1996 WL 84678
Only the Westlaw citation is currently available.
United States District Court, M.D. Louisiana.

Clifford Eugene DAVIS, Jr., et al
v.
UNITED STATES of America
v.
EAST BATON ROUGE PARISH SCHOOL BOARD, et al.

No. Civ. A. 1662–A.
|
Feb. 26, 1996.

Attorneys and Law Firms

Robert C. Williams, Baton Rouge, LA, for plaintiffs.

Jack M. Weiss, Mark B. Holton, New Orleans, LA, for Capital City Press.

Charles Patin, William D'Armond, Gregg R. Kronenberger, Baton Rouge, LA, for the School Board.

Brian Jackson, First Assistant United States Attorney, for United States.

HEARING

PARKER, District Judge.

FEBRUARY 22, 1996

MORNING SESSION

***1** (CIVIL ACTION NUMBER 1662–A, CLIFFORD EUGENE DAVIS, JR., ET AL VERSUS UNITED STATES OF AMERICA VERSUS EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL; COURT CONVENED AT NINE O'CLOCK A.M.)
THE COURT: COUNSEL READY TO PROCEED?

COUNSEL (IN UNISON): YES, YOUR HONOR.

THE COURT: DID YOU WORK OUT THE STIPULATION WE WERE TALKING ABOUT?

MR. PATIN: YOUR HONOR, UNFORTUNATELY, WE WERE UNABLE TO REACH AGREEMENT.

THE COURT: THEN YOU'RE NOT READY TO PROCEED. WHAT'S THE PROBLEM?

MR. WEISS: THE PROBLEM, YOUR HONOR, IS THAT THE SCHOOL BOARD AND MY CLIENTS HAVE A VERY DIFFERENT VIEW ABOUT WHAT IS RELEVANT IN THIS CASE. WE BELIEVE THAT IT IS OF THE UTMOST IMPORTANCE THAT WE ESTABLISH ON THE RECORD EXACTLY WHAT TRANSPIRED ON FEBRUARY 5, 1996, PRIOR TO THE ENTRY OF THIS ORDER THAT WE'RE CONTESTING HERE TODAY.

WE BELIEVE THAT THE FACTS RELATING TO THE ENTRY OF THE ORDER AND THE REASONS THAT WERE CITED TO YOUR HONOR BY THE SCHOOL BOARD IN SUPPORT OF THAT ORDER, GO BOTH TO THE ISSUE OF OUR STANDING TO INTERVENE, WHICH THE SCHOOL BOARD IS CONTESTING, AND TO THE MERITS OF THE ORDER ITSELF.

THE COURT: WHY?

MR. WEISS: WELL, FOR EXAMPLE, YOUR HONOR, AS THE COURT IS AWARE, AND I'LL JUST PICK ONE EXAMPLE, WE CONTEND THAT THE IMPACT OF THE ORDER UPON THE ENFORCEMENT OF THE LOUISIANA PUBLIC RECORDS ACT AND OPEN MEETINGS LAW, IN AND OF ITSELF, NOT ONLY CONFERS STANDING UPON MY CLIENTS, BUT, ALSO, AS THE *PANSY* CASE HELD AT GREAT LENGTH, AT GREAT LENGTH, MAKES ANY ORDER THAT PURPORTS TO ABROGATE THE ENFORCEMENT OF STATE PUBLIC RECORDS AND

OPEN MEETINGS LAWS PRESUMPTIVELY UNCONSTITUTIONAL.

SO, WE THINK IT'S OF THE UTMOST IMPORTANCE TO KNOW WHETHER THE ISSUE OF PUBLIC RECORDS LAWS AND OPEN MEETINGS LAWS WAS CITED TO YOUR HONOR.

THE COURT: IF THAT IS THE EFFECT OF THE ORDER, MR. WEISS, WHAT DIFFERENCE DOES IT MAKE WHAT EXCUSE, IF ANY, WAS GIVEN IN SUPPORT OF IT? IF THAT IS THE LAW, AND I MIGHT ADD, IF YOU READ DICKENS, IF THAT IS THE LAW, "THE LAW IS A ASS." BUT IF THAT IS THE LAW, THEN WHAT DIFFERENCE DOES IT MAKE?

MR. WEISS: WELL, YOUR HONOR, THE DIFFERENCE IT MAKES IS THAT, AS YOUR HONOR KNOWS, WE BELIEVE THAT THE OPPOSITION TO OUR STANDING TO INTERVENE IS MERITLESS AND, INDEED, I WOULD GO SO FAR AS TO SAY BORDERLINE FRIVOLOUS. NEVERTHELESS—

THE COURT: WAIT A MINUTE, NOW.

MR. WEISS: —THE SCHOOL BOARD HAS CHOSEN TO CONTEST OUR STANDING TO INTERVENE.

THE COURT: WAIT A MINUTE.

MR. WEISS: CERTAINLY.

THE COURT: I'M GOING TO REQUIRE YOU AND OTHER COUNSEL HERE TODAY TO FALL BACK, REGROUP, AND GO READ LOCAL RULE 20.17 ON COURTROOM DECORUM REQUIRED OF LAWYERS. I'M NOT GOING TO HAVE CHARGES BACK AND FORTH OF PERSONALITIES, OR ANYTHING OF THAT NATURE, IN THIS COURTROOM.

DO WE UNDERSTAND EACH OTHER?

MR. WEISS: YES, YOUR HONOR. I DON'T THINK I HAVE MADE ANY SUCH CHARGES, NOR DO I INTEND TO.

THE COURT: YOU JUST DID; YOU REFERRED TO HIS ARGUMENT AS FRIVOLOUS.

MR. WEISS: THAT IS MY BELIEF, AS AN ATTORNEY, YOUR HONOR.

***2** THE COURT: WELL, LET'S DON'T USE THOSE WORDS.

MR. WEISS: MAY I PROCEED?

THE COURT: YES.

MR. WEISS: IN ANY EVENT, YOUR HONOR, THE SCHOOL BOARD HAS CHOSEN TO CONTEST OUR STANDING HERE. AND WE BELIEVE, ON THE ISSUE OF STANDING, ALTHOUGH WE THINK IT'S PERFECTLY CLEAR, FOR A VARIETY OF OTHER REASONS, THAT WE HAVE STANDING, THAT, CERTAINLY, IF THE INTENT AND REASONS CITED TO YOUR HONOR FOR THE ORDER WERE TO SUPERSEDE THE ENFORCEMENT OF STATE PUBLIC RECORDS AND OPEN MEETINGS LAWS, THEN THAT MAKES IT ABUNDANTLY CLEAR, AS THE *PANSY* CASE HOLDS, THAT WE WOULD HAVE STANDING TO OBJECT TO THE ORDER.

THE COURT: YOUR PURPOSE, THEN, AS I APPRECIATE WHAT YOU'RE TELLING ME, RELATES TO YOUR STANDING ARGUMENT.

MR. WEISS: BOTH, YOUR HONOR. THE REASONS CITED TO THE COURT IN SUPPORT OF THE ORDER, GO TO BOTH STANDING—THAT IS TO SAY, WHO IT WAS THE INTENT OF THE ORDER TO AFFECT—AND ALSO GO TO THE VALIDITY OF THE ORDER.

THE COURT: WELL, MAYBE WE CAN CUT TO THE QUICK ON THIS ISSUE.

MR. WEISS: YES, YOUR HONOR.

THE COURT: I HAVE GRAVE DOUBTS OF YOUR STANDING IN THIS CASE, AS MEMBERS OF THE PRESS. I AM FULLY AWARE, HOWEVER, THAT THERE ARE NUMEROUS AVENUES AVAILABLE TO THE *ADVOCATE* AND CHANNEL 2 TO CONTEST THIS COURT ORDER.

AND IN THIS DISTRICT, MR. WEISS, THE POLITICALLY CORRECT TERMINOLOGY IS CONFIDENTIALITY ORDER, NOT DRACONIAN GAG ORDER. BUT, IN ANY EVENT, YOUR CLIENTS HAVE AMPLE OPPORTUNITY, EITHER

BY MEANS OF MANDAMUS OR FILING A SEPARATE SUIT, OR MOVING TO INTERVENE, TO CHALLENGE THIS ORDER. SO, I WILL HEREBY GRANT YOUR MOTION TO INTERVENE IN THESE PROCEEDINGS, FOR THE LIMITED PURPOSE OF CHALLENGING THE VALIDITY OF THIS ORDER DATED FEBRUARY WHATEVER IT'S DATED. SO, WE HAVE ELIMINATED THAT PROBLEM.

MR. WEISS: THANK YOUR HONOR. MAY I MAKE A SUGGESTION AT THIS POINT, YOUR HONOR, IN ORDER TO EXPEDITE THE PROCEEDINGS?

THE COURT: SURE. I'M FULLY IN FAVOR OF EXPEDITING.

MR. WEISS: WE HAD, OF COURSE, EXPECTED TO HAVE TO PUT ON EVIDENCE RELATING TO THE ISSUE OF STANDING. WILL YOUR HONOR GRANT US A BRIEF RECESS IN ORDER THAT I CAN CONFER WITH MY CLIENT AND, ALSO, WITH MY PARTNER, MR. HOLTON, AND DETERMINE EXACTLY HOW WE CAN BEST EXPEDITE OUR CASE NOW, AS THE COURT HAS GRANTED OUR MOTION TO INTERVENE, WITHOUT THE NECESSITY OF OUR PUTTING ON EVIDENCE?

THE COURT: WHAT KIND OF EVIDENCE ARE YOU TALKING ABOUT?

MR. WEISS: WELL, THE EVIDENCE THAT WE WERE GOING TO PUT ON, YOUR HONOR, WOULD HAVE BEEN EVIDENCE OF THE WILLINGNESS OF VARIOUS REPRESENTATIVES OF THE SCHOOL BOARD TO SPEAK TO MY CLIENTS PRIOR TO THE ENTRY OF THE ORDER, AND EVIDENCE OF THEIR UNWILLINGNESS TO SPEAK TO MY CLIENTS FOLLOWING THE ENTRY OF THE ORDER, WHICH THE CASE LAW INDICATES, AS YOUR HONOR IS AWARE, IS A RESPONSE TO THE SO–CALLED WILLING SPEAKER CONCEPT AS AN OPPOSITION TO STANDING, IF YOU WILL.

THE COURT: WELL, WE'VE ELIMINATED THAT PROBLEM.

MR. WEISS: NO, NO. I UNDERSTAND WE HAVE, AND THAT'S WHY—

THE COURT: THEN WHY DO WE KEEP BEATING A DEAD HORSE?

***3** MR. WEISS: I DON'T NECESSARILY WANT TO BEAT THAT DEAD HORSE, OBVIOUSLY, YOUR HONOR. WHAT I WANT TO DO IS CONFER WITH MY CLIENT AND CO–COUNSEL WITH RESPECT TO THE ISSUES THAT WE NOW—WHETHER WE NEED AND TO WHAT EXTENT WE NOW NEED TO PUT ON EVIDENCE ON THE MERITS AS DIVORCED FROM THE ISSUE OF STANDING, SO THAT I CAN STREAMLINE MY CASE AND NOT TAKE ANYMORE OF YOUR HONOR'S TIME THAN I NEED TO.

THE COURT: WELL, I WANT TO KNOW IS, WHAT WITNESSES YOU THINK YOU'RE GOING TO CALL AND WHAT YOU THINK THEY'RE GOING TO SAY. BECAUSE I HAVE GREAT DOUBTS THAT THERE IS ANY NEED FOR ANY ACTUAL TESTIMONY IN THIS CASE.

MR. WEISS: WELL, WE WOULD PLAN TO CALL MR. PACK, YOUR HONOR, ONE OF THE INTERVENORS, TO TESTIFY ABOUT THE EFFECT OF THE COURT'S ORDER ON HIS ABILITY TO GATHER AND REPORT NEWS ABOUT THIS MATTER, AND UPON THE NEWSWORTHINESS—

THE COURT: WE'LL STIPULATE THAT IF THIS ORDER IS COMPLIED WITH, MR. PACK WILL GET ESSENTIALLY ZERO INFORMATION, AND WILL NOT BE ABLE TO REPORT ANYTHING.

DO YOU STIPULATE TO THAT, MR. PATIN?

MR. PATIN: YES, YOUR HONOR, WE WILL.

MR. WEISS: AND, YOUR HONOR, WE WOULD ALSO CALL—LET ME, IF I MAY, JUST TELL THE COURT SPECIFICALLY EXACTLY WHAT WE WOULD PROVE THROUGH OUR TESTIMONY, YOUR HONOR.

WE WOULD CALL MR. PACK AND MS. LIGHTFOOT, AND MR. PASTOREK FROM WBRZ, TO TESTIFY THAT IN THEIR JUDGMENT, AS REPORTERS AND EDITORS, INFORMATION ABOUT THE SCHOOL DESEGREGATION PLAN IS HIGHLY NEWSWORTHY AND OF GREAT COMMUNITY IMPORTANCE.

MR. PATIN: YOUR HONOR, WE DON'T THINK THAT THAT IS RELEVANT, BUT, OBVIOUSLY, IF IT'S IN THE PAPER—

THE COURT: OH, I THINK IT IS HIGHLY RELEVANT. IT'S WHAT THIS CASE IS ALL ABOUT. THIS IS CERTAINLY ONE OF THE MOST IMPORTANT CASES IN THE HISTORY OF EAST BATON ROUGE PARISH, HAS BEEN FOR FORTY YEARS. WE NOW, IT SEEMS TO ME, FINALLY HAVE AN OPPORTUNITY, MAYBE, TO ACTUALLY RESOLVE IT.

AND I WOULD SAY—I DON'T SEE ANY MEMBERS OF THE BOARD OUT THERE, BUT I WOULD SAY TO THE MEMBERS OF THE BOARD THAT IT'S AT TIMES LIKE THESE, AND I MUST CONFESS, I'VE HAD LOTS OF THEM, I ALWAYS THINK OF THE REFRAIN OF AN OLD METHODIST HYMN I LEARNED AS A CHILD, AND I'M SURE MOST OF YOU MIGHT HAVE LEARNED AS A CHILD, AND ONE YOU'LL NEVER FORGET. IT GOES SOMETHING LIKE THIS: "JESUS LOVES ME, THIS I KNOW, FOR THE *BIBLE* TELLS ME SO." OF COURSE, JESUS MAY BE THE ONLY ONE AT THE PRESENT TIME. BUT HANG ON TO THAT THOUGHT. IT'S WORTHWHILE.

ALL RIGHT, MR. WEISS, PROCEED.

MR. WEISS: WILL THE SCHOOL BOARD STIPULATE THAT INFORMATION ABOUT THE PLAN IS HIGHLY NEWSWORTHY AND OF GREAT COMMUNITY IMPORTANCE?

THE COURT: I'LL ACCEPT JUDICIAL NOTICE IF THEY DON'T STIPULATE.

MR. PATIN: WE DON'T MIND STIPULATING, YOUR HONOR.

THE COURT: ALL RIGHT.

AND AS MUCH AS I WOULD LIKE TO HEAR MS. LIGHTFOOT—I'M TRYING TO THINK OF THE LAST TIME, IF EVER, I HAD THE OPPORTUNITY TO PUT MS. LIGHTFOOT UNDER OATH. WE MAY RECONSIDER. THE TEMPTATION, THE MORE I THINK ABOUT IT—IS LINDA HERE?

MS. LIGHTFOOT: YES, JUDGE.

***4** THE COURT: HEY, DARLING.

ALL RIGHT, PROCEED.

MR. WEISS: YOUR HONOR, WE WOULD SHOW, THROUGH THE TESTIMONY OF MS. LIGHTFOOT, IN PARTICULAR, THAT THE *ADVOCATE,* ABSENT THIS COURT'S ORDER, WOULD SERIOUSLY CONSIDER ASSERTING AND SEEKING JUDICIAL ENFORCEMENT IN THE STATE COURTS OF ITS RIGHTS UNDER THE PUBLIC RECORDS AND OPEN MEETINGS LAWS, WITH RESPECT TO THE INFORMATION COVERED BY YOUR HONOR'S GAG ORDER, OR CONFIDENTIALITY ORDER.

MR. PATIN: YOUR HONOR, WE WILL NOT STIPULATE TO THAT, BECAUSE THEY CAN FILE ANY SUIT THEY WANT IN STATE COURT RIGHT NOW.

THE COURT: THEY'RE SAYING BUT FOR THE EXISTENCE OF THIS DRACONIAN GAG ORDER, THEY WOULD ATTEMPT TO DO THAT RIGHT NOW, AND I THINK THAT'S FAIRLY OBVIOUS.

MR. PATIN: OUR POSITION, YOUR HONOR, IS THAT, IN GOING INTO EXECUTIVE SESSION, THE SCHOOL—

THE COURT: I UNDERSTAND THAT. WE'RE NOT TALKING ABOUT THE MERITS OF WHETHER OR NOT THEY WOULD GET A STATE COURT ORDER AGAINST YOU; THEY'RE JUST SAYING THEY WOULD BE SEEKING A STATE COURT ORDER.

MR. PATIN: WELL, WE'LL STIPULATE THAT THAT'S WHAT SHE WOULD SAY. WE DON'T STIPULATE TO THE TRUTH OF IT.

THE COURT: ALL RIGHT. YOU'RE NOT GOING TO STIPULATE TO THE TRUTH OF WHAT MS. LIGHTFOOT SAYS. OKAY, MARK THAT IN THE RECORD.

MR. PATIN: THE TRUTH OF THE LEGAL CONCLUSIONS SHE WOULD SEEK TO IMPLY, JUDGE.

MR. WEISS: YOUR HONOR, MS. LIGHTFOOT WOULD FURTHER TESTIFY THAT, GIVEN THE EXISTENCE OF THE GAG ORDER, MR. PASTOREK WOULD TESTIFY—

THE COURT: CONFIDENTIALITY ORDER, MR. WEISS.

MR. WEISS: PERHAPS I SHOULD REFER TO IT AS THE COURT'S ORDER OF FEBRUARY 6TH.

THE COURT: THAT'S ALL RIGHT.

MR. WEISS: GIVEN THE EXISTENCE OF THE FEBRUARY 6TH ORDER, THAT BOTH THE *ADVOCATE* AND WBRZ WOULD CONSIDER EFFORTS TO ENFORCE THEIR RIGHTS UNDER THE STATE PUBLIC RECORDS AND OPEN MEETINGS LAWS IN THE STATE COURTS OF LOUISIANA TO BE A VAIN AND USELESS ACT, GIVEN YOUR HONOR'S ORDER AT THIS POINT IN TIME.

THE COURT: AND THAT IT WOULD BE A VAIN AND USELESS ACT TO DO SO.

MR. PATIN: JUDGE, WE WOULD STIPULATE THAT THEY MIGHT SAY THAT. WE DO NOT AGREE WITH THE LEGAL CONCLUSION. AND WE'D CITE TO THEM ONE OF YOUR HONOR'S CASES UNDER THE PUBLIC RECORDS ACT THAT WAS DECIDED IN THE LAST TWO OR THREE YEARS. AND, ALSO, THE LAW STATES WHAT THE LAW STATES.

THE COURT: ALL RIGHT. SO BE IT.

MR. WEISS: YOUR HONOR, I'M NOT CLEAR. I ASSUME MR. PATIN IS SAYING HE WOULD STIPULATE THAT MS. LIGHTFOOT WOULD TESTIFY TO THAT EFFECT.

THE COURT: THAT'S WHAT I THOUGHT HE SAID. AND THAT'S WHAT SHOWS IN THE RECORD; DOESN'T IT, KAY?

MR. PATIN: YOUR HONOR, WITH MY CAVEAT.

THE COURT: THAT YOU AGREE THAT SHE WOULD SAY IT, BUT YOU DON'T NECESSARILY AGREE WITH THE CONCLUSIONS.

MR. PATIN: YES, SIR.

MR. WEISS: YOUR HONOR, MS. LIGHTFOOT AND MR. PASTOREK WOULD ALSO TESTIFY THAT THE EFFECT OF YOUR HONOR'S ORDER UPON THE *ADVOCATE* AND WBRZ HAS BEEN TO EXTINGUISH THE ABILITY OF THOSE ORGANIZATIONS TO HAVE THEIR RIGHTS, UNDER THE PUBLIC RECORDS ACT AND OPEN MEETINGS LAW, DETERMINED IN ACCORDANCE WITH LOUISIANA LAW DURING THE PENDENCY OF YOUR HONOR'S ORDER.

***5** MR. PATIN: YOUR HONOR, WE WILL NOT STIPULATE TO THAT.

MR. WEISS: YOUR HONOR, MAY I SPEAK TO THAT POINT SO WE CAN ATTEMPT TO CLARIFY IT?

THE COURT: SURE.

MR. WEISS: I DON'T UNDERSTAND THE BOARD'S POSITION ON THAT POINT, IT SEEMS TO ME THAT IT'S THE OBVIOUS INTENT OF YOUR HONOR'S ORDER, WHICH IS, OF COURSE, AN ORDER OF A FEDERAL COURT, SUPREME UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION, TO SUPERSEDE ANY RIGHTS THAT MIGHT EXIST UNDER STATE LAW.

I WOULD THINK THAT IF THE BOARD WOULD NOT RECOGNIZE THAT TRUTH, YOUR HONOR MIGHT SIMPLY WANT TO RECOGNIZE IT SO WE CAN SIMPLY PROCEED ON THAT ASSUMPTION, WHICH SEEMS, TO ME, TO BE FAIRLY CLEAR.

THE COURT: WELL, I'M CERTAINLY AWARE OF THE SUPREMACY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES, AND I THINK, REALLY, WE'RE JUST SPARRING AROUND HERE. CERTAINLY, THERE IS NO QUESTION BUT THAT THE *ADVOCATE* AND CHANNEL 2 ARE UNABLE TO OBTAIN NEWS THAT THEY OTHERWISE WOULD REPORT, OR INFORMATION THAT THEY WOULD CONSIDER NEWS, THAT THEY OTHERWISE WOULD REPORT AND DISSEMINATE TO THE PUBLIC AT LARGE. THAT'S THE EFFECT THAT THIS ORDER HAS HAD UPON THEM. IT HAS, I GUESS, ESSENTIALLY DRIED UP THEIR SOURCES OF INFORMATION ABOUT A 40–YEAR–OLD DESEGREGATION CASE, WHICH HAS SIGNIFICANT PUBLIC INTEREST, BOTH HERE AND ELSEWHERE. AND IT'S CERTAINLY ITEMS OF RED HOT NEWS THAT THEY WOULD LIKE TO BE TALKING ABOUT.

IF THAT'S CLEAR, I'LL TAKE JUDICIAL NOTICE OF IT.

MR. WEISS: JUST SO WE'RE CLEAR ON THIS POINT, DOES MR. PATIN STIPULATE, REGARDLESS OF THE LEGAL CONCLUSION ABOUT WHICH HE AND I MIGHT DIFFER, THAT MS. LIGHTFOOT WOULD TESTIFY AND MR. PASTOREK WOULD TESTIFY THAT THE EFFECT OF THE ORDER HAS BEEN TO EXTINGUISH THEIR ABILITY TO ENFORCE THEIR RIGHTS UNDER THE PUBLIC RECORDS AND OPEN MEETINGS LAWS?

THE COURT: I WOULDN'T THINK HE WOULD STIPULATE TO THAT BECAUSE IT'S SIMPLY NOT CORRECT. IF YOU HAVE RIGHTS UNDER THE PUBLIC RECORDS LAW, YOU CAN GO OVER TO THE STATE COURT AND ASK THE STATE COURT TO ADJUDICATE THOSE RIGHTS. IF YOU WANT TO ASSERT THOSE RIGHTS HERE, YOU CAN ASSERT THOSE RIGHTS HERE.

MR. PATIN: YOUR HONOR, WE WOULD OBJECT—

THE COURT: BUT YOU HAVE NOT DONE SO. YES?

MR. PATIN: I'M SORRY, YOUR HONOR. WE WOULD OBJECT ANYWAY TO THEM TRYING TO STATE LEGAL CONCLUSIONS. MOREOVER, THE STATE LAW PROVISIONS ON OPEN MEETINGS AND THE PUBLIC RECORDS LAW SPEAK FOR THEMSELVES.

MR. WEISS: YOUR HONOR, THE ISSUE IS NOT THE PROVISIONS OF STATE PUBLIC RECORDS AND OPEN MEETINGS LAW. THE ISSUE IS WHETHER THE INTENT AND EFFECT OF THE ORDER IS TO SUPERSEDE THEM.

THE COURT: NO, YOU'RE SAYING THAT THIS ORDER HAS THE EFFECT OF PREVENTING THE *STATE TIMES, ADVOCATE,* AND CHANNEL 2 FROM OBTAINING AN ADJUDICATION OF THEIR RIGHTS UNDER THE STATE LAWS, AND I TELL YOU THAT THAT IS ABSOLUTELY INCORRECT. YOU CAN DO IT RIGHT HERE, RIGHT NOW, EXCEPT THAT YOU HAVE NOT RAISED THAT ISSUE IN YOUR BRIEF.

MR. WEISS: YOUR HONOR, I BELIEVE, UNLESS I'M MISTAKEN, IF WE WERE TO ASSERT A PUBLIC RECORDS OR AN OPEN MEETINGS LAW CLAIM, EITHER IN STATE COURT OR HERE, WE WOULD IMMEDIATELY BE MET WITH THE OBJECTION THAT YOUR HONOR'S ORDER SETTLES THE QUESTION; THAT YOUR HONOR'S ORDER DECIDES THAT THIS INFORMATION CAN'T BE DISSEMINATED, AND, THEREFORE, WE CAN'T SUE THESE FOLKS IN STATE COURT TO OBTAIN RECORDS WHICH YOUR HONOR'S ORDER PROHIBITS THEM FROM DISCLOSING.

***6** THE COURT: THAT MIGHT BE THE CASE. THEY MAY MAKE THAT ARGUMENT. I DON'T KNOW. MY POINT SIMPLY IS THAT THAT ISSUE NOT BEFORE THE COURT BECAUSE YOU HAVE NOT MADE IT AN ISSUE, SO I WILL NOT ASK MR. PATIN TO STIPULATE THAT YOU ARE BEING DEPRIVED OF YOUR RIGHT TO ADJUDICATE THAT ISSUE. YOU'RE NOT AT ALL.

MR. WEISS: WELL, I THINK WE HAVE RAISED THE ISSUE REPEATEDLY.

THE COURT: LET'S MOVE ON TO THE NEXT ISSUE.

MR. WEISS: YOUR HONOR, MY CLIENTS WOULD TESTIFY THAT THEY GOT NO NOTICE PRIOR TO THE REQUEST MADE BY THE SCHOOL BOARD FOR ENTRY OF THE FEBRUARY 6TH ORDER.

THE COURT: MR. PATIN CAN STIPULATE TO THAT. THAT'S A MATTER OF PUBLIC RECORD. IT'S ALSO A MATTER OF PUBLIC RECORD THAT YOUR CLIENTS HAVE NEVER GOTTEN NOTICE OF ANY OTHER ORDER ISSUED IN THIS CASE FOR THE LAST FORTY YEARS. THAT'S A MATTER OF PUBLIC RECORD, AS WELL.

MR. PATIN: I THINK THE RECORD OF THIS CASE SPEAKS FOR ITSELF, YOUR HONOR.

THE COURT: ALL RIGHT. YOU STIPULATED TO THAT.

MR. WEISS: HE HAS STIPULATED TO THAT LAST POINT; IS THAT CORRECT?

THE COURT: SURE.

MR. WEISS: MY CLIENTS WOULD TESTIFY, YOUR HONOR, THAT THEY WERE AFFORDED NO OPPORTUNITY TO BE HEARD IN OPPOSITION TO THE FEBRUARY 6TH ORDER PRIOR TO ITS ENTRY.

THE COURT: AGAIN, THAT'S A MATTER OF PUBLIC RECORD, AS WELL. OR ANY OTHER ORDER IN THE LAST FORTY YEARS. OH, THAT'S NOT CORRECT. SOMETIMES ORDERS HAVE BEEN ISSUED AFTER HEARINGS IN OPEN COURT, SO THERE HAVE BEEN OCCASIONS WHEN YOUR CLIENT HAS HAD THE OPPORTUNITY TO OBSERVE, BUT NOT BE HEARD.

MR. WEISS: MY CLIENTS WOULD TESTIFY THAT THEY LEARNED, FOR THE FIRST TIME, OF THE FEBRUARY 6TH ORDER AT A PRESS CONFERENCE CONDUCTED BY MR. PATIN ON FEBRUARY 6, 1996.

THE COURT: I DON'T KNOW ABOUT THE PRESS CONFERENCE. I RARELY HAVE ANYTHING TO DO WITH THAT.

MR. PATIN: I MISSED IT, YOUR HONOR. I JUST MISSED IT. I MISSED WHAT HE SAID.

MR. WEISS: MY CLIENTS WOULD TESTIFY THAT THEY LEARNED ABOUT THE ENTRY OF THE ORDER FOR THE FIRST TIME AT A PRESS CONFERENCE CONDUCTED BY MR. PATIN ON FEBRUARY 6, 1996.

MR. PATIN: IF THAT'S WHAT THEY SAY.

THE COURT: I DON'T THINK YOU GOT THAT IN THE RECORD, KAY. I THINK THAT MEANS HE WILL SO STIPULATE.

MR. WEISS: YOUR HONOR, MY CLIENTS WOULD FURTHER TESTIFY—IN PARTICULAR, MR. PACK WOULD TESTIFY THAT AT THAT PRESS CONFERENCE, HE ASKED MR. PATIN WHO REQUESTED THE ENTRY OF THE FEBRUARY 6TH ORDER, AND MR. PATIN DECLINED TO ANSWER.

MR. PATIN: THAT'S ABSOLUTELY CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. WEISS: AND THEY WOULD FURTHER TESTIFY THAT THEY LEARNED, FOR THE FIRST TIME, THAT THE SCHOOL BOARD ADMITTED TO SEEKING THE ORDER IN A—

THE COURT: MAYBE WE CAN PUT THIS OF RECORD AND KIND OF GET THROUGH WITH ALL OF THESE PRELIMINARIES, MR. WEISS.

IT IS A FACT THAT IN AN IN CAMERA DISCUSSION BETWEEN THE COURT AND COUNSEL, THE SUBJECT MATTER OF THIS CONFIDENTIALITY ORDER WAS PROPOSED, OR RAISED, BY COUNSEL FOR THE EAST BATON ROUGE PARISH SCHOOL BOARD. A DISCUSSION WAS HELD AMONG COUNSEL AND THE COURT, AND COUNSEL FOR THE EAST BATON ROUGE PARISH SCHOOL BOARD REQUESTED THE ENTRY OF AN ORDER, A DRAFT OF WHICH HAD BEEN PRESENTED TO THE COURT, AND, I THINK, FAXED—IF THAT'S THE CORRECT TERM THESE DAYS—TO OPPOSING COUNSEL.

***7** THE COURT ULTIMATELY TOLD COUNSEL, THAT WITH ONE RELATIVELY MINOR MODIFICATION, THAT THE ORDER WOULD BE SIGNED, A MODIFICATION RELATIVE TO THERE BEING OPEN AND PUBLIC DISCUSSION FOLLOWING RESOLUTION UPON ANY PLAN THAT THE BOARD MIGHT COME UP WITH. THAT MODIFICATION WAS MADE, THE ORDER WAS SUBMITTED AND SIGNED, AND THAT'S HOW THIS CAME ABOUT. THERE WERE NO FORMAL REASONS FOR THE ACTION OF THE COURT ENTERED AS OF THAT TIME, ALTHOUGH THERE MAY WELL BE FORMAL REASONS ENTERED BEFORE WE LEAVE THE COURTHOUSE TODAY.

DOES THAT COVER EVERYTHING YOU NEED?

MR. WEISS: NO, YOUR HONOR, IT DOES NOT.

THE COURT: OKAY.

MR. WEISS: WE WOULD CALL MR. PATIN ON THE ISSUE OF PRECISELY WHAT HE SAID TO THE COURT IN THAT CONFERENCE AS THE PURPORTED JUSTIFICATION FOR ENTRY OF THE ORDER.

THE COURT: WELL, I WOULD NOT ALLOW THAT TESTIMONY TO BE ENTERED, SO YOU CAN SAY ANYTHING YOU WANT TO SAY, AS A PROFFER, AND IT WILL GO UP TO THE FIFTH CIRCUIT. AND THEN THEY CAN—YOU CAN MAKE UP ANYTHING YOU WANT TO, THAT HE WOULD SAY, IF I LET YOU CALL HIM, BUT I'M NOT GOING TO LET YOU CALL HIM.

MR. WEISS: SHALL I ADDRESS THAT NOW?

THE COURT: NO, NOT NOW. YOU CAN DO IT LATER, AFTER YOU GET THROUGH WITH ME.

MR. PATIN: WE ALSO HAVE A STIPULATION.

THE COURT: IT'S NOT YOUR TURN.

MR. WEISS: I'M NOT FINISHED.

MR. PATIN: OH, I'M SORRY.

MR. WEISS: AND, YOUR HONOR, WE WOULD FURTHER ASK MR. PATIN, IF WE CALLED HIM, WHAT OTHER COUNSEL SAID WITH RESPECT TO THE PROPOSED ENTRY OF THE ORDER AND WHAT—

THE COURT: WELL, I THINK WE CAN SAY THAT COUNSEL FOR THE UNITED STATES AND COUNSEL FOR THE PLAINTIFFS BOTH ESSENTIALLY SAID WE DIDN'T ASK FOR IT, BUT WE DON'T HAVE ANY OBJECTION.

IS THAT FAIR, MR. WILLIAMS?

MR. WILLIAMS: YES, SIR.

THE COURT: NOW, YOU WERE NOT THERE, MR. JACKSON, BUT IS THAT A FAIR STATEMENT? MR. MARSHALL WAS IN THE CONVERSATION.

MR. JACKSON: ON BEHALF OF THE UNITED STATES, IT IS MY UNDERSTANDING, JUDGE, THAT MR. MARSHALL WAS A PARTICIPANT OF THAT CONFERENCE CALL, AND THAT WAS, ESSENTIALLY, THE POSITION OF THE UNITED STATES; THAT IS, THAT WE NEITHER SUPPORTED NOR—

THE COURT: BUT IT WAS NOT AS VERBOSE AS THE ONE YOU'RE STATING NOW. IT WAS SIMPLY, WE DIDN'T ASK FOR IT, JUDGE, BUT WE DON'T OBJECT.

MR. JACKSON: WE DON'T OBJECT, WE DON'T SUPPORT IT.

THE COURT: THAT'S WHAT THE GOVERNMENT'S POSITION WAS.

MR. WEISS: AND WE WOULD FURTHER ASK MR. PATIN, YOUR HONOR, WHAT REASONS, IF ANY, YOUR HONOR CITED IN GRANTING THE ORDER.

THE COURT: I JUST TOLD YOU, I DIDN'T CITE ANY REASONS AT THAT TIME, OTHER THAN, YES, I'LL GO ALONG WITH IT IF YOU MAKE THIS CHANGE. AND I MAKE AN ADDITIONAL HANDWRITTEN CHANGE LATER ON, TOO.

MR. WEISS: WILL THE SCHOOL BOARD STIPULATE THAT YOUR HONOR GAVE NO REASONS PRIOR TO THE ENTRY OF THE ORDER FOR THE ENTRY OF THE ORDER?

THE COURT: I DON'T KNOW WHETHER THEY'LL STIPULATE TO IT, OR NOT, BUT I WILL TELL YOU I DID NOT. THAT'S NOT ENOUGH?

MR. WEISS: I JUST DON'T WANT TO FIND OUT LATER THAT THEY DISAGREE, FOR SOME REASON, WITH YOUR HONOR'S ACCOUNT OF WHAT OCCURRED.

***8** MR. PATIN: WE DON'T DISAGREE WITH YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU.

MR. WEISS: YOUR HONOR, IF I MAY CONTINUE WITH WHAT WE WOULD SHOW THROUGH OUR TESTIMONY, WE WOULD SHOW, THROUGH THE TESTIMONY OF MR. PACK, THAT HE, AS I INDICATED A MINUTE AGO—I BELIEVE WE GOT SIDETRACKED BRIEFLY—THAT MY CLIENTS FIRST LEARNED THAT THE SCHOOL BOARD ADMITTED SEEKING THE ORDER ENTERED ON FEBRUARY 6TH IN A PRESS RELEASE ISSUED BY THE SCHOOL BOARD ON FEBRUARY 16, 1996, AFTER MY CLIENTS HAD POSED INTERROGATORIES TO THE SCHOOL BOARD, SEEKING THAT INFORMATION.

THE COURT: WELL, I DON'T KNOW WHETHER THAT'S CORRECT, OR NOT. I HAVE NO WAY OF KNOWING THAT, BUT IT'S TOTALLY IRRELEVANT, SO GO ON.

MR. WEISS: CAN WE STIPULATE THAT MY CLIENT WOULD SO TESTIFY?

MR. PATIN: IF THAT'S WHAT YOU SAY YOUR CLIENT WOULD SAY, WE HAVE NO REASON TO DOUBT YOU.

MR. WEISS: YOUR HONOR, MS. LIGHTFOOT AND MR. PASTOREK WOULD TESTIFY THAT THE *ADVOCATE* AND WBRZ HAVE INTERVENED IN THIS ACTION FOR THE FOLLOWING PURPOSES: FIRST OF ALL, TO OBTAIN ACCESS TO—

THE COURT: IS THAT WHAT THEY WOULD SAY, OR IS THAT WHAT YOU SAY?

MR. WEISS: NO, THIS IS WHAT THEY WOULD SAY. THIS WOULD BE THEIR STATEMENT OF THE PURPOSES OF THEIR ORGANIZATIONS FOR INTERVENING IN THE LAWSUIT: FIRST, TO OBTAIN ACCESS TO DOCUMENTS IN THE CONTROL OR CUSTODY OF THE SCHOOL BOARD AND ITS SEVEN–THOUSAND–ODD EMPLOYEES—

THE COURT: THEY'RE NOT ALL ODD; SOME OF THEM ARE JUST REGULAR FOLKS.

MR. WEISS: —RELEVANT TO THE DESEGREGATION PLAN AND RELATED DATA.

MR. PATIN: YOUR HONOR, WE WOULD OBJECT THERE. THE ONLY THING THAT THIS ORDER OF FEBRUARY 6TH PROHIBITS IS MAKING WRITTEN AND ORAL COMMENTS ON ASPECTS OF THE PLAN. IT HAS NOTHING TO DO WITH RECORDS, IT HAS NOTHING TO DO WITH MEETINGS. IT'S JUST WRITTEN AND ORAL COMMENTS ABOUT THE PLAN.

MR. WEISS: YOUR HONOR, IT IS OUR INTERPRETATION OF THE ORDER, AS IT HAS BEEN APPLIED BY REPRESENTATIVES OF THE BOARD, THAT THE BOARD IS REFUSING TO DISCLOSE DOCUMENTS RELATING TO THE PLAN, AND MY CLIENTS WOULD SO TESTIFY.

MR. PATIN: YOUR HONOR, IF HE'S TALKING ABOUT DOCUMENTS THAT SHOW WHAT THE PLAN LOOKS LIKE, OUR BASIS FOR REFUSING TO GIVE HIM THAT IS BECAUSE WE HAVE ATTORNEY–CLIENT WORK PRODUCT PRIVILEGES, WHICH LOUISIANA LAWS RECOGNIZE, AND WHICH ARE EXEMPTED FROM DISCLOSURE UNDER THE LOUISIANA PUBLIC RECORDS ACT.

THE COURT: WELL, FOR WHATEVER REASON, YOU WILL STIPULATE THAT YOU HAVE REFUSED TO GIVE THEM. OR HAVE YOU? I DON'T KNOW WHETHER YOU HAVE, OR NOT.

MR. PATIN: WELL, I DON'T KNOW THAT THEY WERE EVEN ASKED FOR. IF THEY HAVE, I'M SURE WE WOULDN'T GIVE THEM TO THEM. BUT IT'S NOT ON THE BASIS OF THE ORDER; IT'S ON THE BASIS OF STATE LAW.

THE COURT: WILL THAT SATISFY YOUR PURPOSES?

MR. WEISS: YOUR HONOR, AS I SAID, MY CLIENTS WOULD TESTIFY THAT THEIR PURPOSE IN SEEKING TO INTERVENE AND OVERTURN THE ORDER IS TO OBTAIN ACCESS TO DOCUMENTS OF THE BOARD AND DOCUMENTS, INCLUDING, BY THE WAY, DRAFTS OF THE PLAN ITSELF, AND DOCUMENTS CONTAINING RELATED INFORMATION. AND I BELIEVE MR. PATIN WILL STIPULATE TO THAT, THAT THAT IS THEIR PURPOSE.

***9** THE COURT: HAVE YOUR CLIENTS MADE ANY SUCH REQUESTS, EITHER BEFORE OR AFTER THIS ORDER WAS SIGNED?

MR. WEISS: BEFORE THE ORDER WAS SIGNED, YOUR HONOR, THEY MADE NUMEROUS REQUESTS, AND WERE GIVEN DRAFTS OF THIS PLAN AS SHORT A PERIOD OF TIME AS FIVE OR SIX DAYS BEFORE THIS ORDER WAS ENTERED.

THE COURT: OKAY. HAVE YOU MADE ANY REQUESTS FOLLOWING THE SIGNING OF THIS ORDER?

MR. WEISS: THERE HAVE BEEN REQUESTS MADE, WHICH WE'RE PREPARED TO PUT ON EVIDENCE OF—AND I'LL GET TO THAT IN JUST A MINUTE—FOLLOWING THE ENTRY OF THE ORDER, WHICH HAVE BEEN DECLINED. FOR DOCUMENTS.

MR. PATIN: YOUR HONOR, I HAVE NO REASON TO BELIEVE THAT MR. WEISS WOULD MISREPRESENT FACTS TO THE COURT; HOWEVER, OUR BASIS FOR REFUSING, IF WE HAVE, INDEED, REFUSED TO GIVE THEM ANY

DOCUMENTS ON THE PLAN, IS BECAUSE STATE LAW GIVES US THAT RIGHT.

THE COURT: BUT THE FACT OF REFUSAL, YOU'RE WILLING TO STIPULATE TO, IF SUCH A REQUEST WERE MADE AT THIS TIME. YOU WOULD REFUSE TO DO IT, WHETHER IT'S ON THE BASIS OF STATE LAW, FEDERAL LAW, OUTER MONGOLIAN LAW, OR ANY OTHER LAW, YOU WOULD NOT DELIVER THE DOCUMENT. IS THAT A FAIR STATEMENT?

MR. PATIN: WELL, I'M NOT A STUDENT OF OUTER MONGOLIAN LAW, BUT—

THE COURT: YOU SHOULD. IT'S A VERY INTERESTING BRANCH OF THE LAW. CIVILIAN LAW, AS A MATTER OF FACT.

MR. WEISS: YOUR HONOR, MY CLIENTS WOULD FURTHER TESTIFY THAT IT IS ONE OF THEIR PURPOSES IN INTERVENING IN THIS LAWSUIT AND SEEKING TO VACATE THE COURT'S ORDER, TO OBTAIN ACCESS TO SCHOOL BOARD MEMBERS, OFFICIALS, EMPLOYEES, INCLUDING TEACHERS AND PRINCIPALS, WHO WOULD BE WILLING TO TALK TO THEM ABOUT THE PROPOSED DESEGREGATION PLAN AND DRAFTS OF THAT PLAN ABSENT THE COURT'S ORDER.

THE COURT: CERTAINLY, YOU WILL STIPULATE TO THAT, WILL YOU NOT, MR. PATIN, THAT ABSENT THE COURT'S ORDER, THEY WOULD BE INTERVIEWING EVERYBODY FROM BUS DRIVERS TO SUPERINTENDENTS?

MR. PATIN: I DON'T SEE WHY THEY CAN'T TALK TO EVERYBODY NOW, JUDGE, WITH THE ORDER. WE MAY NOT ANSWER THEM, BUT THEY'RE FREE TO TALK TO THEM.

THE COURT: WELL, THEY CERTAINLY ARE, I'LL AGREE WITH THAT. THEY'RE FREE TO ASK.

MR. PATIN: THEY'RE FREE TO ASK.

MR. WEISS: WELL, YOUR HONOR, LET ME MAKE IT PERFECTLY CLEAR. THEY'RE SEEKING TO OBTAIN THE RIGHT TO INTERVIEW THESE PEOPLE AND TO HAVE THESE PEOPLE PROVIDE INFORMATION TO THEM, AND THEIR OPINIONS TO THEM, ABOUT VARIOUS ASPECTS OF THE PLAN.

MR. PATIN: YOUR HONOR, THEY CAN INTERVIEW PEOPLE NOW. AND IF THEY DON'T WANT TO TALK TO THEM, THEY DON'T TALK TO THEM. HE COULD ASK PEOPLE QUESTIONS AND—

THE COURT: I UNDERSTAND THAT. HE'S JUST TRYING TO GET A FACTUAL BASIS UPON WHICH HE CAN PROCEED TO THE NEXT LEVEL, WHICH IS TO TROT OUT HIS LEGAL AUTHORITIES TO SHOW WHY THIS ORDER IS INVALID. AND I'D LIKE TO TRY TO GET IT DONE AS QUICKLY AS POSSIBLE, WITH THE COOPERATION OF EVERYONE CONCERNED.

MR. PATIN: WELL, WE WILL STIPULATE, YOUR HONOR, THAT HE IS FREE TO TALK TO ANYONE HE WANTS TO TALK TO, WITH OR WITHOUT THE ORDER OF FEBRUARY 6TH, AND THAT THOSE PERSONS ARE FREE TO ANSWER HIS QUESTIONS, WITH OR WITHOUT THE ORDER. IF THEY ANSWER THE QUESTIONS IN VIOLATION OF THE ORDER, THEY'VE VIOLATED THE ORDER.

***10** THE COURT: WELL, YOU WILL ADMIT THAT THERE IS AN EFFECT OF SUPPRESSING SOME INFORMATION THAT THEY MIGHT OTHERWISE GET?

MR. PATIN: YES.

THE COURT: ALL RIGHT. THAT IS, THE EFFECT OF THE CONFIDENTIALITY ORDER. WHETHER IT'S WRITTEN OR VERBAL, IT'S INFORMATION.

MR. WEISS: I DON'T MEAN TO ARGUE MY CASE NOW, BUT I THINK EVEN YOUR HONOR RECOGNIZES THAT MR. PATIN IS TRYING TO HAVE IT BOTH WAYS. HE'S TRYING TO TELL US, ON THE ONE HAND, THAT HE'S ENTITLED TO HAVE AN ORDER TO STOP THESE HUNDREDS, IF NOT THOUSANDS, OF TEACHERS AND PRINCIPALS AND OTHER PEOPLE FROM GIVING INTERVIEWS TO MY CLIENT, AND, ON THE OTHER HAND, HE STANDS UP HERE AND HE SAYS THAT MY CLIENTS ARE PERFECTLY FREE TO TALK TO THESE PEOPLE. YOU CAN'T HAVE IT BOTH WAYS.

THE COURT: WELL, I WOULD AGREE WITH THAT,

AND I THINK WE JUST RESOLVED THAT, I HOPE.

MR. WEISS: YOUR HONOR, MY CLIENTS WOULD FURTHER TESTIFY THAT THEY ARE INTERVENING HERE—THE PURPOSE FOR INTERVENING HERE, ONE OF THE PURPOSES, IS TO RESTORE THEIR RIGHTS UNDER STATE LAW, UNDER THE PUBLIC RECORDS AND OPEN MEETINGS LAW, AND THEIR ABILITY TO HAVE THOSE RIGHTS ADJUDICATED IN STATE COURT UNDER THE PROCEDURE PROVIDED FOR BY THOSE RESPECTIVE STATE STATUTES.

THE COURT: I THOUGHT WE JUST WENT THROUGH THAT. IN FACT, I KNOW WE DID. WE PASSED THAT CURVE.

MR. WEISS: WE TALKED ABOUT THE EFFECT. NOW I'M TALKING ABOUT THE PURPOSE OF RESTORING THOSE RIGHTS.

THE COURT: WELL, I TAKE A LITTLE BIT OF EXCEPTION AT THE WORD RESTORE. AS WE JUST WENT THROUGH HERE A FEW MINUTES AGO, YOU CERTAINLY HAVE A FORUM IN WHICH TO ADJUDICATE THOSE RIGHTS, IF YOU CARE TO.

MR. WEISS: I'M SIMPLY SAYING MY CLIENTS WOULD TESTIFY THAT THAT IS THEIR OBJECTIVE. WE CAN ARGUE ABOUT THE LEGAL CONSEQUENCES—

THE COURT: WELL, I DON'T THINK THEY WOULD USE THE WORD RESTORE. THEIR OBJECTIVE IS TO GET INFORMATION. THAT'S WHAT THEIR OBJECTIVE IS.

MR. WEISS: THEIR OBJECTIVE—

THE COURT: AND PUBLISH INFORMATION.

MR. WEISS:—IS TO PUT THEMSELVES BACK WHERE THEY WERE BEFORE THE COURT ENTERED THIS ORDER, WITH RESPECT TO LOUISIANA PUBLIC RECORDS AND OPEN MEETINGS LAWS.

THE COURT: OKAY, WE'LL ACCEPT THAT.

MR. PATIN: I CAN'T HEAR WHAT HE'S SAYING HALF THE TIME, YOUR HONOR.

THE COURT: HE SAID THAT THE PURPOSE OF THE INTERVENORS IN THIS LITIGATION IS TO PUT THEMSELVES INTO THE SAME POSITION THEY WERE IN, RELATIVE TO VIS–A–VIS THE STATE PUBLIC RECORDS ACTS, ET CETERA, INTO THE SAME POSITION THAT THEY WERE IN PRIOR TO THE SIGNING OF THIS ORDER.

MR. PATIN: WELL, YOUR HONOR, SINCE WE DON'T BELIEVE THIS AFFECTS THEIR RIGHTS UNDER EITHER ONE OF THOSE STATE STATUTES, I GUESS WE'LL STIPULATE.

THE COURT: ALL RIGHT. WELL, WE'LL GRATEFULLY ACCEPT THAT STIPULATION.

MR. WEISS: YOUR HONOR, THE QUESTION AROSE AS TO WHETHER MY CLIENTS HAD REQUESTED AND BEEN DENIED INFORMATION SUBSEQUENT TO THE ENTRY OF THE ORDER, SO LET ME ADDRESS THAT, IF I MAY, IN TERMS OF—

MR. PATIN: WE'VE ALREADY STIPULATED ON THAT, YOUR HONOR.

***11** THE COURT: I THOUGHT YOU STIPULATED THAT IF SUCH A REQUEST WERE MADE, IT WOULD BE DENIED.

MR. WEISS: MR. PATIN INDICATED, YOUR HONOR, AS I UNDERSTOOD WHAT HE HAD TO SAY, THAT HE WOULD NOT STIPULATE THAT WE HAD REQUESTED DOCUMENTS, WHICH HAD BEEN DENIED SUBSEQUENT TO THE ENTRY OF THE ORDER, AND WE'RE PREPARED TO OFFER PROOF OF THAT.

MR. PATIN: YOUR HONOR, IF HE'S TALKING ABOUT THE PLAN ITSELF, HE'S ABSOLUTELY RIGHT, WE'RE NOT GIVING HIM THAT.

MR. WEISS: LET ME TELL YOU EXACTLY WHAT MR. PACK WOULD TESTIFY, YOUR HONOR.

YOUR HONOR, FIRST, HE WOULD TESTIFY THAT HE WAS GIVEN EXTENSIVE INFORMATION ABOUT THE PLAN PRIOR TO THE ENTRY OF THE ORDER, INCLUDING DRAFTS OF THE PLAN, INFORMATION RELATING TO BUSING, INFORMATION RELATING TO STUDENT TEST

SCORES. HE WOULD TESTIFY THAT HE AND MS. LIGHTFOOT ATTENDED WORKSHOP SESSIONS CALLED BY THE SUPERINTENDENT TO PRESENT AND DISCUSS THE DRAFT PLANS, WHICH THEY DISSEMINATED, AND THE UNDERLYING DATA.

CAN WE STIPULATE TO THAT?

MR. PATIN: YOUR HONOR, I THINK MY CLIENT WAS A SIEVE BEFORE. WE'LL STIPULATE TO THAT.

THE COURT: ALL RIGHT.

MR. WEISS: FOLLOWING THE ENTRY OF THE ORDER, YOUR HONOR, MY CLIENT, MR. PACK, WOULD TESTIFY AS FOLLOWS: MY CLIENT WOULD TESTIFY THAT HE HAS NOT REQUESTED A DRAFT, A CURRENT DRAFT OF THE DESEGREGATION PLAN FOLLOWING THE ENTRY OF THE ORDER BECAUSE, FROM HIS OTHER DEALINGS WITH MEMBERS OF THE BOARD, RELATIVE TO INFORMATION, HE CONSIDERED IT A VAIN AND USELESS ACT TO REQUEST THE INFORMATION.

THE COURT: ALL RIGHT. MR. PACK CONSIDERS IT A VAIN AND USELESS ACT TO ASK YOU FOR INFORMATION OR COPIES OF DRAFTS AT THIS TIME.

MR. PATIN: IF HE SAYS SO.

THE COURT: THAT'S WHAT HE WOULD TESTIFY TO.

MR. WEISS: AND MR. PACK WOULD TESTIFY THAT PRIOR TO THE ENTRY OF THE ORDER, THE DIRECTOR OF FINANCE OF THE SCHOOL SYSTEM TOLD MR. PACK THAT SHE WOULD COMPILE A COST COMPARISON BETWEEN GIFTED PROGRAMS AND REGULAR PROGRAMS IN THE SCHOOL SYSTEM, BUT THAT AFTER THE ORDER WAS ENTERED, HE DID NOT EVEN REQUEST THAT INFORMATION BECAUSE HE ASSUMED IT WOULD NOT BE PROVIDED TO HIM PURSUANT TO THE ORDER. THAT WOULD BE HIS TESTIMONY.

MR. PATIN: HE CAN MAKE ANY ASSUMPTIONS HE WISHES, YOUR HONOR. WE DO NOT NECESSARILY AGREE WITH HIS CONCLUSION.

MR. WEISS: MR. PACK WOULD TESTIFY THAT PRIOR TO THE ENTRY OF THE ORDER, THE PERSONNEL DIRECTOR OF THE SCHOOL SYSTEM SAID THAT SHE WAS PREPARING A STUDY OF THE DEGREED STATUS OF TEACHERS IN THE SYSTEM IN CONNECTION WITH THE PLAN. AFTER THE ORDER WAS ENTERED, MR. PACK WOULD TESTIFY THE PERSONNEL DIRECTOR LEFT A MESSAGE FOR MR. PACK ON HIS VOICE MAIL, THAT SHE COULD NOT PROVIDE HIM WITH THE PROMISED INFORMATION, THAT HE HAD TO GET CLEARANCE FROM THE BOARD'S ATTORNEY TO OBTAIN THE INFORMATION.

MR. PATIN: THAT'S HEARSAY, YOUR HONOR, AND WE CAN'T STIPULATE TO THAT.

MR. WEISS: IT ISN'T HEARSAY. IT'S NOT BEING OFFERED TO PROVE THE TRUTH OF WHAT SHE SAID, MERELY THAT SHE SAID IT.

THE COURT: IT'S BEING OFFERED TO PROVE THE TRUTH OF THE FACT THAT SHE CONSULTED SOMEONE WHO TOLD HER SHE COULDN'T DO IT.

***12** MR. WEISS: IT'S BEING OFFERED TO PROVE THAT SHE CALLED MR. PACK AFTER THE ENTRY OF THE ORDER AND SAID, I CAN NO LONGER GIVE YOU THE INFORMATION; YOU'VE GOT TO CALL OUR ATTORNEY. SHE TOLD HIM THAT. THAT'S ALL WE'RE OFFERING IT TO PROVE.

THE COURT: WELL, THAT'S NOT WHAT YOU SAID. I THINK THAT'S DIFFERENT, YES; THAT I CAN'T GIVE YOU THE INFORMATION, YOU'LL HAVE TO CALL MY LAWYER. I THINK HE'LL STIPULATE TO THAT.

MR. PATIN: WE'LL STIPULATE THAT HE WOULD SAY THAT, YOUR HONOR.

MR. WEISS: MR. PACK WOULD TESTIFY, YOUR HONOR, THAT PRIOR TO THE ENTRY OF THE ORDER, VICTOR KIRK, SUPERINTENDENT MATHEWS' EXECUTIVE ASSISTANT—

THE COURT: HOW MANY OF THOSE ARE YOU GOING TO HAVE? I MEAN, YOU CAN MAKE THE POINT. ANYBODY OVER THEREIS GOING TO GIVE YOU THE SAME ESSENTIAL REACTION.

MR. WEISS: I THOUGHT THAT WAS CLEAR EARLIER ON. NOW I HEARD, WHEN MR. PATIN SAID, NO, THEY'LL GIVE YOU DOCUMENTS, OR THAT THIS ORDER HAS GOT NOTHING TO DO WITH GIVING OUT DOCUMENTS, THEN I FEEL I HAVE TO ADDRESS THAT ISSUE.

THE COURT: WELL, HE ALSO, IMMEDIATELY FOLLOWING, SAID THAT IF YOU ASK FOR A DOCUMENT THAT IS A DRAFT OF THIS PLAN, IF THEY'RE WORKING ON A PLAN, OR WHATEVER IT IS THEY'RE WORKING ON, THEY WOULD REFUSE TO DO SO.

DIDN'T YOU STIPULATE TO THAT?

MR. PATIN: YOUR HONOR, WITH THIS CAVEAT: CERTAIN OF THE TESTIMONY MR. PACK WILL GIVE, REGARDING THE DOCUMENTS, INVOLVED THE SCHOOL BOARD CREATING CERTAIN TYPES OF DOCUMENTS FROM EXISTING DOCUMENTS TO MEET SOME CONCERN THAT MR. PACK HAS. THE LOUISIANA SUPREME COURT RULED, IN A CASE THAT I ARGUED JUST THE OTHER DAY, THAT THE PUBLIC RECORDS ACT DOES NOT REQUIRE PRODUCTION—CREATION OF DOCUMENTS FROM EXISTING DATA WITHIN AN AGENCY TO SATISFY SOMEONE'S REQUEST.

NOW, THE KINDS OF DOCUMENTS HE'S TALKING—ESPECIALLY THE ONE THAT WE GOT THE PHONE CALL ON, IS NOT, IN OUR VIEW, A DOCUMENT THAT IS DESIGNED, UNDER LOUISIANA LAW, TO COME IN UNDER THE PUBLIC RECORDS ACT. SHE WAS GOING TO BE—

THE COURT: I'M REALLY NOT INTERESTED IN DEBATING THE NICETIES OF THE LOUISIANA PUBLIC RECORDS ACT OR WHAT'S IN IT, BECAUSE IT'S NOT BEFORE US. THE ESSENTIAL FACT THAT NEEDS TO BE ESTABLISHED, I THINK, IS THAT THIS ORDER HAS HAD AN EFFECT, A VERY SIGNIFICANT EFFECT, UPON THE NEWS–GATHERING ABILITIES OF THE *STATE TIMES,* OR THE *ADVOCATE* AS IT IS NOW, AND CHANNEL 2. AND AS I SAID A MOMENT AGO, IT'S ESSENTIALLY DRIED UP THEIR SOURCES OF NEWS. AND I THINK THAT'S CORRECT. THAT'S THE EFFECT IT HAS.

IT DOESN'T MAKE ANY DIFFERENCE HOW MANY PEOPLE YOU TALK TO OVER THERE WHO SAID I'M NOT GOING TO TELL YOU, THE FACT OF THE MATTER IS, THAT'S WHAT THEY TELL YOU, I'M NOT GOING TO TELL YOU. YOU MADE YOUR POINT.

MR. WEISS: I AGREE, YOUR HONOR, BUT MY FURTHER POINT THAT I NEED TO MAKE IS THE IMPACT OF THE ORDER UPON, SPECIFICALLY, THE PROVISION OF DOCUMENTS WHICH, OTHERWISE, WE CONTEND WERE PROVIDED FREELY AND WOULD BE PROVIDED UNDER THE PUBLIC RECORDS ACT, AND WHICH WE COULD GO TO COURT AND COMPEL THE PROVISION OF UNDER THE PUBLIC RECORDS ACT.

***13** THE COURT: WHAT MR. PATIN HAS SAID IS THAT PRIOR TO THIS ORDER, HIS CLIENT WAS, AS I RECALL, A SIEVE, AND YOU COULD GET ANYTHING YOU ASKED FOR; VERBAL, WRITTEN, OR OTHERWISE.

IS THAT CORRECT?

MR. PATIN: YES.

THE COURT: WHETHER IT FELL UNDER THE PUBLIC RECORDS ACT, OR NOT.

MR. WEISS: BUT, YOUR HONOR, THE QUESTION IS, PERHAPS WE COULD PIN IT DOWN. I THINK THIS WOULD BE HELPFUL, IF I RAISED THE QUESTION IN THIS WAY.

MR. PATIN STOOD HERE A FEW MINUTES AGO, AS I APPRECIATE IT, AND TOLD THE COURT THIS ORDER DOESN'T HAVE ANY EFFECT ON DOCUMENTS. CAN WE, RIGHT HERE AND NOW, CLARIFY THE ORDER TO MAKE CLEAR THAT IT IS NOT INTENDED TO AND DOES AFFECT THE RIGHT OF MY CLIENTS UNDER THE LOUISIANA PUBLIC RECORDS ACT TO OBTAIN DOCUMENTS FROM THE SCHOOL BOARD. THIS ORDER.

THE COURT: I DON'T EVEN HAVE A COPY OF THE ORDER, SO I CAN'T SPEAK TO THAT.

MR. PATIN: YOUR HONOR, IF COUNSEL WILL READ THE ORDER, THE ONLY THING THE ORDER SAYS IS WRITTEN AND ORAL COMMENTS ABOUT THE PLAN, PERIOD. IT DOESN'T USE THE WORD DOCUMENTS.

THE COURT: WELL, WRITTEN, I THINK, DOES INCLUDE DOCUMENTS, UNLESS I'M MISTAKEN.

MR. PATIN: ONLY AS TO THE PLAN, THAT'S ALL THAT IT COVERS.

MR. WEISS: YOUR HONOR, I'M NOT GETTING AN ANSWER. YOU SEE, THIS IS MY PROBLEM. DOES THE ORDER, OR DOES NOT THE ORDER—WOULD THE COURT PLEASE ASK MR. PATIN IF, DOES THE ORDER, OR DOES NOT THE ORDER EXTEND TO DOCUMENTS IN THE CUSTODY AND CONTROL OF THE SCHOOL BOARD?

IF IT DOESN'T, THEN, OBVIOUSLY, MY ARGUMENT IS CONSIDERABLY NARROWER AND WE WILL PURSUE THE MATTER IN THE STATE COURTS. AND WE CAN TAKE UP ALL OF THESE ISSUES ABOUT ATTORNEY–CLIENT PRIVILEGE, WHICH HAS SO RECENTLY COME TO MR. PATIN'S ATTENTION, AND WORK PRODUCT PRIVILEGE, AND ALL THESE ISSUES IN THE STATE COURTS OF LOUISIANA. THAT'S WHAT WE WOULD LIKE TO DO.

THE COURT: WELL, THE ORDER COVERS ANY ASPECTS OF ANY DRAFTS OF DESEGREGATION PLANS IN CONNECTION WITH THE EAST BATON ROUGE PARISH SCHOOL SYSTEM. SO, IF IT RELATES TO ANY ASPECT OF ANY DRAFT OF DESEGREGATION PLANS OF THE EAST BATON ROUGE PARISH SCHOOL SYSTEM, IT WOULD BE COVERED BY THE ORDER, AND THE DOCUMENT WOULD NOT BE FURNISHED. THAT'S WHAT THE ORDER SAYS. WE DON'T HAVE TO STIPULATE TO THAT. THAT'S A MATTER OF LAW, AND I'LL TELL YOU THAT'S WHAT IT COVERS.

MR. WEISS: THAT WAS MY INTERPRETATION OF THE ORDER, BUT I THOUGHT MR. PATIN WAS SAYING THAT IN AN EFFORT TO TRY TO PERSUADE THE COURT THAT IT DIDN'T NEED TO RECEIVE EVIDENCE ON WHETHER WE HAD OR HAD NOT TAKEN DOCUMENTS, A FEW MINUTES AGO HE SAID THIS ORDER DOESN'T COVER DOCUMENTS. ALL IT COVERS IS COMMUNICATIONS ABOUT THE PLAN.

THE COURT: HE OBVIOUSLY MISSPOKE HIMSELF. I THINK WE'VE STRAIGHTENED HIM OUT NOW.

MR. WEISS: SO, THE ORDER DOES COVER DOCUMENTS; IS THAT CORRECT?

THE COURT: I DON'T THINK THERE IS ANY QUESTION ABOUT IT.

MR. WEISS: OKAY, THANK YOU, YOUR HONOR. LET ME THEN CONTINUE WITH WHAT MR. PACK WOULD TESTIFY ABOUT DOCUMENTS THAT HE HAS NOT BEEN PROVIDED.

***14** THE COURT: SURELY, THERE IS AN EASIER AND QUICKER WAY TO GET THROUGH THIS, MR. WEISS.

MR. WEISS: I DON'T THINK I HAVE MUCH MORE TO GO ON THIS, IF WE CAN BEAR WITH IT.

THE COURT: WELL, I HOPE NOT, BECAUSE I AM FAST LOSING MY PATIENCE WITH THIS.

MR. WEISS: YOUR HONOR, MR. PACK WOULD TESTIFY THAT ON FEBRUARY 7, 1996, HE MADE A PUBLIC RECORDS REQUEST FOR TWO RECORDS. FIRST, RECORDS RELATING TO MONEY ALLOCATED TO SCHOOLS FOR MATERIALS OF INSTRUCTION AND TEXTBOOKS. AND A SECOND REQUEST FOR MONEY RAISED BY THE SCHOOLS FROM NON–PUBLIC SOURCES. AND MR. PACK WOULD TESTIFY THAT HE WAS PROVIDED WITH INFORMATION ABOUT THESE SUBJECTS, BUT NOT GIVEN A REPORT THAT HAD BEEN COMPILED BY ASSOCIATE SUPERINTENDENT MERCER FOR PURPOSES OF THE DESEGREGATION PLAN.

IN OTHER WORDS, HE WAS GIVEN SOME VERSION OF THE INFORMATION HE REQUESTED, BUT WAS TOLD THAT HE COULD NOT BE PROVIDED WITH INFORMATION THAT WAS COMPILED FOR PURPOSES OF THE DESEGREGATION PLAN BECAUSE OF THE COURT'S GAG ORDER, AND HE WOULD SO TESTIFY.

THE COURT: WELL, OBVIOUSLY, I DON'T HAVE ANY PERSONAL KNOWLEDGE OF ANYTHING LIKE THAT OCCURRING.

MR. PATIN, DO YOU?

MR. PATIN: I HAVE NO PERSONAL KNOWLEDGE

OF IT OCCURRING EITHER. BUT IF HE SAYS MR. PACK WILL SAY THAT, I HAVE NO DOUBT BUT THAT MR. PACK WILL SAY THAT.

MR. WEISS: THE EVIDENCE WE WOULD OFFER, THROUGH THE TESTIMONY OF MR. PATIN WOULD BE, AGAIN, CONTINUING ON THE ISSUE OF THE PROCEDURE THAT WAS FOLLOWED—

THE COURT: I'VE ALREADY TOLD YOU THAT YOU AND MR. PATIN—I'M NOT GOING TO LET YOU CALL MR. PATIN AS A WITNESS. I'M NOT GOING TO LET YOU RECITE HERE. YOU CAN DO IT AS AN APPELLATE PROFFER AFTER I GET THROUGH IN COURT. GIVE IT TO MR. LORIO HERE, WHO WILL ATTACH IT TO THE RECORD.

MR. WEISS: I WAS JUST GOING TO INDICATE SEVERAL DIFFERENT POINTS THAT I WOULD ASK MR. PATIN ABOUT.

THE COURT: WELL, NOT HERE TODAY, YOU'RE NOT GOING TO INDICATE THAT.

MR. WEISS: DO YOU PREFER ME TO HANDLE THAT BY PROFFER?

THE COURT: NOT BY PROFFER NOW, PROFFER AFTER COURT, YES, WHEN I'M NOT PRESENT, BECAUSE I DON'T HAVE TIME TO FOOL WITH IT.

MR. WEISS: LET ME JUST STATE FOR THE RECORD, THERE ARE OTHER ITEMS, WHICH I WILL HANDLE BY PROFFER, THAT WE WOULD ASK MR. PATIN ABOUT.

YOUR HONOR, MS. LIGHTFOOT, IF CALLED TO TESTIFY, WOULD TESTIFY THAT THE *ADVOCATE* BELIEVES THAT IT IS OF THE UTMOST IMPORTANCE, FROM THE STANDPOINT OF NEWSWORTHINESS, TO REPORT ON THE SCHOOL DESEGREGATION PLAN AS IT EVOLVES, AS DISTINGUISHED FROM THE FINAL VERSION THAT IS SUBMITTED TO THE COURT AFTER AGREEMENT AMONG ALL PARTIES. AND SHE WOULD STATE THE FOLLOWING REASONS, IN HER CAPACITY AS EXECUTIVE EDITOR, WHY SHE BELIEVES—

THE COURT: WELL, I WOULD NOT LET HER DO THAT ANYWAY. YOU CAN SAY THAT, BUT YOU'RE JUST PUTTING WORDS IN HER MOUTH. I KNOW SHE BELIEVES THAT. ACTUALLY, SHE DOESN'T HAVE TO HAVE WORDS PUT IN HER MOUTH. SHE'S PRETTY GOOD AT IT HERSELF. BUT THAT'S NOT EVIDENCE. THAT'S NOT ANYTHING OTHER THAN A DEEP BELIEF IN THE FIRST AMENDMENT. WE ALL HAVE A DEEP ABIDING CONVICTION THAT THE FIRST AMENDMENT IS GOOD STUFF.

***15** MR. WEISS: WELL, YOUR HONOR, SHE WOULD ACTUALLY TESTIFY AS TO SPECIFIC REASONS AS TO WHY SHE BELIEVES IT'S IMPORTANT, FROM A NEWSWORTHINESS STANDPOINT, TO REPORT—

THE COURT: OKAY, THAT'S ARGUMENT. THAT'S NOT FACT. THAT'S NOT TESTIMONY. LET'S GO ON TO SOMETHING ELSE.

MR. WEISS: MAY I PROFFER THAT INFORMATION, ALSO, YOUR HONOR?

THE COURT: WHEN WE GET OUT OF COURT, YOU CERTAINLY MAY.

WE HAVE SOME SERIOUS ISSUES TO TALK ABOUT HERE TODAY, AND I REALLY WOULD LIKE TO GET TO THEM AND GET THROUGH WITH THIS, ESSENTIALLY, NON–PRODUCTIVE PRELIMINARY STUFF THAT YOU SEEM DETERMINED TO GO THROUGH.

MR. WEISS: YOUR HONOR, WE INTENDED TO CALL THESE WITNESSES. AND I'M ATTEMPTING TO DO THIS IN ORDER TO SAVE EVERYONE TIME RATHER THAN CALL THE WITNESSES. IT'S A RATHER UNUSUAL PROCEDURE, AND I'M TRYING TO DO MY BEST TO BE SURE THAT THE RECORD IS AS COMPLETE AS I THINK IT NEEDS TO BE TO SERVE MY CLIENT'S INTERESTS. I'M DOING THE BEST I CAN TO TRY TO GET THROUGH IT QUICKLY.

THE COURT: ALL RIGHT, WELL, PROCEED.

MR. WEISS: MS. LIGHTFOOT, IF CALLED TO TESTIFY, WOULD TESTIFY THAT THE INFORMATION THAT THE *ADVOCATE* OBTAINED CONCERNING THE DRAFTS OF THE DESEGREGATION PLAN PRIOR TO THE ORDER CAN NO LONGER BE REPLIED UPON FOR NEWS REPORTING BECAUSE THE *ADVOCATE* IS

UNABLE TO DETERMINE NOW WHETHER THE INFORMATION IS CURRENT OR ACCURATE.

THE COURT: WHETHER THE OLD INFORMATION IS CURRENT OR ACTIVE.

MR. WEISS: RIGHT.

THE COURT: I THINK THAT'S A FAIR CONCLUSION. YOU'RE CERTAINLY CORRECT; SHE DOESN'T KNOW WHAT THEY'RE TALKING ABOUT. SHE DOESN'T KNOW WHETHER THEY'RE TALKING ABOUT SOMETHING DIFFERENT THAN WHAT HAS BEEN PREVIOUSLY FURNISHED. THAT'S A VERY OBVIOUS FACT.

MR. WEISS: MS. LIGHTFOOT, IF CALLED TO TESTIFY, WOULD TESTIFY THAT AT THE TIME THE COURT'S ORDER OF FEBRUARY 6TH CAME DOWN, THE *ADVOCATE* WAS PLANNING A SIGNIFICANT FOCUS IN ITS NEWSPAPER, LEADING UP TO WHAT THEY THOUGHT WOULD BE THE SUBMISSION OF THE PLAN TO THE COURT IN EARLY MARCH.

THE COURT: OH, IS THAT CORRECT? I DIDN'T REALIZE THAT. I WAS UNAWARE OF THAT, PERSONALLY.

MR. WEISS: THAT'S WHAT SHE WOULD TESTIFY, THAT IT WAS HER UNDERSTANDING THAT THAT WAS THE TIMETABLE, AND THAT SHE WAS PLANNING A SIGNIFICANT FOCUS ON THESE ISSUES IN THE NEWSPAPER LEADING UP TO THE SUBMISSION.

THE COURT: WELL, I CAN STATE FOR THE RECORD, THAT THE COURT HAS NOT ESTABLISHED ANY TIMETABLE, AND THE COURT DOESN'T INTEND TO ESTABLISH ANY TIMETABLE.

AND I MIGHT AS WELL TELL YOU THIS, WHILE WE'RE ABOUT IT: ALTHOUGH THIS ORDER DOESN'T MAKE IT VERY PLAIN, AT SUCH TIME THAT THE MEMBERS OF THE EAST BATON ROUGE PARISH SCHOOL BOARD AND THE OTHER PARTIES TO THIS LAWSUIT, WHICH DOES NOT INCLUDE YOUR CLIENTS, COME TO AND SAY WE HAVE SOMETHING FOR THE COURT—AND THEY MAY NOT DO SO. THE HISTORY OF THIS LITIGATION IS TO THE CONTRARY. SADLY. SADLY. VERY SADLY, TO THE CONTRARY. SADLY FOR THIS COMMUNITY, NOT JUST THE EAST BATON ROUGE PARISH SCHOOL SYSTEM, BUT FOR THE ENTIRE COMMUNITY. SADLY, SADLY.

***16** THIS IS THE FIRST TIME IN FORTY YEARS THAT WE'VE EVER HAD A MAJORITY OF THE EAST BATON ROUGE PARISH SCHOOL BOARD WHO WAS WILLING TO STAND UP AND ACKNOWLEDGE PUBLICLY ITS RESPONSIBILITY FOR THE DESEGREGATION OF THE EAST BATON ROUGE PARISH SCHOOL SYSTEM, AND WHO INTENDED, APPARENTLY, TO DO SOMETHING ABOUT IT RATHER THAN TO LET THE COURT ISSUE ORDERS AND LET THE COURT WORRY ABOUT IT. I FIND THAT TO BE A VERY ENCOURAGING MOVE, ONE THAT HAS NEVER HAPPENED IN THE 40–YEAR HISTORY OF THIS LITIGATION.

NOW, I HAVEN'T HAD IT FOR FORTY YEARS. IT SEEMS LIKE FORTY YEARS. THIS CASE IS OLDER THAN A LOT OF THE PEOPLE IN THIS COURTROOM TODAY.

IT IS THE COURT'S INTENTION, REGARDLESS OF WHAT THIS LITTLE OLE ORDER SAYS, THAT NOTHING WILL BE PRESENTED TO THIS COURT UNTIL AFTER WHATEVER THESE FOLKS COME UP WITH, IF THEY COME UP ANYTHING, IS FULLY DISSEMINATED TO THE PUBLIC AND THE PRESS. AND THAT EVERYBODY WHO HAS ANYTHING TO SUGGEST OR COMMENT UPON, OR TO TRY TO GET THE BOARD CHANGE WHATEVER IT MAY HAVE COME UP WITH, IS GIVEN FULL OPPORTUNITY TO DO THAT, BEFORE THE BOARD, AT PUBLIC SESSIONS. AND, IF NECESSARY, I'LL AUTHORIZE PRIVATE SESSIONS. ONLY THEN, REGARDLESS OF ANYBODY'S TIMETABLE, WILL THE COURT ALLOW THE BOARD TO PRESENT IT TO THE COURT FOR ITS ACTION.

AFTER AN OPEN AND PUBLIC HEARING, AT WHICH ANYTHING THAT ANY CITIZEN OR RESIDENT OF THIS COMMUNITY, NOT JUST THE PARTIES, HAS TO SAY WILL THE COURT ACT ON IT, WHETHER THAT'S IN MARCH, APRIL, MAY, JUNE, JULY, SEPTEMBER OR JUVEMBER, THIS COURT DOESN'T HAVE ANY TIMETABLE. AFTER FORTY YEARS, I'M GOING TO SET A TIMETABLE?

SO, I SEE SOME ENCOURAGEMENT AFTER THESE FORTY YEARS, AND I DON'T LOOK AT THE SCHOOL BOARD MEMBERS AS THE TYRANTS, DRACONIAN OPPONENTS OF FREE SPEECH THAT YOU SEEM TO VIEW THEM AS.

LET ME TELL YOU A STORY. THERE WAS A TIME MANY, MANY YEARS AGO, MR. WEISS, MANY YEARS AGO, BEFORE THERE WAS AN AUTOMOBILE, BEFORE THERE WAS A JET AIRPLANE, BEFORE THERE WAS ELECTRICITY, EVEN. A GROUP OF MEN MET IN A LITTLE CITY UP IN THE EAST. THEY MET TO WORK ON A PLAN, A PLAN THAT WAS PUBLIC BUSINESS.

AND A FEW OF THOSE GUYS GOT THERE EARLY, AND THEY SAT DOWN AND THEY GOT TO TALKING. THEY SAID, YOU KNOW, THIS IS PRETTY SERIOUS BUSINESS WE'RE DEALING WITH. THEY SAID, OF COURSE, IT'S PRETTY SERIOUS BUSINESS. THEY SAID, YOU KNOW, GEORGE, SOME OF THE THINGS AND ISSUES THAT WE MIGHT TALK ABOUT DURING OUR SESSIONS COULD PROBABLY GET US LYNCHED; TARRED AND FEATHERED AND RUN OUT OF TOWN. IF WHAT WE ARE THINKING ABOUT, TALKING ABOUT, IF IT EVEN GOT OUT TO THE PUBLIC THAT WE WERE THINKING ABOUT, TALKING ABOUT SOME OF THESE ISSUES, IT WOULD NOT ONLY PROBABLY AFFECT OUR PERSONAL SAFETY, BUT IT WOULD PROBABLY TORPEDO THE WHOLE PLAN, AND IT WOULD NEVER GET OFF THE GROUND. WE NEED TO DO SOMETHING ABOUT THAT.

SO, THEY GOT TO THINKING ABOUT IT, AND THEY SAID YES. SO, WHEN ENOUGH DELEGATES GOT THERE, DO YOU KNOW WHAT THEY DID, MR. WEISS? THE FIRST THING THEY DID WAS TO ADOPT WHAT YOU WOULD CALL A DRACONIAN GAG ORDER. A GAG ORDER. THAT THEY WOULD NOT LET THE PRESS OR THE PUBLIC KNOW WHAT THEY WERE TALKING ABOUT. AND DO YOU KNOW WHAT THEY DID NEXT, MR. WEISS? THEY NAILED THE WINDOWS SHUT. THEY NAILED EVERY WINDOW IN THAT LITTLE BUILDING SHUT IN ORDER TO INSURE THAT NEITHER THE PRESS NOR THE PUBLIC KNEW WHAT THEY WERE TALKING ABOUT IN THAT LITTLE BUILDING. AND THEY STAYED THERE FROM MAY THROUGH SEPTEMBER, ARGUING WITH EACH OTHER, CALLING EACH OTHER NAMES, AND WORKING ON THEIR PLAN. AND DO YOU KNOW WHAT THEIR PLAN WAS, MR. WEISS?

***17** MR. WEISS: NOT ONLY DO I KNOW WHAT IT WAS, YOUR HONOR, I KNOW THAT IT ALSO HAPPENED TWO HUNDRED YEARS AGO, TO RECOGNIZE SLAVERY. AND THAT TELLS US HOW LONG AGO THAT HAPPENED AND IT TELLS US HOW MUCH UNITED STATES CONSTITUTIONAL LAW HAS CHANGED SINCE THAT CONSTITUTIONAL CONVENTION.

THE COURT: NO, IT DOESN'T TELL US THAT. IT TELLS US—YES, THAT WAS A PLAN FOR THE GOVERNANCE OF THE UNITED STATES. THAT'S EXACTLY WHAT IT WAS. AND IT CERTAINLY WASN'T PERFECT. BUT, ESSENTIALLY, IT'S STILL HERE. IT'S STILL WHAT WE HAVE HERE TODAY. IT HAS, WITH SOME DEFECTS, HELD THIS COUNTRY TOGETHER.

DO YOU KNOW WHO SOME OF THOSE PEOPLE WERE? GEORGE WASHINGTON. I THINK HE, LATER ON, HELD SOME SORT OF PUBLIC OFFICE, UNDER THAT CONSTITUTION. A GAG ORDER, GEORGE WASHINGTON?

DO YOU KNOW WHO ELSE WAS THERE, AMONG FIFTY–FIVE OR SO OTHERS? ALEXANDER HAMILTON. BENJAMIN FRANKLIN; HE WAS A NEWSPAPER PUBLISHER. A GAG ORDER, BENJAMIN FRANKLIN? YES. ROBERT MORRIS WAS THERE, GOUVERNEUR MORRIS. JAMES WILSON, WHO LATER BECAME A JUSTICE OF THE UNITED STATES SUPREME COURT. JOHN DICKINSON. AND FROM VIRGINIA, JAMES MADISON.

MR. WEISS: AND THOMAS JEFFERSON.

THE COURT: NO, JEFFERSON WAS IN FRANCE. JEFFERSON WAS NOT PRESENT. HE WAS NOT THERE.

MADISON WROTE THE FIRST AMENDMENT. GAG ORDER.

MR. WEISS: BUT, YOUR HONOR, HISTORICALLY, LET ME JUST SAY, AS I MENTIONED BEFORE, THE CONSTITUTION—

THE COURT: THAT'S HISTORICAL PRECEDENT FOR THIS ORDER HERE.

MR. WEISS: YOUR HONOR—

THE COURT: AND IT ILLUSTRATES THAT THERE ARE SOME THINGS, SOME PUBLIC MATTERS, THAT ARE BETTER DISCUSSED AND ARGUED ABOUT IN PRIVATE THAN THEY ARE IN PUBLIC.

AND DO YOU KNOW WHAT ELSE THEY DID? AFTER THEY GOT THROUGH WITH WHAT THEY HAD WROUGHT, AS MR. FRANKLIN SAID, THEY HAD TO CONVINCE THE PUBLIC THAT IT WAS WORTHWHILE. AND THEY DID THAT THROUGH WHAT WE NOW CALL THE FEDERALIST PAPERS, WHERE THE PROVISIONS THAT THEY HAD SUGGESTED WERE ARGUED, SET FORTH IN DETAIL, DISCUSSED, DIGESTED, DISSECTED, AND EVENTUALLY THE CONSTITUTION WAS, OF COURSE, RATIFIED.

MR. WEISS: YOUR HONOR, MY RESPONSE, OF COURSE, IS THAT—

THE COURT: AND THAT'S WHY I SAY TO THE BOARD, JESUS LOVES YOU.

MR. WEISS: YOUR HONOR ACTUALLY HAS TOUCHED ON A POINT, WHICH IS ONE THAT I INTENDED TO GET INTO; THAT IS, THE ISSUE OF HOW THIS PARTICULAR MOTION BY MR. PATIN, OR REQUEST BY MR. PATIN WAS AUTHORIZED, AND IF, IN FACT, IT WAS UNANIMOUSLY SUPPORTED BY ALL MEMBERS OF THE BOARD, WHETHER THEY VOTED ON IT, WHETHER IT WAS DONE IN EXECUTIVE SESSION, WHETHER THEIR MINUTES WOULD INDICATE THE REASONS WHY IT WAS DONE.

THE COURT: I DON'T THINK THAT MAKES ANY DIFFERENCE. THE FACT OF THE MATTER IS, THE REQUEST WAS MADE TO THE COURT, THE COURT SIGNED THE ORDER, AND THE ORDER HAS HAD THE EFFECT THAT YOU'VE STATED ON YOUR CLIENTS. THAT IS EITHER VALID OR INVALID. SO, LET'S GET DOWN TO THE ISSUES.

MR. WEISS: LET ME JUST ADDRESS THIS ISSUE BRIEFLY. SUPPOSE THAT, IN FACT, THERE ARE MEMBERS OF THE BOARD WHO ARE ELECTED PUBLIC OFFICIALS OF THIS COMMUNITY, OR, FOR THAT MATTER, TEACHERS, PRINCIPALS, AND OTHERS, BUT, IN PARTICULAR, I'LL FOCUS ON BOARD MEMBERS AT THE MOMENT, WHO DISAGREED WITH THE BOARD. WHERE HAS ANY COURT OF THE UNITED STATES EVER HELD THAT IT IS APPROPRIATE FOR A FEDERAL COURT TO GAG ELECTED PUBLIC OFFICIALS OF A COMMUNITY WHO MAY WANT TO TALK TO THE PUBLIC ABOUT THEIR ACTIONS?

***18** THE COURT: WELL, NOW, IF YOU WOULD LOOK IT UP, MR. WEISS, YOU WILL FIND A CASE CALLED *CLIFFORD EUGENE DAVIS, JR. VERSUS THE UNITED STATES OF AMERICA.*

MR. WEISS: YOUR HONOR, MY UNDERSTANDING IS THAT THE FIFTH CIRCUIT NEVER PASSED ON THE VALIDITY OF THE ORDER IN THAT CASE.

THE COURT: WELL, YOUR UNDERSTANDING IS NOT CORRECT.

MR. WEISS: MY UNDERSTANDING IS THAT THE ORDER WAS VACATED BY THIS COURT BEFORE IT WAS ADJUDICATED BY THE FIFTH CIRCUIT.

THE COURT: AN ORDER WAS ISSUED—AN INVOLUNTARY ORDER WAS ISSUED BY THIS COURT—WHAT DOES YOGI BERRA SAY, "DEJA VU ALL OVER AGAIN"—WHICH DIRECTED THE MEMBERS OF THE EAST BATON ROUGE PARISH SCHOOL BOARD TO CONFER WITH EACH OTHER AND TO CONFER WITH THEIR OPPOSING PARTIES IN AN EFFORT TO SEE IF THERE WAS ANY WAY TO COME UP A RESOLUTION OF THE PROBLEM, WHICH THEN HAD BEEN PENDING FOR OVER TWENTY–FIVE YEARS, NOW OVER FORTY YEARS. IN FACT, IT WAS FIFTEEN YEARS AGO, ALMOST TO THE DAY, THAT THE ORDER WAS ISSUED.

AND THERE WERE SEVERAL MEMBERS—I DON'T KNOW HOW MANY MEMBERS—BUT THERE WERE MEMBERS OF THE SCHOOL BOARD THAT DIDN'T LIKE THE ORDER, AND THEY COMPLAINED ABOUT IT. THAT ORDER WAS, IN SOME RESPECTS, EVEN MORE DRACONIAN THAN THIS ONE, BECAUSE IT NOT ONLY REQUIRED THAT THEY MEET AND TALK IN SECRET, AND NOT TALK TO THE PRESS, AND NOT TALK TO THE PUBLIC ABOUT IT—ALTHOUGH WE DID ALLOW A FEW PUBLIC

STATEMENTS, WE EVENTUALLY QUIT THAT BECAUSE THEY DIDN'T SAY ANYTHING ANYWAY.

IT ALSO REQUIRED THAT THE MEETINGS BE HELD AT THE COURTHOUSE, SO THAT THE COURT COULD KEEP AN EYE ON WHAT WAS GOING ON. AND ALL OF THE MEMBERS, THOSE WHO THOUGHT IT MIGHT BE A GOOD IDEA, AS WELL AS THOSE WHO OPPOSED THE ORDER, WERE REQUIRED TO COMPLAIN ABOUT THE ORDER. AND I KNOW VERY CLEARLY THAT SOME OF THEM DID NOT LIKE IT. ONE OF THE MORE MODERATE MEMBERS OF THE BOARD REFERRED TO THE JUDGE IN THE CASE AS, QUOTE, MR. WEISS, A BASTARD, CLOSE QUOTE, WHICH IS ONE OF THE MILDER TERMS THAT THE COURT RECEIVED AT THAT TIME. WHICH WAS DULY REPORTED, OF COURSE, IN THE PRESS AND I MUST ADD, UPSET MY MOTHER SOMEWHAT MORE THAN A LITTLE BIT.

SO, THAT ORDER WAS IMPOSED BY THE COURT ITSELF, WITHOUT ANY PRIOR DISCUSSION WITH ANYONE FROM THE BOARD, FROM THE OPPOSING COUNSEL, OR ANYTHING ELSE. IT WAS SIMPLY FABRICATED AND IMPOSED FROM THE COURT ITSELF, AND IT WAS CERTAINLY NOT A UNANIMOUS REQUEST. IN FACT, THERE WAS NO REQUEST. IT WAS NOT UNANIMOUSLY ACCEPTED.

THE FIFTH CIRCUIT DID HEAR SEVERAL APPEALS. AND THIS BOARD HAS NEVER WON ANY OF THEM ON APPEAL. BUT THERE WAS A GROUP THAT CALLED ITSELF PARENTS FOR NEIGHBORHOOD SCHOOLS, I THINK. THE COURT HAD DECLINED TO ALLOW THEM TO INTERVENE, BUT THEY WERE HEARD AT THE FIFTH CIRCUIT, AND THEY CHALLENGED THE ORDER. THE FIFTH CIRCUIT, AS I'VE SAID, REFERRED TO IT AS A CONFIDENTIALITY ORDER, NOT AS A GAG ORDER.

SO, THAT'S A POLITICALLY CORRECT TERM IN THE FIFTH CIRCUIT, A CONFIDENTIALITY ORDER. AND THE COURT COMMENTED FURTHER THAT IT FOUND NOTHING WRONG WITH, QUOTE, CLOSED DOOR, CLOSE QUOTE, NEGOTIATIONS.

***19** NOW, I WILL AGREE WITH YOU THAT THAT WAS NOT A FIRM, FAIR, STRAIGHT UP–AND–DOWN ATTACK AND RULING BY THE FIFTH CIRCUIT. AND IT IS ALSO CORRECT THAT BY THAT TIME I HAD LIFTED THAT GAG ORDER SO THAT WE COULD ALLOW FULL PUBLIC DISCUSSION ABOUT WHAT WAS GOING ON. UNFORTUNATELY, THERE WAS NO PRODUCTIVITY FROM THOSE MEETINGS. NOTHING CAME OF THOSE THAT WAS OF ANY BENEFIT.

MR. WEISS: I WAS GOING TO POINT THAT OUT, YOUR HONOR.

THE COURT: THE REASON NOTHING CAME OF THOSE MEETINGS, MR. WEISS, IN MY FIRM OPINION, IS THAT A MAJORITY OF THE BOARD REFUSED TO ACCEPT THEIR RESPONSIBILITY TO COMPLY WITH THE FEDERAL CONSTITUTION.

NOW, THAT'S NOT TO SAY THAT THERE WERE NOT INDIVIDUAL EXCEPTIONS. THERE WERE, AND HAVE BEEN, THROUGH THE YEARS. BUT UP UNTIL THIS POINT, A MAJORITY OF THE EAST BATON ROUGE PARISH SCHOOL BOARD HAS NEVER ACCEPTED ITS RESPONSIBILITY TO GO FORTH, COMPLY WITH THE FEDERAL CONSTITUTION, AND DESEGREGATE THE PUBLIC SCHOOL SYSTEM.

SO, I THINK THAT WE CAN SAY THAT'S PRECEDENCE IN THIS VERY CASE FOR THIS TYPE OF ORDER.

MR. WEISS: WELL, YOUR HONOR, I RESPECTFULLY DISAGREE. I THINK THAT THE CIRCUMSTANCES OF AN ORDER ENTERED BY THE COURT, AT AN EARLIER PHASE OF THE LITIGATION, ON ITS OWN MOTION, ARE QUITE DIFFERENT FROM THE CIRCUMSTANCES OF A SELF–INFLICTED WOUND IN WHICH MEMBERS OF A PUBLIC BODY COME TO THIS COURT AND ASK IT TO IMPOSE AN ORDER, NOT SIMPLY LIMITING THE COMMUNICATIONS OF MEMBERS OF THE ELECTED BOARD, BUT LITERALLY HUNDREDS AND THOUSANDS OF PUBLIC EMPLOYEES WHO MAY WANT TO SPEAK OUT AND BE HEARD AS THIS PLAN EVOLVES.

THE COURT: WE CAN CERTAINLY MODIFY THE ORDER TO LET THE SCHOOL BUS DRIVERS, FOR EXAMPLE, SAY WHAT THEY WANT TO SAY, IF THEY WANT TO SAY SOMETHING.

MR. WEISS: I THINK THE COURT SHOULD SERIOUSLY CONSIDER MODIFYING THE ORDER TO ALLOW EVERY PRINCIPAL, EVERY TEACHER THAT IS OUT THERE, THAT HAS INFORMATION OR OPINIONS ABOUT THIS MATTER TO SPEAK UP AND BE HEARD. I MEAN, CERTAINLY, THAT WOULD BE AN IMPROVEMENT OVER WHAT WE HAVE NOW. ONE OF THE GREAT VULNERABILITIES, I THINK, IN THIS ORDER NOW IS THAT IT DOES, INDEED, COVER THOUSANDS OF PEOPLE. THERE'S BEEN NO SHOWING BY ANYBODY THAT THESE PEOPLE, ON THEIR OWN, WERE UNWILLING TO TALK. IN FACT, THEY WERE TALKING FREELY—FREELY, AND BEING INTERVIEWED BY THE NEWSPAPER AND THE T.V. STATION BEFORE THE ORDER WAS ENTERED.

BUT I THINK THE CRUX OF THE MATTER, IF I MAY SAY SO, FIRST OF ALL, ON THE ISSUE OF WHAT I WOULD CALL THE HISTORY OF THE ADOPTION OF THE CONSTITUTION, THE FIRST AMENDMENT AT THE TIME OF THE ADOPTION OF THE CONSTITUTION WAS NOT UNDERSTOOD, EVEN REMOTELY, IN THE SAME TERMS AS IT IS UNDERSTOOD TODAY. FOR EXAMPLE, AS LATE AS THE EARLY 1930s, IT WAS THOUGHT THAT THE FIRST AMENDMENT HAD ABSOLUTELY NO APPLICATION WHATEVER TO STATE LIBEL LAW. WE NOW KNOW, *NEW YORK TIMES V. SULLIVAN* SEVERELY LIMITS THE REACH OF STATE LIBEL LAW BY REASON OF THE FIRST AMENDMENT. THAT WAS A CONCEPT THAT THE FRAMERS IN THE LATE 18TH CENTURY WOULDN'T EVEN REMOTELY HAVE CONCEIVED OF. THEY WOULDN'T REMOTELY HAVE CONCEIVED OF THE RICHMOND NEWSPAPERS CASE, DECIDED IN THE 1970s, IT GAVE THE PUBLIC A CONSTITUTIONAL RIGHT OF ACCESS UNDER THE FIRST AMENDMENT TO THE FEDERAL COURTS. SO, I DON'T REGARD THAT HISTORY AS BEING AT ALL MEANINGFUL HERE.

***20** BUT THE CRUX OF THE MATTER, IF I MAY SAY SO, IS THIS: YOUR HONOR AND THE SCHOOL BOARD EVIDENTLY BELIEVE THAT THE PROCESS OF MOVING TOWARD A WORKABLE PLAN FOR THE BENEFIT OF ALL OF THE CITIZENS OF THIS COMMUNITY, WILL PROCEED BEST AND MOST EFFECTIVELY IF THE NEWS MEDIA, MY CLIENTS ARE SHUT OUT OF COMMUNICATIONS ABOUT THIS PLAN WHILE THE UNITED STATES AND THE SCHOOL BOARD AND THE N–DOUBLE–A–C–P AND THE PLAINTIFFS TALK AMONG THEMSELVES AND TRY TO MAKE SOME KIND OF A DEAL TO THEN PRESENT TO THE COURT AND HAVE APPROVED BY THE COURT.

THE COURT: NO.

MR. WEISS: IS THAT NOT A FAIR STATEMENT?

THE COURT: A PLAN THAT WILL BE PRESENTED TO THE PUBLIC AND FULLY DIGESTED AND DISCUSSED, AND DISSECTED AND TALKED ABOUT.

NOW, I GIVE THE BOARD, BY THE WAY, THIS PRESENT BOARD, I GIVE THEM AN A–PLUS GRADE FOR THEIR INTENTION AND THEIR EFFORTS. I GIVE THEM A FLAT OUT F, MAYBE A ZERO, FOR THEIR PUBLIC RELATIONS. AND I THINK THEREIN LIES THEIR PROBLEM.

MR. WEISS: BUT IN ANY EVENT, YOUR HONOR—

THE COURT: I THINK THEY ARE WELL–INTENTIONED CITIZENS OF THIS COMMUNITY, WHO ARE TRYING THE BEST WAY THEY CAN TO FASHION A PLAN THAT WILL COMPLY WITH THE CONSTITUTION AND WILL IMPROVE THE EDUCATIONAL SYSTEM OF THIS COMMUNITY. AT THE PRESENT TIME, THEY FEEL THAT THEY CAN BEST SERVE THAT PURPOSE IF THEY HAVE THE OPPORTUNITY TO SIT DOWN, CATCH THEIR BREATH, TALK TO EACH OTHER IN PRIVATE, EXPLORE ISSUES AND MATTERS THAT PERHAPS EVEN IF PEOPLE KNEW THEY WERE THINKING ABOUT, WOULD IMMEDIATELY TORPEDO ANY CHANCE OF SUCCESS OF THE PLAN, AND TO DISCUSS IT WITH THE OPPOSING PARTIES TO THE LITIGATION, TO EXPLORE THE POSSIBILITY OF SOMEHOW COMING UP WITH SOMETHING AT THIS TIME, FORTY YEARS LATER, THAT WILL RESOLVE THE PROBLEM, PUT THE PUBLIC SCHOOL SYSTEMS BACK IN COMPLIANCE WITH THE CONSTITUTION, AND PROVIDE AN EQUAL AND QUALITY EDUCATION FOR ALL STUDENTS.

THAT'S A LOFTY GOAL AND ONE THAT I CERTAINLY SUBSCRIBE TO AND INTEND TO SEE

THAT THIS COURT FACILITATES IN ANY WAY POSSIBLE. AT THIS TIME, THIS ORDER CAN BE LOOKED AT AS A TIME–OUT, AS A DIGRESSION, AS A PAUSE—PERHAPS NOT A PAUSE THAT REFRESHES, BUT SIMPLY A TIME FOR THEM TO SIT DOWN AND TALK TO EACH OTHER FRANKLY AND FULLY ABOUT ISSUES THAT THEY SEE, AND SOMETIMES DON'T SEE, BECAUSE SOMEBODY ELSE DOES. THAT'S ALL THIS IS, A TEMPORARY TIME–OUT, TO GIVE THEM THE OPPORTUNITY TO SEE WHETHER OR NOT IT'S POSSIBLE TO COME UP WITH SOMETHING THAT SATISFIES THE CONSTITUTION AND MEETS THE NEEDS OF THIS COMMUNITY.

AND IF YOU THINK I'VE ALREADY MADE UP MY MIND ABOUT THIS CASE, YOU ARE ABSOLUTELY CORRECT, I HAVE.

MR. WEISS: YOUR HONOR, MY CLIENTS, OF COURSE, I'M SURE WANT TO SEE THE BOARD DO ITS CONSTITUTIONAL DUTY, AND APPLAUD THEM FOR TRYING TO DO SO. BUT MY CLIENTS ALSO BELIEVE THAT IT'S AN ENTIRE CONSTITUTION THAT MEASURES THAT DUTY, INCLUDING THE FIRST AMENDMENT.

NOW, IN THAT REGARD, THE BASIC DIFFERENCE OF OPINION HERE IS AS TO WHETHER THE FIRST AMENDMENT, WITH ITS PROTECTIONS, IS MORE LIKELY TO PRODUCE A CONSTITUTIONAL AND SATISFACTORY RESULT THAN A SERIES OF NEGOTIATIONS WHICH ARE CONDUCTED BY THE SCHOOL BOARD WITH ITS ADVERSARIES IN THIS LITIGATION, I MIGHT ADD.

***21** THE COURT: WELL, THAT'S SOMETHING, OF COURSE, THAT THE DELEGATES TO THE CONSTITUTIONAL CONVENTION DIDN'T HAVE TO CONTEND WITH. THEY JUST HAD TO AGREE ON SOMETHING AMONG THEMSELVES. THEY DIDN'T HAVE A FEDERAL COURT SITTING UP THERE WITH A BIG CLUB THAT COULD KNOCK THEM ALL DEAD. THIS BOARD IS UNDER A MUCH MORE DIFFICULT SITUATION EVEN THAN WERE THE DELEGATES TO THE UNITED STATES CONSTITUTION.

AS I MENTIONED, THOSE WERE PRETTY GOOD PEOPLE, TOO, WHO NAILED THE WINDOWS SHUT. THEY REFERRED TO IT NOT AS A GAG ORDER, BUT AS AN OATH OF SILENCE. AND I THINK THESE FOLKS CAN CLAIM THAT THEY HAVE AN OATH OF SILENCE, TOO, IF THEY WANT TO.

I'VE LOOKED AT YOUR AUTHORITIES, MR. WEISS, AND I'M READY TO GET DOWN TO THE MEAT IN THE COCONUT. YOU DON'T HAVE ANY LEGAL AUTHORITY TO SUPPORT YOUR POSITION. ARE YOU WILLING TO CONCEDE THAT?

MR. WEISS: FAR FROM BEING WILLING TO CONCEDE THAT, YOUR HONOR, I BELIEVE THAT THE COURT HAS NO AUTHORITY TO SUPPORT THE ENTRY OF THIS ORDER. I DON'T KNOW OF ANY CASE, THAT I'M AWARE OF, THAT HAS EVER SUPPORTED THE ENTRY OF A WHAT THE COURT CALLS CONFIDENTIALITY ORDER, WHAT WE CALL GAG ORDER, RESTRICTING COMMUNICATIONS BY A PUBLIC BODY LITIGANT IN A CIVIL CASE, IN WHICH THERE IS NO JURY—

THE COURT: WHAT DOES A CIVIL CASE HAVE TO DO WITH IT?

MR. WEISS: WHAT A CIVIL CASE HAS TO DO WITH IT IS THAT IN A CRIMINAL CASE—AND, OF COURSE, WE HAVE OUR DIFFERENCES WITH SOME OF THE PRECEDENTS IN THE CRIMINAL AREA EVEN, AND SOME OF YOUR COLLEAGUES IN THEIR INTERPRETATION OF CRIMINAL GAG ORDERS, BUT AT LEAST IN THE CRIMINAL SETTING, ONE CAN UNDERSTAND THAT STATEMENTS BY TRIAL PARTICIPANTS COULD HAVE AN IMPACT ON THE ABILITY TO PICK A JURY.

THE COURT: WOULD YOU, BY ANY CHANCE, BE REFERRING TO *UNITED STATES VERSUS DAVIS* AND TWO CASES DOWN IN THE EASTERN DISTRICT, ONE BEFORE JUDGE BERRIGAN AND ONE BEFORE JUDGE FELDMAN, NEITHER OF WHICH YOU CITED IN YOUR BRIEF, AND IN BOTH OF THOSE CASES, THOSE JUDGES REJECTED EACH AND EVERY ARGUMENT THAT YOU MADE, INCLUDING THE IDENTICAL ARGUMENT THAT YOU'RE MAKING HERE TODAY UP HERE ON THIS SAME AND IDENTICAL AUTHORITIES, AND THAT YOU DID NOT CITE TO ME?

MR. WEISS: NO, YOUR HONOR. THOSE ARE CRIMINAL CASES INVOLVING HIGH VISIBILITY CRIMINAL TRIALS.

THE COURT: YOU CAN SAY THAT, BUT IT SEEMS TO ME THAT WHEN A LAWYER COMES TO COURT AND CITES AUTHORITY, YOU HAVE THE OBLIGATION OF SAYING, BY THE WAY, JUDGE, FOUR MONTHS AGO, OR LESS, I JUST LOST THAT SAME ARGUMENT TO THIS COURT DOWN IN NEW ORLEANS. AND WHILE I DISAGREE, AND I CAN TELL YOU THAT I THINK THAT THAT IS NOT PERSUASIVE AND YOU OUGHT NOT TO ACCEPT THAT, YOU HAVE THE OBLIGATION, AS AN OFFICER OF THIS COURT, TO DISCLOSE THAT UPFRONT. AND I KNOW YOU KNEW ABOUT IT, BECAUSE IT WAS YOUR CASE, BOTH OF THEM. AREN'T YOU JACK M. WEISS OF STONE, PIGMAN, WALTHER, WHITTMANN & HUTCHINSON OF NEW ORLEANS?

MR. WEISS: YES, YOUR HONOR.

THE COURT: FOR THE *TIMES–PICAYUNE?*

MR. WEISS: YES, THOSE ARE MY CASES. I THOUGHT THEY WERE TOTALLY IN APPOSITE TO THE FACTS OF THIS CASE. AND I MIGHT ADD THAT BOTH OF THOSE COURTS RULED THAT WE HAD STANDING TO INTERVENE IN THAT CASE, WHICH WAS A FAVORABLE RULING IN OUR FAVOR.

***22** THE COURT: I JUST ALLOWED YOU TO INTERVENE.

MR. WEISS: I KNOW YOU DID, BUT NONE OF THE PARTIES TO THIS LITIGATION BEFORE YOUR HONOR HAVE CITED THOSE CASES.

THE COURT: YOU MADE THE SAME PROCEDURAL OBJECTION THAT YOU MAKE HERE; THAT THE COURT ENTERED THE ORDER WITHOUT ANY PRELIMINARIES. JUDGE BERRIGAN DISPOSED OF THAT IN A ONE LINE.

THE ONLY ARGUABLE AUTHORITY THAT YOU HAVE CITED, IN SUPPORT OF YOUR POSITION, IS A CASE CALLED *CBS VERSUS YOUNG* OUT OF THE SIXTH CIRCUIT. AND IT DID ALLOW THE NEWS MEDIA TO INTERVENE, TO OPPOSE A SO–CALLED GAG ORDER, OR CONFIDENTIALITY ORDER, AND EVEN ORDERED THE COURT TO MODIFY OR VACATE. I'M NOT SURE WHICH THEY ORDERED.

THAT CASE WAS CRITICIZED AND REFUSED TO BE ADOPTED, OR REFUSED BY THE SECOND CIRCUIT TO ACCEPT THE REASONING OF THAT CASE IN A CASE CALLED *APPLICATION OF DOW JONES,* WHICH YOU DO MENTION IN YOUR BRIEF, BUT FOR ANOTHER POINT. YOU DON'T POINT OUT TO THE COURT THAT THE SECOND CIRCUIT REFUSED TO ADOPT THE POSITION TAKEN BY THE SIXTH CIRCUIT, AND CRITICIZED THAT POSITION. NOR DID YOU POINT OUT THAT THE SUPREME COURT IN THE *DOW JONES* CASE DENIED CERTIORARI, THUS, AT LEAST ARGUABLY, APPROVING THE POSITION OF THE SECOND CIRCUIT AND DISAPPROVING THE POSITION OF THE SIXTH CIRCUIT. ARGUABLY, YOU COULD MAKE THAT ARGUMENT. AND I THINK THAT, AS A LAWYER, YOU AT LEAST HAD THE OBLIGATION TO SAY, BY THE WAY, THIS HAPPENED, BUT THE REASONING OF THE SIXTH CIRCUIT IS STILL THE BEST REASONING TO FOLLOW. AND YOU DIDN'T DO THAT, MR. WEISS.

MR. WEISS: NO, I THINK THAT'S INCORRECT, YOUR HONOR. I THINK, IN FACT, IT'S OUR POSITION, AS SET FORTH, AT GREAT LENGTH, IN OUR BRIEF THAT THE PROPER ANALYSIS FOR A CIVIL GAG ORDER OF THIS KIND IS A PRIOR RESTRAINT ANALYSIS OF *CBS VERSUS YOUNG.* THEN WE GO ON TO SAY EVEN IF IT ISN'T, THOSE COURTS—

THE COURT: THE POINT IS, MR. WEISS, I EXPECT LAWYERS WHO APPEAR BEFORE ME TO TELL ME ALL OF THE AUTHORITIES, WHETHER THEY SUPPORT THEIR POSITION OR DO NOT SUPPORT THEIR POSITION. MY FEELING ABOUT YOU HERE TODAY—AND I'VE GOT TO SAY THIS—IS THAT YOU DIDN'T DO THAT. THAT MEANS THAT I DON'T FEEL COMFORTABLE IN RELYING ON WHAT YOU SAY. I FEEL THE NEED TO GO CHECK, OR VERIFY. I FOUND THOSE CASES IMMEDIATELY, THAT I'M JUST TALKING ABOUT; THESE TWO DISTRICT COURT CASES. THEY'RE BOTH REPORTED IN *FEDERAL SUPP.*

MR. WEISS: YOUR HONOR, LET ME SAY THAT, FIRST OF ALL, I TAKE STRONG EXCEPTION WITH THAT SUGGESTION THAT YOUR HONOR HAS

MADE. SECONDLY—

THE COURT: YOU CAN TAKE WHATEVER EXCEPTION YOU WISH. IT'S A FREE COUNTRY. BUT THE FACT OF THE MATTER IS, THAT'S WHAT HAS HAPPENED IN THIS CASE.

MR. WEISS: MAY I HAVE A CHANCE TO RESPOND?

THE COURT: SURE.

MR. WEISS: YOUR HONOR, LET ME SAY THAT, EVIDENTLY, THE CONCLUSION WE REACHED ABOUT THE RELEVANCE OF THE *DAVIS* CASE WAS SHARED BY THE SCHOOL BOARD SINCE THEY DIDN'T CITE THE CASES EITHER IN ANY OF THEIR PAPERS.

THE COURT: I DON'T THINK THEY FOUND THEM. THEY PROBABLY DIDN'T HAVE TIME TO FIND THEM. BUT THEY DON'T CLAIM TO BE EXPERTS IN THE FIRST AMENDMENT. AND THESE WERE CASES THAT YOU YOURSELF TRIED, SO I WOULD EXPECT YOU TO KNOW ABOUT THEM.

***23** MR. WEISS: WELL, YOUR HONOR, OF COURSE, I DID KNOW ABOUT THEM, AND WHAT I'VE TRIED TO EXPLAIN TO THE COURT IS THAT THEY WERE CRIMINAL CASES; IN MY JUDGMENT, THEY HAD ABSOLUTELY NO APPLICATION TO A GAG ORDER ENTERED AT THE REQUEST OF A PUBLIC BODY IN A CIVIL CASE, NOT INVOLVING A JURY TRIAL OR ANYTHING RESEMBLING A JURY TRIAL, OR, FOR THAT MATTER, AS I APPRECIATE IT, A TRIAL AT ALL.

IF THE COURT FELT THEY SHOULD HAVE BEEN CITED, OF COURSE, I APOLOGIZE TO THE COURT FOR OUR FAILURE TO DO THAT. I WOULD NEVER INTENTIONALLY WITHHOLD ANY AUTHORITY FROM THE COURT, THAT I THOUGHT WOULD INFLUENCE THE COURT'S DECISION. I DIDN'T THINK THEY WERE RELEVANT.

THE COURT: WELL, I WOULD CERTAINLY AGREE THAT THERE ARE SOME DIFFERENCES, BUT THE SAME FIRST AMENDMENT PRINCIPLES AND AUTHORITIES THAT YOU CITE HERE WERE CITED THERE IN YOUR BRIEF FOR THE *TIMES–PICAYUNE.* I HOPE YOU WON'T CHARGE THE *ADVOCATE* FOR THE SAME BRIEF THAT YOU WROTE FOR THE *TIMES–PICAYUNE.*

MR. WEISS: IT ISN'T THE SAME BRIEF, AND THE ISSUES ARE QUITE DIFFERENT, AS THE COURT KNOWS.

NOW, I WOULD DIRECT THE COURT'S ATTENTION, WITH REFERENCE TO THE *YOUNG* CASE AND THE *DOW* CASE, AND THE CHARGE THAT THE COURT MADE THAT WE SOMEHOW MISREPRESENTED THOSE CASES, TO PAGE—ROMAN NUMERAL THREE, PAGES 8 AND FOLLOWING OF OUR ORIGINAL MEMORANDUM IN SUPPORT OF THE MEMORANDUM TO VACATE THE GAG ORDER, WHICH SAYS—THAT HEADING IS, EVEN IF THE STANDARDS SOMETIMES APPLIED TO GAG ORDERS ISSUED IN THE CRIMINAL CONTEXT ARE APPLIED, THE SUBJECT ORDER MUST BE VACATED. AND THEN WE WENT ON TO SAY THAT EVEN IF THE PRIOR RESTRAIN ANALYSIS DOESN'T APPLY, THE COURTS HAVE, NEVERTHELESS, APPLIED A VERY STRICT STANDARD OF SCRUTINY IN REVIEWING GAG ORDERS. AND WE CITED THERE THE *SALAMEH* CASE.

THE COURT: I DON'T WANT TO BELABOR THE ISSUE, MR. WEISS, BUT IF YOU WILL LOOK AT PAGE 4 OF YOUR BRIEF, YOU DO MAKE REFERENCE TO THE *DOW JONES* CASE, BUT IT IS UNDER THAT PORTION OF YOUR BRIEF RELATING TO A PROCEDURAL DEFECT, WHICH HAS NOTHING TO DO WITH THE MERITS OF WHAT WE ARE TALKING ABOUT. AND YOU DO CITE THE CASE, AND IT'S THERE. BUT YOU DON'T MENTION, BY THE WAY, THAT THIS CASE DISAGREED WITH THE CASE ON THE NEXT PAGE, *CBS VERSUS YOUNG,* AND DECLINED TO ADOPT THE REASONING OF *CBS VERSUS YOUNG,* AND, THUS, WHEN THE SUPREME COURT DENIED WRITS, YOU CAN ARGUE THAT THE SUPREME COURT AGREED WITH THE SECOND CIRCUIT, THAT THE REASONING OF *CBS VERSUS YOUNG* IS NOT SOUND.

MR. WEISS: WELL, YOUR HONOR, I RESPECTFULLY DISAGREE. I THINK WE ADEQUATELY DISCUSSED THE *DOW* CASE IN BOTH OUR OPENING MEMORANDUM AND SUBSEQUENTLY.

THE COURT: WELL, YOU DIDN'T ADEQUATELY DISCUSS IT FOR ME, BECAUSE I'M A LITTLE SLOW, AND YOU KINDA GOT TO SPELL IT OUT FOR ME. AND IT WAS ONLY WHEN I WENT AND LOOKED AT THE *DOW* CASE THAT I REALIZED. I THOUGHT IT HAD SOMETHING TO DO WITH PROCEDURAL DEFECTS.

MR. WEISS: WELL, IT'S SPECIFICALLY REFERRED TO, YOUR HONOR, IN THE LENGTHY QUOTE FROM THE *SALAMEH* CASE THAT APPEARS ON PAGES 8 AND 9 OF OUR ORIGINAL MEMORANDUM. AND I MIGHT ADD THAT THE DENIAL OF CERT IS ALSO MENTIONED THERE.

***24** THE COURT: I DIDN'T SAY YOU DIDN'T CITE THE CASE. YOU DID.

MR. WEISS: WELL, *SALAMEH* IS A LATER SECOND CIRCUIT CASE THAT FOLLOWS *DOW JONES.* AND I THINK WE CLEARLY ACKNOWLEDGE, YOUR HONOR, THAT THERE ARE COURTS WHO HAVE REFUSED TO APPLY THE PRIOR RESTRAINT ANALYSIS TO GAG ORDERS. AND THAT, EVEN SO, WE THINK THIS GAG ORDER IS FATALLY FLAWED.

BUT MAY I JUST SAY, AT THIS POINT, YOUR HONOR SAID THAT THERE IS NO AUTHORITY FOR THE RELIEF THAT WE ARE REQUESTING. AND, AGAIN, I HAVE INDICATED THAT I THINK THE SHOE IS ON THE OTHER FOOT, IF I MAY SO, RESPECTFULLY; NAMELY, THAT THE ORDER THAT THIS COURT HAS ENTERED IS BOTH UNPRECEDENTED AND UNSUPPORTED BY ANY AUTHORITY, THAT I'M AWARE OF ANYWHERE, OTHER THAN YOUR HONOR'S OWN PRIOR ORDER TEN YEARS AGO, WHICH THE FIFTH CIRCUIT NEVER REALLY HAD OCCASION TO FULLY ADDRESS.

THE COURT: FIFTEEN YEARS AGO.

MR. WEISS: I'D LIKE TO SPECIFICALLY DISCUSS, IF I MAY—

THE COURT: THE DELEGATES TO THE CONSTITUTIONAL CONVENTION, THAT'S PRETTY GOOD AUTHORITY.

MR. WEISS: WELL, I'D LIKE TO DISCUSS SPECIFICALLY FOR A MOMENT, YOUR HONOR, THE VERY RECENT CASE, *PANSY AGAINST BOROUGH OF STROUDSBURG* (PHONETIC) THAT IS CITED IN OUR REPLY MEMORANDUM, WHICH WE MANAGED TO FILE YESTERDAY AFTERNOON. THAT'S A CASE IN WHICH THE THIRD CIRCUIT EMPHASIZED, AT GREAT LENGTH, AT GREAT LENGTH, THE NEED FOR EXTREMELY CLOSE SCRUTINY OF ANY GAG ORDER IN A CASE IN WHICH A PUBLIC BODY IS BEING GAGGED, AND THE STATE PUBLIC RECORDS AND OPEN MEETINGS LAWS ARE BEING SUPERSEDED BY A FEDERAL COURT ORDER.

THERE, THIS IS WHAT THE COURT SAID, IF I MAY QUOTE, DIRECTLY ON POINT, ABSOLUTELY DIRECTLY ON POINT WITH WHAT THE COURT CALLED THE MEAT OF THE COCONUT HERE. "WE ACKNOWLEDGE THE IMPORTANT ROLE THAT COURT–AIDED SETTLEMENT PLAYS IN OUR OVERBURDENED COURT SYSTEM, AND WE REALIZE THAT A STRONG PRESUMPTION AGAINST CONFIDENTIALITY ORDERS, WHEN FREEDOM OF INFORMATION LAWS ARE IMPLICATED, MAY INTERFERE WITH THE ABILITY OF COURTS TO SUCCESSFULLY ENCOURAGE THE SETTLEMENT OF CASES. HOWEVER, WE BELIEVE THAT A STRONG PRESUMPTION AGAINST ENTERING OR MAINTAINING CONFIDENTIALITY ORDERS STRIKES THE APPROPRIATE BALANCE BY RECOGNIZING THE ENDURING BELIEFS UNDERLYING FREEDOM OF INFORMATION LAWS, THAT AN INFORMED PUBLIC IS DESIRABLE, THAT ACCESS TO INFORMATION PREVENTS GOVERNMENTAL ABUSE AND HELPS SECURE FREEDOM, AND THAT, ULTIMATELY, GOVERNMENT MUST ANSWER TO ITS CITIZENS. NEITHER THE INTERESTS OF PARTIES IN SETTLING CASES, NOR THE INTERESTS OF THE FEDERAL COURTS, IN CLEANING THEIR DOCKETS, CAN BE SAID TO OUTWEIGH THE IMPORTANT VALUES MANIFESTED BY FREEDOM OF INFORMATION LAWS."

AND THE COURT THEN SAID THAT FOR THAT REASON, THAT WHERE A GOVERNMENTAL ENTITY IS A PARTY TO LITIGATION, NO PROTECTIVE CEILING OR OTHER CONFIDENTIALITY ORDER SHALL BE ENTERED WITHOUT CONSIDERATION OF ITS EFFECT ON DISCLOSURE OF GOVERNMENTAL RECORDS TO

THE PUBLIC UNDER STATE AND FEDERAL FREEDOM OF INFORMATION LAWS. SUCH AN ORDER SHALL BE NARROWLY DRAWN TO AVOID INTERFERENCE WITH THE RIGHTS OF THE PUBLIC, TO OBTAIN DISCLOSURE OF GOVERNMENT RECORDS, AND SHALL PROVIDE AN EXPLANATION OF THE EXTENT TO WHICH THE ORDER IS INTENDED TO ALTER THOSE RIGHTS.

***25** NONE OF THOSE THING WERE DONE HERE.

THE COURT: THAT'S A THIRD CIRCUIT CASE.

MR. WEISS: THAT'S A THIRD CIRCUIT CASE, ABSOLUTELY, BUT IT'S ONE OF THE LEADING DECISIONS IN THE AREA. IT'S THE ONLY CASE, THAT I'M AWARE OF.

THE COURT: WITHOUT PRECEDENTIAL BINDING EFFECT HERE.

MR. WEISS: THAT'S CORRECT. WELL, I BELIEVE THAT, OF COURSE, PRECEDENTS OF OTHER FEDERAL JUDICIAL CIRCUITS ARE NOT BINDING IN THE FIFTH CIRCUIT, BUT THEY'RE CERTAINLY ENTITLED TO CONSIDERATION AND WEIGHT.

THE COURT: THERE IS NO QUESTION ABOUT IT, EXCEPT THOSE THAT HAVE BEEN CRITICIZED BY OTHER CIRCUITS.

MR. WEISS: PARTICULARLY, THIS IS A LENGTHY EXPOSITION, IF YOU WILL, OF THE CORE ISSUE BEFORE US HERE TODAY, AS OPPOSED TO A SUMMARY ONE–LINE ORDER, FOR EXAMPLE, DENYING RELIEF ON A PROCEDURAL GROUND, WHICH WAS THE ORDER ENTERED BY THE FIFTH CIRCUIT IN THE 1983 MANDAMUS ACTION TO VACATE YOUR HONOR'S ORDER AT THAT TIME.

SO, YOUR HONOR, THIS IS DIRECTLY ON POINT. IT, OF COURSE, HIGHLIGHTS, IF I MAY SAY SO, TWO OTHER ISSUES. AND THAT IS THE ISSUE OF THE BREATH OF THE ORDER ENTERED BY THE COURT, WHICH PREVENTS NOT ONLY DISCLOSURE OF, FOR INSTANCE, SETTLEMENT DISCUSSIONS AMONG THE PARTIES TO THIS LITIGATION, BUT PREVENTS DISCUSSION OF, QUOTE, ANY ASPECT OF ANY DRAFT PLAN, WHICH HAS BEEN INTERPRETED TO MEAN THAT WE COULDN'T GET INFORMATION BEING PREPARED FOR USE IN SUPPORTING THE PLAN, WHICH TEACHERS HAVE CALLED MY CLIENTS, TALKED TO THEM, AND THEN CALLED BACK AND SAID THAT THEY NOW REALIZE THAT BECAUSE OF THE GAG ORDER, THEY DON'T THINK THEY CAN TALK TO MY CLIENTS. THIS IS A SWEEPING ORDER.

AND IN TERMS OF ALTERNATIVES, WHICH IS ANOTHER ISSUES THAT'S TRADITIONALLY CONSIDERED, AND WHICH WAS NOT ADDRESSED BY THE COURT IN ENTERING THE ORDER IN THE FIRST PLACE, IN TERMS OF ALTERNATIVES TO THE ORDER—

THE COURT: WELL, YOU'VE ALREADY PUT ON THE RECORD THAT NO FORMAL REASONS WERE ENTERED IN THE RECORD AT THAT TIME. THAT'S NOT TO SAY WHAT THE COURT CONSIDERED OR DIDN'T CONSIDER, BECAUSE THIS COURT HAS BEEN CONSIDERING THIS CASE FOR BETTER THAN FIFTEEN YEARS. AND IT HAS CONSIDERED A LOT OF THINGS ABOUT THIS CASE. AND THERE IS A LOT OF TRACK RECORD TO GO ON.

MR. WEISS: LET ME JUST CONCLUDE, BECAUSE I DON'T WANT TO—THE COURT IS OBVIOUSLY PREPARED TO RULE, AND I DON'T WANT TO BELABOR THE POINT. I JUST WANT TO MENTION THAT IN TERMS OF ALTERNATIVES TO THIS ORDER, I CAN THINK OF AT LEAST THREE RIGHT OFF THE TOP OF MY HEAD. ONE IS THAT THIS SCHOOL BOARD CAN SIMPLY DIRECT ITS EMPLOYEES, AS IT SEES FIT, AND IN ACCORDANCE WITH STATE AND FEDERAL LAW, WITH RESPECT TO THE COMMUNICATIONS THAT IT WANTS THEM TO ENGAGE IN. AND IF THEY VIOLATE THOSE DIRECTIVES, AND THEY'RE NOT CHALLENGED BY ANYONE, THEN DISCIPLINARY MATTERS CAN BE TAKEN, NOT A GAG ORDER.

IT'S REALLY EQUIVALENT, IF YOU WILL, TO THE SITUATION OF THE *PENTAGON PAPERS* CASE, IN WHICH THE REMEDY WAS NOT A PRIOR RESTRAINT. THE REMEDY WAS, SOMEBODY TOOK THE INFORMATION; DO SOMETHING ABOUT THAT.

***26** ANOTHER ALTERNATIVE, WHICH MR. PATIN HAS CITED AT GREAT LENGTH, THE STATE OPEN

MEETINGS AND PUBLIC RECORDS LAW PROVIDE AN ARGUABLE BODY OF LIMITATION ON THE REVELATION OF THIS INFORMATION. LET'S DUKE IT OUT, IF YOU WILL, OVER THOSE ISSUES. WE DON'T NEED A GAG ORDER CIRCLING THE WAGONS AROUND THE ENTIRE PERIMETER OF THE ENTIRE DEBATE TO DEAL WITH THAT ISSUE. WE HAVE THE ATTORNEY–CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE, TO THE EXTENT THAT MR. PATIN THINKS WE'RE LOOKING TO GO THROUGH HIS OWN FILES ABOUT THE GAG ORDER, WHICH I HARDLY THINK MY CLIENTS ARE. THE ATTORNEY–CLIENT AND THE WORK PRODUCT PRIVILEGE COME INTO PLAY THERE.

SO, WE HAVE ALL OF THESE MECHANISMS THAT COULD ACT TO ADDRESS THE CONCERNS OF THE BOARD WITHOUT AN ORDER THAT, IF YOU WILL, SWEEPS SO BROADLY AS TO SHUT OFF ALL COMMUNICATIONS WITH EVERYONE IN THE SYSTEM AND ELIMINATE THE PRODUCTION OF ALL DOCUMENTS AND ALL INFORMATION RELATING IN ANY WAY TO THE DRAFT PLAN.

BUT I APPRECIATE THE COURT HEARING OUR ARGUMENT ON THIS. I APPRECIATE THE COURT HAVING TAKEN THE MATTER UP.

THE COURT: I READ EVERY WORD OF EVERY BRIEF, AND I HAVE PERUSED THE CASES, EVEN SOME YOU DIDN'T CALL TO MY ATTENTION.

MR. WEISS: I DO SINCERELY APOLOGIZE IF THE COURT FELT, AS WE DID NOT, THAT THE *DAVIS* CASE WAS PERTINENT TO THIS. AND I TAKE TO HEART WHAT THE COURT SAID, AND I DO APOLOGIZE.

THE COURT: WELL, MR. WEISS, THIS IS, OF COURSE, MY FIRST EXPERIENCE WITH YOU. AND I DON'T WANT TO REPEAT WHAT I'VE SAID, BUT I'VE HEARD THAT YOU ARE A VERY CAPABLE AND OUTSTANDING AND UPSTANDING AND ETHICAL LAWYER. I'VE HEARD GOOD THINGS ABOUT YOU. IT'S MY FIRST EXPERIENCE WITH YOU. I'VE GOT TO SAY THAT THIS EXPERIENCE, FROM MY PERSPECTIVE, HAS SIMPLY NOT BEEN OF THE SORT THAT I LIKE TO SEE MY LAWYERS DO.

MR. WEISS: WELL, SOMETIMES, I'M AFRAID, YOUR HONOR, THAT WHEN, FIRST OF ALL, WE'VE BEEN MOVING ON A VERY FAST TRACK WITH THIS THING; SECONDLY, AS YOUR HONOR MENTIONED, I DO DEVOTE A LOT OF TIME TO THIS PARTICULAR AREA OF THE LAW. PERHAPS I PERCEIVE DISTINCTIONS AND ASSUME, IF YOU WILL, THAT OTHERS WILL PERCEIVE THEM THE SAME WAY I WILL, WHEN THAT MAY NOT BE THE CASE.

THE COURT: I JUST THINK THAT'S FOR THE COURT TO DECIDE, WHETHER THERE ARE DISTINCTIONS.

THANK YOU.

MR. WEISS: THANK YOU.

THE COURT: ALL RIGHT, MR. PATIN, DO YOU WANT TO MOVE TO RESCIND THIS ORDER?

MR. PATIN: YOUR HONOR, MY CLIENT OBVIOUSLY REQUESTED THE ORDER, WE STILL NEED THE ORDER, WE HAVE VERY SERIOUS ISSUES TO FINISH WORKING ON. WE DO NOT HAVE A WHOLE LOT OF TIME TO DO IT, AND THE ORDER IS ESSENTIAL FOR US TO GET OUR WORK DONE.

THE COURT: I WANT YOU TO UNDERSTAND THAT YOU HAVE ALL THE TIME NECESSARY TO DO IT. AS I HAVE TOLD MR. WEISS, AFTER FORTY YEARS, I'M NOT GOING TO SET A TIMETABLE THAT'S GOING TO UPSET THE APPLE CART.

MR. PATIN: YOUR HONOR, NOW THAT MY CLIENTS FULLY UNDERSTAND THE REQUIREMENTS OF THE CONSTITUTION, THEY ARE VERY ANXIOUS TO GET THEIR PROGRAM UNDERWAY AS QUICKLY AS POSSIBLE. WE'RE MOVING WITH GREAT SPEED. WE NEED AS FEW DISTRACTIONS AS POSSIBLE FROM CASES COMING AT US, ASKING US ALL THESE ISSUES.

***27** YOUR HONOR, WE'RE GOING TO SUBMIT ON OUR BRIEFS. THANK YOU.

THE COURT: I REALLY SEE NO FURTHER PROLONGING OF THE SITUATION. I THINK THE RECORD IS AMPLE TO ALLOW ANYBODY TO DO ANYTHING THAT MAY BE NECESSARY IN THE

WAY OF APPELLATE REVIEW OR ANYTHING OF THAT NATURE. AND I THINK IT'S TIME FOR THE COURT TO RULE.

I THINK IT'S VERY IMPORTANT THAT WE KEEP A PERSPECTIVE ON WHERE WE ARE AND WHAT WE ARE ABOUT. NOW, THAT'S FAST FORWARD FROM THE CONSTITUTIONAL CONVENTION IN 1787 AND THAT DRACONIAN GAG ORDER THAT GEORGE WASHINGTON AND OTHER LABORED UNDER.

LET'S RUN THROUGH EARLY AMERICAN HISTORY. FORMATION OF THE FIRST GOVERNMENT, LOUISIANA PURCHASE, THE WAR OF 1812, WESTERN EXPANSION, INCREASING TENSION BETWEEN NORTH AND SOUTH OVER THE ISSUE OF HUMAN SLAVERY, WHICH, AS MR. WEISS HAS POINTED OUT, THE CONSTITUTION WAS FAULTY; THE MISSOURI COMPROMISE, LINCOLN'S HOUSE DIVIDED SPEECH, HIS ELECTION AS PRESIDENT, AND, FINALLY, THE GREAT FAULT OF THAT CONSTITUTION RESULTING IN THE CIVIL WAR, OR, AS SOME PEOPLE CALL IT, THE WAR BETWEEN THE STATES, THE MOST DESTRUCTIVE AND BLOODY WAR IN THE HISTORY OF OUR NATION, EVEN UNTIL TODAY. IT LEFT THE SOUTH BEATEN AND PROSTRATE.

LET'S PAUSE AT THE IMMEDIATE POST–WAR PERIOD, WITH THE ADOPTION OF THREE AMENDMENTS TO THE CONSTITUTION. THE THIRTEENTH AMENDMENT. THE THIRTEENTH AMENDMENT FREED THE SLAVES. THE FOURTEENTH AMENDMENT. THE FOURTEENTH AMENDMENT MADE CITIZENS OUT OF THE FORMER SLAVES. AND IT PROHIBITED THE STATES FROM DEPRIVING THOSE FORMER SLAVES, OR ANYONE ELSE, OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW. AND IT MANDATED THE EQUAL PROTECTION OF THE LAW. AND THE THIRD, THE FIFTEENTH AMENDMENT, WHICH PROHIBITED THE STATES FROM DEPRIVING THOSE FORMER SLAVES OF THE RIGHT TO VOTE ON ACCOUNT OF RACE, COLOR, OR PREVIOUS CONDITION OF SERVITUDE.

THOSE ARE, I THINK, FAIRLY STRAIGHT–FORWARD AMENDMENTS. AND ONE MIGHT HAVE THOUGHT BACK THEN THAT THEY WOULD HAVE LAID THE QUESTION TO REST; THE QUESTION OF EQUAL RIGHTS ON ACCOUNT OF RACE WOULD HAVE BEEN SETTLED. BUT IT WASN'T. WE ALL KNOW THIS.

EVEN AFTER THE ADOPTION OF THOSE THREE AMENDMENTS, THERE WERE FOLKS WHO SAID, WELL, ALL RIGHT, MAYBE THEY'RE NOT SLAVES ANYMORE, BUT THEIR SKIN IS STILL BLACK. THEIR SKIN IS STILL BLACK, AND I DON'T WANT THEM COMING IN THE FRONT DOOR OF MY BUSINESS ESTABLISHMENT, AND I DON'T WANT THEM USING THE SAME REST ROOMS, AND I DON'T WANT THEM DRINKING FROM THE SAME WATER FOUNTAIN, AND I DON'T WANT THEM TO EAT AT THE SAME LUNCH COUNTER, AND I DON'T WANT THEM TO RIDE IN THE FRONT OF THE BUS EITHER, AND I DON'T WANT THEM TO VOTE. I DON'T WANT THEM TO VOTE IN MY PRIMARY. AND I CERTAINLY DON'T WANT THEM ATTENDING PUBLIC SCHOOLS WITH WHITE FOLKS.

WE ALL KNOW WHAT HAPPENED. PRETTY SOON, PRIMARILY IN THE SOUTH, BUT NOT EXCLUSIVELY IN THE SOUTH, THERE WERE STATE LAWS BASED ON RACE THAT COVERED VIRTUALLY EVERY ASPECT OF OUR SOCIETY. STATE LAWS THAT SAID PEOPLE WHOSE SKIN IS BLACK CAN'T DO ANY OF THE THINGS THAT I JUST MENTIONED, AND MANY MORE. AND EVEN THE FEDERAL COURTS PARTICIPATED. THE FEDERAL COURTS WERE LED TO ADOPT THE NOTION THAT SEPARATE, BUT EQUAL, WAS CONSTITUTIONAL. SO, WE READ OUT THE THIRTEENTH, FOURTEENTH, AND FIFTEENTH AMENDMENTS INSOFAR AS THEY APPLIED TO PEOPLE WHOSE SKIN HAPPENED TO BE BLACK.

***28** LET'S FAST FORWARD AGAIN, TO THE YEAR 1954, WHEN THE SUPREME COURT HANDED DOWN ITS DECISION IN THE FAMOUS—SOME PEOPLE SAY INFAMOUS—CASE OF *BROWN VERSUS BOARD OF EDUCATION.*

NOW, WHAT DID THE SUPREME COURT DO IN THAT CASE? THIS IS WHAT I THINK IT SAID: IT SAID, WHOA, HOLD UP A MINUTE. DO YOU FOLKS KNOW ABOUT THE DECLARATION OF INDEPENDENCE; DO YOU KNOW ABOUT THE THIRTEENTH, THE FOURTEENTH, AND THE FIFTEENTH AMENDMENTS? GUESS WHAT, THEY

ACTUALLY MEAN WHAT THEY SAY. ALL MEN, INCLUDING PEOPLE WHOSE SKIN IS BLACK, ARE CREATED EQUAL. MY GOD, THAT IS BLASPHEMOUS. ALL MEN, INCLUDING PEOPLE WHOSE SKIN IS BLACK, ARE CREATED EQUAL? THAT WAS QUITE A SHOCK. QUITE A SHOCK. PARTICULARLY NOT ONLY WHEN THE COURT SAID IT, BUT WHEN IT SAID, BY THE WAY, A STATE VIOLATES THE CONSTITUTION WHEN IT SEGREGATES SCHOOLS BY RACE. MY GOD, WE'VE BEEN DOING THAT DOWN HERE FOR YEARS, A HUNDRED YEARS, AND NOW YOU TELL ME IT VIOLATES THE CONSTITUTION. YES, THAT'S WHAT THE COURT SAID. THAT'S WHAT THE COURT SAID.

AND THEN IT SAID, AND BY THE WAY, YOU FEDERAL DISTRICT COURTS, THE LOWER COURTS, GET ABOUT IT AND PROCEED WITH DELIBERATE SPEED TO DISMANTLE THE DUAL SYSTEM OF PUBLIC EDUCATION IN THIS COUNTRY.

TWO YEARS LATER, IN 1956, THE PLAINTIFFS IN THIS CASE, WHO, PERHAPS NAIVELY BELIEVED WHAT THE SUPREME COURT SAID, FILED THIS SUIT, THE PURPOSE OF WHICH IS TO CAUSE THE EAST BATON ROUGE PARISH SCHOOL BOARD TO DESEGREGATE THE PUBLIC SCHOOL SYSTEM OF THIS PARISH.

FAST FORWARD AGAIN. IN 1979, I INHERIT THIS CASE. THE EAST BATON ROUGE PARISH SCHOOL SYSTEM IS STILL SEGREGATED BY RACE AFTER TWENTY YEARS OR SO OF SO–CALLED DESEGREGATION.

IN 1980, WE HELD A PUBLIC HEARING, RECEIVED EVIDENCE, AND THE COURT RULED, I THINK FOR THE THIRD TIME, THAT THE EAST BATON ROUGE PARISH SCHOOL SYSTEM, THAT THE BOARD WAS IN VIOLATION OF THE CONSTITUTION BY OPERATING A PUBLIC SCHOOL SYSTEM SEGREGATED BY RACE.

ONE OF THE SPECIFIC FINDINGS MADE AT THAT TIME, IN 1980, WAS THAT THE EAST BATON ROUGE PARISH SCHOOL BOARD HAD CONTINUED TO BUILD WHITE SCHOOLS FOR WHITE STUDENTS AND BLACK SCHOOLS FOR BLACK STUDENTS ALL THE TIME THEY WERE UNDER A COURT ORDER TO DESEGREGATE. THAT'S IN THE *REPORTER*. ALL THE TIME THE BOARD WAS UNDER COURT ORDER TO DESEGREGATE, THEY CONTINUED TO BUILD WHITE SCHOOLS FOR WHITE PEOPLE AND BLACK SCHOOLS FOR BLACK PEOPLE.

WELL, THE BOARD'S RESPONSE, MR. PASTOREK, WAS TO APPEAL THAT DECISION. DID THEY ACQUIESCE, DID THEY CONFESS, DID THEY ACKNOWLEDGE THAT IT WAS A VIOLATION OF THE CONSTITUTION TO OPERATE A DUAL SYSTEM OF PUBLIC EDUCATION? NO. THEY APPEALED. FOR PROBABLY THE FIFTH OR SIXTH TIME, THEY APPEALED THAT RULE.

A YEAR LATER, IN MARCH 1981, ALMOST FIFTEEN YEARS TO THE DAY, WE CAME UP FOR A HEARING ON WHAT REMEDY WAS TO BE INSTITUTED. I HAD REQUESTED THE BOARD TO PROVIDE A PLAN FOR DESEGREGATION. I SAY REQUESTED. IT WAS MORE THAN A REQUEST. IT WAS IN THE FORM OF A COURT ORDER.

THE BOARD SUBMITTED SOMETHING, BUT I HAD TO TELL THEM, AND I DID, THAT IT WAS NOT SOMETHING THAT WOULD ACTUALLY DESEGREGATE THE SCHOOL SYSTEM. I ALSO TOLD THEM THAT THEIR APPEAL, WHICH WAS THEN PENDING, HAD, QUOTE, ONLY A MINUSCULE CHANCE OF SUCCESS. I WAS HOPING TO ENCOURAGE THEM TO FORGET THE APPEAL AND JUST SIT DOWN AND DO WHAT'S RIGHT, JUST DO WHAT THE LAW REQUIRES. BUT I WAS NOT SUCCESSFUL. THE BOARD WAS NOT WILLING, AT THAT TIME, TO DO WHAT'S RIGHT, WHAT THE LAW REQUIRES. THE BOARD, AT THAT TIME, WAS NOT EVEN WILLING TO SUBMIT ANYTHING CLOSE TO AN ACTUAL PLAN TO DESEGREGATE THE SCHOOL SYSTEM.

***29** NOW, I'M NOT CRITICIZING THOSE MEN AND WOMEN WHO WERE MEMBERS OF THAT BOARD. THOSE BOARDS, BECAUSE WE'VE HAD FIFTEEN YEARS OF SUCCESSORS. SOME THINGS PEOPLE JUST CAN'T BRING THEMSELVES TO DO. AND FOR WHATEVER REASON, OR WHATEVER CAUSE, THE MAJORITY OF THE EAST BATON ROUGE PARISH SCHOOL BOARD HAS NEVER, UNTIL NOW, BEEN WILLING TO BRING ITSELF TO DO WHAT'S RIGHT, TO ACCEPT THE NOTION THAT ALL MEN, INCLUDING THOSE WHOSE SKIN IS BLACK, ARE CREATED EQUAL.

I TRIED EVERY BIT OF ELOQUENCE THAT I HAD, AND I HAD ALL THE MEMBERS OF THE SCHOOL BOARD HERE IN OPEN COURT, TO CONVINCE THE MEMBERS OF THAT BOARD TO SET ASIDE THEIR DIFFERENCES, TO SIT DOWN WITH OPPOSING LITIGANTS, TO TRY TO WORK OUT A SOLUTION TO THE PROBLEM. THE PHRASE I USED WAS TO FIND THE LEADERSHIP, COURAGE, AND WISDOM TO WORK OUT A CONSTITUTIONAL SOLUTION TO THIS LOCAL PROBLEM. THAT'S WHAT I TOLD THEM. I'M QUOTING FROM *FED. SUPPLEMENT.*

"IF ALL OF YOU WILL APPROACH THIS SITUATION, NOT AS GLADIATORS, NOT AS PROTECTING A, QUOTE, SIDE, CLOSE QUOTE, BUT AS A GREAT OPPORTUNITY TO REVITALIZE THE PUBLIC SCHOOL SYSTEM IN THIS PARISH, THEN YOU MAY HERE CREATE A QUALITY SYSTEM OF EDUCATION BASED UPON REAL AND EQUAL OPPORTUNITY FOR ALL.

"ALL OF YOU KNOW IN YOUR HEARTS ..."—AND I'M CONTINUING TO QUOTE—"... THAT SOME DAY, SOMEHOW THAT MUST OCCUR. SOUTHERN SCHOOL SYSTEMS OUGHT NOT TO, AND CANNOT, REMAIN THE WARDS OF THE FEDERAL COURTS FOREVER," ALTHOUGH GOD KNOWS, IT SEEMS LIKE IT.

BACK TO THE QUOTE, "LOCAL PUBLIC OFFICIALS MUST SOMEDAY, IN THE SOUTH, ASSUME AND DISCHARGE THEIR FULL RESPONSIBILITY, NOT JUST UNDER STATE AND LOCAL LAWS, BUT UNDER THE CONSTITUTION OF THE UNITED STATES. SOME DAY, SOMEHOW, QUALITY PUBLIC EDUCATION, BASED UPON EQUAL EDUCATIONAL OPPORTUNITY FOR ALL MUST COME ABOUT, AND IT MUST BE DONE BY LOCAL PUBLIC OFFICIALS. I ASK YOU, WHY NOT NOW, WHY NOT HERE IN BATON ROUGE, IN LOUISIANA? WHY NOT IN THIS PLACE AND AT THIS TIME?"

WELL, THAT'S NOT UP TO JACK KENNEDY'S INAUGURAL ADDRESS OR ANYTHING LIKE THAT, BUT IT WAS THE BEST THAT THIS OLE COUNTRY BOY, WHO NEVER LEARNED TO SPEAK IN SOUND BYTES COULD DO. AND, OF COURSE, IT DIDN'T WORK. I THINK IT DIDN'T WORK PROBABLY BECAUSE IT WAS INVOLUNTARILY THRUST UPON THE BOARD. AT THAT TIME, AN APPEAL WAS PENDING, WHICH, DESPITE MY ADMONITION, THEY, SOME OF THEM, LEAST, SINCERELY THOUGHT THEY WOULD WIN AND THEY COULD GO BACK TO THE WAY THEY HAD DONE THINGS IN THE PAST. THEY LOST THAT APPEAL. THEY, OF COURSE, LOST THE APPEAL FROM THE SEVERAL ORDERS THAT THIS COURT WOUND UP HAVING TO ENTER BECAUSE OF THE DEFAULT OF THE THEN BOARD.

AS A FOOTNOTE TO ALL OF THIS, I GUESS WE OUGHT TO POINT OUT THAT NEITHER THE *ADVOCATE* NOR CHANNEL 2, NOR ANY OTHER MEMBER OF THE PRESS RAISED ANY OBJECTION TO THE DRACONIAN GAG ORDER THAT WAS ISSUED AT THAT TIME. PERHAPS MY ELOQUENCE, OR ATTEMPTED ELOQUENCE, HAD SOME EFFECT UPON THE PRESS BECAUSE THERE WAS NO OBJECTION FROM THE PRESS AT THAT TIME.

SO, WHERE ARE WE HERE TODAY, WHAT ARE WE ABOUT? WE ISSUED THIS ORDER THE OTHER DAY BASED ON THE REPRESENTATION TO THE COURT THAT A MAJORITY—I WOULD SAY PROBABLY IT'S UNANIMOUS—AND I HAD OTHER SECRET MEETINGS, BY THE WAY, MR. WEISS. I HAVE MET SECRETLY—I DON'T LIKE THAT WORD. I MET PRIVATELY WITH ALL OF THE MEMBERS OF THE EAST BATON ROUGE PARISH SCHOOL BOARD, ALONG WITH ALL COUNSEL OF RECORD, JUST ON AN INFORMAL BASIS, AND I TOLD THEM MUCH OF WHAT I'M SAYING HERE TODAY. AND WHAT I RECEIVED IN RETURN HAS CONVINCED ME THAT WE HAVE A BOARD OF MEN AND WOMEN WHO ACCEPT THEIR RESPONSIBILITY, ACKNOWLEDGE THEIR DUTY TO DESEGREGATE THE SCHOOL SYSTEM, AND PLAN TO ACCOMPLISH EXACTLY THAT.

***30** AGAIN, I'LL SAY I GIVE THEM AN F–MINUS FOR PUBLIC RELATIONS. BUT IN SEEKING THE OPPORTUNITY TO HAVE PRIVATE DISCUSSIONS BEFORE EVERYTHING IS MADE PUBLIC, TO SEE IF SOMETHING CAN BE RESOLVED AFTER FORTY YEARS OF LITIGATION, I SAY TO THEM, HOLD UP YOUR HEADS, YOU HAVE NOTHING TO BE ASHAMED OF. YOU STAND IN THE COMPANY OF GIANTS, THE GIANTS WHOSE NAMES I HAVE JUST MENTIONED; WASHINGTON AND MADISON

AND FRANKLIN AND THE OTHERS, THE DELEGATES TO THE CONVENTION WHO NAILED UP THE WINDOWS TO ASSURE THEIR PRIVACY.

I HOPE, WITH EVERY FIBER OF MY BEING, THAT THEIR EFFORTS ARE SUCCESSFUL. I DON'T KNOW WHETHER THEY WILL BE, OR NOT. BUT AS A CITIZEN OF THIS COMMUNITY, I HOPE THAT THEIR EFFORTS ARE SUCCESSFUL. I HOPE THAT THEY CAN COME UP WITH SOME AMICABLE RESOLUTION OF THIS LONGSTANDING CANCER THAT HAS BEEN EATING AWAY AT OUR COMMUNITY.

THIS IS NOT GOING TO RESOLVE, CERTAINLY NOT GOING TO SOLVE ALL OF THE RACE PROBLEMS IN BATON ROUGE OR ANYWHERE ELSE. BUT WHERE WE HAVE A BOARD WHO RECOGNIZES THAT ALL MEN, INCLUDING PEOPLE WHOSE SKIN IS BLACK, ARE CREATED EQUAL, MY GOD, THAT'S PROGRESS. EVEN MR. WILLIAMS WOULD ADMIT THAT'S PROGRESS.

I DON'T KNOW WHETHER THEY'RE GOING TO BE SUCCESSFUL, BUT I THINK THEY ARE ENTITLED TO THE OPPORTUNITY TO DO IT, TO TRY IT, TO EXPLORE IN PRIVATE THOSE ISSUES THAT IF PEOPLE EVEN THOUGHT THEY WERE THINKING ABOUT, MIGHT KILL THEM, KILL THEIR PLAN.

I THINK I KNOW THIS COMMUNITY. I HAVE ALREADY SAID THAT WHEN, AS, AND IF THESE FOLKS COME UP WITH SOMETHING, OR WHEN THEY SAY THEY CAN'T COME UP WITH SOMETHING, WE'RE GOING TO HAVE PLENTY OF PUBLIC DISCUSSION.

LET ME TELL YOU ONE MORE THING THAT I FORGOT TO MENTION, THAT I DID TELL THE MEMBERS OF THE BOARD, AND THAT IS—WE DID NOT MENTION THIS IN PUBLIC BECAUSE WE DIDN'T WANT TO CREATE A BIG RUCKUS—BUT THE SINGLETON REPORTS, WHICH THE BOARD IS REQUIRED TO FILE ANNUALLY, THE SINGLETON REPORTS, WHICH THE BOARD HAS FILED IN THE LAST FIFTEEN YEARS, ONE AFTER THE OTHER, CLEARLY DEMONSTRATE THAT THE EAST BATON ROUGE PARISH SCHOOL SYSTEM IS STILL, THIS DAY, NOT DESEGREGATED.

NOW, I TOLD THE BOARD THAT WE'VE JUST BEEN SORT OF DRIFTING IN THE LAST FEW YEARS, BUT THE TIME FOR DRIFTING WAS DONE, AND THAT FURTHER EFFORTS WERE GOING TO HAVE TO BE UNDERTAKEN TO DESEGREGATE, REALLY DESEGREGATE, THE EAST BATON ROUGE PARISH SCHOOL SYSTEM. SO, THE MEMBERS OF THE BOARD WERE FULLY AWARE OF THAT. THIS MEETING WAS NOT LONG AFTER THEY TOOK OFFICE, MAYBE SIX MONTHS AFTER THEY TOOK OFFICE, BEFORE THEY HAD HIRED THEIR NEW SUPERINTENDENT.

SO, ON THE BACK BURNER THERE IS THIS NEXT ROUND IN COURT THAT THE BOARD WAS WELL AWARE WAS COMING. AND, OF COURSE, THE MEMBERS OF THE BOARD ARE JUST CITIZENS OF OUR COMMUNITY. I THINK THEY NEED THE OPPORTUNITY TO SEE WHETHER THEY CAN PUT SOMETHING TOGETHER. YOU CAN CRITICIZE IT, YOU CAN ARGUE ABOUT IT, YOU CAN DISAVOW IT, YOU CAN MAKE THEM CHANGE IT LATER IF YOU DON'T LIKE IT.

LINDA, I'M PERFECTLY WILLING TO GIVE THE *ADVOCATE* BACK, IF YOU WISH IT, THE AWARD THAT THE *STATE–TIMES* AND *MORNING ADVOCATE* GAVE TO ME IN 1981 FOR MY OUTSTANDING DEVOTION TO AND STAUNCH DEFENSE OF THE PRINCIPLES OF THE FIRST AMENDMENT, IF YOU THINK THAT I NO LONGER DESERVE THAT AWARD. JIM HUGHES SAID THAT IT WAS IMPORTED CUT GLASS OF THE FINEST QUALITY, BUT THEN WHOEVER BELIEVED ANYTHING JIM HUGHES EVER SAID.

***31** JIM WOULD RECOGNIZE THE IRONY OF THIS SITUATION, BUT HE'LL NEVER HEARD ABOUT IT BECAUSE HE TOLD ME HE QUIT READING THE PAPER WHEN HE RETIRED.

ACTUALLY, I FOUND IT IN A CLOSET. IT WAS REAL DUSTY AND I'VE BEEN USING IT TO MIX PAINT. BUT I THOUGHT I'D BRING IT DOWN HERE. AND IF YOU WANT IT BACK, LINDA, I'LL CERTAINLY GIVE IT BACK.

THE COURT: LET ME SPEAK TO THE COMMUNITY, WHICH I CAN'T BECAUSE I'LL HAVE TO FILTER IT THROUGH WHATEVER YOU GUYS FROM THE PRESS SAY I SAID.

THE *ADVOCATE* AND CHANNEL 2 ARE GOOD

CITIZENS OF THIS COMMUNITY, ALWAYS HAVE BEEN. THEY HAVE ALWAYS TRIED TO SUPPORT WHAT BENEFITS THE COMMUNITY, AND HAVE ALWAYS BEEN ABLE TO KEEP A PERSPECTIVE ON WHERE WE ARE.

I WOULD LIKE TO ASK THE *ADVOCATE* AND CHANNEL 2, AS GOOD CITIZENS OF THIS COMMUNITY, TO TAKE A TIME–OUT, TO BACK UP, TO LOOK AT THE SITUATION, AND TO BACK OFF, TO CALL OFF THE DOGS. THIS COURT ACTIVITY HAS BEEN A DIGRESSION FROM THE WORK THAT THE SCHOOL BOARD IS TRYING TO DO. I WOULD LIKE TO ASK YOU, AS CITIZENS OF THIS COMMUNITY, THE *ADVOCATE* AND CHANNEL 2, TO GIVE THESE WELL–INTENTIONED, BUT PUBLIC–RELATIONS–INEPT FOLKS AN OPPORTUNITY TO SEE IF THEY CAN COME UP WITH SOMETHING THAT THIS COMMUNITY CAN LIVE WITH.

NOW, WHEN I SAY THAT, I'M FULLY AWARE THAT THE PRESS, INCLUDING, AND PERHAPS MOST PROMINENTLY, THE *ADVOCATE* AND CHANNEL 2 HAVE THE LEGAL RIGHT, AND HOLD IT WITHIN YOUR POWER TO SO AGITATE THE PUBLIC THAT WHATEVER, IF ANYTHING, THE BOARD COMES UP WITH WILL NOT BE ACCEPTABLE, WILL NOT BE ACCEPTED, WILL NOT WORK, AND WE ARE BACK WHERE WE WERE FORTY YEARS AGO WHEN THIS LITIGATION COMMENCED.

YOU CERTAINLY ARE NOT REQUIRED TO DO THAT, BUT I HOPE THAT MY PERSONAL REQUEST WOULD AT LEAST BE SERIOUSLY CONSIDERED.

I DENY THE MOTION TO VACATE THE CONFIDENTIALITY ORDER. WE CERTAINLY MAY MODIFY IT AS THE NEED MAY ARISE, AND THERE MAY BE NEED TO MODIFY IT. I'M NOT GOING TO REPEAT, BUT AT SUCH TIME IF SOMETHING COMES UP, IF SOMETHING DOES, WE'LL HAVE PLENTY OF TIME FOR PUBLIC COMMENT ON IT.

MR. WEISS?

MR. WEISS: YOUR HONOR, THERE ARE A FEW MATTERS, WHICH I NEED TO TAKE UP WITH THE COURT, IN ORDER TO COMPLETE THE RECORD, IF I MAY.

THE COURT: YOU CAN DICTATE YOUR PROFFERS AFTER I LEAVE. I DON'T NEED TO BE HERE.

MR. WEISS: SURE.

THE FIRST MATTER IS, AS THE COURT IS AWARE, WE ISSUED A SUBPOENA DUCES TECUM TO THE SCHOOL BOARD, TO WHICH IT OBJECTED, ON THE BASIS OF OUR LACK OF STANDING, WHICH THE COURT HAS RECOGNIZED TODAY.

THE COURT: WELL, YOU CERTAINLY HAVE STANDING, BUT I QUASHED THE SUBPOENAS.

MR. WEISS: COMPLETELY?

THE COURT: COMPLETELY. I THINK YOUR RECORD IS ADEQUATE TO PUT THE ISSUES BEFORE ANYBODY, ANY COURT THAT NEEDS TO BE CONSIDERING THE ISSUES.

MR. WEISS: THE OTHER MATTER THAT I WANTED TO DO AT THIS TIME, YOUR HONOR, IF I MAY, IS THAT WE WOULD LIKE TO OFFER, AS EXHIBITS, IF WE MAY, A COPY OF THE PERTINENT PAGES OF THE DOCKET SHEET. THAT'S ITEMS NUMBER 755 THROUGH 767.

THE COURT: THE DOCKET SHEET IS ALREADY A MATTER OF RECORD, BUT IF YOU WANT TO DO THAT, YOU CERTAINLY MAY DO THAT.

***32** MR. WEISS: MY FEELING WAS, YOUR HONOR, WAS THAT THE DOCKET SHEET IN THE CASE, GIVEN THE LENGTH OF THE CASE, MIGHT BE VOLUMINOUS, AND THAT THIS WOULD—

THE COURT: FORTY YEARS' WORTH.

MR. WEISS:—THIS WOULD HELP TO EXPEDITE THE RECORD, IF I MAY OFFER, AS INTERVENOR'S EXHIBIT NUMBER 1, A CERTIFIED COPY OF THE DOCKET SHEET.

AND I WOULD ALSO LIKE TO OFFER, AS INTERVENOR'S NUMBER 2, A COPY OF THE RESPONSES OF THE UNITED STATES TO OUR FIRST SET OF INTERROGATORIES. THOSE ARE NOT FILED IN THE RECORD.

THE COURT: OH, OKAY, THEY WERE NOT FILED IN THE RECORD. THE QUESTIONS WERE NOT FILED IN THE RECORD, EITHER.

MR. WEISS: THEY'RE PART OF THE ANSWERS.

THE COURT: OH, OKAY.

MR. WEISS: YOUR HONOR, WITH THE EXCEPTION OF OUR PROFFERS, I THINK THAT COMPLETES MY BUSINESS.

THE COURT: THANK YOU, MR. WEISS. THANK YOU ALL. COURT WILL BE IN RECESS.

(COURT ADJOURNED AT 11:05 A.M.)

All Citations

Not Reported in F.Supp., 1996 WL 84678