

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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 PARAMOUNT COMMUNICATIONS INC., )  
 VIACOM INC., MARTIN S. DAVIS, )  
 GRACE J. FIPPINGER, )  
 IRVING R. FISCHER, )  
 BENJAMIN L. HOOKS, )  
 FRANZ J. LUTOLF, ) No. 427, 1993  
 JAMES A. PATTISON, IRWIN )  
 SCHLOSS, SAMUEL J. SILBERMAN, ) COURT BELOW:  
 LAWRENCE M. SMALL, and ) COURT OF CHANCERY  
 GEORGE WEISSMAN, ) OF THE STATE OF  
 ) DELAWARE IN AND FOR  
 ) NEW CASTLE COUNTY  
 ) CIVIL ACTION  
 ) NO. 13208

v. )

QVC NETWORK, INC., )

Plaintiff Below- )  
 Appellee ) AND

-----  
 IN RE PARAMOUNT COMMUNICATIONS ) CONSOLIDATED CIVIL  
 INC. SHAREHOLDERS' LITIGATION ) ACTION NO. 13117  
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Carvel State Office Building  
 Supreme Court Chambers Conference Room  
 820 North French Street  
 Wilmington, Delaware

Friday, November 26, 1993  
 11:20 a.m.

BEFORE: Chief Justice E. Norman Veasey  
 Justice Andrew G. T. Moore, II  
 Justice Randy J. Holland

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1 CHIEF JUSTICE VEASEY: Good morning.  
2 I'm sorry we're late getting started but we were  
3 waiting for the court reporter.

4 Did you get lost in the parade?

5 THE COURT REPORTER: Yes.

6 CHIEF JUSTICE VEASEY: Thank you all  
7 for coming here today on what is a holiday for some.

8 We have a list of the people who are  
9 present, outside of the law clerks, but it would be  
10 helpful if you would identify yourselves for the  
11 record and the party you represent. And we will  
12 begin with you, sir. You can stay seated.

13 MR. OSTRAGER: Thank you, your Honor.  
14 Barry Ostrager representing Paramount.

15 MS. VYSKOCIL: Mary Kay Vyskocil for  
16 Paramount.

17 MR. RICHARDS: Charles Richards for  
18 Paramount.

19 MR. BASKIN: Good morning, your Honor.  
20 Stuart Baskin for Viacom.

21 MR. LAFFERTY: Bill Lafferty for  
22 Viacom.

23 MR. SPARKS: Gil Sparks for Viacom.

24 MR. ABBEY: Good morning. Arthur Abbey

1 for the class plaintiffs.

2 MS. MORRIS: Karen Morris for the class  
3 plaintiffs.

4 MR. ROSENTHAL: Joseph Rosenthal for  
5 the class plaintiffs.

6 MR. KRASNER: Daniel Krasner for the  
7 class plaintiffs.

8 MR. MIRVIS: Your Honor, Ted Mirvis for  
9 QVC.

10 MR. McBRIDE: David McBride for QVC.

11 MR. WACHTELL: Herb Wachtell for QVC.

12 CHIEF JUSTICE VEASEY: Thank you all  
13 for coming here and thank you for your written  
14 submissions this morning, it was very helpful to  
15 have everything organized before we begin this  
16 conference.

17 The court has not decided yet whether  
18 or not to accept the interlocutory appeal.

19 I haven't filed any of the orders on  
20 admissions pro hac vice yet but anybody in this room  
21 can speak and it's perfectly acceptable.

22 I think we should begin with the  
23 disclosure of financial interests and the issue  
24 whether or not any member of the court is or may be

1 disqualified from sitting in this matter. We have  
2 the disclosures of financial interests that you  
3 filed in your letters this morning. Are there any  
4 additional disclosures that you'd like to add for  
5 the record at this time?

6 JUSTICE MOORE: Including advisers.

7 MR. WACHTELL: I note that Viacom and  
8 Paramount listed their financial advisers. We had  
9 not thought to list ours but it's Allen & Company.

10 CHIEF JUSTICE VEASEY: I thought I saw  
11 something in the paper this morning about  
12 Wasserstein being involved.

13 MR. WACHTELL: No. Wasserstein is  
14 financial adviser to Bell South, they are not  
15 financial advisers to QVC except insofar as Bell  
16 South is an equity participant on the tender offer.

17 CHIEF JUSTICE VEASEY: So the record is  
18 now complete about the financial disclosures. Your  
19 letters will be part of the record.

20 Justice Moore, did you have a matter  
21 you wished to raise?

22 JUSTICE MOORE: Yes. I noticed in the  
23 QVC letter of November 26 from Mr. McBride in  
24 paragraph Roman numeral I, disclosure of parties

1 with financial interests, under the heading  
2 financial institutions providing debt financing,  
3 among the banks listed is Nations Bank of Texas N.A.  
4 I have a brother-in-law whose name is Kevin Pickard,  
5 P-i-c-k-a-r-d, who recently began working for  
6 Nations Bank of Texas in Dallas and I am told by him  
7 that he has had nothing to do with this case, has  
8 had nothing to do with this transaction, and will  
9 have nothing to do with this transaction, and is not  
10 even in that line of banking work. So I wanted to  
11 pass that on in the event there's anyone who feels  
12 that that is a disqualifying factor.

13 CHIEF JUSTICE VEASEY: It's not  
14 preclusive if you don't have a position now, if you  
15 need to check with your client, but if anybody has a  
16 position now, it would be helpful if you would state  
17 it. If you do wish to confer with your clients  
18 about this, we can keep this matter open until let's  
19 say 1:00 o'clock. Does anybody care to keep this  
20 matter open until 1:00 o'clock or so?

21 MR. SPARKS: Your Honor, on behalf of  
22 Viacom, we believe we have the authority to say that  
23 creates no problem from Viacom's point of view.

24 MR. OSTRAGER: On behalf of Paramount,

1 the same as well.

2 MR. ABBEY: Clearly on behalf of the  
3 class plaintiffs, we have no problem, your Honor.

4 MR. WACHTELL: On behalf of QVC, the  
5 same.

6 CHIEF JUSTICE VEASEY: There was an  
7 article in the New York Times today about me in  
8 which it said, quote: "The context of any panel can  
9 be altered if one of the justices is disqualified  
10 from hearing the case for any of a variety of  
11 reasons, including conflict of interest. For  
12 example, any judge within his first year of service  
13 must recuse himself if one side in the case is  
14 represented by a judge's former law firm. In the  
15 Paramount case, Mr. Veasey's firm, Richards,  
16 Layton & Finger, is representing Paramount, but  
17 Mr. Veasey was appointed 19 months ago. He could  
18 still decline to hear the appeal but several experts  
19 in corporation law suggest that that would be  
20 unlikely." That's the end of the quote.

21 It is correct that I used to be with  
22 the firm of Richards, Layton & Finger and it is  
23 correct that it's about 19 months ago that I was  
24 with the firm of Richards, Layton & Finger. The

1 custom in Delaware has been a disqualification for  
2 one year after one assumes the bench, and I assumed  
3 the bench on April 7, 1992. And the other custom  
4 would be any case that was in the firm at the time  
5 that the judge was in the firm, and I assume this  
6 case was not in the firm of Richards,  
7 Layton & Finger before April 7, 1992. Is that  
8 correct, Mr. Richards?

9 MR. RICHARDS: That's correct, your  
10 Honor.

11 CHIEF JUSTICE VEASEY: And that our  
12 firm did not represent Paramount when I was there.  
13 Is that correct?

14 MR. RICHARDS: No, that's not correct,  
15 your Honor. We have represented Paramount and its  
16 predecessor-in-interest, Gulf & Western Industries,  
17 off and on for 30 years.

18 CHIEF JUSTICE VEASEY: Was there any  
19 representation of Paramount in any matter related to  
20 this case at the firm when I was there?

21 MR. RICHARDS: No, your Honor, there  
22 was not.

23 CHIEF JUSTICE VEASEY: Well, I do not  
24 consider that I am disqualified in this matter. And



1 again, I would want anybody to raise that question.

2 Incidentally, this custom that I  
3 mentioned is going to be codified in the new Code of  
4 Judicial Conduct which I think will be promulgated  
5 around the first of January, 1994.

6 But the same question is presented to  
7 you this morning that was presented to you in  
8 connection with what Justice Moore said earlier.

9 MR. RICHARDS: Your Honor, I might want  
10 to add one fact. While we have represented  
11 Paramount and its predecessors-in-interest over the  
12 years, it hasn't been unvarying and constant. My  
13 friends remind me that in 1989 when Paramount was  
14 making an offer for Time, we represented Warner  
15 Communications against Paramount, with Paramount's  
16 consent and the knowledge of Warner Communications.

17 CHIEF JUSTICE VEASEY: Does anybody  
18 want to raise this as a disqualifying issue?

19 MR. WACHTELL: No, I do not want to  
20 raise it as a disqualifying issue, nor do I want to  
21 raise the next thing I'm going to say as a  
22 disqualifying issue, but I do believe the firm has  
23 represented TCI and I just want to state that, your  
24 Honor. We have no objection but I'm not sure if

1 your Honor had that awareness.

2 CHIEF JUSTICE VEASEY: I was not aware  
3 of that.

4 MR. WACHTELL: I did want to state  
5 that. Am I correct, Mr. Richards?

6 MR. RICHARDS: Yes. Not related to  
7 this transaction.

8 MR. WACHTELL: No, not in this  
9 transaction but there has been a relationship.

10 CHIEF JUSTICE VEASEY: I've had no  
11 personal involvement I can recall with Paramount or  
12 TCI in any matter.

13 MR. WACHTELL: As I say, I have no  
14 objection. In case your Honor was not aware of it,  
15 I thought it would be appropriate to put it on the  
16 record.

17 CHIEF JUSTICE VEASEY: Thank you.

18 MR. ABBEY: Class plaintiffs have  
19 absolutely no objection to your serving in this  
20 case, your Honor.

21 MR. SPARKS: Your Honor, Viacom has no  
22 objection.

23 CHIEF JUSTICE VEASEY: And,  
24 Mr. Wachtell, you stated your position.

1                   And Mr. Richards?

2                   MR. RICHARDS: We have no objection,  
3 your Honor.

4                   CHIEF JUSTICE VEASEY: Well, it  
5 appears, then, we don't have any other disclosures  
6 or inquiry into that issue.

7                   The next issue, I'm referring now to  
8 the letter that the clerk of the court sent to  
9 counsel on November 24th, beginning at page two, I  
10 think this would be a helpful agenda for our meeting  
11 here today, the first one is disclosure of parties  
12 with financial interests under Roman numeral IA.  
13 Roman numeral IB says complete record or facts in  
14 flux. And the court appreciates the very complete  
15 letters from counsel that were submitted this  
16 morning at 10:00 o'clock. I think we might have one  
17 or two questions on this issue.

18                  The court is concerned, of course, that  
19 events before the appeal is accepted could be in  
20 flux, such as was true in the J. B. Stephens case,  
21 or during the pendency of the appeal, events could  
22 evolve which put the facts in flux that might make  
23 any decision moot that we would render or render  
24 whatever we were intending to write to be an

1 advisory opinion, which would not be permissible.  
2 So it's important to inquire whether or not the  
3 state of the record is complete or the record is in  
4 flux. And it is stated in the clerk's letter this  
5 shall be deemed to be a continuing disclosure  
6 obligation in the event of future developments which  
7 may render the transaction moot or otherwise inject  
8 a state of flux into the record.

9 This is a delicate area because it runs  
10 the risk of intruding on game plan strategies of  
11 parties that are involved. But we take it that  
12 insofar as action which was taken which might have  
13 been subject to disclosure requirements, that no  
14 such action has been taken on this issue which would  
15 be relevant for this inquiry up to this point, and  
16 that's the way we read the letters of counsel.

17 In Mr. Sparks' letter at page four, he  
18 concludes by saying thus, by reason of the various  
19 representations and statements of the parties, this  
20 court is guaranteed a fixed factual record  
21 throughout the course of these appellate  
22 proceedings. But then earlier in his letter, at the  
23 bottom of page two, Mr. Sparks states Viacom has no  
24 intention of altering its bid during the pendency of

1 this appeal. And in Mr. Richards' letter at page  
2 one, he states Paramount board intends to await this  
3 court's review of these actions before taking any  
4 further steps with respect to the transaction. And  
5 it concludes that the transaction cannot be said to  
6 be in flux.

7           The court would like to inquire a  
8 little bit further into that, recognizing the  
9 sensitivity of game plan disclosures. And perhaps  
10 Justice Moore would like to amplify a little bit on  
11 that.

12           JUSTICE MOORE: The concern that the  
13 court has is that these letters seem to be hedged in  
14 that you are asking for us to review a set of facts  
15 but that you do in fact perhaps have a program in  
16 place to do something different in the event of  
17 various outcomes.

18           And recognizing the sensitivity of it,  
19 I guess the first question we would ask is have  
20 there been any meetings at which any decisions have  
21 been made as to what will take place depending on  
22 certain outcomes of this litigation in the Supreme  
23 Court?

24           And if that happens to be in the area

1 of confidential plans, we would like you therefore  
2 to file a disclosure under seal with the court  
3 in camera, without copies to anyone else, disclosing  
4 that.

5           You can understand the obvious concern  
6 of the court that we not be giving advisory opinions  
7 and that we not really be just giving an opinion to  
8 decide a state of facts which indeed are expected to  
9 change depending on which way the court decides.  
10 Because I think you'd find that, depending on how  
11 the outcome came, if that's the case, the court may  
12 very well simply, once the decision is announced,  
13 dismiss the appeal without any opinion. So you may  
14 not be getting what you really think you're after.

15           CHIEF JUSTICE VEASEY: Would anybody  
16 care to comment on this?

17           MR. SPARKS: Yes, let me respond on  
18 behalf of Viacom.

19           First, my letter, the guarantee  
20 language in my letter is what I meant and I  
21 apologize to the court if it looked like we were  
22 trying to hedge because that was not the intention.  
23 Let me state it as clearly as I can. Viacom's bid  
24 is frozen during the course of this appeal and

1 during the course of this appeal there will be no  
2 change in our offer.

3           Secondly, we are not aware of any  
4 consideration having been given on Viacom's side,  
5 certainly no meetings with respect to what happens  
6 based on various outcomes of the court's decision.  
7 I mean I just don't know what might happen after the  
8 court's decision. We had understood, we do  
9 understand the concept of flux to mean that will  
10 something happen during the course of the appeal  
11 that would moot in any way what the court's --

12           JUSTICE MOORE: But you understand our  
13 concern that we're not just talking about waiting  
14 until the day of the announcement of a decision when  
15 there's a game plan to do something else.

16           MR. SPARKS: That's right. There is no  
17 game plan on Viacom's part to do something else. We  
18 expect that once a decision comes down, all of the  
19 parties would act in accordance with whatever the  
20 new facts are once the court's decision has come  
21 down but we have not engaged in any meeting or  
22 speculation or planning various alternatives based  
23 on what the court might decide, that has not  
24 happened on Viacom's part so far as we are aware and

1 we have checked as best we could before we came here  
2 today.

3 CHIEF JUSTICE VEASEY: Thank you,  
4 Mr. Sparks.

5 Mr. Richards.

6 MR. RICHARDS: Yes, your Honor, there  
7 have been no meetings of the Paramount board and our  
8 plan --

9 JUSTICE MOORE: Or the executive  
10 committee?

11 MR. RICHARDS: Or the executive  
12 committee. And our plan is as set forth, we expect  
13 to await this court's decision or guidance as to  
14 whether what the Paramount board has done in the  
15 past is correct or incorrect or what it should do in  
16 the future. Obviously there will be some events  
17 after the court's opinion because whatever the court  
18 says, then, you know, progress will move on, but we  
19 have no plan in anticipation of that. We intend to  
20 wait and see what the court decides.

21 CHIEF JUSTICE VEASEY: Mr. Wachtell,  
22 would you care to comment on this?

23 MR. WACHTELL: Well, sure. Well, I  
24 guess we're disappointed at Mr. Richards' statement



1 that the board does not have a plan to meet with us,  
2 but if that's their position, that's their position.  
3 We, absent some change of circumstance, we certainly  
4 have no intention to change our bid at all.

5 CHIEF JUSTICE VEASEY: I think that's  
6 sufficient. Thank you.

7 Stays or injunction pending appeal, I  
8 gather from the submissions that is not contemplated  
9 to be necessary at this time.

10 Schedule on appeal if accepted, page  
11 three, the argument date of December 9 I gather is  
12 not contested. And if we accept the appeal, that  
13 will be the argument date. And the other terms set  
14 forth with respect to the argument in item Roman  
15 numeral IIA will prevail. Does anybody care to  
16 comment on that?

17 MR. WACHTELL: We had just one item,  
18 your Honor, which I think is in the last paragraph  
19 of our letter, that the shareholder plaintiffs were  
20 not willing to do a joint brief and therefore --

21 CHIEF JUSTICE VEASEY: I haven't gotten  
22 to the briefs yet. I was just talking about the  
23 argument date.

24 MR. WACHTELL: Okay.

1 CHIEF JUSTICE VEASEY: With respect to  
2 the briefs, yes, we do note that all parties, I  
3 think, would prefer separate briefs, so that the  
4 idea of a joint brief for Viacom and Paramount and a  
5 joint brief for QVC and the stockholders is not  
6 something that the parties deem appropriate. And  
7 that's certainly a prerogative of the parties.

8 We would certainly hope that there  
9 would not be a lot of unnecessary repetition and  
10 that the parties would discuss and address  
11 themselves primarily to the vice-chancellor's  
12 decision and any errors or areas of affirmance that  
13 respective parties care to address to that decision.  
14 And I would assume that would be the principal focus  
15 of these briefs within the page limits of the rule  
16 as to each individual brief.

17 I understand, Mr. Wachtell, that the  
18 stockholder plaintiffs and QVC would take the  
19 70 pages of the rule and divide it not 35/35 but  
20 45 for QVC and 25 for the stockholder plaintiffs.  
21 And if that's --

22 MR. WACHTELL: If that is agreeable to  
23 the court.

24 CHIEF JUSTICE VEASEY: That is

1 agreeable to the court.

2 MR. WACHTELL: We appreciate it.

3 CHIEF JUSTICE VEASEY: With respect to  
4 appendices --

5 MR. SPARKS: Your Honor?

6 CHIEF JUSTICE VEASEY: Yes, Mr. Sparks.

7 MR. SPARKS: We had understood that the  
8 court had given the parties really two choices,  
9 either to combine their briefs and do 50 and 35  
10 pages on an opening and a reply or to follow the  
11 rules and do 35 and 20 each. We had not understood  
12 that there was this option to in effect file  
13 separately but then have agreements among appellants  
14 or appellees to trade pages.

15 CHIEF JUSTICE VEASEY: Would you like  
16 to do that?

17 MR. SPARKS: I don't know. We haven't  
18 discussed it. We just hadn't understood that was  
19 one of the options that was open to us. So if that  
20 is an option that's open, I guess we ought to at  
21 least let the court know whether we wish to, if  
22 that's all right with the court, if we wish to --

23 CHIEF JUSTICE VEASEY: Any way you wish  
24 to divide it between Paramount and Viacom's side

1 within the page limits is satisfactory.

2 MR. SPARKS: Thank you.

3 CHIEF JUSTICE VEASEY: Appendices. The  
4 court sometimes receives quite a stack of paper in  
5 some of these cases and we would simply ask the  
6 parties to exercise restraint in inundating us with  
7 paper and killing trees and forests in the process.

8 A question arose, I believe, before  
9 this conference about the briefs that were filed in  
10 the Court of Chancery. They have been forwarded to  
11 the court and we have copied them within the court  
12 and we have the briefs as filed in the Court of  
13 Chancery. We would hope the parties would refer to  
14 those briefs when they want to make a point that's  
15 in the briefs and use the reference to the briefs.  
16 It's not necessary to put those briefs in the  
17 appendix since we have them. And unless somebody  
18 has a particular reason to do that, I see no reason  
19 to burden the record or our files with those briefs  
20 in the appendix.

21 As to other matters in the appendix, to  
22 the extent that you can agree on a joint appendix,  
23 it would be helpful, but most importantly, we would  
24 like a detailed index of the appendices with a

1 clarifying table of contents so that it's easy for  
2 us to refer to the matters within the appendices.

3 MR. RICHARDS: Your Honor, I think it's  
4 perfectly clear in the court's letter and in what  
5 you just said, but just to nail down a point, I  
6 gather, then, that you could make a one or two  
7 sentence argument, hypothetically, and say this is  
8 dealt with at more length at pages X to Y in the  
9 briefs below.

10 CHIEF JUSTICE VEASEY: Yes.

11 MR. RICHARDS: I mean, that is the kind  
12 of reference you're inviting?

13 CHIEF JUSTICE VEASEY: Yes.

14 MR. RICHARDS: Thank you.

15 MR. OSTRAGER: If your Honor please,  
16 does the court have the appendices that were filed  
17 with the Court of Chancery?

18 CHIEF JUSTICE VEASEY: No. We just  
19 have briefs.

20 MR. OSTRAGER: So if we wanted to  
21 refer, for example, to the material which is cited  
22 in the briefs, in the appellant brief we would have  
23 to include the citations in the appendix.

24 CHIEF JUSTICE VEASEY: Yes, the

1 appendix in this court.

2 Anybody want to raise anything?

3 Mr. McBride.

4 MR. McBRIDE. Yes, one other question,  
5 I think both sides below submitted affidavits. I  
6 think it was my affidavit and Anne Foster's  
7 affidavit from the other side that had numerous  
8 exhibits attached to them, many of which were also  
9 deposition exhibits. I presume we're also going to  
10 be including at least some depositions in the  
11 appendices. Would the court want to have the  
12 deposition exhibits that are also part of these  
13 affidavits included again with the deposition  
14 transcripts or, if they are included in the  
15 affidavits, can we eliminate the exhibits that are  
16 part of the transcript?

17 CHIEF JUSTICE VEASEY: Well, we would  
18 like to eliminate duplication to the extent feasible  
19 and we would also like a clear road map of where  
20 you're referring the court and an appendix page or  
21 someplace where we can find something that you're  
22 referring to. Does that give you enough guidance?

23 MR. McBRIDE: I think that does, your  
24 Honor.

1                   MR. SPARKS: Your Honor, there's one  
2 other thing that might be helpful to the court and I  
3 raise it only because it's an innovation that's  
4 recently come in, at least since the last time I sat  
5 in at a conference like this, is we found it helpful  
6 or hope that the court below found it helpful to  
7 have a volume of the Min-U-Scripts, which are the  
8 very condensed form of deposition transcripts which,  
9 instead of giving a mountain of paper, it results in  
10 just giving a notebook that was I think about this  
11 thick that in effect had all the deposition material  
12 in it. I'm wondering if in this modern day and age  
13 it might be more helpful to the court with respect  
14 to deposition materials simply to have that volume  
15 available, which could be jointly supplied by both  
16 sides. Rather than having both sides Xerox hundreds  
17 of pages of selected pages from deposition  
18 transcripts and put them in their respective  
19 appendices, I think it would be easier for the court  
20 if we were able to provide jointly one set of that  
21 and then have an understanding with the court, if  
22 the court desired it, that the appendix would not be  
23 cluttered with extracts from deposition pages. I  
24 would think it's much easier for the court to sort

1 of be able in any event to know what came before and  
2 after the extracts. And then we can make the  
3 Min-U-Scripts a part of the appendix and put the  
4 appendix pages at the bottom of the Min-U-Script and  
5 then the court would have all of the deposition  
6 material in that form.

7           Maybe the court doesn't want to do that  
8 but it did seem to me that, sort of trying to gauge  
9 what it might look like on the other side of the  
10 bench, that that might be an innovation that the  
11 court might want to take advantage of, as the  
12 lawyers have.

13           CHIEF JUSTICE VEASEY: That sounds  
14 acceptable.

15           MS. VYSKOCIL: How is your eyesight?

16           MS. MORRIS: Your Honor, the only thing  
17 I would note is that the Min-U-Script version is not  
18 proofread by the court reporter before it's  
19 distributed. It's very accurate in this case but it  
20 is not technically read by the court reporter.

21           JUSTICE MOORE: Ms. Vyskocil just said  
22 how is your eyesight.

23           MS. VYSKOCIL: They're tiny. It's got  
24 six pages to each eight and a half by eleven page.



1                   MR. WACHTELL: We could probably blow  
2 them up a little bit. I agree with Gil Sparks, it  
3 cuts the reading and scanning time, I would say,  
4 probably to 25 percent because your eyeball rolls  
5 over eight pages at a time and you can pass the  
6 colloquy and go to what you want rather than having  
7 to flip the pages. It is an extremely useful tool.

8                   MR. SPARKS: I do not believe the  
9 typeface is any smaller or harder to read than a  
10 reported case in the Atlantic Reporter.

11                  MR. WACHTELL: We can enlarge it in a  
12 slightly larger book by Xeroxing up.

13                  CHIEF JUSTICE VEASEY: I think the  
14 court is willing to try it. If we can't read it,  
15 then we'll do something else.

16                  MR. SPARKS: Or we'll do something  
17 else, if your Honors decide.

18                  CHIEF JUSTICE VEASEY: Anything else on  
19 that?

20                  MR. WACHTELL: Still on the subject of  
21 briefs, if we're still on that subject, your Honor.

22                  CHIEF JUSTICE VEASEY: Yes.

23                  MR. WACHTELL: Our brief is due on a  
24 Saturday and it struck us that under the

1     circumstance, it might be helpful to the court if we  
2     could deliver courtesy copies to the justices and we  
3     just wanted to make inquiry if you wished that and,  
4     if so, where.

5                   CHIEF JUSTICE VEASEY:   Well, Justice  
6     Holland probably has the most difficult problem  
7     geographically in this area.  As far as I'm  
8     concerned, they can be delivered to this building  
9     because I occasionally work on Saturday.  I will be  
10    on this case.

11                   JUSTICE MOORE:   Yes, that would be  
12    fine.  I guess the most important thing is to get  
13    them to Justice Holland in Georgetown.

14                   MS. MORRIS:   Justice Holland, is there  
15    a fax number where we can fax it to you?

16                   JUSTICE HOLLAND:   Well, why don't we  
17    assume for now to deliver them all here and I'll  
18    make arrangements to get them.  And if that turns  
19    out to be not convenient, I'll let you know.  But  
20    thank you all for offering.

21                   CHIEF JUSTICE VEASEY:   Are we finished  
22    with briefs and appendices?

23                   MR. RICHARDS:   I believe, if we're  
24    finished with it, that QVC has a form of order to

1 present to the court.

2 MR. McBRIDE: I have a form of order I  
3 prepared but, unfortunately, within the 50 pages, it  
4 doesn't allow for the flexibility that you've asked  
5 for but I can easily have it redone.

6 CHIEF JUSTICE VEASEY: Is it a  
7 comprehensive form of order that includes --

8 MR. McBRIDE: Let me pass it to you. I  
9 delivered copies already to other counsel.

10 CHIEF JUSTICE VEASEY: Do you have  
11 three copies or several copies?

12 I don't believe that there's anything  
13 we need to discuss under Roman numeral III that we  
14 haven't already touched on. Does anybody else care  
15 to bring up anything further?

16 MR. OSTRAGER: Your Honor, if I may, in  
17 connection with the discussion which we had on the  
18 issue of whether or not there is any flux here,  
19 Mr. Richards accurately outlined Paramount's  
20 position, which is that the board does not intend to  
21 take any action until there's a decision in this  
22 case. Mr. Wachtell interpreted that as meaning that  
23 the Paramount management would not speak to QVC, and  
24 I don't believe any decision has been made on that

1 subject and I didn't want there to be any  
2 misunderstanding based on Mr. Wachtell's conclusion  
3 about what Mr. Richards' said.

4 CHIEF JUSTICE VEASEY: All right.  
5 Anybody else care to say anything  
6 further?

7 The court would like to withdraw from  
8 the conference for a few moments. We suggest that  
9 you stay here. And we'll come back in. You don't  
10 need to get up when we walk out. Thank you.

11 (Brief recess taken.)

12 CHIEF JUSTICE VEASEY: The only  
13 lingering concern the court has relates to the  
14 representations that have been made here today  
15 regarding the extensions of the offers. We need to  
16 have a supplemental undertaking or representation by  
17 the parties involved confirming that and that it was  
18 done in such a way that it's binding on the  
19 companies, that is to say, Viacom, Paramount in  
20 particular, that it's binding on the companies. You  
21 do have directors and you do have procedures, I'm  
22 certain, for action by executive committees or  
23 others, but I think we want to be certain that we  
24 have a filing on Monday by noon supplementing these

1 undertakings with regard to the extension of the  
2 offers and the state of flux issue.

3           The court will on Monday enter an order  
4 accepting the interlocutory appeal and will embody  
5 in that order, subject to obtaining these further  
6 written supplemental representations, we will embody  
7 in that order all of the matters agreed to here with  
8 respect to the filing of briefs, oral argument, and  
9 et cetera.

10           Is it correct that there is no cross  
11 appeal and there's not going to be a cross appeal on  
12 this interlocutory appeal?

13           MR. WACHTELL: That's correct.

14           CHIEF JUSTICE VEASEY: There are two  
15 appeals here, as I understand it, 427 and 428, in  
16 this court, one by Paramount and one by Viacom,  
17 separate appeals, and I assume that we will treat  
18 this as a consolidated matter, the order will be a  
19 consolidating order when it is entered accepting the  
20 appeal, and that will be done on Monday.

21           MR. RICHARDS: Your Honor, one other  
22 point. The shareholders' action was dealt with  
23 below as if it had been consolidated with the QVC  
24 matter, I mean it was a combined caption and so

1     forth. I don't believe that there was ever an order  
2     entered consolidating those appeals. And I don't  
3     know whether or not it is technically necessary to  
4     file further appeals, that is, as to whether or not  
5     there have been two more appeals because there were  
6     two separate cases below. It seems to me to be a  
7     technical question which the court could say well,  
8     it's not necessary or the court could say it is  
9     necessary and we can file two more notices of  
10    appeal.

11                   CHIEF JUSTICE VEASEY: And two more  
12    filing fees.

13                   Justice Holland raises the question,  
14    and that's a good inquiry, Mr. Richards, if it  
15    wasn't consolidated, there may be some issue whether  
16    or not we have jurisdiction. It might be a good  
17    idea to tidy that up to be certain that we do have  
18    jurisdiction.

19                   MR. RICHARDS: Then can we do that on  
20    Monday, your Honor?

21                   CHIEF JUSTICE VEASEY: Yes, that can be  
22    done on Monday.

23                   MR. SPARKS: What is it we're to do?  
24    I'm unclear.

1 JUSTICE HOLLAND: Mr. Richards is  
2 suggesting that the cases in the Court of Chancery  
3 weren't consolidated, so you would need to basically  
4 take two appeals from each of the Court of Chancery  
5 cases using the separate numbers. And I don't have  
6 the papers in front of me that you filed on  
7 anything, but assuming one Chancery number was used  
8 by the vice-chancellor, or perhaps he used two  
9 numbers, but I think all the court is suggesting is  
10 that counsel check to see that if you have two  
11 separately numbered cases in the Court of Chancery  
12 that haven't been consolidated, that we have those  
13 same two numbers in this court on appeal.

14 MR. SPARKS: The court below entered  
15 one order.

16 JUSTICE HOLLAND: Using both numbers?

17 MR. SPARKS: Using both numbers.

18 JUSTICE HOLLAND: That seems to take  
19 care of it.

20 CHIEF JUSTICE VEASEY: That should take  
21 care of it, then.

22 MR. SPARKS: Our caption of our appeal  
23 has both.

24 JUSTICE MOORE: And the body refers to

1 those two numbers?

2 MR. SPARKS: Yes, it does.

3 MR. RICHARDS: Yes.

4 JUSTICE MOORE: Okay.

5 JUSTICE HOLLAND: You can use one  
6 notice of appeal for two different numbers.

7 CHIEF JUSTICE VEASEY: I think that's  
8 probably satisfactory and I do see that now in the  
9 vice-chancellor's preliminary injunction.

10 MR. RICHARDS: I raised it, your Honor,  
11 because the clerk had sort of raised it to me as I  
12 was walking by on the way in here, so I thought it  
13 was worth raising.

14 CHIEF JUSTICE VEASEY: Thank you.

15 MR. RICHARDS: Let me just ask a  
16 question. Do I understand that what the court wants  
17 from the parties before Monday at noon is simply  
18 some formal confirmation that the representations  
19 contained in our letter are authorized?

20 CHIEF JUSTICE VEASEY: Justice Holland,  
21 do you want to speak to that?

22 JUSTICE HOLLAND: I think that what the  
23 court is looking for is a letter from each of the  
24 parties who have said in their letters today that



1 the offers are extended until midnight on the 9th,  
2 or as long as the court needs thereafter to make a  
3 decision, that in the attorneys' opinions those  
4 extensions have been made in a manner that are  
5 binding upon the parties.

6 MR. RICHARDS: All right. I thought  
7 that was right and then you threw or somebody threw  
8 in the reference to Paramount. I think, then, as I  
9 understand it, the court is asking for letters from  
10 QVC and Viacom but there isn't any further letter  
11 that needs to be sent by Paramount. We don't have  
12 an offer. The problem that you raised really could  
13 be, as I understand it, that's why I raised the  
14 question, I think it's a letter from QVC and a  
15 letter from Viacom.

16 JUSTICE HOLLAND: Well, we haven't  
17 gotten into any of the merits yet. You all have to  
18 decide among yourselves. But to the extent there  
19 were any reciprocal agreements that Paramount would  
20 need to extend, they would have to say that they're  
21 willing to do that and that it's binding. If there  
22 are none, you can say that. But what the court  
23 wants to make sure is that it's going to be deciding  
24 a real case.

1 CHIEF JUSTICE VEASEY: Mr. Richards,  
2 your letter said Paramount board intends to await  
3 review of these actions before taking any further  
4 steps with respect to the transaction. That is a  
5 representation by you which I'm sure is authorized.  
6 I think what we need to do is button up the  
7 authorization and make sure that in your view it's  
8 binding on the company.

9 MR. OSTRAGER: Your Honor, I can  
10 confirm that, having spoken with the Paramount  
11 management as recently as an hour and a half ago to  
12 obtain approval for this form of letter, it is  
13 absolutely authorized and binding.

14 MR. SPARKS: Your Honor, one other  
15 point. I made the Min-U-Script suggestion. While  
16 the court was out, there was discussion among  
17 counsel about the logistics of that. If it turns  
18 out as we try to implement it that it doesn't work,  
19 can I assume that we can do it the regular way if it  
20 doesn't work?

21 CHIEF JUSTICE VEASEY: Yes.

22 MR. McBRIDE: Your Honor, if I could,  
23 I'm just a little unclear. The letters that come in  
24 on Monday, are they to address the representations

1 that were made here with respect to the flux issue?  
2 Because I believe there were things said here that  
3 weren't contained in anyone's letters of today. I  
4 didn't know whether the representation you're  
5 seeking from us on Monday was to cover the  
6 statements each party made with respect to flux or  
7 is limited to what was in the letters that were  
8 already sent or limited to just keeping the offers  
9 open.

10 CHIEF JUSTICE VEASEY: What was in the  
11 letter with regard to flux, what was said here today  
12 with regard to flux and with regard to extending the  
13 offers and keeping the offers open.

14 MR. McBRIDE: Thank you, your Honor.

15 CHIEF JUSTICE VEASEY: Particularly  
16 with regard to the issue of authority. And it is  
17 understood that it's a continuing duty to update  
18 that information with regard to the flux issue.

19 Mr. Richards, did you want to add  
20 anything? Do you want to take a moment and confer?

21 MR. RICHARDS: Just a moment.

22 Thank you, your Honor, I don't wish to  
23 say anything.

24 CHIEF JUSTICE VEASEY: Thank you.

1                   Thank you all for coming in here on  
2   this semiholiday.

3                   (Hearing concluded at 12:15 p.m.)  
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I, Heather G. Slate, Registered  
Professional Reporter and Notary Public for the  
State of Delaware, do hereby certify that the  
foregoing record, pages 2 to 35 inclusive, is a true  
and accurate transcript of my stenographic notes  
taken on Friday, November 26, 1993, in the  
above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand and seal this 26th day of November, 1993, at  
Wilmington.

---

Heather G. Slate

PRINT NAME	PARTY REPRESENTED	SIGNATURE
DAVID R. OSTROWITZ SIMPSON THACHER & BARTLETT	Plaintiffs	David Ostrowitz
MARY KAY VYSKOCEIL SIMPSON THACHER & BARTLETT	Plaintiffs	Mary Kay Vyskoceil
CHARLES F. RICHARDS JR. RICHARDS, LEIGHTON & FUGIER	"	Charles F. Richards Jr.
STUART J. BACKIN SLEAMON & STERLING	Viacom	Stuart J. Backin
WILLIAM M. LAFFERTY MORRIS, NICHOLS, ARSHT & TUNNELL	Viacom	William M. Lafferty
A. GILBERT SPARKS JR. MORRIS, NICHOLS, ARSHT & TUNNELL	Viacom	A. Gilbert Sparks Jr.
ARTHUR N. ABBEY ABBIEY & ELLIS	CLASS PLAINTIFFS	Arthur N. Abbey
KAREN L. MOREIS MOREIS AND MOREIS	CLASS PLAINTIFFS	Karen L. Moreis
JOSEPH A. ROSENTHAL ROSENTHAL, MONTAGROSS & GONZALEZ	CLASS PLAINTIFFS	Joseph A. Rosenthal
DANIEL KRAUSER WOLF HENDERSON & PAUL	Class Plaintiffs	Daniel Krauser
THEODORE N. MIRELS WACHMAN, LUTER, ROSEN & LARSEN	QVC	Theodore N. Mirels
DAVID MCBRIDE YOUNG, CONAWAY, STANGE, HOFFER & LEVY	QVC	David McBride

Herbert M. Wachtel  
KATZ, KATZ, KATZ & KATZ

QVC

Herbert M. Wachtel