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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie Williams, his guardian ad litem, *et al.*, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION,

Defendants.

No. 312236

**PLAINTIFFS' OPPOSITION TO INTERVENOR LOS ANGELES UNIFIED SCHOOL DISTRICT'S MOTION RE: PRECEDENCE OF ISSUES FOR TRIAL**

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| Hearing: | September 17, 2003 |
| Time: | 3:30 p.m. |
| Department: | 20, Hall of Justice |
| Judge: | Hon. Peter J. Busch |
| Date Action Filed: | May 17, 2000 |
| Trial Date: | August 30, 2004 |

## I. INTRODUCTION

On May 22, 2003, Los Angeles School District ("LAUSD") filed what amounted to a motion to trifurcate and set a sequence for proceedings. As discussed in plaintiffs' opposition, LAUSD's initial trifurcation motion was a misconceived and flawed attempt to confirm an interpretation of *Butt v. State*, 4 Cal. 4th 668 (1992), that is incorrect as a matter of law. LAUSD withdrew this motion after receiving plaintiffs' opposition. LAUSD has now filed a second trifurcation motion that also seeks a ruling on the meaning of *Butt*. LAUSD's equally flawed new motion asserts different theories on how the trial in this case should proceed and proffers yet another misreading of *Butt*.

In spite of this Court's repeated signaling that it is not prepared to disaggregate issues for trial, LAUSD seeks to impose on all parties an artificial, expensive, and cumbersome seriatim presentation of issues that are necessarily intertwined. (*See, e.g.*, Dec. 18, 2001 Hearing Tr. at 12:18-21 ("I don't expect that we can or should construct a proceeding that ignores the fundamental remedial questions during the trial. I know we'll have to refine that further as we go along . . . .").) As this Court correctly noted in its "tentative reaction" at the last case management conference, "the bifurcation of liability that's proposed would make things more, rather than less complicated." (June 19, 2003 Hearing Tr. at 6:28-7:4.) LAUSD provides no good reason for why its preferred order of proof makes sense, no good reason for why a ruling granting its preferred order would promote efficiency and convenience or streamline discovery, and no procedural basis for this Court to rule on the meaning of *Butt* in the process of deciding upon the order of trial.

As plaintiffs explained in our opposition to LAUSD's initial motion and as we reiterate below, we expect that our proof at trial will consist of three primary showings, all of which revolve around the failure of the State's system of oversight to ensure basic educational equality. These showings are necessarily intertwined (as this Court has already concluded), and thus LAUSD's rigid and nonsensical trial scheme would not advance judicial economy or streamline trial. In fact, LAUSD's proposal would morph trial into a multi-year process sandwiched in its component mini-trial parts by extensive and expensive discovery. In short, LAUSD's trifurcation proposal does nothing more than add unnecessary layers of complication to this case, and it should be denied.

In addition, LAUSD tacks onto its putatively procedural motion an insistence that this Court "must decide" both what the *Butt* Court meant when it referred to education "viewed as a whole" and whether equal protection redounds to the benefit of "individual students or [instead] an entire school or school district." (LAUSD Mem. P. & A. at 3.) These two substantive issues are not properly presented in a procedural motion for trifurcation, and the Court therefore should not entertain them. The first substantive question LAUSD improperly poses in its motion is properly before the Court in plaintiffs' Motion for Summary Adjudication of the State's Duty to Ensure Equal Access to Instructional Materials for All California's Public School Students. The second substantive question LAUSD attempts to shoehorn into its trifurcation motion has been decided already: The *Butt* Court confirmed the principle that "access to a public education is a uniquely fundamental personal interest." 4 Cal. 4th at 681. There is no reason for the Court, in ruling on this motion, to decide either of the substantive questions that LAUSD presents.

## II. LAUSD HAS FAILED TO ESTABLISH WHY TRIFURCATION OR SEQUENCING TRIAL IS WARRANTED IN THIS CASE.

Pursuant to California Code of Civil Procedure section 598, the Court is permitted to order that "the trial of any issues . . . shall precede the trial of any other issue" when "the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby." Similarly, section 1048 states that a trial court may order a separate trial of a cause of action "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." This Court has already ruled, repeatedly, that these efficiency and justice goals are not served by disaggregation of issues for trial along the lines LAUSD proposes. (*See, e.g.*, June 19, 2003 Hearing Tr. at 6:28-7:4; Dec. 18, 2001 Hearing Tr. at 12:18-21.) LAUSD offers no countervailing reason why the Court should reverse its view now.

### A. LAUSD's Proposed Trifurcation Will Not Result in Greater Efficiency at Trial.

LAUSD's principal basis for trifurcation of trial appears to be that "a decision in favor of the State with respect to its 'system of oversight and management' could conclude the case." (LAUSD Mem. P. & A. at 6.) LAUSD is mistaken. If the State were to prevail on the first question LAUSD

proposes—"[i]s the State's system of oversight and management incapable of preventing or discovering and correcting educational resource deprivations," *id.*—all that would be established is that the State has the capacity now effectively to satisfy its oversight obligations. Establishing capacity would not absolve the State of liability; such absolution would depend on a showing that the State fulfills its capacity to ensure that students' "fundamental California right to basic educational equality" is safeguarded. *Butt*, 4 Cal. 4th at 688. Examination of that question requires examination of the second question LAUSD poses: "are there students as to whom the actual quality of the educational program, viewed as a whole, falls fundamentally below prevailing statewide standards." (LAUSD Mem. P. & A. at 6.)

Because the case could not be concluded even with a ruling for the State on the first question LAUSD proposes that the Court decide, LAUSD's proposed ordering offers no benefit to this litigation and is therefore inconsistent with section 598.[1] *Cf. Plaza Tulare v. Tradewell Stores, Inc.*, 207 Cal. App. 3d 522, 524 (1989) (noting that "[t]he objective of this section [598] was the avoidance of the waste of time and money caused by the unnecessary trial of damage questions in cases where the liability issue was resolved against the plaintiff. Thus, if the issue of liability was decided in favor of the defendant, judgment would be entered at that time.") (citations omitted). In fact, where there is a great degree of interdependence between or among the issues, case law holds that it is improper to bifurcate or trifurcate them. In *Cohn v. Bugas*, 42 Cal. App. 3d 381, 385-86 (1974), the Court held that where an issue in the second proposed portion of the trial is so intertwined with an element that must be proven in the first proposed portion such that it is necessary to present the second issue in order to prove the first element, a court may not separate the two.

Similarly, it will be impossible for plaintiffs to separate out testimony regarding each of the primary showings. For example, many of plaintiffs' expert witnesses will provide testimony

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[1] By contrast, trying the first and second issues LAUSD identifies together would be consistent with plaintiffs' agreement that liability and remedy could, if this Court chooses, be tried separately. (*See, e.g.*, Pls.' Dec. 18, 2001 Case Mgmt. Conf. Stmt. at 1-3.) This Court has already indicated that it would seek additional input from the parties following a determination of liability before developing a final remedial plan, however (Dec. 18, 2001 Hearing Tr. at 11:22-12:28), so there is no need to revisit that question at this stage.

regarding the flaws in the State's system; the breadth, severity, and impact of the educational deprivations that result therefrom; and possible steps the State could take to remedy its failure to operate an effective system of oversight and management to ensure basic educational equality. It makes no sense and certainly will not promote "efficiency" or the "convenience of the witnesses" to have these individuals testify multiple times. A large number of plaintiffs' lay witnesses will also provide testimony on multiple showings. As another example, plaintiffs expect that many of the teachers who will testify regarding this case will have insight both into the conditions that deprive plaintiffs of equal educational opportunity and the inadequacies of the State's system of oversight as they have observed and experienced them. Again, it makes no sense to require these witnesses to take the stand more than once.

Moreover, even if it were plausible to parse out the testimony, LAUSD's proposed order adds nothing to the "efficiency" of this case, nor does it make sense. Although LAUSD melodramatically states that "judicial economy cries out for the introduction of the trial of evidence by all parties that focuses directly on the existing system of oversight and management of public education," the district provides no basis for this assertion other than its repeated misrepresentation that to allow plaintiffs to begin the trial with a presentation of the constitutional deprivations at issue would be "time consuming" because it would involve the "introduction of hundreds of hundreds of lay and fact witnesses." (LAUSD Mem. P. & A. at 5.) Notably, plaintiffs do not intend to introduce "hundreds of lay and fact witnesses" as we have made clear in past case management conference statements. (Pls' June 17, 2003 Case Mgmt. Conf. Stmt., Exh. A at 3.) More importantly, however, plaintiffs' showing regarding the inadequacies of the State's system simply cannot be divorced from the constitutional deprivations that demonstrate the inadequacies of the current system. As this Court has found, this case is focused on the failure of the State's system "to prevent or discover and correct" the unconstitutional deprivations at issue in this lawsuit. (Nov. 14, 2000 Order at 2.) Accordingly, this Court has already made clear that these issues are inter-related.

Although LAUSD alleges that plaintiffs "ironically" proposed a trifurcated liability phase in our opposition to LAUSD's initial trifurcation motion, LAUSD has misinterpreted plaintiffs'

position. Plaintiffs' opposition merely asserts that we "anticipate" directing our liability evidence to the following three showings:

- There are students at a non-trivial number of California public schools who suffer from conditions that deprive them of equal educational opportunity.
- The State's system of oversight and management is not capable of preventing or discovering and correcting these conditions.
- There are steps the State could take to institute a system of oversight and management that would remedy these conditions now and in the future.

(Pls' Mem. P. & A. in Opp'n to LAUSD Mot. to Bifurcate at 12-13.) We did not attach a temporal scheme to these showings, and we have nowhere proposed that trial be divided into three separate stages. As we noted, "plaintiffs believe that the liability phase can be efficiently tried without artificially dividing it into separate legal issues."[2] (*Id.*) The only endorsement plaintiffs have provided in terms of ordering the trial is our consistent view that the liability phase should precede the remedy phase. Indeed, plaintiffs' initial opposition expressly states that "[a]fter" we have presented our proof with respect to the three areas noted above, "the State will of course be free to present its evidence in response." (*Id.* at 13.) This Court therefore has no reason to reconsider its previous rejections of the concept of a bifurcated trial.

### B. LAUSD's Proposed Trifurcation Will Not Streamline the Discovery Process.

Despite LAUSD's assertion that "the end of discovery remains distant" (LAUSD Mem. P. & A. at 8), the fact of the matter is that discovery in this case is on schedule for completion by February 16, 2004. (Aug. 6, 2003 Pretrial Scheduling Order at 8.) Trifurcation of trial could not shorten that discovery date and if anything would extend it by reordering the trial into multiple mini-trials with responsive discovery to be extended after each mini-trial concludes. Although LAUSD never explicitly says so, these mini-trials, separated by long periods of months in between each one,

[2] We intend our reference to "[f]irst ," "[s]econd" and "[t]hird" simply to list the items, not to identify the sequence for their introduction. (Pls' Mem. P. & A. in Opp'n to LAUSD Mot. to Bifurcate at 12-13.) Notably, we did not claim that we would "next" or "later" or "finally" present issues.

are what its motion calls for if it is to achieve the ends LAUSD endorses.[3] (*Cf.* LAUSD Mem. P. & A. at 6 (referring to the third phase it proposes as "that trial" separate and apart from the trials of the first two phases it proposes).)

If the parties are to receive the benefits LAUSD promises will result from trifurcation, then the trifurcation must mean that the parties may limit the scope of their discovery to the specific segregated issue to be tried nearest in time. Such an ordering of the trial would be pound foolish and hardly penny wise. As shown above, no matter how the Court rules, the case could not be concluded after the first of the mini-trials on the trifurcated issues. That means therefore that discovery must either all be completed now (in which case there is no benefit to ruling on the order of trial at this early juncture) or pause and then resume at a later time, after conclusion of the mini-trial, regarding the next issue to be tried. On LAUSD's recommendation, the second issue for trial would be whether some students' educational program, viewed as a whole, falls fundamentally below prevailing statewide standards. (LAUSD Mem. P. & A. at 3.) Discovery related to this issue is extensive, and if it were to suffer a hiatus, existing evidence may well become stale. Delay of discovery related to these issues exponentially increases the scope and cost of that discovery.

Far from advancing the interests of judicial economy or efficiency, LAUSD's proposed trifurcation will only serve to add unnecessary layers of complexity to this case.[4] If adopted, LAUSD's scheme could result in countless motions over the permissible trial testimony and exhibits to be offered during various phases of the trial. Ordering trifurcation may also give rise to additional discovery disputes, especially if the trial phases are staggered. By contrast, if the Court rejects LAUSD's requested ordering of issues and expansion of the trial, the Court will effectively manage the scope and duration of this litigation.

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[3] If instead LAUSD merely seeks to schedule the order of presentation of issues in a single contiguous trial of all the issues, there is no need to decide that question so far in advance of trial because the sequence of presentation would not change discovery now.

[4] This Court has twice ordered that school districts' intervention in this litigation must "work in a way that will not delay the trial." (Nov. 21, 2002 Hearing Tr. at 6:20-24; *see also* Apr. 11, 2001 Hearing Tr. at 15:19-22.)

## III. THIS MOTION PRESENTS NO BASIS FOR THE COURT TO RULE AS LAUSD REQUESTS ON THE MEANING OF *BUTT*

In addition to seeking a ruling that plaintiffs' trial should be trifurcated, LAUSD also insists, without providing any legal basis, that "plaintiffs' trial . . . must be refocused in light of *Butt*." (LAUSD Mem. P. & A. at 9.) LAUSD points to no provision of the Code of Civil Procedure in support of this request, nor does LAUSD present any authority for its request. To the extent that the other parties need further guidance regarding the California Supreme Court's unequivocal holding in *Butt* and this Court's several rulings in light of *Butt*, there is nonetheless no legal basis for LAUSD to obtain such a ruling on a substantive legal question in this procedural motion. *See Salazar v. Eastin*, 9 Cal. 4th 836, 860 (1995).

As plaintiffs asserted in our opposition to LAUSD's initial trifurcation motion, the objective of obtaining a ruling on the applicability of *Butt* can be accomplished through plaintiffs' pending, substantive motion for summary adjudication of the State's duty to operate an oversight system to ensure equal access to instructional materials for all California public school students. Plaintiffs' motion provides the Court with the opportunity to fully resolve concrete and critical issues for trial.

LAUSD's professed need for further guidance about the holding of *Butt* finds no basis in any opacity in the opinion itself. LAUSD's initial motion rested on a novel theory that *Butt* required a showing, nowhere articulated in the case itself, that a district is somehow incapacitated to resolve unconstitutional discrimination its students suffer before any State duty to act is triggered. (LAUSD Mem. P. & A. at 8.) LAUSD's current motion rightly eschews that theory but now asserts instead that evaluation of education "as a whole" within the meaning of *Butt*, 4 Cal. 4th at 687, requires a particularized showing of all conditions in specific schools regardless of how strong the evidence that the conditions that are addressed are fundamental to educational equity. (LAUSD Mem. P. & A. at 10.)

As plaintiffs document in the pending summary adjudication motion in which this issue is properly presented to the Court, there are schools in which students suffer material denial of access to the content of the curriculum because of shortages of instructional materials, with the consequence that students' education "as a whole" is fundamentally unequal to the prevailing standard. Just as the

Richmond students in *Butt* would be deprived of what anyone could understand as education by virtue of their schools' unplanned early closure, 4 Cal. 4th at 687, there have been and continue to be students in California public schools who, because of chronic shortages in instructional materials in core subjects, are deprived of a fundamentally equal education. Plaintiffs' pending summary adjudication motion asks for confirmation that the State has a legal duty with respect to such a violation to take necessary steps to be able to prevent or discover and correct such violations.

In *Butt*, the Court held that the constitutional guarantee of a fundamentally equal education is denied when schools shut down early without planning alternative means to transmit the final six weeks of educational material. *Id.* This condition established an intolerable inequity without further inquiry into the results of tests of "outputs," such as test scores or graduation rates. Likewise, in this case a constitutional violation can be established by showing that, in some schools, students are denied access to the content of the prescribed curriculum because the intended (and in most schools, actual and available) means for delivering that access—instructional materials—are not present. The Court can determine that particular educational deprivations "have a real and appreciable impact on the affected students' fundamental California right to basic educational equality," *Butt*, 4 Cal. 4th at 688, without requiring plaintiffs to present evidence on every condition that could conceivably affect the quality of education in the schools. This Court has already recognized this principle, holding that plaintiffs' allegations in the complaint, if true, satisfy the requisite *Butt* showing: "Plaintiffs' allegations, if believed, would demonstrate that, despite the State's legal obligations with respect to public education, these plaintiffs do not enjoy the level of educational opportunity to which they are entitled." (Nov. 14, 2000 Order at 2.) Thus, the Court has made clear that plaintiffs' allegations, if proved, qualify as "extreme circumstances" that "would have a real and appreciable impact" on students' "fundamental California right to basic educational equality." *Butt*, 4 Cal. 4th at 684-85, 688.

The second prong of LAUSD's *Butt* analysis is equally misguided. Contrary to LAUSD's musings in its motion, *Butt* did not leave—and could not have left—open a question whether the equal protection right extends to each individual student as distinct from benefiting only a school or a district in the aggregate. It is beyond cavil that each of us possesses an individual right to equal

protection of the law. As the *Butt* Court put it most starkly: "Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality." *Butt,* 4 Cal. 4th at 689. This holding that each blameless student is constitutionally entitled to basic educational equality follows in a long line of equal protection analysis that has consistently and uniformly protected the equal protection right as an individual right. As the United States Supreme Court put it most recently, "the Fourteenth Amendment 'protects *persons*, not *groups*'." *Grutter v. Bollinger*, 123 S. Ct. 2325, 2337 (2003) (quoting *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995)). But that holding is far from new: a "long line of cases understand[s] equal protection as a personal right." *Adarand*, 515 U.S. at 230. LAUSD is therefore mistaken that "[d]eciding this issue now is essential to inform ongoing discovery, to insure an orderly trial and to maximize the possibility of settlement." (LAUSD Mem. P. & A. at 13.) The issue has long been decided and the answer is clear and definitive.

## IV. CONCLUSION

LAUSD's motion for trifurcation offers no benefits at this stage in the litigation. To the contrary: granting the motion would lead to delay and added, unnecessary effort and expense for all parties.

Dated: September 8, 2003

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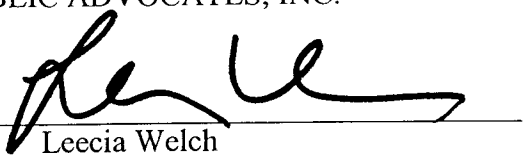
By: 
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