

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:

: EB Docket No.
: 07-13

DAVID L. TITUS

: FRN No. 0002074797

Amateur Radio Operator : File No.

and Licensee of : EB-06-IH-5048

Amateur Radio
Station KB7ILD

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tuesday,
March 27, 2007

9:30 a.m.

BEFORE :

RICHARD L. SIPPEL
Chief Administrative Law Judge

APR 12 1 40 PM '07

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APPEARANCES :

On Behalf of the Enforcement Bureau:

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On Behalf of David L. Titus:

Of: STEVEN D. BROWN, ESQ.
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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:29 A.M.)

3 JUDGE SIPPEL: Did you file notices
4 of appearance?

5 MR. SCHONMAN: Did we file?

6 JUDGE SIPPEL: Yes.

7 MR. SCHONMAN: No, the HDO said we
8 didn't have to.

9 JUDGE SIPPEL: I was just asking
10 that more out of curiosity than out of any
11 requirement. I've gotten into tussles with
12 the Bureau sometimes.

13 MR. SCHONMAN: It doesn't say that
14 we didn't have to file one, but the rules make
15 us an automatic party in every case.

16 JUDGE SIPPEL: Well, I know, but
17 I've had occasion where it's been a problem in
18 terms of the equality of treatment of the
19 parties, and it's not just for purposes of
20 principle on the administrative - taking that
21 next administrative step, but it's a -
22 sometimes what happens is, I think in one case

1 it happened, is that the party was late in
2 filing notice of appearance and didn't have
3 too much of an excuse for doing it. But there
4 was no notice of appearance that had been
5 filed by the Bureau, so I mean in terms of
6 taking drastic steps in a situation like that,
7 such as, you know, dismissing a party or doing
8 on a default basis, I felt I just couldn't do
9 it.

10 MR. SCHONMAN: Well nobody's
11 alleged -

12 JUDGE SIPPEL: No. But I think in
13 the future it would be a good idea as a matter
14 of practice to just file one. It doesn't
15 hurt, and it puts everybody on an even keel.
16 But I'm not going to - no, not this case. Mr.
17 Brown?

18 MR. BROWN: Yes.

19 JUDGE SIPPEL: Hold on just a
20 minute. We have a court reporter here. I'm
21 Judge Sippel.

22 MR. BROWN: All right.

1 JUDGE SIPPEL: Judge Richard L.
2 Sippel. And I'll be presiding at this
3 proceeding. And I'm going to ask counsel to
4 identify themselves on the record.

5 MR. SCHONMAN: On behalf of the
6 Chief Enforcement Bureau, Gary Schonman and
7 William Knowles-Kellett.

8 JUDGE SIPPEL: Okay. And on behalf
9 of Mr. Titus, who is on the phone.

10 MR. BROWN: Steven Brown of the law
11 offices of David S. Marshall.

12 JUDGE SIPPEL: Okay. That's it
13 then, right.? Just you Mr. Brown?

14 MR. BROWN: That's correct.

15 JUDGE SIPPEL: All right. I know
16 that you've got your notice of appearance in,
17 and Mr. Marshall is on that as well as
18 yourself.

19 MR. BROWN: That's correct.

20 JUDGE SIPPEL: Okay, let me just
21 make a couple of preliminary comments here.
22 First of all, I know you're Seattle,

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1 Washington. You're on the speaker phone with
2 my authorization. This is our first
3 conference. It's our first pre-hearing
4 conference and show-cause/revocation
5 proceeding. EB docket number 07-13 in Re: the
6 amateur license of David L. Titus, your
7 client, which was released by the Enforcement
8 Bureau on the 30th of January, 2007. The
9 counsel for the Bureau have now identified
10 themselves and will be participating in the
11 trial of this case.

12 Burden of proof and the burdens of
13 proceeding has been assigned to the Bureau
14 counsel. Mr. Brown, I want to again extend my
15 appreciation for your coming in this early,
16 because you're three hours behind us, so we've
17 had a chance to sort of wake up and have our
18 first cup of coffee. I hope you're not
19 disadvantaged by this. I appreciate it very
20 much, sir.

21 MR. BROWN: Well thank you for
22 allowing me to participate by phone. I

1 appreciate it.

2 JUDGE SIPPEL: All right, well
3 let's move on to business. My first concern
4 is with the trial date. And I've informally
5 asked the parties to see if you can get
6 together with some dates. You understand that
7 I'm not going to be available in August, so
8 with that as a given, whatever all you can
9 agree to, I'm interested in hearing. Mr.
10 Schonman, you want to pick up on that?

11 MR. SCHONMAN: Sure. We have
12 informally discussed a potential hearing date,
13 and Mr. Brown, I think if my records are
14 correct, we were going to propose to the
15 presiding judge September 19th and, if
16 necessary, September 20th. That's a Wednesday
17 and a Thursday. Is that correct? Is that
18 your understanding?

19 MR. BROWN: That is where we were
20 on dates. yes.

21 JUDGE SIPPEL: Is that okay with
22 you?

1 MR. BROWN: The dates are. I do
2 have a question I'd like to ask with regard to
3 that, but the dates themselves are fine.

4 JUDGE SIPPEL: How about Mr. Titus,
5 is he essentially available on those dates?

6 MR. BROWN: Well, he will try to
7 make himself available on those dates. The
8 question we obviously had is whether there are
9 any provisions for such a hearing to be held
10 on the west coast rather than on the east
11 coast.

12 JUDGE SIPPEL: Sorry about that, no
13 sir. The designation order, which controls my
14 discretion on a question such as that order
15 the case to be heard here in Washington.

16 MR. BROWN: Right. And obviously
17 there are provisions for witnesses' testimony,
18 etcetera, upon motion, to be able to be done
19 telephonically.

20 JUDGE SIPPEL: That's correct. I
21 will listen to that request, but it's going to
22 have to be done witness by witness, and the

1 Bureau is going to have to, obviously, have
2 the opportunity to object or ask for some kind
3 of a protective order or whatever, but I'm not
4 totally averse to it. But if the witnesses
5 needed - i:e the witness that is needed is a
6 fact witness -

7 MR. BROWN: Is Mr. Titus himself.

8 JUDGE SIPPEL: Mr. Titus himself?

9 MR. BROWN: Go ahead, I'm sorry. I
10 interrupted. Continue.

11 JUDGE SIPPEL: I'm saying that if
12 the witness: is a fact witness, all right, to
13 what would be an essential matter of fact, and
14 it's based on something like observation as
15 opposed to introducing a document which
16 reflects a date, I might be inclined to
17 require that, for demeanor purposes, I might
18 require the witness to be hear in the
19 courtroom. But the nature of this case, it
20 seems to me, at this juncture anyway, lends
21 itself to being open to requests for
22 telephonic testimony. Now that would be with

1 the exception of Mr. Titus, of course. I
2 would expect him to be in the courtroom for
3 the entire proceeding. Now let me ask this to
4 the Bureau, do you have any objection to what
5 I just said, or any qualifications?

6 MR. SCHONMAN: No sir, we would
7 expect Mr. Titus to be present at the hearing
8 in Washington, and that if there's a request
9 that other witnesses appear by speaker phone,
10 we would want to have justification for that
11 and be able to weigh in on whether that's
12 warranted or not, or appropriate.

13 JUDGE SIPPPEL: Certainly. Okay
14 Mr. Brown, anything - now that's my ruling
15 but do you have comment, or are there any
16 qualifications to that that you'd be asking
17 for?

18 MR. BROWN: Well, I think, just so
19 you understand the nature of the case from our
20 perspective, we are in the interesting
21 position of going to have to be proving a
22 negative. This is a gentleman who's aged

1 thirty two who was convicted, plead guilty
2 when he was eighteen to child abuse, has had
3 a clean record since then, so one of the
4 things that we will have a hard time figuring
5 out is how much we have to prove that he does
6 not have a record.

7 JUDGE SIPPEL: All right, well,
8 we'll get to that. I know that's what defense
9 counsel are for, and you know, I certainly
10 have a keen interest in what you're saying
11 here. So I think let's take it just one step
12 at a time, okay?

13 MR. BROWN: That's fine.

14 JUDGE SIPPEL: Today all we're
15 trying to do is get dates set, and I'm giving
16 you the general parameters of telephonic
17 testimony. There are some cases where I would
18 just exclude it, but I'm not excluding it.
19 I'm saying that you have the burden of showing
20 or giving a reason as to why the witness is
21 not needed here in the courtroom, and the
22 Bureau can give its position on that and I

1 would be inclined to accept it unless it was
2 a good reason not. Again. with the exception
3 of Mr. Titus.

4 MR. BROWN: Yes.

5 JUDGE SIPPEL: Okay. Now, the
6 scope of discovery. I know what's in the mill
7 right now. Let me just make an aside with
8 respect to filing pleadings with the
9 Commission. You filed an original and one of
10 the set of pleadings that you filed -
11 basically preliminary objections, I think, to
12 the request. for documents -

13 MR. BROWN: Correct.

14 JUDGE SIPPEL: -- And
15 interrogatories of the Bureau and asking for
16 a bit of an extension of time, that type of
17 thing. Those documents came in as an original
18 and one. The rules require an original and
19 six copies. And they are to be filed not with
20 the Office of the Administrative Law Judge,
21 but with the Office of the Secretary. So
22 we're going to require that you file five

1 additional copies with the secretary's office.
2 We'll take care of the original and one. **And**
3 I've got - you've given me the notice that I
4 want. You've given me a fax notice of these
5 documents, and that's all I need for my
6 working copies.

7 MR. BROWN: Got it.

8 JUDGE SIPPTEL: But the official
9 filing, and that can get critical sometimes,
10 when it comes a date, compliance with the
11 rules on dates, like any other court system.
12 And those have to be filed specifically with
13 the secretary's office, and we then - the six
14 copies get distributed to counsel and the
15 judges, and we get the stamped copy from the
16 secretary's office, so we know we've a fixed
17 date that we can work with if we need to.

18 But on the other hand, in the
19 meantime, yes, fax us, right away, as soon as
20 you're finished sending them out for filing,
21 give me a fax and also an email copy to myself
22 and to Mrs. Gosse, my assistant.

1 MR. BROWN: Yes.

2 JUDGE SIPPEL: And I guess whatever
3 you worked out with counsel. Courtesy copies
4 to counsel also. And he'll do the same for
5 you. Mr. Schonman?

6 MR. SCHONMAN: Yes, I have some
7 additional matters with respect to filings.
8 I think it would be helpful if each individual
9 filing has a certificate of service appended
10 to it, and then I think - I'm certain that the
11 rules require that each pleading be directed
12 to a particular individual or entity that's
13 supposed to rule on it. So it has to have
14 your name on the - your Honor, if you're the
15 one to whom it's directed, your name has to
16 appear on the - below the caption. And I also
17 believe that in terms of filing the original
18 plus six, so that we all are aware of due
19 dates for certain filings, that the document
20 has to be received at the secretary's office
21 on or before the due date, not necessarily
22 mailed from Seattle on the due date.

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1 JUDGE SIPPEL: Mr. Schonman is - I
2 know from experience he's citing basically
3 what the rules require. Do you have any
4 additional comment to that, Mr. Brown? It
5 seems to be pretty straightforward, and I will
6 give you time to get - to meet these dates.
7 I mean, if you need a couple of more days
8 coming in from Seattle, I'll be glad to give
9 those to you.

10 MR. BROWN: One, I understand what
11 he says. Two, I would request, particularly
12 given sometimes the state of the mail, the
13 same courtesy of being faxed or emailed copies
14 of all pleadings so that even with the lack of
15 delivery of mail, that I get them in time to
16 be able to respond.

17 JUDGE SIPPEL: Oh, absolutely. I
18 don't mean to cut you off, but absolutely. I
19 mean, this is a two-way street on all this.
20 And I will courtesy-copy you as well as Bureau
21 counsel with email copies of orders. Once the
22 order leaves the office, usually on the

1 issuance date, not even on the release date,
2 I will get you a courtesy copy, so that -
3 particularly if it's a time-sensitive order.

4 MR. BROWN: Right, and I assume
5 that future pleadings will be, in fact, mailed
6 to our law offices as opposed to our client.

7 JUDGE SIPPEL: Mr. Schonman?

8 MR. SCHONMAN: Well, absolutely.
9 Now that you have filed a notice of
10 appearance, we now know that you exist. When
11 we filed our original documentary quest and
12 interrogatories, we had not yet received your
13 late-filed notice of appearance.

14 JUDGE SIPPEL: All right. You want
15 to respond to that, Mr. Brown? I didn't mean
16 to cut you off.

17 MR. BROWN: No, I just - in the
18 spirit with which we're conducting this
19 conference, I just want to make sure that
20 we're all square on moving forward.

21 JUDGE SIPPEL: Absolutely. Good
22 point. All right, well I think we basically

1 know where we're going on this. I require a
2 fax because sometimes I don't check my emails
3 as religiously as I probably should, and I
4 know if a fax comes in, I know I've got it.

5 MR. BROWN: That's not a problem.

6 JUDGE SIPPEL: But you all can
7 agree to just using emails, whatever you all
8 agree to is fine with me. When I say you all,
9 I mean you and the Bureau counsel.

10 MR. BROWN: Understood.

11 MR. SCHONMAN: Your Honor, the
12 Bureau has no problem sending Mr. Brown
13 courtesy copies either by fax or by email so
14 that he gets it virtually immediately. My
15 concern was with Mr. Brown's filing of
16 documents with the secretary's office, that he
17 has to somehow arrange to insure that
18 documents are received by the secretary's
19 office. **An** original and the proper number of
20 copies on whatever due date is applicable to
21 that pleading.

22 JUDGE SIPPEL: All right. I think

1 we've already covered that. He knows that.
2 And you've got the Bureau's pleading. You can
3 see what Mr. Schonman was referring to in
4 terms of addressing a pleading specifically to
5 myself.

6 MR. BROWN: Let's take a look -
7 he's talking about his discovery pleadings?

8 JUDGE SIPPEL: Right.

9 MR. BROWN: Yes, I have those.

10 JUDGE SIPPEL: Well, no, he's got
11 them addressed to Mr. Titus. He doesn't have
12 them addressed to me.

13 MR. BROWN: That's right.

14 JUDGE SIPPEL: Not that they should
15 be necessarily addressed to me, but I'm just
16 trying to say that there is a - you know, in
17 the place where instead of "To David L.
18 Titus," it would say "To the Honorable Richard
19 L. Sippel, Chief Administrative Law Judge,"
20 something like that.

21 MR. BROWN: Yes, that's fine.

22 JUDGE SIPPEL: And that would cover

1 your point, right Mr. Schonman?

2 MR. SCHONMAN: Yes sir.

3 JUDGE SIPPEL: This is such a
4 common thing that I don't really focus on it
5 in a pre-hearing conference. And I don't mean
6 to say that it's not important. It is. Let's
7 do this one right, and I'm sure we will.

8 MR. SCHONMAN: And your Honor,
9 yesterday we did file a pleading directed to
10 you, and we will, today, send Mr. **Brown** either
11 a fax or an email version of that.

12 JUDGE SIPPEL: Okay, I haven't
13 gotten that. Have we gotten that? Oh, Mrs.
14 Gosse just passed it over to **me**. What I've
15 just been handed is a copy of the Bureau's
16 response to David Titus' response and general
17 objections to the first set of interrogatories
18 and a request for additional time in which to
19 answer and object. I was going to address the
20 additional time. I haven't read this
21 document, I'm just looking at the title. But
22 it certainly will show how it's addressed to

1 me.

2 MR. BROWN: Yes, and I of course
3 haven't received it.

4 MR. SCHONMAN: On that point, your
5 Honor, we have no objection to his request for
6 additional time.

7 JUDGE SIPPEL: Okay, there is no
8 objection to the time. I can move right into
9 that right now, then. And that is, let me
10 see, I've got a note on that. You want until
11 the second of April?

12 MR. BROWN: That would be good. I
13 guess with the mailing time we maybe ought to
14 be smart with that, because that will be three
15 days. It's probably smarter, if no party
16 objects, to -- it would be wiser to make it the
17 sixth of April, but I can live with the second
18 of April, getting it there. Given that we
19 have a September hearing date, I would not
20 think we're particularly time-sensitive, but
21 maybe I'm wrong.

22 JUDGE SIPPEL: Well, the sixth is

1 okay with me. I'm going to be out of the
2 country until the sixteenth, so if it's all
3 right with the Bureau, the sixth is fine with
4 me, and then the Bureau would have until the
5 sixteenth. How does that work?

6 MR. SCHONMAN: Well, I guess I'm
7 confused. In his request for additional time
8 to respond to the interrogatories, he asked
9 for April 2nd.

10 JUDGE SIPPEL: Right.

11 MR. SCHONMAN: Is he now not asking
12 for April 2nd? He wants April 6th?

13 JUDGE SIPPEL: That's correct.
14 Because of the mailing requirement. He **knows**
15 that he has to get it in - it has to be
16 received at the Commission on the date that
17 it's due.

18 MR. SCHONMAN: He can email that to
19 us, to the Bureau, that is.

20 JUDGE SIPPEL: Yes, but he's got to
21 get it in to the Commission. He's got to get
22 it in to the secretary's office on the due

1 date, also.

2 MR. SCHONMAN: If he wants to
3 modify to April 6th, we would have no
4 objection to that. But I think in the future
5 it would be helpful if, when he requests a
6 date, that that is the date that he's
7 requesting.

8 JUDGE SIPPEN: I don't mean to
9 speak on your behalf, Mr. Brown, but my
10 understanding is is that we're now - we're
11 just getting into the nuts and bolts of this
12 filing requirement, and he's going to be
13 filing documents from out there in Seattle,
14 Washington, to the Commission here on 12th
15 Street, and we've noted to him, or instructed
16 him, that the date that is set for the filing,
17 whether it's by virtue of rule or by virtue of
18 my order, is the date that it has to be
19 physically filed with the Commission.

20 And the date that he sends it to
21 the Commission, however he does it, whether
22 it's by - you know, two or three days earlier,

1 by overnight mail or messenger, however, we
2 will get the courtesy copies. So they should
3 be emailed the date that they leave your - the
4 day that they're signed and they leave your
5 office - I'm talking to both counsel on this,
6 the emails should go out. Unless it's done
7 late in the evening and you want to wait until
8 the next day. Again, there's a rule of reason
9 here. I'm not asking or setting a requirement
10 here that you wait until a document is
11 actually filed with the Commission before you
12 send the courtesy out. The whole idea is to
13 get that courtesy out right away.

14 MR. SCHONMAN: The Bureau
15 understands that Mr. Brown is in Seattle. We
16 just want to make sure that when he proposes
17 a particular date and we agree to that
18 particular date, that he understands that he
19 has to take efforts to insure that it's
20 received on that date. If he proposed April
21 2nd and he understands that he has to get it
22 out sometime in late March, that's something

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1 he'll have to work with. There are firms out
2 of state that work directly with law firms
3 here in Washington, and they do the filings on
4 behalf of out of state firms.

5 I don't know if Mr. Brown has any
6 relationship with communications firms here in
7 town, but what I'm trying to do, and we
8 certainly want to cooperate, but I think we
9 have to have a precise understanding that when
10 there's a due date, that he will have to take
11 whatever efforts are necessary on his part to
12 insure that he complies with that. Now he
13 suggested, he proposed April 2nd. We filed a
14 pleading agreeing to that, and then on the
15 date of the pre-hearing conference, he's
16 proposing yet another date. This is an
17 initial pre-hearing conference. We don't
18 mind, in the spirit of cooperation, agreeing
19 to a few extra days, but I think on a going
20 forward basis, he's going to have to take
21 whatever efforts are necessary to insure that
22 it's filed on a particular date.

1 JUDGE SIPPET: All right. Well,
2 Mr. Brown, do you want to respond?

3 MR. BROWN: I appreciate the April
4 6th. Yes, I put April 2nd. I hadn't gotten
5 the response until now, and my wisdom slowly
6 being developed with regard to the timing and
7 issues, I thought April 6th would be a date
8 that would work better for all of us. Or at
9 least for me, to make sure that it was done on
10 time. And I appreciate both the Court's and
11 Enforcement; Bureau's acceptance of that, and
12 I will be mindful of dates. Again, I know
13 there are all kinds of firms that do this in
14 Washington, DC, and there's big firms that
15 work. I'm working for an individual who
16 doesn't necessarily have a lot of money, and
17 I know that's not a concern of yours, who's
18 been thrown into something because of
19 something that he did fourteen years ago, and
20 he is trying to make sure things go forward,
21 but attempt to do it efficiently as we go
22 along.

1 So I appreciate the Court's ruling
2 on April 6th, and we will, of course, attempt
3 to be timely on all dates in the future.

4 JUDGE SIPPEL: Well, all right. I
5 think that certainly addresses everything, all
6 the concerns you've heard from this end. I
7 want you to know, I mean, I'm not completely
8 - I'm not oblivious to the fact that Mr. Titus
9 is not a Clear Channel operation. That's a
10 good - that went into my decision right away
11 in terms of permitting this to be done by
12 speaker phone today. So I just want you to
13 know that I am sensitive that, but it
14 certainly is not going to be controlling if it
15 comes to something like does he have to show
16 up for the hearing.

17 MR. BROWN: Sure.

18 JUDGE SIPPEL: Okay. Let me point
19 out for the record, since I have exercised
20 discretion here in giving you the additional
21 four days, that there are a couple of observed
22 holidays that week.

1 MR. BROWN: Yes, you're right.

2 JUDGE SIPPEL: And as I said
3 before, I'm going to be out of the country.
4 I'm going to be in Europe, visiting with my
5 family in Europe. I've got grandchildren that
6 live in Europe, and that's where I'm going to
7 be until I get back in the office on the 16th.
8 So I think if we move these dates to the 6th
9 for Mr. Titus, and to the 16th for the Bureau,
10 that that would accommodate everybody. Is the
11 16th okay with you, Mr. Schonman?

12 MR. SCHONMAN: I'm sorry, can you
13 give us one moment?

14 JUDGE SIPPEL: Okay, go off the
15 record.

16 (Whereupon, the above-entitled
17 matter went off the record briefly).

18 JUDGE SIPPEL: We're going back on
19 the record.

20 MR. SCHONMAN: Your Honor, could
21 you clarify for me the dates that you're
22 proposing? What is that for, please?

1 JUDGE SIPPEL: Well, Mr. Titus has
2 responded, in a general way, to your initial
3 discovery requests, which are requests for
4 documents and interrogatories. That filing of
5 his was made - it was March the 22nd, I
6 believe. Yes, and it came into our fax
7 machine on March the 22nd at 1800. So that is
8 something that you responded to yesterday,
9 that is, you being the Enforcement Bureau
10 counsel.

11 MR. SCHONMAN: Correct.

12 JUDGE SIPPEL: Now, what he has to
13 do is he has to respond fully to the request.
14 And that is, he has to answer the questions or
15 object to the questions. And he has provide
16 the documents or object to certain of the
17 documents that have been requested. And that
18 task is going to be completed by the 6th of
19 April.

20 MR. SCHONMAN: Up to now it was my
21 understanding we were talking about his
22 interrogatory responses -

1 JUDGE SIPPEL: That's just what I
2 said.

3 MR. SCHONMAN: -- Would be due by
4 the 6th. And is it also your ruling that he
5 has to provide the requested documents by the
6 6th as well.

7 JUDGE SIPPEL: Yes, I just said
8 that.

9 MR. SCHONMAN: Okay.

10 JUDGE SIPPEL: I just said that.

11 MR. SCHONMAN: All right.

12 JUDGE SIPPEL: Answers to
13 interrogatories, and documents, and objections
14 to those that are not provided, whether they
15 be answers or documents, has to come in on the
16 6th of April. And then the Bureau would have
17 until the 16th of April to decide whether or
18 not they want: to oppose the objections, to ask
19 for a motion to compel, you know, whatever
20 pleadings that you feel are appropriate or
21 that you need to get to the next step.

22 I'm sorry Mr. Brown, we're just

1 consulting. I may be shortening the time that
2 the rules give them.

3 MR. SCHONMAN: Would you mind, sir,
4 if we had until the 18th to interpose a motion
5 to compel as to the interrogatories and
6 document requests, if we find that it's
7 necessary?

8 JUDGE SIPPEL: Is that what the
9 rules give you?

10 MR. SCHONMAN: I believe.

11 JUDGE SIPPEL: Well, I'm going to
12 go along with that. I'm assuming that the
13 rules give them until the 18th.

14 MR. BROWN: I don't have any
15 problem with that.

16 JUDGE SIPPEL: Okay. Well, you've
17 got until the 18th.

18 MR. SCHONMAN: Okay.

19 MR. BROWN: Yes, no problem.

20 MR. SCHONMAN: Thank you, sir.

21 JUDGE SIPPEL: All right. Now, on
22 the documents, if there are documents that are

1 being withheld, and you do raise this point in
2 your preliminary objections, Mr. **Brown**, but if
3 there are documents that are being withheld
4 because of privilege, whether it be attorney-
5 client or work product, I've got certain
6 conditions with respect to those documents.
7 Documents which are claimed to be privileged,
8 they must be identified. You can do this in
9 your answers or you can do it in a separate
10 document. However you feel comfortable with
11 it.

12 But each document that is
13 withheld, which is responsive to the request,
14 but you contend are privileged, has to
15 identify the author, the recipient, the date
16 of the document, any person or persons who are
17 copied on the document, the subject matter of
18 the document, and the basis for the privilege
19 asserted.

20 MR. BROWN: Sure. A privilege log
21 is what you're requesting.

22 JUDGE SIPPPEL: There you go.

1 MR. BROWN: The practical
2 difficulty we have here is there may be
3 documents that exist but the documents - and
4 I would think they would be privileged or work
5 product, but neither Mr. Titus, nor certainly
6 us, because we weren't involved in this
7 fourteen years ago and earlier, have any of
8 those documents or know much about them. So
9 my general concern that way goes to that.
10 Certainly if there are documents that we have
11 from our work with Mr. Titus, or that he has
12 that we're withholding on privilege, we will
13 be happy to provide a log.

14 JUDGE SIPPEL: All right. Well I
15 never even focused on your first point. It
16 would seem to me - well, let me put one twist
17 on that. If you look at some of these
18 earlier-on documents which might be
19 privileged, but you feel that it's in his
20 interest to have them disclosed -

21 MR. BROWN: Sure.

22 JUDGE SIPPEL: -- That might open

1 up the door to having all of them disclosed.

2 MR. BROWN: Right.

3 JUDGE SIPPTEL: Now I would
4 certainly give you the opportunity to do it on
5 a document by document basis. To say, 'Well,
6 here, we're going to let this one in, we're
7 going to give you this one on your discovery,
8 Bureau counsel, but we're going to hold out
9 this other two documents," for whatever
10 reason, they're more sensitive, or whatever,
11 they're just duplicative, not privileged but
12 duplicative, something like that.

13 MR. BROWN: Right. My concern,
14 your Honor, is that there are documents that
15 we don't know about and we don't have, and Mr .
16 Titus doesn't have.

17 JUDGE SIPPTEL: Okay.

18 MR. BROWN: And these documents, if
19 anything, are available to either party in
20 court files. Certainly if he has copies of
21 court documents, we'll produce them, although
22 my concern about having a protective order is

1 that, given the public availability of items
2 before the Commission, this is something that
3 in response, in this particular case, Mr.
4 Titus will comply with, but he's not
5 particularly interested in having his - the
6 records of this offense from when he was
7 eighteen publicized online with all the
8 details, etcetera.

9 JUDGE SIPPPEL: Well, he's going to
10 have to file something separate on those types
11 of documents, that they want to be filed under
12 seal. Either until the trial or all the way
13 through. And I'll have to rule on those. But
14 the Bureau has to get copies of those, of
15 course. They would be subject to the same
16 protective order, and then, as to whether or
17 not they need to go on the public record, the
18 Bureau would have an opportunity to give their
19 opinions too, their positions.

20 I want to add to that, quickly,
21 that I am very much inclined to put anything
22 that's considered as evidence in the case,

1 particularly if it's really probative
2 evidence, I am very much inclined to put them
3 on the record. Because I'm as much interested
4 in the "public," whoever that might be,
5 knowing the basis for my ruling, than I am for
6 somebody's sensitivities. But I do understand
7 exactly where you're coming from, and I will
8 consider any request for a protective order on
9 any particular document in the first instance.

10 MR. BROWN: Okay.

11 JUDGE SIPPPEL: Mr. Schonman, do you
12 have anything to add to that?

13 MR. SCHONMAN: Your Honor, I agree
14 wholeheartedly with what you're saying. I
15 would like to add that the Bureau has no
16 interest in unnecessarily disparaging anyone's
17 character. That's not the purpose of this
18 hearing. We certainly would like to work
19 closely with Mr. Brown in obtaining documents,
20 relevant documents that he might have, and we
21 are sensitive too. There are matters which
22 are relevant to this hearing and there may be

1 matters which are not. And we have no
2 interest in disparaging, unnecessarily,
3 anyone's character.

4 We would note, though, in our
5 document request, that the definition of
6 documents includes materials that are in his
7 possession, custody, or control. To the
8 extent he doesn't have anything, or doesn't
9 have a particular document, I'm not sure that
10 it falls into the definition of a document.

11 MR. BROWN: Oh, and I understand
12 and appreciate that.

13 MR. SCHONMAN: But if during the
14 course of providing materials to us, if Mr.
15 Brown would like to call us and talk with us
16 about any concerns or problems he's having, I
17 think that we can speed things along and try
18 to work out an arrangement. Keeping in mind
19 the procedures that you, your Honor, have
20 explained about protective orders or providing
21 things under seal. We certainly want to
22 cooperate in that respect.

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1 **JUDGE SIPPEL:** All right. This is
2 going along just fine. Yes, I didn't pick
3 that up, but if the request has even replied
4 that much, then -

5 **MR. BROWN:** Yes, and I appreciate
6 that.

7 **JUDGE SIPPEL:** -- That's an
8 excellent point. On the other hand, it
9 wouldn't surprise me at all to see Mr. Titus
10 wanting to put in some evidence from that
11 previous proceeding. Not for purposes of
12 proving the crime, whether the crime occurred
13 or was committed by him, but for the purpose
14 of explaining - there might be some
15 circumstantial evidence in there, as to frame
16 of mind, this type of thing, that he would
17 want me to consider.

18 So there you go. I mean, the
19 Bureau may not see it the same way - when they
20 see the individual evidence, they may not see
21 it my way, or the way that I'm saying it now,
22 but at a minimum, I certainly would **look** at

1 anything that he wants to put in the record
2 that's probative, that doesn't constitute a
3 collateral attack on the conviction, to me
4 it's fair game in the first instance.

5 MR. SCHONMAN: Your Honor, I would
6 agree with that. We're not here to re-
7 litigate any criminal convictions or any of
8 the number of a adjudications that he was
9 involved with, that Mr. Titus was involved
10 with as a juvenile. But all that information
11 certainly may be probative.

12 JUDGE SIPPEL: Okay. All right. I
13 think we're making some progress *here*. Let me
14 continue to go down my list. Use of sworn
15 testimony at trial. Now, Mr. Titus would be
16 expected and in all likelihood be required to
17 come in and 'testify.

18 MR. BROWN: Understood.

19 JUDGE SIPPEL: But the other
20 witnesses who you say you would be asking -
21 well, let's say other witnesses. Other
22 witnesses that you - there would be two

1 categories. Other witnesses that for some
2 reason or other you feel it would be wise to
3 bring them in. They would - we have a
4 practice here at the Commission that they
5 would initially testify through written
6 testimony. In fact, I'm going to let Mr.
7 Schonman address this more specifically, even
8 Mr. Titus himself can present his affirmative
9 evidence by way of a written statement, or
10 written testimony. It has to be sworn to.

11 MR. BROWN: Got it.

12 JUDGE SIPPEL: And then presented
13 for cross examination. I'm going to ask the
14 parties to work out an agreement on that, but
15 that's normally what the practice is. Now, I
16 don't want to get into any qualifications on
17 that, but like everything else, it depends on
18 the witness. But as a general rule, that's
19 how we do it here. Okay, I've got you on the
20 dates. Depositions. Anybody interested in
21 depositions at this stage?

22 MR. SCHONMAN: You know, at this

1 stage, we're not sure - the Bureau's not sure
2 whether we would want to take depositions.
3 Among the interrogatories that we have asked
4 of Mr. Titus is for him to identify potential
5 individuals who he might bring in to testify
6 on his behalf. We'd certainly like to be able
7 to speak with those individuals before the
8 trial. Whether we take formal depositions, we
9 just haven't decided. It's also a budgetary
10 concern as well, about traveling out to
11 Seattle. We have our own budget problems, Mr.
12 Brown.

13 JUDGE SIPPEL: Yes, we're not Clear
14 Channel either.

15 MR. BROWN: I'm heartened to hear
16 it.

17 JUDGE SIPPEL: Yes, I know. I'm
18 sure that's a real tear-jerker, isn't it?

19 MR. SCHONMAN: So the answer is, we
20 don't know. There is a possibility that there
21 might be depositions, but we're not sure.

22 JUDGE SIPPEL: All right.

1 MR. SCHONMAN: I think, in part, it
2 depends on the comprehensiveness of the
3 responses to our interrogatories and document
4 requests

5 JUDGE SIPPEL: All right. It might
6 be helpful if witnesses, if the Bureau becomes
7 interested in several witnesses as possible
8 targets for depositions, that they receive a
9 - I mean, I would think that they'd only be
10 interested in witnesses who might testify, as
11 a general rule. And that there be some kind
12 of a proffer, as to a general proffer as to
13 what this witness might testify to. So that
14 they can make a determination as to whether or
15 not they think it's important enough to depose
16 the person. But I leave that up to counsel in
17 the first instance, and if there's any
18 problem, you know, then an appropriate motion
19 or a request for a pre-hearing conference,
20 we'll work to get it straightened out.

21 I think that covers my list. I
22 will say this, again, if it's just a question

1 of a status conference or a conference where
2 I feel that we can work this out on the phone,
3 I might even be inclined to do this on an
4 informal telephone conference, if you don't
5 have any objection to that Mr. Brown or
6 Schonman.

7 MR. BROWN: I have no objection.

8 MR. SCHONMAN: The Bureau would
9 fine with that.

10 JUDGE SIPPET: We wouldn't have a
11 court reporter involved in that. Okay. I
12 take pretty good notes, and in situations like
13 that, I invariably get an order out right
14 after the conference, so that to that extent
15 there is a record. I don't know what counsel
16 do these days. I've heard, sometimes,
17 computer keys going in the background, taking
18 me down verbatim. Whatever you want to do, it
19 doesn't bother me. Okay, does anybody else
20 have anything more? Let me ask the Bureau
21 first, because they've got the burden on this.
22 Is there anything further, Mr. Schonman?

1 MR. SCHONMAN: Well, just the -
2 will your Honor be releasing an order
3 memorializing the April 6th and April 18th
4 dates?

5 JUDGE SIPPEL: Yes I will.

6 MR. SCHONMAN: And I think there
7 was some concern expressed by Mr. Brown, and
8 I'm characterizing here. If I'm doing it
9 incorrectly, Mr. Brown, please **jump** in. I
10 think there was some concern as to where he
11 would produce the documents that we've all
12 agreed will be due on the 6th. And we would
13 like to have those documents delivered to the
14 Bureau offices on April 6th.

15 JUDGE SIPPEL: Okay, Mr. **Brown**?

16 MR. BROWN: To the extent we have
17 documents in possession, custody, or control
18 of Mr. Titus, that our responsive. we would
19 send them to the Bureau.

20 JUDGE SIPPEL: That's fine. I
21 don't need them, and the secretary doesn't
22 need them. The secretary just needs the

1 pleadings.

2 MR. BROWN: Exactly.

3 JUDGE SIPPEL: I think that's
4 understood. Well, okay, you understand what
5 the Bureau's asking for and there's no
6 objection to it. I will issue an order that
7 may not cover each and every point that we're
8 discussing here, but the transcript will
9 control anything that's not included in my
10 order or that's inconsistent with my order.
11 The transcript here controls - But there
12 shouldn't be any - we're not into anything
13 being contested here.

14 MR. BROWN: Right.

15 MR. SCHONMAN: Your Honor, if I may
16 as well, do you anticipate having another pre-
17 hearing conference, either informally or
18 formally, regarding the closing of discovery,
19 exchange of exhibits, notification of
20 witnesses for cross examination, and things of
21 that nature?

22 JUDGE SIPPEL: I will be issuing an

1 order at an appropriate time on what has to be
2 done for purposes of putting this - filing the
3 case for trial, which would include the dates
4 for documents, the dates for noticing
5 witnesses for cross examination, that type of
6 thing. I am interested in a discovery date
7 closure on this, even independently of what
8 I've just outlined. But I know you can't
9 really give me that until you figure out what
10 you're going to do with depositions and see
11 where these requests for motions to compel and
12 everything are going. So I think it's just
13 premature for that.

14 MR. SCHONMAN: Okay.

15 JUDGE SIPPPEL: You know, I take it
16 first things first. But yes, we can work that
17 out, either - my preference is that if I have
18 a concern on something like that or I'm ready
19 to require something like that, I'm going to
20 issue probably - it'd be a short order, you
21 know, requiring counsel to get together and
22 give me some dates. If that can't be done, if

1 there's any glitch that comes up in any of
2 this, then we try it first by telephone
3 conference, and if that doesn't work, we'll go
4 back on the record again. But I'm certainly
5 going to look for every way possible not to
6 drag counsel in from Seattle, Washington, for
7 any kind of a pretrial matter.

8 MR. BROWN: I appreciate that.

9 JUDGE SIPPEL: This is just not
10 that type of case. Okay, anything else
11 anybody have?

12 MR. BROWN: Not here.

13 JUDGE SIPPEL: Mr. Schonman has
14 asked for just a minute here.

15 MR. SCHONMAN: We're okay. Thank
16 you.

17 JUDGE SIPPEL: Okay.

18 MR. SCHONMAN: Can we, the parties
19 and your Honor, discuss something off the
20 record once we close this session?

21 JUDGE SIPPEL: Can you hang on for
22 a couple of minutes after we go off the

1 record?

2 MR. BROWN: Sure.

3 JUDGE SIPPEL: I think that
4 accomplishes what we accomplished today. Then
5 this pre-hearing conference is concluded
6 subject to my next call, which will be by way
7 of order.

8 (Whereupon, the above-entitled
9 matter was concluded at 10:16 a.m.)

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CERTIFICATE

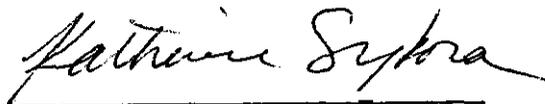
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Before : The Honorable Richard L. Sippel

Date : March 27, 2007

Place : Washington, D.C

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Katherine Sykora