

1 might be authorized with respect to the issue against Scripps  
2 Howard. They're different issues, they're different facts,  
3 different people, different locations. I mean, everything's  
4 different. So I don't understand why you feel that there's a  
5 deficiency or something in terms of running these discovery  
6 parallel, whether or not I need it or not.

7 MR. LEADER: Well, because if you don't resolve the  
8 motion to -- for summary decision until June 15th, then we've  
9 got a problem in discoveries for the July 12th hearing.  
10 That's my only point.

11 JUDGE SIPPEL: Well, there would be -- what I've  
12 tried to tell you, Mr. Leader, is that I will -- as  
13 contingencies develop, I will address them. We have the  
14 possibility that we may try this case before July 12th.  
15 That's a possibility. We have a possibility that there may  
16 have to be discovery with respect to the issue that I've added  
17 against Scripps Howard, in which case, we'll have to come back  
18 and work out a discovery schedule. If that's going to impact  
19 some hearing date, we're going to have to adjust that. You're  
20 shaking your head. I know -- I understand that you don't  
21 particularly like the way that I'm setting this down at this  
22 pace --

23 MR. LEADER: Correct.

24 JUDGE SIPPEL: -- but it's very difficult to  
25 accommodate everybody. Mr. Zauner, you've expressed your

1 concern about the July 12 date. Is there anything that you  
2 want to add to this --

3 MR. ZAUNER: No, Your Honor.

4 JUDGE SIPPEL: -- element of it? All right --

5 MR. LEADER: Can I just ask one -- so I'm just  
6 thinking here. Somebody like Ms. Covington -- I mean, we  
7 can't depose her even though she's not a lawyer and yet  
8 whatever is in this footnote in her statement seems to me  
9 critical to the testimony of several witnesses here and I  
10 don't see how that can be resolved in a summary decision.  
11 You're going to decide that. But Ms. Covington is not Mr.  
12 Howard or his law firm. So we have to wait to depose her or  
13 file a notice of deposition if we can find her?

14 JUDGE SIPPEL: Well, if you -- would you -- you say  
15 you would want to -- you would want to -- you would want to  
16 depose Ms. Covington?

17 MR. LEADER: The rationale you gave was that you  
18 didn't want to because of attorney/client issues here. We  
19 couldn't have any discovery. Ms. Covington is a non-party  
20 witness who seems to me, based on what I heard at the last  
21 hearing and what I've read, has material testimony as to the  
22 issues in this case and yet we can't discover her -- we can't  
23 depose her, but commence discovery with her until you rule on  
24 the Motion for Summary Decision. I just --

25 JUDGE SIPPEL: All right. I hear what you're

1 saying.

2 MR. HOWARD: Among other problems with that  
3 statement, it simply is not true that Ms. Covington's  
4 testimony bears any relevance to the issues that were  
5 designated in your order. Those had to do with statements  
6 that were made about documents that Ms. Covington produced.  
7 But what's in those documents or otherwise is not relevant to  
8 the order as I understood it.

9 JUDGE SIPPEL: Well, perhaps -- did you want to  
10 focus more on what you were talking about in terms of deposing  
11 Ms. Covington? You mean in terms of who was talking to her  
12 about what and that type of thing?

13 MR. LEADER: Yeah. I mean, there was all kinds of  
14 testimony in the record, Your Honor, that she tore up the  
15 notes. Now all of a sudden, the notes appear. She threw them  
16 away. Nobody knew where they were. It's in the record. You  
17 sat here and now -- Ms. Barr testified to that. Now magically  
18 they appear. I think that's something I'd like to be able to  
19 talk about with her.

20 JUDGE SIPPEL: Well, you better get an affidavit.  
21 I'm not saying that I'm going to accept the affidavit. I  
22 understand what you're saying. If I don't -- look, you're  
23 going to have an opportunity to oppose this, all right? If I  
24 don't like what I'm reading and I -- certainly I have  
25 questions about that, too. You know, why are the Covington

1 notes coming in now?

2 But these are questions that supposedly people are  
3 going to address. Now, whether they're going to answer them  
4 to my satisfaction is another question. Whether they're going  
5 to answer them to your satisfaction is certainly going to be  
6 another question and you're going to have an opportunity to  
7 see it and you're going to have an opportunity to oppose it.

8 MS. SCHMELTZER: I guess what we'd like you to do is  
9 at least give us some dates for commencing discovery, too. I  
10 mean, you're setting dates for Scripps Howard even though  
11 we'll have a Motion for Summary Decision opportunity and why  
12 not set dates when we can commence discovery as well?

13 JUDGE SIPPEL: Well, because I don't -- well, you're  
14 talking about a Motion for Summary Decision in your favor on  
15 the issue that was added against Four Jacks?

16 MS. SCHMELTZER: Yeah. That we have the opportunity  
17 to file that by February 28th is my understanding.

18 JUDGE SIPPEL: Well, the motion that -- the cross  
19 motion that I was talking about in that situation was a cross  
20 motion against Scripps Howard. That's what I'm talking about.  
21 They've filed for a Motion for Summary Decision in their  
22 favor. You're -- the rules permit this, too. You can file a  
23 cross motion against them which I could resolve -- I could  
24 conceivably resolve the issue against them without a hearing.  
25 That's what they're exposing themselves to. Now, do you want

1 to expose yourself to a motion against Four Jacks without a  
2 hearing?

3 MR. LEADER: We'll decide that.

4 JUDGE SIPPEL: Then if you're undecided about that,  
5 I think that we ought to go forward with the discovery  
6 schedule as I've outlined with respect to the Four Jacks issue  
7 and -- well, I've said enough. I've said enough. But if you  
8 are going to proceed by way of a Motion for Summary Decision  
9 on that issue -- it's going to have to be -- it's going have  
10 to be done soon.

11 I'm reluctant to set a date down now, in terms of  
12 giving you additional responsibilities. But certainly by this  
13 time next week, which is the 22nd of February, if you intend  
14 to file a Motion for Summary Decision, I'm going to require  
15 that you give me notification and then we'll -- I'll work out  
16 a date with you and that -- but I don't want -- in other  
17 words, I'm not going to allow that opportunity to just persist  
18 indefinitely. All right, any other questions?

19 (No response.)

20 JUDGE SIPPEL: I will issue an order this afternoon  
21 or tomorrow morning on these points and I'll call counsel and  
22 let them know that they're available to be picked up.

23 MR. HOWARD: May I ask -- I had indicated I could  
24 hand these out today. In light of what's happened -- you  
25 know, the discussions that occurred today, can I have until

1 the end of the day to file the affidavits that explained Emily  
2 Barr and notes to make sure that there's not any information  
3 we not want to put in? These were prepared in haste to try to  
4 get them in and I'd like to just, you know, have --

5 JUDGE SIPPEL: You just want until the end of the  
6 day instead of now. Any objection to that?

7 (No response.)

8 JUDGE SIPPEL: No objections. You may have until  
9 the end of the day to do that.

10 MR. HOWARD: Thank you, Your Honor.

11 JUDGE SIPPEL: We're in recess until the 12th of  
12 July.

13 (Whereupon, at 10:11 a.m. on Tuesday, February 15,  
14 1994, the prehearing conference adjourned.)

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**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN THE MATTER OF SCRIPPS HOWARD BROADCASTING, INC.  
**Name** AND FOUR JACKS BROADCASTING, INC.

MM DOCKET NO. 93-94  
**Docket No.**

WASHINGTON, D.C.  
**Place**

FEBRUARY 15, 1994  
**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1384 through 1413, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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