

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DAVIS,

Plaintiff,

vs.

DEPARTMENT OF JUSTICE,

Defendant.

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. Docket No. CA 88-130

. Washington, D.C.

. July 19, 1993

. 9:40 a.m.

TRANSCRIPT OF STATUS CALL
BEFORE THE HONORABLE THOMAS P. JACKSON
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiff:

JAMES LESAR, ESQ.

For the Defendant:

SUSAN A. NELLOR, ESQ.

Court Reporter:

BEVERLY J. BYRNE
Official Court Reporter
Room 6812 U. S. Courthouse
Washington, D.C. 20001
(202) 273-0899

Proceedings reported by stenomask, transcript produced from dictation.

Attachment C.A. 04-0814

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P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action 88-130, Davis versus Department of Justice. Mr. Lesar for the plaintiffs. Susan Nellor for the defendant.

THE COURT: Good morning, ladies and gentlemen. Mr. Lesar, I don't know what I'm going to do with this case. I thought you were entitled to --

MR. LESAR: I thought we had a presumption that would have disposed of it, and Your Honor agreed with me. The Court of Appeals dumped on us.

THE COURT: I think your client is just going to have to give up or take it to the Supreme Court.

MR. LESAR: Well, we may have to go that route. He's determined to try and get the tapes, and I've not given up hope that there is some way I can get some of the material.

THE COURT: Well, you've got an almost impossible burden to carry.

MR. LESAR: I agree that it's --

THE COURT: If the Court of Appeals is correct, and at least from my vantage point, they're correct. I don't have any choice in the matter. I think probably the best thing to do is to ask you to show cause within 15 days why the case ought not to be dismissed.

MR. LESAR: All right. If I can extend that somewhat because I do have some deadlines. If we could make it --

1 THE COURT: Oh, sure. If you can represent right now
2 that you are going to be unable to make a showing of which
3 tapes are in the public domain.

4 MR. LESAR: No, I won't make that representation.

5 THE COURT: You think you can?

6 MR. LESAR: I think I can -- well, first of all,
7 remember the Court of Appeals left open the question of whether
8 or not they have to submit a Vaughn Index, and I think that,
9 indeed, they're going to have to do that. We had raised that
10 issue before, and we raise it now.

11 And, in addition, also remember that I have put into
12 the record and can do so again, a great volume of materials
13 that purport to be verbatim quotes from tapes that were played
14 at the trial. And I may have some other alternatives,
15 including the possibility, I haven't yet attempted to do it,
16 but the possibility of getting some declarations from people
17 who participated in the trial.

18 So I do have some possibilities. I recognize that
19 it's a hard road, but --

20 THE COURT: All right. How much time do you want?

21 MR. LESAR: Well, I would -- if you're going to
22 proceed with the show cause order method, I would probably need
23 until about August 15.

24 THE COURT: Any problem with that, Ms. Nellor?

25 MS. NELLOR: No problem.

1 THE COURT: All right.

2 MR. LESAR: If I can get it done before then, I will.

3 THE COURT: All right. Well, I'll ask you to show
4 cause by August 15 why the case should not be dismissed for the
5 plaintiff's inability to satisfy the burden the Court of
6 Appeals has deemed to be on the plaintiff, namely, to demon-
7 strate which of those tapes is within the public domain.

8 MR. LESAR: All right.

9 THE COURT: Failing which the case will be dismissed
10 and we'll see where it goes from there. Do you have any other
11 suggestions, Ms. Nellor?

12 MS. NELLOR: No, I don't.

13 THE COURT: Does that sound like a reasonable way to
14 do it?

15 MS. NELLOR: Sounds very reasonable, Your Honor. I
16 see no other alternative at this --

17 THE COURT: I don't either. I don't either. The
18 Court of Appeals mystifies me, but it's not the first time, and
19 I'm sure it won't be the last.

20 All right. Thank you.

21 (Whereupon, the proceedings were concluded at 9:45 o'clock
22 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.


BEVERLY J. BYRNE
Official Court Reporter