

CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LOUISIANA

NO. 09-2279

DIVISION "D"

THE COUNCIL OF THE CITY OF NEW ORLEANS, JACKIE  
CLARKSON, ARNIE FIELKOW, CYNTHIA HEDGE-MORRELL, CYNTHIA  
WILLARD LEWIS, STACY HEAD, SHELLY MIDURA, JAMES CARTER

VS.

TRACIE WASHINGTON, TIONNE SIMON, THE LOUISIANA JUSTICE  
INSTITUTE

PROCEEDINGS held in the above-captioned matter were taken  
in Chambers before the HONORABLE LLOYD J. MEDLEY, JR., JUDGE  
presiding, on MARCH 4, 2009.

APPEARANCES:

STEVEN J. LANE  
LENNY DAVIS  
SOREN E. GISLELSON  
ATTORNEYS for Plaintiffs

EDWARD WASHINGTON  
EVELYN PUGH  
LINDA WESTBROOK  
CLARENCE ROBY *via speakerphone*  
ATTORNEYS for Defendants

Reported by:

DEBRA A. WEAVER, C.C.R.  
Certified Court Reporter



1                   why don't you go ahead and make your  
2                   appearances as present.

3           MR. WASHINGTON:

4                   Edward Washington present for the City  
5                   of New Orleans with the City Attorney's  
6                   Office.

7           MS. PUGH:

8                   Evelyn Pugh also present on behalf of  
9                   the City of New Orleans.

10          MS. WESTBROOK:

11                   I'm Linda Westbrook also present on  
12                   behalf of the City of New Orleans.

13          THE COURT:

14                   While the City is not a party, members  
15                   of the City are here and are welcome and  
16                   we're glad to have them.

17                   This matter is brought my Mr. Lane.  
18                   Mr. Lane why don't you proceed.

19          MR. LANE:

20                   Judge, we filed this Petition for Writ  
21                   of Injunction because there has been, what  
22                   I believe to be, a very serious, albeit  
23                   possibly inadvertent, breach of potentially  
24                   privileged information in many aspects.

25                   What happened here, just to summarize  
26                   it briefly, what's set out in this petition  
27                   is: On or about December 3, 2008 Tracie  
28                   Washington on behalf of The Louisiana  
29                   Justice Institute made a request for  
30                   information to be produced. She sent the  
31                   request to the Department of Information  
32                   and Technology, and, I believe, a copy may

1 have been sent to the City Attorney's  
2 Office. And the request that was made was  
3 for three years worth of e-mails from  
4 certain Council members and all of their  
5 staff. And that, it was a very vague,  
6 broad request.

7 And what happened was, and I don't  
8 have all of the facts, but I have enough to  
9 know that injury has been, irreparable  
10 injury could be done here, is that somehow  
11 this request as well as various other  
12 request made of Council records got to Ms.  
13 Veronica White, the head of Sanitation. I  
14 don't know why the request went to Ms.  
15 White. I haven't had an opportunity to  
16 talk to her. Ms. White is not an attorney.

17 And what happened in the month of  
18 December of '08 and also in February of '09  
19 Ms. White, I believe, through the  
20 Department of Information and Technology  
21 with the City, produced records dealing  
22 with e-mails of one or more City Council  
23 members, possibly one or more staff  
24 members, on a variety of subjects, and I  
25 don't know the subjects, and I don't know  
26 how many documents.

27 The City Council did not find out  
28 about this request until, no earlier than  
29 February 19<sup>th</sup> of '09, more than two and a  
30 half months after the request and after the  
31 documents had already been produced. When  
32 we learned that that request had been made

1 of the Council we sent a letter to Ms.  
2 Washington on February 23<sup>rd</sup> asking for the  
3 documents to be returned. We sent several  
4 letters to her asking for the documents to  
5 be returned. And she has refused.

6 We contacted the City and tried to  
7 find out what documents were produced and  
8 they couldn't tell us exactly what  
9 documents were produced, because apparently  
10 Ms. White did not maintain a record or a  
11 copy of a letter or a copy of what was  
12 produced. So the only person who knows  
13 what was produced by Ms. White to Ms.  
14 Washington is Ms. Washington.

15 But what we do know is that apparently  
16 thousands of pages of documents were  
17 produced. That these documents could  
18 include private e-mails from citizens  
19 writing to the Council, private e-mails of  
20 the Council themselves, attorney client  
21 privilege information of communications  
22 between the Council and attorneys for the  
23 Council, between Council staff members and  
24 attorneys for the Council.

25 We have listed in our petition in  
26 Paragraph 16, 50 different active lawsuits  
27 that we know the Council and Council staff  
28 members communicated on over the last three  
29 years with their attorneys. And those  
30 matters are still pending involving  
31 millions potentially billions of dollars in  
32 exposure for the City, which is subject to

1 attorney client privilege and work product  
2 protection.

3 We know that there is a current  
4 federal investigation of what I will call  
5 the NOAH incident, in which the U.S.  
6 Attorney's Office subpoenaed records from  
7 the City and from the City Council, and  
8 we've produced those to the U.S. Attorney.  
9 But we don't know if any of those documents  
10 have been produced to Ms. Washington. And  
11 there is a potential that the U.S. Attorney  
12 could look at this as if someone is  
13 impeding a federal investigation by  
14 producing documents to a third-party.

15 There is a legislative privilege that  
16 we have identified in Paragraph 18 of our  
17 petition. We've also identified 35  
18 different exceptions under the Public  
19 Records Act, which could apply to this  
20 situation depending upon what was produced.

21 And we also have, what I perceive as  
22 a potential ethics violation, because as  
23 you know under Rule 4.4 of the Rules for  
24 Professional Conduct, an attorney has a  
25 duty to return any privilege documents  
26 which are produced inadvertently. And we  
27 put Ms. Washington on notice as soon as we  
28 found out that Council records were  
29 produced by somebody other than the  
30 Council. And I submit to Your Honor the  
31 head of the Department of Sanitation  
32 doesn't have the right to waive privileges

1 on behalf of the Council or their staff or  
2 attorneys for the Council.

3 So, what we are asking for, and I  
4 think the only way to solve this problem is  
5 to grant a Temporary Restraining Order  
6 preventing Ms. Washington from  
7 communicating these documents or  
8 information to anyone else. She said in an  
9 interview on WDSU with Norman Robinson  
10 yesterday that she was intending on putting  
11 these e-mails on the Internet. She was  
12 quoted in the Times Picayune today of  
13 saying the same thing. That it hadn't been  
14 done, but she was going to do it. So we  
15 want a Restraining Order as to that.

16 We want to know to whom she's given  
17 these documents. We want the documents  
18 returned so that we can do what should have  
19 been done at the outset, which is review  
20 the documents, assert whatever privileges  
21 apply, give her whatever information she's  
22 entitled to, and if she questions any of  
23 the privileges asserted a Court can decide  
24 whether or not any of the records are  
25 privileged.

26 And in order to confirm that whatever  
27 she's returning to us is what she got, we  
28 would need her under oath or in some way to  
29 give the same set of documents to you so  
30 that you would know that whatever we're  
31 getting is what you're getting and there's  
32 no other documents out there.

1           We need to know what documents were  
2 produced, who else has the documents. She  
3 says she's given them out. So that can put  
4 other people on notice. And an Order that  
5 she not post the documents or disseminate  
6 them to others. And that would put us back  
7 to square one, which is where it should  
8 have been. In other words, when this  
9 request came in for Council records it  
10 should have either been dealt with by the  
11 City Attorney or an attorney or the  
12 attorney for the Council. And that's what  
13 we're trying to avoid.

14           Because there is no telling what kind  
15 of damage is going to be done to the  
16 Council, to the City, if lawsuit  
17 information gets out, to staff members of  
18 the Council if their private information  
19 gets out, to Council members if private  
20 information gets out, and how many other  
21 lawsuits would stem from that breach of  
22 confidentiality.

23           THE COURT:

24           Let the record reflect that Clarence  
25 Roby, Attorney-at-Law, is appearing on  
26 behalf of Tracie Washington via speaker  
27 phone.

28           Clarence, do you want to respond?

29           MR. ROBY:

30           Judge, if I could briefly.

31           I think this is more of putting the  
32 cart before the horse. I have not seen

1 or received a copy of the Injunction Mr.  
2 Lane has referenced. But what I find to be  
3 curious; are we talking about public e-  
4 mails from these employees of the City  
5 Council or are we talking about --

6 (PHONE DISCONNECTED)

7 THE COURT:

8 Call him back. Get him back.

9 MR. LANE:

10 Just for the record, Your Honor, this  
11 is another partner, Soren Gislelson.  
12 Thank you.

13 THE COURT:

14 Clarence?

15 MR. ROBY:

16 Yes, Judge, I'm sorry about that.

17 THE COURT:

18 Go ahead.

19 MR. ROBY:

20 I'm actually driving towards the  
21 courthouse now on Tulane, so if I get close  
22 enough I'll just come on up.

23 I'm not sure how you show irreparable  
24 harm based on what Mr. Lane asserts on  
25 behalf of his client. It's quite simple to  
26 figure out what documents were given  
27 pursuant to this Public Records Request.  
28 The City is in possession of what they  
29 claim Ms. Washington should reproduce to  
30 them. And to suggest that it could involve  
31 certain documents or information concerning  
32 suits or it could involve personal

1 information, we're talking about e-mails  
2 from public employees. I'm not sure what  
3 personal information that they have some  
4 claim. You don't have a claim for personal  
5 information as a city employee when you're  
6 using a city property e-mail.

7 THE COURT:

8 Clarence, what I think I hear him  
9 saying is that, even if we concede what  
10 you're saying is true, and I don't know if  
11 it is, there may be attorney client  
12 information in there that if it got out  
13 could mean damage to the City, to the  
14 Council, employees of the City or the  
15 Council, that was intended to be attorney  
16 client privilege that could cause  
17 irreparable harm depending on whose hands  
18 it got in. I think that's a very real  
19 concern.

20 MR. ROBY:

21 And I agree, Judge, I agree.

22 THE COURT:

23 So I think there could be irreparable  
24 harm there. I think he's made a case for  
25 potential irreparable harm.

26 On its face I think there's merit at  
27 least for the TRO. All he's asking is that  
28 Ms. Washington or anybody who has these e-  
29 mails not disseminate them until there has  
30 been a hearing or an in camera inspection  
31 to determine what e-mails can go out and  
32 which ones are privileged or shouldn't go

1 out. That's all he's asking.

2 I'm going to grant the TRO, set it for  
3 hearing within ten days wherein you and any  
4 other party can come in. Okay? I'm going  
5 to post a bond.

6 MR. LANE:

7 There's no bond. It's the City  
8 Council.

9 THE COURT:

10 I thought you said you don't mind  
11 posting a bond.

12 MR. LANE:

13 No, I don't think so. I don't believe  
14 we said that.

15 THE COURT:

16 If the Statue doesn't require a bond,  
17 then there will be no bond.

18 But I think there's merit, at least,  
19 in the TRO to stop the e-mails from going  
20 out.

21 MR. ROBY:

22 And, Judge, let me ask this question  
23 because I saw the article, the interview on  
24 WDSU, but I also remember Ms. Washington  
25 stating that she's had these e-mails for in  
26 excess of two months prior to being  
27 delivered. And as I appreciate it, they  
28 were turned over, one set of e-mails were  
29 turned over by the City Attorney's Office.  
30 And I'm somewhat concerned. I will ask her  
31 for a list.

32 THE COURT:

1 I see everybody in the room shaking  
2 their head.

3 MR. ROBY:

4 Shaking their head as no?

5 THE COURT:

6 As no.

7 MR. ROBY:

8 Or yes?

9 THE COURT:

10 As no.

11 MR. ROBY:

12 Okay.

13 THE COURT:

14 Clarence, a lot of what you're  
15 raising, I guess, will be ferreted out at  
16 the hearing. And certainly when you arrive  
17 we'll be happy to give you a copy of the  
18 pleading.

19 MR. ROBY:

20 Okay. I'm parking so I'll be there in  
21 about two minutes.

22 THE COURT:

23 And I'm sure Mr. Lane will hang around  
24 in case you want to talk. He says he's  
25 going to hang around in case you want to  
26 talk to him. And we'll set the hearing  
27 within ten days. Give everybody a chance  
28 to get their papers in and we'll hear it.

29 MR. LANE:

30 Just so it's clear; is Your Honor  
31 going to prepare the judgment, do you want  
32 us to prepare the judgment?

1 THE COURT:

2 The Court directs the plaintiff to  
3 prepare the judgment.

4 MR. LANE:

5 I just want to make sure that the  
6 wording is right. We're going to have a  
7 Temporary Restraining Order, restraining  
8 and enjoining the defendants, all the ones  
9 that we listed, from discussing, --

10 THE COURT:

11 Anybody else who does or who might  
12 have possession of the e-mails.

13 MR. LANE:

14 Transferring to any other person or  
15 legal entity the documents received by them  
16 in response to the Records Requests at  
17 issue. But also that it not be posted on  
18 the Internet, which is what Ms. Washington  
19 said she was intending to do.

20 THE COURT:

21 well, to me that's disseminating. She  
22 was also prohibited from posting it on the  
23 e-mail or any other public site where  
24 someone might have access to it prior to  
25 the hearing.

26 MR. LANE:

27 And I assume you will decide at  
28 whatever hearing we set whether or not  
29 those documents need to come back or how  
30 you're going to deal with it if you decide  
31 that there could be privilege information  
32 there.

1 THE COURT:

2 well, the only thing I'm going to  
3 decide at the hearing is the merits of the  
4 TRO whether or not I should do a  
5 Preliminary Injunction. I'm sure at a  
6 later hearing, at a later proceeding the  
7 issue of where the e-mails go, who they  
8 belong to, can be decided. I don't think  
9 that's in the purview of the Injunction.

10 MR. DAVIS:

11 And I'm presuming that your Injunction  
12 will require Ms. Washington and any of  
13 those --

14 THE COURT:

15 Let's wait until we get to the  
16 Injunction.

17 MR. DAVIS:

18 But I want to be sure on the TRO that  
19 she preserves and maintains what she has.  
20 That's incumbent in the TRO.

21 THE COURT:

22 Yeah, oh, yeah. Yeah, yeah, I agree.  
23 So word it as such.  
24 Clarence, thank you for being here.

25 MR. ROBY:

26 Okay, Judge. No problem. I'm  
27 actually across the street parking so I'll  
28 be there. I guess I can come over in  
29 Chambers and get a copy of that pleading.

30 THE COURT:

31 Be happy to hold one for you.

32 MR. LANE:

1 I'll wait for him to come so we could  
2 pick a date.

3 THE COURT:

4 And he's going to wait for you to come  
5 so you can pick a date. I see Ms.  
6 Washington is here.

7 MR. ROBY:

8 Okay. I'll be there shortly.

9 THE COURT:

10 Take care.

11 MR. ROBY:

12 Thank you, Your Honor.

13 THE COURT:

14 Okay, gentlemen and ladies. Glad to  
15 have you. Had I known we were going to be  
16 on the record, we would have had it in  
17 court so you would have been more  
18 comfortable.

19 **(ALL PARTIES WERE DISMISSED FROM CHAMBERS. THE**  
20 **FOLLOWING WERE PRESENT FOR THE FOLLOWING; STEVEN**  
21 **LANE, CLARENCE ROBEY, AND TRACIE WASHINGTON.**

22 THE COURT:

23 Back on the record in the matter of  
24 City Council versus Tracie Washington Et  
25 Al.

26 The only reason why we're here, I  
27 think Mr. Lane wanted to make sure Ms.  
28 Washington and her council understood the  
29 breadth of the TRO; right?

30 MR. LANE:

31 Right, I just want to make sure that  
32 it's clear on the record that Ms.

1 Washington wasn't here, which wasn't done  
2 in court.

3 There is a Temporary Restraining Order  
4 in effect against disseminating any of the  
5 e-mails.

6 THE COURT:

7 In any way, shape or form including  
8 the Internet, including the radio, any way  
9 at all, any means of communication. They  
10 are not to be disseminated to any other  
11 parties.

12 MR. ROBY:

13 Henceforth.

14 MS. WASHINGTON:

15 Henceforth.

16 THE COURT:

17 Henceforth, yeah. What has happened  
18 before, we can't control. But that's  
19 basically what the TRO is going to say.  
20 And he just wanted you to hear it so that  
21 nobody would come back and say, "Oh, I  
22 didn't know that. I gave it to CNN. I  
23 didn't think you meant them."

24 MR. ROBY:

25 Not a problem.

26 THE COURT:

27 Now, one of the things I just wanted  
28 to remind people of; this is on affidavit  
29 only, Clarence.

30 MR. ROBY:

31 Yes, sir.

32 THE COURT:

1                   So, I don't want 30 people coming in  
2                   whose got to testify.

3                   MR. ROBY:

4                   Oh, no, Judge.

5                   THE COURT:

6                   And are angry because they can't  
7                   testify.

8                   MR. ROBY:

9                   Not on this end.

10                  THE COURT:

11                  There's also certain time limits. I  
12                  don't want to get the affidavits or your  
13                  brief the morning of the hearing. Okay?  
14                  Everybody look. It's on the Order in front  
15                  that I signed.

16                  Anything else you need to tell them?

17                  MR. LANE:

18                  We'll pick a date. The documents,  
19                  whatever was produced needs to be  
20                  preserved. Nothing destroyed.

21                  THE COURT:

22                  Yeah. Anything that's produced will  
23                  be preserved until the litigation at some  
24                  point when you can get rid of it if you  
25                  want to. Right now produce it. And just  
26                  read the document. Whatever the TRO says.

27                  MS. WASHINGTON:

28                  I'm being ordered to produce?

29                  THE COURT:

30                  No.

31                  MR. ROBY:

32                  No.

1 MR. LANE:

2 And if I'm missing anything, I mean,  
3 you rendered your Order, that's what I was  
4 going to ask for a copy, so that when I  
5 draft the judgment nobody say, "well, this  
6 isn't what was said."

7 THE COURT:

8 And that's why I want at least  
9 everybody sitting down to hear it all.

10 MR. ROBY:

11 To be on the same page.

12 THE COURT:

13 Yeah. Don't disseminate to anybody by  
14 any means. Don't put it on the Internet.  
15 Don't do anything. The issue of what is  
16 going to be produced, if anything, is  
17 something for a later date.

18 MR. ROBY:

19 Right.

20 THE COURT:

21 The only thing we decide now was the  
22 TRO, was to stop it from going out. And if  
23 at the hearing I'm satisfied, we will or  
24 will not formalize it.

25 Now, is there anything y'all want to  
26 tell mister, want to just remind Mr. Lane  
27 while you're here?

28 MR. ROBY:

29 I guess at some point, and I'll take  
30 a look at the pleadings, but if there is  
31 any additional information that you have  
32 other than what you think might be in those

1 e-mails, get it to me as soon as possible  
2 so I can be prepared for the hearing.

3 MR. LANE:

4 I mean, I don't have anything else  
5 other than what I attached to the pleading.  
6 Whatever else has been made public.

7 MR. ROBY:

8 I think when we were in, when I was on  
9 the phone, I think you said that you had  
10 not received copies from either the  
11 Sanitation Director or the City Attorney's  
12 Office from what they provided to Ms.  
13 Washington?

14 MR. LANE:

15 Correct.

16 MR. ROBY:

17 As soon as you get whatever those  
18 copies are and you have a look to kind of  
19 booster out what you think is privileged  
20 information, maybe we can do that before we  
21 come to court because I think that would  
22 probably --

23 THE COURT:

24 No, no, no. I was going to suggest,  
25 you know, --

26 MR. LANE:

27 Here's the problem, so you'll  
28 understand. I'm sure Ms. Washington will  
29 correct me if I say anything wrong. But I  
30 had asked her before I filed this petition,  
31 I had to ask; "Can we get to see what was  
32 produced?" And she said, "No." So, I

1 don't know what she's got.

2 I asked the City Attorney; "Can you  
3 tell me what was produced?" At which point  
4 the City Attorney says, "well, it was  
5 produced by Veronica white." And I said,  
6 "Can you talk to Veronica white and tell me  
7 what was produced?" They talked to  
8 Veronica white, they called me back. They  
9 said, "Veronica white didn't keep a copy of  
10 what was produced. She doesn't have the  
11 letter sending it. She doesn't have  
12 anything. We do have disks. We're going  
13 to make copies of them, but we can't  
14 guarantee that that's what was produced."

15 And they are getting together disks  
16 and they were going to give them to us, but  
17 whether they give us one page or a million  
18 pages, I have no idea whether or not that  
19 relates to what was produced.

20 THE COURT:

21 And basically the only person that can  
22 tell you is Ms. Washington at some point?

23 MR. LANE:

24 She's it.

25 THE COURT:

26 Okay. And, of course, as I always  
27 tell people before you leave, if you can  
28 settle it and agree to it, it's always  
29 better.

30 MR. LANE:

31 What I'll do is, when I get the disks  
32 and I have the documents, I'll send it to

1 Clarence. He can compare what he's got  
2 with what I gave him and if there's  
3 something else in there --

4 MR. ROBY:

5 I can do that, but what's more  
6 important to me is you, when you get your  
7 documents, you take a look at whatever you  
8 assert is privilege information according  
9 to that list of those exceptions that you  
10 cite, because other than that what I have  
11 is a Public Record Request that has been  
12 honored, whether by Ms. White, whether by  
13 the City Attorney's Office regarding public  
14 elected officials or their agents.

15 And if there's privileged information  
16 in those documents, in those e-mails, then  
17 obviously, I don't want Ms. Washington or  
18 any other client to disseminate those,  
19 especially in her capacity as an attorney.  
20 But I don't want to have to do the job for  
21 the individual requesting the information.

22 MR. LANE:

23 No, no. I understand.

24 THE COURT:

25 I think the documents speak for  
26 themselves. I'll see y'all on the date  
27 that you pick outside.

28 MR. LANE:

29 Thank you, Judge.

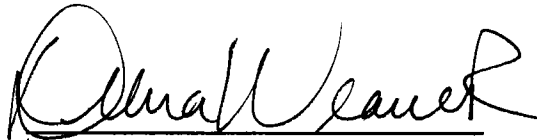
30 THE COURT:

31 It's good to see you all. Always a  
32 pleasure. (END OF PROCEEDING)

C E R T I F I C A T E

I, Debra A. Weaver, Certified Court Reporter in and for the State of Louisiana, do hereby certify that the foregoing testimony was reported in Stenomask, transcribed by me, and is a true and correct transcript to the best of my ability and understanding;

That I am not related to counsel or to the parties herein; am not otherwise interested in the outcome of this matter; and am a valid member in good standing of the Louisiana State Board of Examiners of Certified Shorthand Reporters.



DEBRA WEAVER, C.C.R.  
Certified Court Reporter  
Louisiana License #9985

