

1 MR. SHOOK: Yes, sir, for the same reasons.

2 JUDGE SIPPEL: The motion is denied for the same  
3 reasons. Okay, do you have another one?

4 MR. SHOOK: Yes, sir, the next motion that we have  
5 is entitled "Motion to Proceed In Forma Pauperis."

6 JUDGE SIPPEL: Right. I do have such a document,  
7 and I take it you're -- what is your position with respect  
8 to that motion?

9 MR. SHOOK: Well, Your Honor, we oppose it simply  
10 because there's insufficient -- well, for two reasons: One  
11 is that it wasn't properly, you know, prepared and filed;  
12 but, more to the point, there's insufficient information, we  
13 believe, within the motion itself to establish that Mr. Ptak  
14 is unable to proceed except in forma pauperis.

15 JUDGE SIPPEL: So, in other words, there's not  
16 enough information to determine whether anyone qualifies --  
17 whether he qualifies or not.

18 MR. SHOOK: Well, I mean there is a certain --  
19 there's a certain amount of information that is contained in  
20 here with respect to Mr. Stefanoff, and there's also a  
21 certain amount of information with respect to The Hays  
22 County Guardian, but with respect to Mr. Ptak it simply  
23 states that he currently has a court-appointed attorney in  
24 pending criminal case in Hays County courts, in district  
25 court, and has established there that he is a pauper.

1 Well, that may well be, but that doesn't tell us  
2 anything because that information is not properly before us.

3 JUDGE SIPPEL: I will say it's an unusual way to  
4 advance that argument that he's got a court-appointed  
5 counsel in a criminal case and, therefore, he should get  
6 pauper treatment in this case.

7 I'll accept your arguments. I'd also want to  
8 point out that my understanding, or my taking a look at that  
9 rule for proceeding in forma pauperis, it seems to me that  
10 the rule is designed and it is intended to apply in renewal  
11 cases where there's actually a licensee involved. This man  
12 is not a licensee.

13 MR. SHOOK: Your Honor, there seems to be -- well,  
14 frankly, I don't think that there's anything that I am aware  
15 of in the rule itself or in its history that envisions, you  
16 know, dealing with a case such as this. So it may well be  
17 that the spirit of the rule is meant to, you know, cover a  
18 person such as Mr. Ptak, but it, certainly, you know -- the  
19 rule on its face does not cover it.

20 JUDGE SIPPEL: Well, he's not -- I mean, as I say,  
21 he's not, I think, a person who comes in here on a show  
22 cause basis who is not a licensee is not, under the rules,  
23 is not contemplated in the same context as somebody who has  
24 a license.

25 MR. SHOOK: Right. To that extent he may not even

1 be entitled to, you know, such relief.

2 JUDGE SIPPEL: Well, we can put that in the  
3 alternative, or I will put that in the alternative. But in  
4 any event, your first two grounds are certainly sufficient  
5 for denying the motion, and it will be denied.

6 MR. SHOOK: Next, Your Honor, we have a motion to  
7 be informed of filing dates. It bears a date of May 10.  
8 There is no certificate of service. It was signed by Joe  
9 Ptak and Jeffrey "Zeal" Stefanoff. So far as the Bureau is  
10 concerned, Mr. Ptak, like any other litigant before this  
11 agency, receives notice of filing dates in the usual course,  
12 and the Bureau doesn't understand what, if any, additional  
13 relief, you know, Mr. Ptak is supposed to receive as a  
14 consequence of this motion. So, in addition to its  
15 procedural infirmities, the Bureau would request that the  
16 motion be dismissed and, if it's not dismissed, denied  
17 because, substantively, it doesn't ask for anything that  
18 isn't already given to the individual.

19 JUDGE SIPPEL: No. It will be denied; it's  
20 superfluous. You're absolutely right. All right, that  
21 takes care of that one.

22 Well, you go ahead. You keep proceeding on your  
23 pace, if I can keep up with you. Do you have another  
24 document?

25 MR. SHOOK: Well, I have several documents here,

1 and these are documents that Your Honor may not have. I  
2 have --

3 JUDGE SIPPEL: Well, let me tell you before you  
4 pass -- let me tell you the two that I do have and see if  
5 you have those, so we can -- if I can eliminate the ones at  
6 least that I have.

7 MR. SHOOK: All right.

8 JUDGE SIPPEL: I have two left. One is entitled  
9 "Motion for Party Status in the Show Cause Hearing of Joseph  
10 Frank Ptak and Motion for Change of Venue," and it's  
11 handwritten, or the name is printed in by hand of Adam  
12 Tracey. And the same document for John Backus. And these  
13 appear to be dated on the 22nd of April. No certificate of  
14 service. These were addressed to me, and copies were gotten  
15 over to the Clerk's office -- to the Secretary's office, and  
16 I'm sure -- well, I feel -- I don't know. I don't know if  
17 copies did get to you.

18 MR. SHOOK: Are those the documents that are  
19 referenced in your May 1 order, FCC 98M-53?

20 JUDGE SIPPEL: Let me see. Yes, I'm quite sure  
21 they are. I haven't received anything else that looks like  
22 these.

23 MR. SHOOK: Your Honor, for your information, I  
24 have before me several documents. I'll read the names as we  
25 go along that appear to be similar to what you referred to.

1 JUDGE SIPPEL: All right.

2 MR. SHOOK: What I have is a motion for party  
3 status and a show cause hearing of Joseph Frank Ptak and  
4 motion for change of venue. It's a one-page document and  
5 I'll read it because the others are all going to be similar  
6 to this.

7 "It comes now..." -- and then the individual's  
8 name which in this case is Graham Sullivan -- "...on this  
9 day, 4/20, who lives at 1007 North LBJ, San Marcos, Texas,  
10 78666, to request party status in matter of the show cause  
11 hearing of Joseph Frank Ptak why a cease and desist order  
12 should not be issued by the Federal Communications  
13 Commission (FCC 98-60:CIV Docket Number 98-44).

14 "I request party status because, as a listener to  
15 Mu Kind Radio, San Marcos, I found that it was the only  
16 radio station which served San Marcos with local news,  
17 information, entertainment, and access.

18 "Furthermore, I requested and was granted access  
19 to broadcast on Mu Kind Radio and am currently a regularly  
20 scheduled programmer. As such, I am impacted by your  
21 action against Mr. Ptak, and I have an interest separate and  
22 apart from Mr. Ptak's interest.

23 "I do not think that Mr. Ptak can represent my  
24 interests and feel that I may have information which may be  
25 of importance in this matter, which is unique to my

1 circumstances as well as having a stake in your decision.  
2 Therefore, I request that I be recognized a party in this  
3 matter.

4 "In addition, I make a motion for a change of  
5 venue from Washington, D.C., to San Marcos, Texas, because  
6 it would be an unfair financial burden on me to go to  
7 Washington, D.C., and I cannot afford to be represented  
8 there.

9 "Thank you for your consideration in this matter.

10 "Yours in freedom, Graham Sullivan."

11 Now, I have that motion plus one that is identical  
12 in form from Christopher J. Thomas. It appears -- the  
13 person's handwriting is not entirely clear to me, but I  
14 believe that's the person's name and the spelling of the  
15 last name appears to be T-H-O-M-A-S. And it's dated April  
16 27, 1998, and this individual lives at 100 Warden Lane,  
17 Number 34, San Marcos, Texas, 78666.

18 I have another document similar in form. This one  
19 is from Doug Morgan, M-O-R-G-A-N. It is dated April 23,  
20 1998. This individual lives at 1000 North LBJ, Number  
21 E-7, San Marcos, Texas, 78666. And then down at the bottom  
22 where it is signed, he has above it one of these Fabulous  
23 Lawn Wranglers.

24 I have another similar motion from an individual  
25 named Scott A. White, W-H-I-T-E. This is dated April 23,

1 1998. He lives at 1249 North LBJ, Number 204, San Marcos,  
2 Texas, 78666. He's also identified as one of the Fabulous  
3 Lawn Wranglers.

4 The next similar document is from a Chad Bowen,  
5 B-O-W-E-N. It is dated April 22, 1998. He lives at 1300  
6 Earle Street, E-A-R-L-E, San Marcos, Texas, 78666.

7 Another similar motion from Steve Benson,  
8 B-E-N-S-O-N, dated April 22, 1998; he lives at 108 House  
9 Wren -- Wren is spelled W-R-E-N -- Hill, San Marcos, Texas,  
10 78666.

11 Another such motion from April Nault, N-A-U-L-T,  
12 dated April 22, 1998, the address is 1037 Haynes,  
13 H-A-Y-N-E-S, Street, San Marcos, Texas, 78666.

14 And a final such motion from John David Schmidt,  
15 S-C-H-M-I-D-T, dated April 22, 1998, the address appears to  
16 be 527, Number 5 West San Antonio Street, San Marcos, Texas,  
17 78666.

18 And, Your Honor, the Bureau would oppose all such  
19 motions to intervene and change of venue both for procedural  
20 infirmities and because they do not substantively comply  
21 with Section 1.223 of the Commission's rules.

22 JUDGE SIPPEL: Okay. Then, on those grounds, the  
23 motions that you just read into the record are denied. Let  
24 me get -- the first one is Graham Sullivan?

25 MR. SHOOK: Yes, sir.

1 JUDGE SIPPEL: How do you spell the first name?

2 MR. SHOOK: G-R-A-H-A-M.

3 JUDGE SIPPEL: And that's S-U-L-L-I-V-A-N?

4 MR. SHOOK: Correct.

5 JUDGE SIPPEL: What was the date of his?

6 MR. SHOOK: April 20.

7 JUDGE SIPPEL: Okay. And then let me just read  
8 off the other ones. You've got, in addition to Sullivan,  
9 you've got Christopher Thomas, Doug Morgan, Scott White,  
10 Chad Bowen, Steve Benson, April Nault, and John David  
11 Schmidt.

12 MR. SHOOK: Yes, sir. And I have two more, and I  
13 don't -- this came in, I believe with the first pack of  
14 documents that we got over to the Secretary's office, but  
15 these might not have gotten to you all. One is -- it's the  
16 same, but it's precisely the same language, and the first  
17 one that I have there is Adam T. Tracey, T-R-A-C-E-Y, dated  
18 April 22, '98, and indicating an address at 123 Blanco, B-L-  
19 A-N-C-O, Street in San Marcos, Texas, 78666.

20 And the second one that I have is from John  
21 Backus, B-A-C-K-U-S, also dated April 22 listing as an  
22 address P.O. Box 316 in Martindale, Texas, 78655.

23 JUDGE SIPPEL: And I take it that you would have  
24 the same -- you would be asking the same relief with respect  
25 to those motions, also.

1 MR. SHOOK: Yes, sir.

2 JUDGE SIPPEL: And it's granted. These motions  
3 are denied for the reasons you've stated. All right.

4 MR. SHOOK: Now, there are a number of other  
5 documents here which, so far as the Bureau knows, was not  
6 filed -- or the documents were not filed -- and, frankly,  
7 we're not really sure what they're supposed to be.

8 JUDGE SIPPEL: I might not know what they are  
9 because that accounts for all the papers that I brought in  
10 with me today that I had received. And, as I say, my source  
11 has been, with the exception of that one document that I  
12 identified that had a Secretary's stamp on it, my source has  
13 been courtesy copies from Mr. Ptak. Originally, he tried to  
14 file them with me, but then they later on became courtesy  
15 copies.

16 So you want to just describe what it is that you  
17 have in addition?

18 MR. SHOOK: I'll describe one such document,  
19 because they're all the same. It's roughly a four by six  
20 paper.

21 JUDGE SIPPEL: Oh, these might be the ex parte  
22 items that came in. I issued an order on those.

23 MR. SHOOK: Was that in addition to the two orders  
24 that we've already talked about?

25 JUDGE SIPPEL: No, it should be in one of those

1 orders. Yeah, the one that was FCC 98M-53 released on May  
2 1, the reference in the second paragraph to the ex parte  
3 rules, and, yeah, there was one of those that was directed  
4 to the General Counsel's office, and it came on that size  
5 paper that you were describing. See footnote 3?

6 MR. SHOOK: I see now. I see.

7 JUDGE SIPPEL: Now, this is the same John Backus  
8 but he also filed -- I think he filed two documents: He  
9 filed this motion that we just ruled upon for party status,  
10 and then he also sent in one of these forms, these, as  
11 you've described it, a four-by-six form.

12 MR. SHOOK: All right. And then it's the Bureau's  
13 understanding from looking at this form that it doesn't  
14 really request intervention, per se. I mean, these people  
15 are obviously interested in what's happening and could well  
16 want to appear as witnesses to any hearing. But so far as  
17 the Bureau can tell, they're not requesting, you know,  
18 formal party status.

19 JUDGE SIPPEL: Well, I have -- there's nothing  
20 that's been directed to me, and so I don't see any point on  
21 my ruling on it here today. I wouldn't -- if you wanted to  
22 put something in the form of a written motion, if you want  
23 to get the record clearer on it, clearer than we're talking  
24 about here today, then maybe you wanted to somehow or other  
25 itemize these as documents that have been received at the

1 Commission and ask for, you know, a specific ruling that  
2 these people are not parties and they haven't met the  
3 conditions, well, I'd be glad to do that. At least that  
4 would give a record accounting for them by name. But I  
5 don't see that there's a -- I wouldn't put that as a  
6 requirement on the Bureau's part because there's nothing for  
7 me to rule on.

8 MR. SHOOK: Yes. We'll take that under  
9 advisement.

10 JUDGE SIPPEL: Go right ahead, yes. Let's do it  
11 that way.

12 Now, I know you have requests for admission, but I  
13 don't want to get ahead of you here if there's something  
14 else that you want to address first.

15 MR. SHOOK: Well, at this stage I believe we've  
16 covered, you know, all the matters that I had in my agenda.

17 JUDGE SIPPEL: All right. I just don't want to  
18 ask you -- how do you anticipate -- you've got the burden of  
19 proceeding and the burden of proof. And I know that you  
20 have -- I know that you have a set of requests for  
21 admissions that's outstanding. According to my account, the  
22 answers are due in -- or the objections or some response --  
23 is due by this Thursday. Does that -- and so I guess the  
24 question is, you know, where do we go from here as far as  
25 your meeting -- where your burden is concerned?

1 MR. SHOOK: Well, Your Honor, it's the Bureau's  
2 intention to proceed by way of motion for summary decision.

3 JUDGE SIPPEL: Okay. Do you want to do that on or  
4 before the 3rd of June, which would give the 20 days from  
5 the date that the hearing's been set? Or is that -- well,  
6 let me just put it that way. As a matter of right, you can  
7 do that based on the present hearing schedule, which I did  
8 not set. You have, as a matter of right, to file that on or  
9 before June 3. So I guess the question is, is that what  
10 your intentions are, or do we want to talk about a different  
11 date?

12 MR. SHOOK: No, the Bureau can get it done by June  
13 3.

14 JUDGE SIPPEL: All right. Then we'll stick with  
15 the hearing date we have.

16 MR. SHOOK: With the understanding that if Your  
17 Honor rules in our favor on the motion for summary decision  
18 that the hearing will be called off.

19 JUDGE SIPPEL: Well, I'll tell you what I will do:  
20 when it comes in, I will postpone the hearing date and then  
21 make it clear in that ruling that Mr. Ptak has until, you  
22 know, date certain to get his opposition in. And then  
23 that's going to be it. Then there won't be another  
24 determination for a hearing date until after I rule on that.

25 MR. SHOOK: Very good.

1 JUDGE SIPPPEL: Which we're either going to move  
2 the issue or we do it a different way.

3 MR. SHOOK: Okay.

4 JUDGE SIPPPEL: So that will do it.

5 MR. SHOOK: Thank you.

6 JUDGE SIPPPEL: And I don't have anything -- I  
7 don't -- let me just check my list here. I don't think I  
8 have anything further to ask you, then.

9 No, I just ask that -- I mean this is superfluous,  
10 but I will do the same. I mean we will be conscious of  
11 things that come into our office with respect to this case,  
12 and we'll notify your office as soon as possible after we  
13 receive them to be sure that you're getting what we're  
14 getting and that somehow, logistically, we can cooperate in  
15 terms of how these things are going to get to the  
16 Secretary's office.

17 I'm not anticipating that, and I'm not putting  
18 that on as a burden. If it gets too much, you know,  
19 we're not required to file his papers for him.

20 MR. SHOOK: Well, Your Honor may have noticed that  
21 with respect to our admissions request we included copies of  
22 the pertinent rules there so that --

23 JUDGE SIPPPEL: Good point.

24 MR. SHOOK: -- we're trying to put Mr. Ptak on  
25 specific notice as to what it was he should do.

1           JUDGE SIPPPEL: Good point. I don't think that  
2 he's trying not to do it the right way. I think he would --  
3 I think if he's told, based on the experience thus far, it  
4 seems he will try and do it the right way. And I can't --  
5 I'll be very frank about this and I have no problem putting  
6 this on the record -- but when I see documents like this, a  
7 brief in support of motion to dismiss show cause hearing in  
8 any indictment for APA violations, and the brief that goes  
9 along with that, I can't believe that he's not talking to a  
10 lawyer. I mean it's just, one way, shape, or form, he's  
11 getting some, some form of assistance on this case thus far.

12           But there is no lawyer in this case as a matter of  
13 record. So, we'll, you know, we'll just proceed as we have  
14 been proceeding, and let's see what the next step delivers.  
15 Okay?

16           MR. SHOOK: Thank you, Your Honor.

17           JUDGE SIPPPEL: That's it. Thank you very much.

18           (Whereupon, at 10:04 a.m., the hearing was  
19 concluded.)

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**REPORTER'S CERTIFICATE**

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HEARING DATE: May 19, 1998  
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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