

1 that information come to you?

2 MR. LONGSTRETH: Well, most recently in the
3 letter that he sent to Your Honor, I believe last night,
4 where he indicated what he considered privileged and not
5 privileged and indicated that many of these matters would,
6 in fact, be considered privileged by him and would disad-
7 vantage him if they were disclosed.

8 JUDGE SIPPEL: Is that in that letter? Is there
9 something in that letter about disadvantaging?

10 MR. LONGSTRETH: Well, --

11 JUDGE SIPPEL: I got the letter. It was ad-
12 dressed to me. I didn't read anything about --

13 MR. LONGSTRETH: Okay, I'm sorry. I may have
14 overstated that. That was implicit to me. I'm sorry.

15 MS. NORWINSKI: And, Your Honor, I do want to
16 clarify. There have been communications with Mr. Havens
17 but we are not advising Mr. Havens on the privilege issue.
18 So, I don't want to misstate that.

19 JUDGE SIPPEL: Well, between Mr. Havens -- wait
20 a minute. Between you, Ms. Norwinski and Mr. Havens.

21 MS. NORWINSKI: I have had one conversation with
22 Mr. Havens and Mr. Chen has had conversations with Mr.
23 Havens but these are not in the context of advising Mr.
24 Havens on the privilege. These are asking whether he is
25 going to assert the privilege.

1 JUDGE SIPPEL: And let's see. And Mr. Ende, you
2 are coming out in the same way.

3 MR. ENDE: Yes.

4 JUDGE SIPPEL: Can you answer it, Mr. Ende?

5 MR. ENDE: Yes, sir, although the factual dif-
6 ference is we, that is, I have had no communications with
7 Mr. Havens regarding the issue of privilege. I have been
8 on the receiving end of communications from him asserting
9 the privilege, but I have not had telephonic communications
10 with him about the privilege.

11 Mr. Longstreth did write a letter to him on my
12 behalf but other than that, I have had no communications
13 with him.

14 JUDGE SIPPEL: And would you have the same
15 problem of testifying about whether the scope of your
16 representation would be any different than what Mr. Chen
17 has admitted to?

18 MR. LONGSTRETH: Yes, I mean I think we have
19 come to the same conclusion that the broad scope of the
20 representation, which is that as we disclosed, very similar
21 to what Mr. Chen has disclosed, that we did represent him
22 during a period. And again, another difference between us
23 and Mr. Chen is that Technology Law Group ceased represent-
24 ing him in November, so they had no involvement after
25 November. So, we are just talking about a past period of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time --

2 JUDGE SIPPEL: No, my questions were framed with
3 that.

4 MR. LONGSTRETH: Right but within the scope of
5 our representation, the firm did represent and the scope of
6 that representation did extend to this docket.

7 On the other hand, with respect to what specific
8 items he asked us to either advise him or not advise him
9 on, when he asked us for help, when he did not ask us for
10 help -- and I'm sorry, I keep using us but I mean the law
11 firm Mr. Ende is from.

12 JUDGE SIPPEL: Yes, I understand.

13 MR. LONGSTRETH: Those have been very directly
14 asserted to us by Mr. Havens as violating a privilege and
15 as disadvantaging him, if we were to disclose that.

16 And so we are in the difficult position of
17 between a client who is making a very aggressive assertion
18 of privilege -- I'm sorry -- a former client who is making
19 a very aggressive assertion of privilege and our desire to
20 try to put this issue to rest which, again, we agree from
21 our perspective really is not a significant issue. But we
22 do not believe we are in the position to provide you the
23 information on that without running into Mr. Havens' very
24 direct and square assertion of a privilege.

25 And on top of that, Mr. Havens' very direct and

1 square assertion that he is going to pursue all available
2 rights that he has, if in fact we are ordered to answer
3 those questions.

4 And we laid out in our letter that you referred
5 to, the same comment that was referred to by Ms. Norwinski.

6 Ms. Norwinski had, again, I think there was an
7 ethical ruling there that says very clearly if an attorney
8 is ordered by a court to disclose the client information,
9 he must not make disclosure until he has given the client
10 an opportunity appeal the order to a higher tribunal. And
11 we believe that is the situation we are in.

12 We have been directed not to disclose this. Mr.
13 Havens has advised us, actually we all have been advised
14 because we have seen the pleading, that he is going to --
15 he advised us he was going to appeal and now he has ap-
16 pealed and that is pending. And we believe that if we
17 disclose the information, Mr. Havens will have the argument
18 that we have, essentially, blown up his appeal in violation
19 of our ethical obligations under this rule. And we do not
20 want to be in the position of being subject to that asser-
21 tion from Mr. Havens.

22 JUDGE SIPPEL: Well, you see the position I am
23 in. What am I going to send to the Commission to rule on?
24 I haven't ruled on anything. I haven't ruled on a darn
25 thing.

1 MR. LONGSTRETH: Well, I mean --

2 MS. NORWINSKI: Your Honor, if I may.

3 JUDGE SIPPEL: I can't even make a living with
4 you folks.

5 MR. LONGSTRETH: Well, Ms. Norwinski is appar-
6 ently not making a living on this case either. We have
7 already found that out.

8 (Laughter.)

9 MR. LONGSTRETH: I object to that.

10 But I mean it seems to me that one thing you
11 could rule on would be you could reject Mr. Havens' asser-
12 tion of the privilege and Mr. Havens could take that up to
13 the Commission. I mean that is, I think, what would hap-
14 pen.

15 MS. NORWINSKI: Your Honor, I have --

16 JUDGE SIPPEL: Well, you say he has already gone
17 up to the Commission.

18 MR. LONGSTRETH: Well, I mean he went up to the
19 Commission when the order came out saying I can tell from
20 the face of this order this is asking for privileged infor-
21 mation. And as you know, he also wanted to not have the
22 hearing occur.

23 JUDGE SIPPEL: This is a conference. It is not
24 a hearing.

25 MR. LONGSTRETH: I'm sorry. I'm sorry that is

1 my fault.

2 -- have the conference occur, the hearing con-
3 ference occur. But now that we are at the conference,
4 presumably at this point, we are going to have the question
5 and answer that we are talking about. But I think his
6 first appeal was that the scope of the order involved
7 privileged information. I would assume that his next
8 appeal, after whatever ruling you make on this conference
9 is that as to the specific questions and answers you have
10 ordered us to answer, those are not privileged.

11 Again, I am speculating. I am talking about an
12 appeal somebody else is going to take. And that is, to me,
13 a logical way it might go forward at this point.

14 MR. HAVENS: I object to others here speculating
15 as to what I might do.

16 MR. LONGSTRETH: I would be happy to have Mr.
17 Havens speak to that directly.

18 MR. HAVENS: I just spoke. I object.

19 MS. NORWINSKI: Your Honor, if I could suggest a
20 way forward.

21 JUDGE SIPPEL: I hear you, Mr. Havens. Just
22 hold on. I will give you a ruling but let me hear from Ms.
23 Norwinski first.

24 MS. NORWINSKI: Your Honor, if we could have an
25 in-camera conference that includes the four attorneys that

1 are here today and their counsel, as well as well as Mr.
2 Havens, I believe that we can give you a little more infor-
3 mation about why the substance of what you are asking for
4 is privileged or detrimental to Mr. Havens.

5 That will then allow you to make a ruling on
6 whether this is privileged or not. We are not giving you
7 much here. And then ruling, if Mr. Havens so chooses, can
8 be appealed up to the Commission.

9 JUDGE SIPPEL: Well, it is going to go up to the
10 Commission in a sealed envelope, though. Nobody is going
11 to know what the heck is going on here.

12 Does that bother anybody or is that just me?

13 Your objection is sustained on the color of
14 right, Mr. Havens. Okay? Hello?

15 MR. HAVENS: I appreciate that. Thank you.

16 JUDGE SIPPEL: Okay. Where am I left now?

17 Let me ask you this. Let me ask Mr. Ende this
18 through counsel. Were you paid by Mr. Havens to represent
19 him?

20 MR. LONGSTRETH: I'm sorry, in this particular
21 case?

22 JUDGE SIPPEL: Well, I guess -- I mean --

23 MR. LONGSTRETH: Oh no, absolutely not, Your
24 Honor.

25 JUDGE SIPPEL: Oh, you are not. I'm asking if

1 Mr. Ende was paid.

2 MR. LONGSTRETH: To represent him in connection
3 with this hearing?

4 JUDGE SIPPEL: No, no, no. I'm asking -- you
5 started out with a representation of Mr. Havens back in
6 what was it in August?

7 MR. LONGSTRETH: I believe it was between May
8 and November.

9 JUDGE SIPPEL: It was May. It was the middle of
10 May. Correct?

11 MR. ENDE: Yes, Your Honor.

12 JUDGE SIPPEL: All right. Now, in that connec-
13 tion, during that period of time, during those services,
14 whatever they were, were you paid a fee by Mr. Havens?

15 MR. LONGSTRETH: I guess just for the record we
16 should probably ask Mr. Havens if he asserts a privilege to
17 that answer. I think we would be prepared to answer it.
18 But I do not want to be in the position of -- I do not want
19 my client to be in the position of being accused by Mr.
20 Havens of having broken his privilege. So perhaps we
21 should ask Mr. Havens if he asserts a privilege to that
22 answer.

23 MS. WAID: Your Honor, if I may. This is Nicole
24 Waid from Roetzel and Andress.

25 JUDGE SIPPEL: Yes, Ms. Waid.

1 MS. WAID: I represent the attorneys. If I may,
2 I just think for clarification for the record, if you
3 wouldn't mind asking the questions of the attorneys that
4 you want the answer to and for each question we could then
5 ask Mr. Havens whether he is going to waive or whether he
6 is actually going to invoke, so we have a clear record of
7 the questions that you would like answered and a clear
8 record from the Commission of whether or not they then can
9 rule of whether that is in fact attorney-client privilege
10 or not attorney-client privilege.

11 That way, everybody is kind of on the same page.
12 We know the questions you want answered. We know what Mr.
13 Havens' feelings are about that, whether he is going to
14 waive or actually invoke.

15 JUDGE SIPPEL: Now, a little bit too, I want to
16 say clever but --

17 MS. WAID: Well, thank you.

18 (Laughter.)

19 MS. WAID: I will take clever.

20 JUDGE SIPPEL: I want to ask each person because
21 I don't know if Mr. Havens is going to assert the privilege
22 to every person.

23 MS. WAID: Exactly.

24 JUDGE SIPPEL: He might tell me he is --

25 MS. WAID: Right.

1 JUDGE SIPPEL: -- but when he is asked, I don't
2 know what he is going to do.

3 MS. WAID: Right.

4 JUDGE SIPPEL: I never know. Okay?

5 MS. WAID: Right.

6 JUDGE SIPPEL: So, your question is -- you are
7 asking Mr. Havens does he assert the privilege with respect
8 to the question I asked about fees.

9 MR. LONGSTRETH: Correct.

10 JUDGE SIPPEL: Mr. Havens?

11 MR. HAVENS: Yes, sir.

12 JUDGE SIPPEL: Do you object?

13 MR. HAVENS: Could somebody state the question?

14 JUDGE SIPPEL: Oh, yes, a very simple question.
15 I am simply asking Mr. Ende, through counsel, of course, as
16 to whether or not between the time you retained him or from
17 the time he was retained and the time he terminated the
18 retention that -- did you pay him any fees?

19 MR. HAVENS: Your Honor, my answer first of all
20 is what I put in my letter and motion, which is I was
21 ordered to attend. I was not ordered to testify at this
22 matter. And you asked me in the beginning whether I am
23 represented by counsel today. I said no. And that is
24 because I was not ordered to appear before the Agency,
25 under 5 USC 555(b) to testify.

1 If I am ordered to appear before the Agency to
2 testify to something I understand, I intend to get counsel
3 and then I will have counsel represent me and provide
4 appropriate answers but I don't want to go down that path
5 of testifying today.

6 JUDGE SIPPEL: Well, you are not testifying.
7 There is no -- you are not under oath. This is not a
8 hearing. This is just a conference.

9 MR. HAVENS: My understanding, Your Honor, is
10 you are intending to make a ruling today. I, frankly,
11 don't know why this is not -- it was called for a pre-
12 hearing conference. And I didn't believe this would be
13 recorded. So, it will result in an order. I don't know
14 whatever it is.

15 I don't want to participate in testimony man-
16 dated by the Agency, without counsel. I have a right to
17 counsel in those situations. And, therefore, if you order
18 my testimony for a particular purpose, I will, in reason-
19 able time, get counsel and respond to counsel.

20 JUDGE SIPPEL: Mr. Chen is right here.

21 MR. HAVENS: Mr. Chen is not representing me
22 today in this matter, which I think I gave you the answer
23 to that. You asked me in the beginning. I gave you the
24 answer.

25 JUDGE SIPPEL: Hold on just a second. I am just

1 trying to formulate something there.

2 You are a party to this proceeding and on these
3 particular issues, you are a very important party plus a
4 witness. I obviously contacted you about appearing because
5 I couldn't hold this hearing without you present, or at
6 least without you having waiving the opportunity to be
7 present.

8 So, I notified you in the normal course of
9 events and expected you to be on the other end of the phone
10 participating, as you normally have been. What is the
11 difference between this and any other conference?

12 MR. HAVENS: The other conferences, Your Honor,
13 I attended were voluntary. I didn't have to be -- I was a
14 party voluntarily participating in the hearing with regard
15 to Maritime. That was the party mandated to be in the
16 hearing.

17 In this case, Your Honor, I have read carefully
18 your order many times. It directs the attorneys to come
19 and provide information. It directs me to attend in person
20 or by phone. It does not direct me -- there is nothing in
21 the order directing me to come and testify or answer.
22 Therefore, I haven't prepared with counsel to do that. And
23 if I --

24 JUDGE SIPPEL: Well, you said --

25 MR. HAVENS: Excuse me, Your Honor.

1 JUDGE SIPPEL: Go ahead. Finish up. Finish up.

2 MR. HAVENS: And as I typically do, I do what I
3 believe is careful research and it is my conclusion that if
4 I am ordered by you to testify, which is different than
5 attending voluntarily a pre-hearing conference, to exercise
6 party rights, and if I don't understand what the order is,
7 I will ask for clarification. Once I have an order to
8 provide -- where I am required to provide information or
9 documents, then I will proceed under 5 USC 555(b) and
10 related FCC law and case precedents under it, and I will
11 obtain counsel and respond through counsel.

12 JUDGE SIPPEL: Well, just a second. Just one
13 minute now.

14 The point is I asked you about Mr. Chen repre-
15 senting you here. You said no, you are appearing pro se.
16 So, as with any other attorney, I can ask a question. I
17 mean, if it is improper, obviously they can object. If it
18 meets a privilege, the objection can be raised.

19 Anyway, the point is this. Normally when a
20 conference is held, questions are asked of counsel and it
21 might range from anything from schedule to something such
22 as this. And normally, the answers are just routinely
23 given. Either yes, I know, no, I don't know, or I don't
24 know. But you are complicating it now because you are
25 saying you are here pro se, but you are unable to represent

1 your pro se because you feel you are not qualified --
2 basically you are telling me you are not qualified to
3 handle this issue in this context.

4 MR. HAVENS: What I said, Your Honor, is that
5 under USC, administrative procedures under 5 USC part
6 555(b) and related FCC rules and case precedence that I am
7 entitled to, I don't have to but I am entitled, if required
8 to appear before the Agency to testify, I am entitled to
9 have counsel.

10 JUDGE SIPPEL: You are not testifying.

11 MR. HAVENS: I think this -- that is my answer,
12 Your Honor. If I am ordered -- if you are not ordering me,
13 then I respectfully decline. If you are ordering me, then
14 I have that right to counsel.

15 JUDGE SIPPEL: No, I'm not ordering you. That's
16 not that kind of proceeding. But you are not giving me a
17 basis to rule on your objection. You are asserting the
18 privilege and, again, I am getting not basis on which to
19 make a ruling.

20 MR. HAVENS: I have submitted a motion and
21 letter.

22 JUDGE SIPPEL: All right, I have been through
23 that before. Okay. And I do, I understand what you are
24 doing. You are asserting the privilege in a blanket form,
25 which is escapes me. I don't think I have ever seen this

1 done before. I gather, absent unusual circumstances, of
2 course there always could be, but this doesn't seem to
3 amount to that. That is my interpretation and that is my
4 view.

5 Let me move on to the bankruptcy attorneys.
6 Now, this is Ms. Waid.

7 MS. WAID: Yes, sir.

8 JUDGE SIPPEL: Okay and you have got two attor-
9 neys here from the law firm of?

10 MS. WAID: Copeland and Cook, Your Honor.

11 JUDGE SIPPEL: Okay and you are bankruptcy
12 attorneys, basically. And you participated in assisting
13 Mr. Havens on a certain procedural matter, specifically,
14 with respect to a pleading that is in this pile of docu-
15 ments here. Am I correct?

16 MS. WAID: You are, again, just for the record,
17 prior to answering any questions, we would ask Mr. Havens.
18 Mr. Havens, are you waiving your privilege or are you
19 invoking your privilege?

20 JUDGE SIPPEL: Wait a minute. I haven't even
21 asked a question. Privilege to what?

22 MS. WAID: Oh, I'm sorry. I thought you did,
23 Your Honor.

24 JUDGE SIPPEL: No, I didn't ask a question.

25 MS. WAID: Oh, I'm sorry.

1 JUDGE SIPPEL: Well, I did ask a question have
2 you participated in this pleading and I was going to get
3 the pleading to identify it. That's all.

4 MS. WAID: Oh, okay.

5 JUDGE SIPPEL: I mean I haven't asked anything
6 really -- I haven't asked a hard question. You know?

7 This is Havens' first motion under order 13 dash
8 9 -- to I mean that is 19 -- I'm sorry -- to reject settle-
9 ment. What is the number here? Yes, Exhibit H. I mean,
10 it is marked as Exhibit H for purposes of this conference
11 and for no other purpose.

12 Any answer to that? Any reference to that at
13 all?

14 MS. WAID: Just so I am clear with the question,
15 Your Honor, did they assist in the -- did they participate
16 in the preparation.

17 JUDGE SIPPEL: The preparation of the document,
18 yes, in any way.

19 MS. WAID: In any way. And before they would
20 answer that, I would --

21 JUDGE SIPPEL: You want to know what Mr. Havens'
22 is.

23 MS. WAID: I really would like to know.

24 JUDGE SIPPEL: Mr. Havens?

25 MR. HAVENS: Yes, sir?

1 JUDGE SIPPEL: Did you hear my question?

2 MR. HAVENS: It was a little foggy on the speak-
3 er phone.

4 JUDGE SIPPEL: Well, you can come here any time
5 you want. We'd be glad to have you.

6 MR. HAVENS: We have better weather. We invite
7 you here.

8 JUDGE SIPPEL: This is your motion that was
9 filed back in December of this year -- 2013, rather, to
10 reject a settlement. It is quite a lengthy packet. And I
11 specifically refer to page 11 is the reference. Well, you
12 probably don't have -- do you have this document in front
13 of you? You probably don't, Mr. Havens?

14 MR. HAVENS: I can find it but I am not sure --

15 JUDGE SIPPEL: All right. That's okay.

16 MR. HAVENS: -- my answer is going to be any
17 different than I have said, Your Honor.

18 JUDGE SIPPEL: Okay. Well, that's all right.
19 I'm not going to put you to the trouble of doing that.

20 But this document says on page 11 and it is a
21 breakdown, memo in support of first motion. And then it
22 goes into explaining the variations of the circumstances of
23 bankruptcy. Anyway, it basically talks about the proce-
24 dures of bankruptcy in a broad way and it goes on for a
25 couple of pages, a couple of paragraphs here.

1 And I am asking, did the bankruptcy lawyers
2 prepare these? That is what I am asking. Go ahead.

3 MR. HAVENS: Yes, I have given my answer. If I
4 am -- I respectfully decline a request at this time for the
5 reasons I gave. If I am ordered to testify, then, although
6 I don't have to have counsel, I will exercise my right to
7 get counsel.

8 And then I would ask counsel at any such testi-
9 mony where they represent me and I am guided by counsel on
10 how to respond, I certainly would want to see that report.

11 So, I mean I respectfully don't want to get into
12 what assisting counsel did and did not do in particular
13 portions of documents or any other matter than they have
14 already described in their limited appearances.

15 JUDGE SIPPEL: Okay. I hear you. You do say at
16 Footnote 1 "Havens actions in this hearing on a pro se
17 basis have been informed by assisting counsel as to proce-
18 dure and substance."

19 MR. HAVENS: I'm not taking back anything I
20 wrote.

21 JUDGE SIPPEL: You wrote that and that is okay.

22 MR. HAVENS: Whatever I wrote is okay.

23 MR. KELLER: Your Honor, I just wanted to note
24 for the record --

25 JUDGE SIPPEL: I'm asking -- this is Maritime's

1 Counsel.

2 MR. KELLER: Yes, this is Robert Keller. I just
3 wanted to note for the record that as to this question of
4 bankruptcy counsel and as to the prior question regarding
5 Mr. Ende's fees, as I understood it, you were not asking
6 Mr. Havens those questions. You were not asking him to
7 testify. You were simply inquiring whether he asserted the
8 privilege.

9 You have already noted that first of all, it is
10 difficult to rule on that privilege because you can't even
11 ask questions to establish the existence of the attorney-
12 client privilege. Now, we are simply trying to elicit
13 questions to find out is there a privilege being asserted.
14 But what is being answered is -- you are not asking him the
15 answers to these questions. You are asking does he assert
16 the privilege.

17 And even that we can't get an answer to. It is
18 getting a little out of hand.

19 JUDGE SIPPEL: Are you suggesting I can sharpen
20 up my questions a little better?

21 MR. KELLER: No, I'm suggesting the answers
22 could be a little bit more direct.

23 JUDGE SIPPEL: Oh, well, you are going to have
24 to go shop someplace else for that one.

25 (Laughter.)

1 JUDGE SIPPEL: I am used to this.

2 All right, --

3 MR. HAVENS: I think I am very direct, Mr.

4 Keller.

5 JUDGE SIPPEL: Sir?

6 MR. HAVENS: I thought I was responding to Mr.

7 Keller. I advised Mr. Keller and people seem to be sug-

8 gesting I am not direct. And I am saying here, which I had

9 hoped would be on the record that I am direct.

10 JUDGE SIPPEL: It's on the record. It is on the

11 record. Everything will --

12 MR. HAVENS: And could I ask -- maybe I misun-

13 derstood. Will there be a transcript of this?

14 JUDGE SIPPEL: Yes, yes.

15 MR. HAVENS: Oh, thank you. I didn't know that.

16 JUDGE SIPPEL: Absolutely.

17 MR. HAVENS: I appreciate that.

18 JUDGE SIPPEL: You have got a score card of

19 everybody who is here. I mean, this is the real deal but

20 it is not a hearing. There is no testimony being taken.

21 Nobody can be held for perjury. I mean you can be held for

22 making a false statement to a federal official but that is

23 different.

24 (Laughter.)

25 MS. WAID: Your Honor, if I may.

1 JUDGE SIPPEL: Yes.

2 MS. WAID: Mr. Havens, this is Nicole Waid and I
3 represent Copeland and Cook. I just want to clarify for
4 you that when the judge was asking that question, he was
5 actually asking Danny and Tim that question. The question
6 to you is are you invoking the privilege or are you waiving
7 the privilege so that Danny and Tim can answer. That is
8 the only question he is asking you. He is not asking you
9 the answer to that question.

10 JUDGE SIPPEL: Do you understand what Ms. Waid
11 has said, Mr. Havens?

12 MR. HAVENS: I don't recall some minutes ago
13 what that topic was.

14 MS. WAID: Your Honor, --

15 JUDGE SIPPEL: Are you able to -- well, just a
16 second. Are you able to hear Ms. Waid okay?

17 MR. HAVENS: I can hear her okay but she is a
18 little distant but I can well enough. But I don't recall
19 back when she -- whatever this issue was, what particularly
20 who asked whom what.

21 JUDGE SIPPEL: This is my question as to Mr.
22 Ende, through counsel, of course. Whether or not you paid
23 him any legal fees for the period of time his firm repre-
24 sented you. That is the only question.

25 So Ms. Waid is saying that you are not being

1 asked to answer that question. Mr. Ende would have the
2 answer to that question. But I am asking you if you have
3 any objection because, obviously, you are objecting to so
4 many things here, if you feel that his answer can somehow
5 or other raises in your mind an attorney-client privilege,
6 which I don't see how it does. But go ahead.

7 MR. HAVENS: What is the difference between my
8 being ordered to give testimony versus ordered to give
9 other information on the record here for you to formulate
10 an order where I don't have counsel? I apologize but I
11 don't know the difference.

12 And had I been subject to an order to appear
13 either to give testimony or to give information, then I
14 would have gotten appropriate counsel and prepared for that
15 and then proceeded on that basis.

16 But what I will say is I don't get free counsel.
17 And that includes Copeland Cook. It includes Mr. Ende. It
18 includes Mr. Chen. I have not, for the purpose of this
19 hearing, sought and obtained pre-counsel.

20 JUDGE SIPPEL: All right, I think I understand.
21 I am speaking to everybody now. It appears as though I am
22 not going to get anything from anybody that is going to be
23 of any use to me in ruling on a motion. Actually, it is a
24 broad motion, I guess, for a protective order on the basis
25 of privilege, attorney-client privilege. I can't rule on

1 it. Can anybody help me?

2 MS. NORWINSKI: Your Honor, I think you could
3 rule on it, again, if we could have an in-camera hearing
4 and have more freedom to explain to you the basis of the
5 claim of either privilege or secrets.

6 Mr. Havens could explain, I think, because these
7 attorneys have assisted Mr. Havens in this matter, they
8 also could help explain the basis of the privilege or
9 secrets claim that Mr. Havens is making.

10 JUDGE SIPPEL: Have you actually gotten commit-
11 ment from Mr. Havens in any -- well, let me ask the ques-
12 tion flat out.

13 Do you have any commitment from Mr. Havens that
14 he would go along with that procedure?

15 MS. NORWINSKI: I do not, no.

16 JUDGE SIPPEL: I am going to tell you what the
17 odds are.

18 (Laughter.)

19 MR. HAVENS: What are the odds? I would like to
20 know that.

21 (Laughter.)

22 JUDGE SIPPEL: I'm not giving out odds today.

23 MR. HAVENS: Who is doing the betting? I mean
24 who is making this bet?

25 JUDGE SIPPEL: It is an organized -- this is an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 organized effort by Mr. Havens.

2 MR. HAVENS: How about a conference in Las
3 Vegas?

4 JUDGE SIPPEL: Well, you could say all of those
5 things but do you understand the procedure that Ms.
6 Norwinski is outlining?

7 MR. HAVENS: No, I really don't. I don't know
8 what is involved in in-camera. I have heard the term. I
9 don't know.

10 So again, I think any further proceeding here
11 where in-camera or in Photoshop, or on the street, or
12 whatever, I think if it is a matter where information that
13 I might believe is confidential, secret, 1.6 privileged,
14 work doctrine, or whatever it might be, then I would want
15 to know what that procedure is, what I am supposed to --
16 how I am supposed to participate, whether my participation
17 is testimony or some other type of information which lead
18 to an order that might affect my interest, then I would
19 find appropriate counsel.

20 MS. NORWINSKI: Your Honor, I have another
21 suggestion, if I may.

22 JUDGE SIPPEL: Ms. Norwinski, yes.

23 MS. NORWINSKI: Can we speak with Mr. Havens at
24 another time, explain to him what the in-camera proceeding
25 would entail and see if we can get his agreement and then

1 come back to you, if he so agrees, and set up an in-camera
2 hearing?

3 One other suggestion for proceeding forward --

4 JUDGE SIPPEL: It would be not a hearing, a
5 conference.

6 MS. NORWINSKI: Correct, in-camera conference.

7 JUDGE SIPPEL: There would be no testimony
8 taken.

9 MS. NORWINSKI: Okay, I misspoke.

10 Another suggestion for moving forward on this is
11 does Your Honor want to set some sort of rules or proce-
12 dures prospectively for how Mr. Havens -- what Mr. Havens
13 should say or include in his filing if those filings have
14 been assisted by counsel, whether it is assisted in writing
15 or whether it is assisted with just advice with respect to
16 the issues raised in those proceedings. That can, at
17 least, separate out the prospective from this tangle that
18 we are having retrospectively with privilege and not being
19 able to provide you any information on which to make a
20 ruling on Mr. Havens' claims of privilege.

21 MR. HAVENS: Hold on. I object to any attorney
22 here proposing something for me. I mean, if the judge
23 rules, judges of course, the judge he can rule as he sees
24 fit on what I should and shouldn't do.

25 But I don't want any person here to suggest what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701