date and say, "Even
3 | though the case was pushed back, my services there weren't
4 | terminated, so I was under no obligation to inform the judge."

5 | JUDGE SIPPEL: Well, I'll ask Mr. Greenebaum,
6 | certainly if anything significant happens with respect to a
7 | trial date --

8 | MR. GREENEBAUM: Your Honor, I think I understand
9 | what you want to know and I'll advise you accordingly.

10 | JUDGE SIPPEL: Okay. Let me set some dates then.
11 | 12th of July for the hearing at 10 a.m. June the -- I'm going
12 | to move back on these dates now. June the 27th would be the
13 | date for an exchange of sworn testimony and documents. Now,
14 | I've assigned the burden of going forward and the burden of
15 | proof to Four Jacks on that issue. Under the rules in a
16 | renewal case, it's optional with the parties with respect to
17 | this use of the sworn testimony. Personally I think it works
18 | better and I think for both sides it works better. But I'm
19 | going to ask for Mr. Leader to give me a commitment this
20 | morning. Are you prepared to use that process?

21 | MR. LEADER: Yes, sir.

22 | JUDGE SIPPEL: Any objection?

23 | MR. HOWARD: No, Your Honor.

24 | JUDGE SIPPEL: All right. So that's June the 27th.
25 | On May the 20th, discovery closes and on March the 28th --

1 well, before I get -- I'm sorry. Let me -- I misspoke myself.
2 On March the 21st, I'm going to require Four Jacks to furnish
3 Scripps Howard with at least its preliminary list of the
4 witnesses that it expects to call to prove its case and the
5 documents that will be relied on and on -- by March the 28th,
6 Scripps Howard must commence its formal discovery, that is by
7 noticing depositions and motions for documents.

8 In the meantime, I'm inviting the parties -- I'm
9 inviting counsel for the parties, of course, to informally
10 agree to any procedural -- discovery procedures that will
11 facilitate this or make it less expensive for either side.
12 I'm just outlining here what are the minimum things that have
13 to be done so that this case stays on schedule.

14 MR. LEADER: May I inquire two things?

15 JUDGE SIPPEL: Yes, sir.

16 MR. LEADER: One is we will have just -- you will
17 have just received their opposition to our Motion for Summary
18 Decision, if any, and then we're going to commence -- then
19 they're going to commence discovery approximately a week or
20 two thereafter and I guess the question is are you going to
21 rule on the Motion for Summary Decision before that? And
22 that's question one.

23 Question two is what happens to this discovery
24 schedule in the event that you decide that Scripps Howard has
25 not submitted sufficient information to resolve the issues it

1 designated against them?

2 JUDGE SIPPEL: You mean on the summary decision?

3 MR. LEADER: Yeah.

4 JUDGE SIPPEL: Well, the best I can do, Mr. Leader,
5 is plan for the future by what I know today. If there is some
6 significant development that turns up in terms of the motion,
7 if I'm not satisfied with the motion, if I want more discovery
8 with the motion, if an aspect of it needs to be litigated with
9 live testimony, I'm going to call a conference and we're going
10 to schedule it from there.

11 MS. SCHMELTZER: I guess, Your Honor, is when do we
12 get to commence discovery against Scripps Howard?

13 JUDGE SIPPEL: Well, we've got a Motion for Summary
14 Decision. There is no need to discover on the issue for
15 summary decision --

16 MS. SCHMELTZER: Well, there isn't --

17 JUDGE SIPPEL: -- if it can be resolved by summary
18 decision.

19 MS. SCHMELTZER: But not -- but if it can't be
20 resolved, there isn't --

21 MR. LEADER: Well, does the same -- if we filed a
22 Motion for Summary Decision, does that suspend the discovery
23 against our client as you've indicated that the discovery is
24 suspended by the filing of this Motion for Summary Decision?

25 JUDGE SIPPEL: I stated it up front as to why I

1 prefer the summary decision approach with respect to the issue
2 that I had added against Scripps Howard. I thought I made
3 that quite clear, that there --

4 MR. LEADER: Well, you said --

5 JUDGE SIPPEL: Go ahead.

6 MR. LEADER: You said you preferred it, but that
7 doesn't mean that -- but that doesn't mean they should be
8 treated differently with respect to discovery than we should
9 be.

10 MS. SCHMELTZER: I mean, we're concerned that you
11 not be pre-judging that motion.

12 JUDGE SIPPEL: I am not pre-judging the motion, but
13 I haven't -- all I've -- I mean, I know what's in the motion.
14 I haven't -- certainly haven't studied the motion in the
15 context of an opposition.

16 MS. SCHMELTZER: Is it my understanding that you'd
17 prefer the Motion for Summary Decision route solely because
18 there are questions relating to the attorneys?

19 JUDGE SIPPEL: That's correct. That's correct. And
20 also, it is a -- again, it's a discovery issue. When the
21 issue -- the merits of that issue have to deal with respect to
22 the timeliness of discovery and tactics that were used,
23 perhaps to avoid discovery. That's basically what that issue
24 is.

25 This other issue has to deal with whether or not

1 | there was a commitment, an integration commitment that was
2 | bonified from the beginning, from up front, and that goes
3 | right square to the merits of renewal expect-- not renewal
4 | expectancy rather, but the -- that goes right square to the
5 | merits of an integration commitment and also, of course, the
6 | candor and misrepresentation. So I'm drawing a distinction.
7 | I am.

8 | MR. LEADER: The distinction notwithstanding. Can
9 | you -- is it appropriate to request that you hold off on any
10 | discovery until you rule on the Scripps Howard motion?

11 | JUDGE SIPPEL: You mean any discovery of Scripps
12 | Howard?

13 | MS. SCHMELTZER: Well, I mean --

14 | MR. LEADER: Well, of both parties.

15 | MS. SCHMELTZER: -- both parties.

16 | MR. LEADER: I mean, we're going to -- it just would
17 | seem to me that since we have until July 12th now, we ought to
18 | give you the opportunity to rule on your motion -- their
19 | motion and if it is found wanting, that you can't resolve it
20 | on that basis, then we ought to have discovery all at once
21 | instead of this bifurcated proceeding which I think is, you
22 | know, unfair, for lack of a better word.

23 | JUDGE SIPPEL: For lack of a better word. The
24 | discovery with respect to the issue of Four Jacks, I don't see
25 | where it has any bearing with respect to any discovery that