

1 you're saying?

2 MR. HOWARD: Yes, Your Honor.

3 JUDGE SIPPEL: I don't have any -- Mr. Leader? I
4 would redact that, get that out. I don't want to see a ten-
5 section memorandum if I only have to look at one section.

6 MR. HOWARD: Where it's plainly outside the scope of
7 the document -- not relevant at all to the issues. We'll make
8 sure that that --

9 JUDGE SIPPEL: Well, now, don't you make the
10 determination --

11 MR. HOWARD: It'll be a very conservative --

12 JUDGE SIPPEL: Well, I'm talking -- the illustration
13 I gave is that you have a memorandum that's covering five
14 subjects and one of those subjects happens to be Attachment D
15 and that's what you're citing in your list here to me, then
16 all's I want to see is that section that talks about
17 Attachment D. I don't want to see the other ones that might
18 talk about fees and whatever. I don't know. Do you
19 understand my --

20 MR. LEADER: Not entirely, but maybe I can ask a
21 hypothetical question. I assume that what you meant is if he
22 has a memo which have five topics and one of the topics
23 involves the Scripps Howard station in Phoenix, that he can
24 redact that information. But if it relates to Baltimore and
25 it relates to Channel 2, I think you ought to look at it. I

1 don't think he ought to have unfettered discretion to redact
2 things from documents that may be germane.

3 JUDGE SIPPEL: Well, it's not germane as to --
4 that's too broad. We're really only talking about relevancy
5 to the added issue for one thing.

6 MR. LEADER: Germane to the issues in this case.
7 But I don't think he should make that determination. I think
8 you should.

9 JUDGE SIPPEL: Well, I intend to make those
10 determinations, but I'm saying if it's clear in a multi-page
11 document, that he's got -- in other words, if what they've
12 done is identify the document because it's got a section in it
13 that specifically discusses Attachment D and that's all that
14 -- that's the only reason that they cite it, would be to that
15 document, then that's the area of the memo that I want to look
16 at. I don't care about the rest of the memo.

17 MR. LEADER: I agree with you. But I just want to
18 make sure that they don't have unfettered discretion to redact
19 things from these documents.

20 JUDGE SIPPEL: He doesn't. I think you've indicated
21 you understand that, Mr. Howard.

22 MR. HOWARD: Yes, sir. Although not exactly the way
23 Mr. Leader presented it. It would be -- my understanding is
24 that if there's a section of the document that, say, has to do
25 with an attachment to one of the exhibits that's not at issue

1 | in this proceeding, even though it's in this proceeding, that
2 | that would be something that you don't have any interest in
3 | reviewing and that it would be worthwhile for us to redact.

4 | MR. LEADER: But what if it was an attachment that
5 | should've been turned over in earlier discovery?

6 | MR. HOWARD: It's not an issue in this proceeding.

7 | JUDGE SIPPEL: That's not what we're -- yeah, that's
8 | -- this is not being designed to expand the case on -- or to
9 | add other issues.

10 | MR. LEADER: This would be expanding or adding other
11 | issues. It would be turning over what they had an obligation
12 | to turn over during the course of the proceeding.

13 | MR. HOWARD: A quintessential fishing expedition is
14 | exactly what he described.

15 | MR. LEADER: No, that's not true. That's not true.
16 | If they're obligated to turn something over to us and they
17 | didn't and they now -- it's now attached here, I think we
18 | ought to have it now because we surely were entitled to it
19 | then.

20 | MR. HOWARD: Without arguing that point, Your Honor,
21 | it's not relative to the issues that have been added in this
22 | case and there's no -- he has no evidence that anything even
23 | falls in that category.

24 | JUDGE SIPPEL: I certainly am not going to get into
25 | that. If you're giving me less than a complete document, you

1 | have to disclose -- and whether you give this to me with a
2 | cover letter or an updated schedule, whatever it's called,
3 | you're going to have to serve a copy of that on Mr. Leader and
4 | make clear to me what it is that's not going -- that you're
5 | taking out of the -- make clear to me what is being segregated
6 | out of that document that you're giving me for in camera
7 | inspection and we'll take it from there.

8 | But I don't intend to -- I don't intend to spend an
9 | inordinate amount of time on this. I understand -- you have
10 | to spend the time in getting it lined up. I understand that.
11 | I know -- I've been at that side, so I know it's not nice.
12 | But it will not take me too long to review these once I get
13 | them in the form that I want them and you're not under any
14 | obligation to get them to me at any particular point in time.

15 | But just make very clear to me what it is in the
16 | form of a cover letter -- or if you want to do it by way of
17 | pleading, that's fine, too -- exactly what it is that I'm
18 | getting and what I'm not getting, what is being eliminated
19 | from a particular document, all right?

20 | MR. HOWARD: Your Honor, if once you make a
21 | determination, if you did make a determination that something
22 | would be turned over, may I ask how that procedure would then
23 | -- how that would be done procedurally? Would you direct us,
24 | at that point, to turn the document over?

25 | JUDGE SIPPEL: That's correct. You would be

1 | directed to -- instructed and with -- you know, with or
2 | without redactions or whatnot, yeah, exactly. Exactly. I do
3 | not involve myself in discovery processes. I think that
4 | concludes the business on the in camera.

5 | There were some miscellaneous items that came up in
6 | that telephone conference. I should make that clear for the
7 | record, too, that I did -- last Friday, I called Mr. Howard's
8 | office and required that he initiate -- put together a
9 | conference call with Mr. Leader or somebody from Mr. Leader's
10 | office, and Mr. Masters and Mr. Howard and I spoke on Friday
11 | about certain things in addition -- but primarily to set up
12 | this conference this morning. There was going to -- Mr.
13 | Masters, do you want to report to me on anything else that --
14 | of a procedural nature?

15 | MR. MASTERS: I think that --

16 | JUDGE SIPPEL: There's a May 5 deadline on tax
17 | information?

18 | MR. MASTERS: Yeah, that's right. I think probably
19 | Mr. Howard and we should confer on that. I'm not entirely
20 | clear and maybe you can shed some light on this, Your Honor,
21 | of what the May 5th provision -- what you had in mind in
22 | writing that provision. What kind of mechanisms were you
23 | envisioning?

24 | JUDGE SIPPEL: Well, I suppose redacting unnecessary
25 | information would be the traditional way to do it if you were

1 going to do it. I mean, if you want to turn everything over,
2 that's fine. That makes it easy for everybody.

3 MR. MASTERS: Well, our inclination right now is we
4 have some Jacks information and I'm optimistic that we can
5 produce some documents this afternoon which was the deadline
6 that you specified. Our inclination with respect to the tax
7 information is to turn it over with dollar figures redacted.

8 JUDGE SIPPEL: That's doesn't surprise me. That's
9 what I -- you know, that was -- but I don't know -- as I say,
10 without having access to the documents, I don't know if
11 there's anything -- if there's any other kind of information
12 or something that may be -- you would be seeking --

13 MR. MASTERS: No, I don't think there are any great
14 surprises in it, so I think that's our inclination, to
15 approach it that way.

16 JUDGE SIPPEL: All right.

17 MR. HOWARD: One point of clarification, Your Honor,
18 is that we've -- the scope of the document -- we could -- we
19 could do this afterwards, but it just might, as a matter of
20 convenience, be better if we just talked at an earlier stage
21 as to what documents are included in the production because I
22 have talked to some tax -- one of our tax lawyers about what
23 documents would have relevant information in them and we'd be
24 prepared to talk to you at any time about what we think would
25 be within the scope of that request. If you'd prefer, just

1 | turn over what you think is within the scope and then we'll
2 | seek additional documents.

3 | MR. LEADER: We'll be turning over what we have, you
4 | know, what you asked for and what we have. That's what we're
5 | turning over.

6 | MR. HOWARD: The only other question I would have,
7 | Your Honor, is with respect to dollar amounts being redacted,
8 | that would indicate if there's a redaction, that shows that
9 | there is a sum though in that blank, not a --

10 | MR. MASTERS: That's a fair statement. It's a tax
11 | return.

12 | JUDGE SIPPEL: All right. Yeah, but, he's entitled
13 | to be -- either you're entitled to a clear answer on that, the
14 | document -- or there should be some explanation to make it
15 | absolutely clear that at such and such a line, that it was
16 | redacted. I mean, that may be evident, but --

17 | MR. HOWARD: That it was redacted and that there was
18 | an amount in that blank rather than zero.

19 | JUDGE SIPPEL: Be sure you make that clear.

20 | MR. MASTERS: That's fine.

21 | MR. HOWARD: One other matter, Your Honor, that I'd
22 | like to raise. The order with respect to the production of a
23 | writing sample of Ms. Covington --

24 | JUDGE SIPPEL: Yes?

25 | MR. HOWARD: We have reviewed -- Emily Barr's

1 reviewed the files at the station, but it seems that the
2 documents to be produced -- that could be produced are going
3 to fall -- under your order, would fall in the same category
4 as the Janet Covington notes themselves fall in, that is
5 documents that Scripps Howard says is -- are Janet Covington's
6 handwriting and thus they're not going to lead to the -- to a,
7 you know, resolution of the matter of whether or not they are,
8 in fact, Janet Covington's handwriting any more than the fact
9 that they have already been represented to be Janet
10 Covington's handwriting in the notes would resolve that point
11 and that Four Jacks might be better served to the extent that
12 they wished to make the argument that there's a -- that Janet
13 Covington's notes as produced are not authentic by having
14 Baker and Hostetler, as Ms. Covington's attorneys, ask her for
15 a handwriting sample that then could be presented as, you
16 know, certified by her as a copy of her handwriting rather
17 than again, to have Scripps Howard's assurance that this is
18 Ms. Covington's handwriting which, you know, one is never
19 absolutely certain.

20 These are notes that were taken from files and while
21 it's Ms. Covington's (sic) belief they're Janet Covington's
22 handwriting, we didn't see -- as far as we know, Ms. Barr did
23 not see Ms. Covington produce those documents. What's the
24 goal that Four Jacks is seeking in pursuing this handwriting
25 analysis is our question.

1 JUDGE SIPPEL: Well, as I see it, they want a
2 reliably verified sample of her writing, other than the notes,
3 and it would seem to me if she was an employee for some period
4 of time at Scripps Howard, there might've been some project
5 that she worked on or some particular file that they have that
6 somebody who has actually worked with her handwriting at
7 Scripps Howard can say, yeah, this is -- this is Janet
8 Covington's work product and that kind of a -- with that kind
9 of an assurance to be given to Mr. Leader and a copy of that
10 particular sample, I think that's -- that should suffice. Why
11 don't Mr. Leader -- I want Mr. Leader to respond to that.

12 MR. LEADER: Is the reporter ready?

13 JUDGE SIPPEL: Oh, yes. She's on.

14 MR. LEADER: Oh, I'm sorry. Excuse me. Yeah, we
15 just want something that is certifiably her handwriting.

16 MR. HOWARD: That's the point. I mean, can Emily
17 Barr -- she can certify she believes this is Janet Covington's
18 handwriting, but she can't certify that this is -- she saw
19 Janet Covington produce these documents.

20 MR. LEADER: We want Covington certifying it's her
21 handwriting.

22 MR. HOWARD: That's what I thought they would want,
23 Your Honor.

24 JUDGE SIPPEL: You want Ms. Covington to also
25 certify that it's her handwriting.

1 MR. LEADER: Uh-huh.

2 JUDGE SIPPEL: Because there's -- you know, working
3 with people, some people working together, co-workers, a co-
4 worker can clearly identify -- out of a file, they can say,
5 "Yes, this is definitely Janet's signature. She wrote this.
6 I mean, I know this is her style of writing," something of
7 this nature, that that would give you what you want because
8 I'm assuming that at some point along the line at the
9 deposition of Mrs. Covington, you're going to put this in
10 front of her anyway and have her verify it's her writing.

11 But if you can get something out of the file that
12 your -- that you have, everything short of metaphysical
13 certainty is her writing, then they can get the process
14 started. Go off the record for a minute.

15 (Off the record. Back on the record.)

16 JUDGE SIPPEL: Let the record reflect that the --
17 Mr. Howard has advised Mr. Leader off the record that he will
18 produce a writing sample of Ms. Covington's this is coming
19 from a -- what is the file you've identified it will come
20 from?

21 MR. HOWARD: It's from the Baltimore Broadcaster's
22 Coalition. It's a group ascertainment coalition in Baltimore
23 for the broadcast stations there that Ms. Covington has been
24 providing services to and that there were some notes that
25 Scripps Howard believes were prepared by her in connection

1 with her duties there that are now in Scripps Howard's
2 possession and that those can be -- you know, Ms. Barr could
3 certify as to what the documents are, but they're not
4 technically a Scripps Howard document as it was within the
5 scope of your order.

6 JUDGE SIPPEL: Right. I understand that. Now, that
7 document -- that sample should be accompanied, however, by
8 somebody's -- the person who is most familiar with that file
9 and that -- and her handwriting. There should be a
10 declaration that to that person's belief, this is her writing,
11 all right?

12 MR. HOWARD: Yes, sir.

13 JUDGE SIPPEL: And then -- and then, Mr. Leader, you
14 take it from there with Ms. Covington. And that satisfies
15 your needs now. Then that's it. One last item I have is with
16 respect to this letter of May 9th from Mr. Howard to Mr.
17 Leader. Does this -- this seems to comply with the
18 requirement to turn over drafts of Attachment D. Do I
19 understand that correctly?

20 MR. LEADER: I don't know what it is, frankly. I
21 haven't really looked at it. Mr. Masters just gave it to me.

22 JUDGE SIPPEL: All right. Then there's no --
23 there's no point in discussing it this morning. We are going
24 to have a conference next Monday now. I know that -- that
25 this is some additional work between now and Monday that you

1 might not have been contemplating and I don't want to take
2 anybody away from meaningful work just to have a conference.
3 But I do want to find out that everybody is on schedule.

4 Maybe in light of this development, I should
5 reschedule that to a later time. I mean, I don't think I'm
6 going to learn much more than I know now. Does anybody
7 have a -- anybody have a scheduling problem that they
8 anticipate now with respect to completing discovery and
9 preparing for this hearing date?

10 MR. LEADER: Just one thing. We were just
11 contemplating whether we could have an extra day to give you
12 the documents? And that's because Kathy's tied up in a
13 deposition and I've got to go pick my wife up at Andrews.
14 She's coming back from Cairo, so I'd like to go up there and
15 get her.

16 MR. HOWARD: No objection to that.

17 MR. LEADER: Yeah, you'll have them in the morning.
18 I just would like to see --

19 MR. HOWARD: No objection. The only point we --
20 with the understanding that the discovery dates, dates for the
21 closing of discovery, since there's yet to be a deposition
22 taken in this matter, are to be, you know, extended as
23 necessary reasonably for the completion of discovery.

24 JUDGE SIPPEN: That's what I -- that's what I
25 contemplated would've been covered on Monday.

1 MR. LEADER: We have no objection.

2 JUDGE SIPPEL: All right. There's -- obviously
3 you're not going to be able to conclude discovery in this case
4 by the 20th of May. All right. Then I don't see any reason
5 to meet on Monday. I'll cancel that conference and I have to
6 get back to you on my re-review of the attorney/client
7 privilege documents and you have to get back to me and tell me
8 when I can expect these documents for review.

9 I can't -- I can't see anything -- any reason now to
10 be anything more specific than just that. I want to urge both
11 sides to talk with one another about the mechanics, the
12 logistics of all these things so that there'll be an exchange
13 and you'll have exactly what you're expecting to receive, as
14 best as you can, so that we don't have to -- there won't be
15 that, you know, additional motion practice, hopefully, with
16 respect to this discovery. But there is the depositions now
17 that have to be taken, right, of Ms. Covington and Ms. Barr?

18 MR. LEADER: Uh-huh. And Mr. Kilborne.

19 JUDGE SIPPEL: And what about from Scripps Howard's
20 side? Are you going to be taking -- have the depositions yet
21 been taken?

22 MR. HOWARD: There's a pleading due tomorrow,
23 Wednesday, on the notices of the attorneys who helped prepare
24 the S.E.C. proceedings that they opposed the notice of
25 deposition.

1 JUDGE SIPPEL: Oh, that's right. There was a -- I
2 gave a shortened reply date on oppositions to the deposition
3 notices. That's right. All right. Was that -- all right.
4 That doesn't -- that doesn't tie in with any other dates that
5 we talked about on the phone, Mr. Masters.

6 MR. MASTERS: I think that's correct, Your Honor.

7 JUDGE SIPPEL: Okay, that's going to come in. All
8 right. I will make a ruling on that as soon as I get what I
9 need.

10 MR. HOWARD: My associates are telling me that my
11 date at the end of the week for this document is -- would be
12 apparently a difficult one for us to meet. But you've only
13 asked me to get back to you about it.

14 JUDGE SIPPEL: That's right.

15 MR. HOWARD: And I will do so. But the end of the
16 week may be too soon for us.

17 JUDGE SIPPEL: Well, that's -- I mean, when I say
18 all right, you let me know by the end of the week what your
19 best estimate is, where you stand on this. As I say, if you
20 want to give these documents to me and once you get finished
21 with your first category, as you've outlined them in your
22 schedule, if you want to, you know, go through that first
23 grouping and if they're bundled up and ready to go, you can
24 give them to me and then work on the remainder of them if you
25 want to give them to me in two sections. That's up to you,

1 | too.

2 | MR. MASTERS: Your Honor, just one more matter and
3 | this is very minor. I have on my calendar for tomorrow that
4 | the parties, either jointly or separately, come up with
5 | agendas for the prehearing conference that we have just pushed
6 | off. So I am assuming that the May 11th date is no longer in
7 | effect.

8 | JUDGE SIPPEL: Yeah, I will -- I'll have to go back
9 | and look at that order on which I set the 16th up as the
10 | conference. But I will cancel everything in connection with
11 | the 16th as well as the status report or the -- I'm sorry --
12 | the agenda, yes. That's correct. All right. We've
13 | anticipated all that. All right. We're in recess then until
14 | further call. Thank you.

15 | MR. HOWARD: Thank you.

16 | (Whereupon, at 10:55 p.m. on Tuesday, May 10, 1994,
17 | the hearing adjourned.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

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

MM DOCKET NO. 93-94
Docket No.

WASHINGTON, D.C.
Place

MAY 10, 1994
Date

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