In the

Supreme Court of the United States

JOHN DOE ET AL.,

Appellants,

vs.

JOHN L. McMILLAN, ET AL.,

Appellees.

No. 71-6356

Washington, D. C.
December 13, 1972

Pages 1 thru 56

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Washington, D. C.,

Wednesday, December 13, 1972.

The above-entitled matter came on for argument at 1:52 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

MICHAEL VALDER, ESQ., Suite 509, 1145 - 19th Street, N. W., Washington, D. C., 20036; for the Appellants.

FRED M. VINSON, JR., ESQ., 800 - 17th Street, N. W., Washington, D. C., 20006; for the Appellees.

WILLIAM C. CRAMER, ESQ., Suite 4100, 485 L'Enfant Plaza, S.W., Washington, D.C., 20024; for the Appellees.

DAVID P. SUTTON, ESQ., Assistant Corporation Counsel, D. C., District Building, Washington, D.C.,20004; for Appellees.

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 71-6356, John Doe against McMillan.

Mr. Valder.

ORAL ARGUMENT OF MICHAEL J. VALDER, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. VALDER: Mr. Chief Justice, and may it please the Court:

My name is Michael Valder. With me are Mrs. Jean Camper Cahn and Mr. Dan Bowling.

On behalf of the petitioners, we request this Court to reverse the judgment of the lower courts and to remand this cause for consideration of preliminary injunctive relief and trial on the merits.

But more important than a reversal and remand, is our request that you declare the law which will govern this case.

The issues presented compel, we believe, several declarations by this Court.

First, and perhaps most importantly, is a declaration that the Federal Courts are open for the business of adjudicating petitioners' claims based on the Constitution and the Civil Rights Laws of the United States.

Secondly, a declaration that the Speech or Debate Clause protects no one, Congressmen included, from defending

a suit for violation of constitutional rights to privacy.

The decision in the Gravel case, we believe, indicates that Speech or Debate Clause imunity extends only to valid legislative acts.

Q What about a speech on the floor of the House that was libelous, per se, invading the privacy of some person in a very gross way. Is there any remedy for that?

MR. VALDER: The cases don't indicate so, Your Honor. We are not faced with that here, however.

Q If you are resting on a right of privacy claim, and I am assuming now the grossest kind of libel you could imagine, on the floor of the House, in a speech by a Member.

MR. VALDER: I suspect that that case would be taken to Court and this Court would be asked --

Q Haven't some of them been taken to Court?

MR.VALDER: I believe so, Your Honor, and the speeches on the floor have been held to be immune, under the Speech or Debate Clause.

But, here, as in Gravel, we are dealing with activity not on the floor. We are dealing with subsidiary activity in committee, by committee staff, by investigators.

And, it seems to us, that your teaching in Gravel that invasions of citizen privacy, or illegal or unconstitutional actions by legislators or their staff are not immune under the Speech or Debate Clause.

I believe the technical language in your decision in Gravel, in Mr. Justice White's decision, was that the Speech or Debate Clause should not be extended to protect illegal or unconstitutional actions beyond those which would prevent executive control of legislative speech, debate or legislative activity.

Q Let's assume that the publications haven't been in a Congressional context, just a newspaper or an author or a magazine had simply gone around and picked up the same information from the same sources that had published it.

Now, what right of your clients would have been infringed?

MR. VALDER: Their constitutional right to privacy.

Q Now, are you claiming that there is anything inaccurate about any of the statements?

MR. VALDER: Absolutely, Your Honor, that they were inaccurate. We never had a chance to correct those inaccuracies. We never had notice that this publication --

Q Are you saying that they were libelous?

MR. VALDER: They are libelous. They are invasions of privacy. They are a violation of constitutional and civil rights, protected by the Civil Rights Act of 1871.

Q I know, but you are talking about privacy. You are asserting though whatever right it is to sue for libel, for damage to reputation.

MR. VALDER: Right. All of the allegations we would make if the respondents were private persons are being made, plus additional claims. And that is that the deprivations here were by and under color of Governmental authority, and that the Bill of Rights as a protection against Governmental excess --

Q I'll put it to you this way. Do you think you have any right at all against anybody you have to allege or assert that the statements were false?

MR. VALDER: No, Your Honor, no. The statements could be true. It is still a violation --

Q Where do you find any constitutional right of privacy unless the statements are false? Where do you find that the statements, as long as they are true, are not protected?

MR. VALDER: The common law right of privacy is a private tort. The matters disclosed can be true. They can be false.

Q What would be your answer to the defendant who pleaded the First Amendment, and said I am protected in making these statements unless you can show they are false?

MR. VALDER: I think we are in the law of privacy, where, even if true, there are areas of our lives as citizens where others cannot disrupt or destroy or reach that privacy.

You get into the additional sanction of libel and

slander if the statements are false.

Q As you said, you are relying on all the law that would be available to you if these defendants were private people, such as defamation law, common law, statutory law of defamation, plus constitutional claims against these defendants are Government, the Federal Government, and surely I don't suppose the Fourth Amendment or the Fifth Amendment have anything whatever to do with truth or falsity, do they?

MR. VALDER: That's correct, Your Honor.

I believe the Griswold case, Mr. Justice Douglas' opinions and other opinions in Griswold, constitute a clear majority of the Court at that time, perhaps even of this Court, that there is a constitutional underpinning for the right of privacy, independently of truth or falsity, that there is a private sphere. It was known at common law and the Constitution included that within the special protections of the Constitution.

So, it is private common law tort, plus it is constitutional. And here, there is still a third degree of liability, and that is the whole doctrine of Governmental excess that the Constitution protects citizens more against Governmental excess than excesses or overreaching by private parties.

And that, of course, brings us to you. That is, we submit your role, your special and peculiar role in this

case because it is the Government which is responding and its officials.

Q You would have the same allegations and the same thrust to your complaint, I take it, if instead of having the invasion of privacy that you claim made out by written reports of the committee, one of the Members had made a speech on the floor of the House, using all of the same words, revealing all of the same information, would you not?

MR. VALDER: I believe we would bring that suit, Your Honor.

We would bring it against his aides or his staff who procured the information, assuming it was procured in the way this information was procured, which was as alleged surreptitiously, clandestinely, and we don't know what else, because we were thrown out of Court without a chance of discovery.

Q I take it in the case Mr. Justice White put to you, where it appeared in the newspaper, where you see the newspaper, and then, even though it is based on invasion of privacy, in that sense, you would be subject to the strictures of Time and Hill, wouldn't you?

MR. VALDER: Yes, I see.

Q Going against the newspaper.

But here, you rely on other constitutional provisions because here you are involved with alleged conduct of the Congress, is that it?

MR. VALDER: That's correct.

Also, we are in the deep privacy area. No public figure possibilities or implications here whatsoever, and also it is the question here that what was done in this case was never authorized by the Congress, never authorized.

Yes, an investigation was authorized and we concede that, but the investigation resolution clearly spelled out how information was to be procured, and that is at hearings.

Q If it wasn't authorized, then link up for me how it becomes government action, governmental action?

MR. VALDER: Right. It is governmental action.

The manner and method of procuring and compiling this information and putting it in a report was totally outside the House Rules and the rules of the Committee on the District of Columbia.

Those rules have safeguards which provide minimal due process protections. None of them applied here.

The information was obtained by an investigator and our consultant to the Committee, from a teacher and a principal.

So, the obtaining of the information was not -- the method was not authorized in the resolution, and the manner in which it was incorporated into a report -- this information was not brought into the record through a hearing. There were several days of hearings in this investigation, but none

of them dealt with this information.

This information -- we've called it hip-pocket information -- came in by an investigator to a consultant and was put in a report.

The committee never passed on the report. It was merely sent to the speaker by the Chairman of the Committee with a request that it be printed.

Q Do you allege that an investigator engaged in any illegal conduct in the course of gathering it, like he entered any private files, broke any locks, or violated anybody else's Fourth Amendment rights?

MR. VALDER: To the extent that we know, Your Honor, and, of course, there has been no discovery, we have alleged that the information was obtained by a District of Columbia police officer on loan to the Capitol Hill Police, in turn on loan to the House Committee as an investigator.

By what authority, he went about the schools, whether he used his District of Columbia Police credentials or his Capitol Police credentials, or was merely an independent --

Q But you don't allege he engaged in any specific criminal conduct in the course of his investigation?

MR. VALDER: We alledge that he engaged in unconstitutional conduct because he participated in a breech of the privacies --

Q I understand that, but that's just restating your

position.

MR. VALDER: Not a criminal statute, I don't believe.

Q There have been precisely the same thing, using the same conduct, then, what would be your position?

MR. VALDER: Our position would be that it was a breech of his right, constitutional right of privacy and common law tort, breech of teacher-pupil privilege, all of which would --

Q Would you direct that against the reporter or the teacher?

MR. VALDER: Against both. The teacher because the teacher violated the rules and the Constitution by disclosing information. This is information --

Q You mean a reporter can violate the Constitution by by asking questions?

MR. VALDER: I think he certainly can. Most reporters get away with it, but if it is a breech of the privacy which is protected, a cause of action lies for that breech.

Now, most information is given to reporters locally by those who have the complete interest in the information. Here, the students had an interest, and they were never consulted.

Q You would have to rely on some common law theory, wouldn't you? As I understand the Fourth Amendment, it protects privacy to the extent it does only against Governmental

acts.

MR. VALDER: One of of the cases which we have cited in our brief, as I recall, was a case by a private citizen who was in an accident and was photographed, evidently in some disarray, a lady. And she successfully maintained an action for breech of privacy against the newspaper photographer who took her picture and the newspaper who published it.

Q But that's non-constitutional Brandeis-Warren type privacy, isn't it?

MR. VALDER: Yes.

Now, returning for a moment to the Gravel decision, as we understand that case, there can be speech or debate immunity for valid legislative acts.

And, our position is that what was done here was not valid legislative act. It was unauthorized. The method used was contrary to House Rules and contrary to procedural due process requirements, and it was contrary to Committee rules in the way in which the Committee report was processed and printed.

Secondly, to the extent that it was a valid legislative act, the Bill of Attainder Clause speaks to a limitation on speech or debate immunity.

The Bill of Attainder provision of the Constitution is internal evidence within the Constitution itself that Congressional action will not always escape judicial scrutiny.

So that, if it is a valid legislative act, it begins to partake of a Bill of Attainder. And if it is not a valid legislative act, there is no speech or debate immunity.

Q You mean to say if Congress published this report it could be stopped?

MR. VALDER: We believe it can be. It has been temporarily stopped.

Q You certainly don't have to go that far, do you?

MR. VALDER: Well, actually, we don't want the report stopped, Your Honor. We want the students' names excised. It can serve no valid legislative purpose whatsoever to contain the students' and their parents' names.

We condede that every ounce of information in that report may be relevant and serve a valid legislative purpose, but what purpose is served by putting the names of 12, 13 and 14 year old students in that kind of a report?

The only justification offered in the lower Court was a terse statement that the names lent credibility.

Well, we submit that credibility used in that context really means the interest that a gossiper has in knowing who is the subject of gossip.

Q Do you say that everything was of -- except the name -- served a valid legislative purpose? Do you suggest that the information even though false, shouldn't be deleted?

MR. VALDER: It may and it may not have served a

valid legislative purpose.

We are not challenging that. Some of that information may be valid and useful, other of it may not be at all.

We don't really care.

Q Congress isn't limited to gathering useful information in the process of legislating, is it?

MR. VALDER: Probably most of the information they get turns out to be not useful.

Q Isn't that the normal process of inquiry, whether you are preparing for trial in a lawsuit or preparing to pass legislation? You do a great deal of sifting before you get any nuggets, isn't that true?

MR. VALDER: That's true, but what I was focussing on is the Barenblatt, Watkins, Rumely, line of cases, where, without authorization and with no legislative purpose whatsoever, this Court has said the Federal judiciary may inquire into what's going on in Congress.

And that was the focus. Here, no authorization to get the names and publish them. No ostensible or apparent legislative purpose. In fact, contrarywise, the constitutional proscription of violating privacy would indicate that those names shouldn't be there. Affirmatively that they should not be there, not just negatively that there is no need to put them there.

Now, I might say that we are also requesting a

declaration that the Bivens doctrine, Bivens v. Six Unknown Federal Narcotics Agents, creates an independent cause of action against the Federal respondents here.

Those respondents acting under color of Federal law, we submit, are suable, and a cause of action lies against them, under the 1971 doctrine in Bivens, just as against the District of Columbia respondents, there is an independent cause of action under the 1871 Civil Rights Act, that's Section 1983 of Title 42, that 1983 severely limited the immunity available to local officials.

Now, I wanted to mention that we are aware of the District of Columbia v. Carter case which was argued before you about five weeks ago. It is significant that in that case the District of Columbia Government did not bring to this Court the issue of official immunity, which was decided against the District of Columbia by the U.S. Court of Appeals.

The only issue brought to you in that case was whether the District is a person within the meaning of Section 1983.

As noted in the dissenting opinion in our case, the Carter decision which had been decided before the Doe case was decided, clearly ruled on the question of immunity.

However, the majority opinion below did not even mention the Carter case. It was discussed at length in the dissenting opinion.

And it is our position that the extent and degree and scope of official immunity in the District of Columbia has been refined and honed to a very sharp edge in a series of decisions beginning with Spencer, Elgin and leading up to and including the Carter decision, and that the method of adjudicating official immunity questions has been set.

The District of Columbia has not appealed that method of adjudicating official immunity claims.

Q You are talking now about the District of Columbia, not about the Congressional defendant?

MR. VALDER: That's correct.

Under 1983, we assert a claim against the teacher, the principal, the superintendent and the Board of Education.

Q As far as the Congressional, you are asserting claims only against Congressional employees, not against the Congressmen themselves?

MR. VALDER: We are asserting claims against the Congressmen themselves, Your Honor.

Q Even Judge Wright didn't consider the case as against any except the employees, did he?

MR. VALDER: I believe Judge Wright's opinion makes clear that he was so much more concerned about the sweeping grant of authority to committee aides, that he took that question up and dealt with it.

Now, as you may recall, --

Q He opens his opinion without reaching the more difficult question, whether this clause protects Members of Congress. I would hold that the seven Congressional appellees were not Members of Congress and were not so protected.

MR. VALDER: Our position is that certainly as to injunctive relief, the Federal Courts have the power in appropriate cases, to enjoin a Congressional report. That would be relief directed against Congressmen.

Now, the question of damages is stickier. But, we believe that we can reach the Congressmen respondents on the question of damages upon showing that they participated in a violation of our constitutional rights, that, as said in United States v. Lee, no man is above the law, no one is.

And, if that means that you must exercise your most supreme power to touch the Congressmen, we submit it must be done.

Q But their immunity wouldn't depend on what the Court of Appeals of the District of Columbia has said about the District of Columbia law of immunity, would it?

MR. VALDER: It would as to the official immunity doctrine, Your Honor.

Let me recapitulate. There are two doctrines of immunity operating for the Federal respondents, the speech or debate --

Q Take the Barr v. Matteo type of immunity. Now,

certainly in Barr v. Matteo the fact that Barr may have been here in the District of Columbia didn't lead this Court to say that it is the District of Columbia law, as construed by the Court of Appeals, that governs his immunity, did it?

MR. VALDER: No, it didn't, but in the District of Columbia, the Courts have in the past ten years done a tremendous amount, in several cases, of expansion, contraction and redefining how the Barr doctrine is applied in the District of Columbia.

Q Well then, if you are going to urge that here, as governing the Congressional defendants, you must urge it on its merits, it seems to me. I mean we are not bound by what the Court of Appeals says.

MR. VALDER: No, you are not, but we submit that the Court of Appeals was bound by its earlier opinions in this area, and that it did not follow them under principles of stare decisis.

That Court -- a different panel of that Court had just decided Carter, comes Doe v. McMillan, they don't even cite it. They disregard it, and they rule contrary to it.

And, we are suggesting that you need not reach the Barr v. Matteo question, you need only declare that in the District of Columbia, stare decisis principles operate.

The doctrine, as it has been announced and defined and is operating should be applied in this case the same as in

any other case.

We did not ask you to rule on the Barr v. Matteo doctrine. We merely want the Court of Appeals to follow stare decisis principles, which we believe are binding on the District of Columbia because they did not appeal that question in the Carter case.

Q Can we preclude it from getting into it?

MR. VALDER: Well, certainly, I don't think you are precluded if you care to. It seems to us that it --

Q It would take the stare decisis in the wrong direction, wouldn't it?

MR. VALDER: Well, it is our belief that Barr v. Matteo should be applied, perhaps throughout the country, as it is in the District of Columbia, under that line of cases.

Q Barr against Matteo has nothing to do with the District of Columbia. It is a Federal rule.

MR. VALDER: That's right.

As to how persons sued in the District of Columbia in Federal cases.

Q Barr-Matteo is as to immunity of Federal officials in Alaska, Hawaii and the other 48 States, and the District of Columbia. Is that right?

MR. VALDER: That's correct, Your Honor.

Q I don't see how we can be bound by an interpretation of Barr-Matteo by the District of Columbia Court of Appeals.

I don't think it is binding on us.

MR. VALDER: Your Honor, if I may. In the line of cases in the District, the doctrine of Barr was not played around with. It was the way in which the Courts in this City must apply is, and that is, they must take a look at the case. They must take a close look at the precise governmental function at issue.

What the Carter case stands for is, you can't throw out a case the day it is filed. The judge has an important role to play. He has to look at the function. Is it discretionary? Would it inhibit the proper exercise of the Government to hold this official liable for the performance of this function.

That was the point in the Court of Appeals, that it was not proper to throw this case out on the very day it was filed, without any responsive pleading, without any chance to take a good look at the function at issue.

Now, that's the modification in the District of Columbia. It did not throw out Barr v. Matteo. That's still absolutely the law.

Q Would it be possible to agree with you without considering the Carter case?

MR. VALDER: It would be possible by simply saying that --

Q That's my only point. Why do you keep working on the

one case?

MR. VALDER: Your Honors, flashed on my time. I would like to save a minute or two for rebuttal, if it is possible.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Valder.

Mr. Vinson.

ORAL ARGUMENT OF FRED M. VINSON, JR., ESQ.,

ON BEHALF OF THE APPELLEES

MR. VINSON: Mr. Chief Justice, and may it please the Court:

My brief and that of my colleague, Mr. Cramer, is on behalf of those whom we have referred to as the Legislative Respondents, the Members of Congress, the Committee Members and their aides, the Committee Staff, who are named as defendants, the Public Printer and the Superintendent of Documents.

This case involves an attempt by petitioners to selectively censor, by injunction, a document of the Congress, a committee report which was ordered printed pursuant to the Rules of the House of Representatives.

The petitioners also seek damages against the respondents for their failure to delete the names from the report.

A House Resolution,which is printed at page 5 of our brief, authorized the Committee on the District of Columbia to

conduct a full investigation and study of any instrumentality of the District of Columbia Government.

The resolution also empowered the committee to require by subpoena, or otherwise, the production of documents as it deems necessary.

The House further directed the Committee to report to the House the results of its investigation, and its findings and recommendations.

The report in question issued after seven months of investigation, fourteen hearings, all of which concerned the District of Columbia School System and the report contained 36 specific findings and 27 recommendations.

It is our position that the opinions of the Court in Gravel and in Brewster and all of the dissents in those cases, coalesce as a unanimous holding that the legislative respondents, all of them, are immune from questioning in any other place on account of the matters complained of.

In short, we feel that the Speech or Debate Clause affords absolute immunity to the legislative respondents in the context of this case.

Q Mr. Vinson, are you arguing -- urging any substantive deficiency in the plaintiff's case, just on its own bottom?

Do you feel you must turn to immunity, legislative or otherwise?

MR. VINSON: I think it is best to turn to the

immunity, Mr. Justice, because the Speech or Debate Clause was designed to prevent harassment of legislators and --

Q Or for even considering the substantive merits or demerits --

MR. VINSON: That's correct, Mr. Justice.

The holding of --

Q In your theory, Mr. Vinson, could the legislative people involved here have simply made no appearance at all in the District Court,and stood on the Speech or Debate Clause as a complete defense, even to being required to put in an answer?

MR. VINSON: Theoretically, I suppose, Mr. Chief Justice, that's correct.

Q It might not be a courteous thing to do with respect to the District Court, but you say you could do that as a matter of constitutional law.

MR. VINSON: It might neither be courteous nor prudent.

We feel that the holding of Gravel settled the question of who is covered by the Speech or Debate immunity and the scope of that coverage.

The scope extends to, in the words of the opinion, "the sphere of legitimate legislative activity," and the Court's opinion made clear that the clause applies not only to a Member, but also to his aides, insofar as the conduct

of the latter would be a protective legislative act if performed by the Member himself.

Applying this test, you have to analyze the nature of the acts performed by the Members and by their staff to determine whether they are protected acts.

First, the Members of the House.

Now, their involvement in the complaint relates solely to the issuance of a committee report which was authorized by the House, which was printed and distributed pursuant to the Rules of the House and statute.

The Members, we feel, are clearly protected by the Speech or Debate Clause.

A long line of cases, running from Kilbourn through Johnson to Gravel, unequivocably have held that committee reports are as much within the coverage of the clause as are speeches on the floor of the House.

Secondly, we turn to the committee aides, the Clerk, the Staff Director, the Counsel, a Consultant and an investigator for the committee which issued the report.

The complaint doesn't allege that the Clerk or the Staff Director or the Counsel did anything with respect to the report.

It does allege that the Consultant to the Committee was responsible for the investigation, and that the Investigator of the committee conducted the investigations which were

used in the report.

Now, exactly what actions are complained of?

Turning again to the allegations of the complaint, reproduced on page 9 of the appendix, it is alleged that Savoid, who was a junior high school principal, gave the investigator copies of disciplinary letters and other materials.

It is alleged that Irven, who was a teacher, gave the investigator copies of attendance lists, school test papers and other materials.

So we have an investigator for a committee and he is alleged as such in the complaint.

The committee was authorized to inquire into the D.C. School System and further authorized to obtain documents by subpoena or otherwise.

This investigator was given -- and the words in the complaint are "given" -- he was given school documents by school officials.

Petitioners now characterize the obtention of these documents as clandestine and surreptitious, in an attempt to avoid the holding in Gravel, but they don't really challenge the committee's right to interview school officials and obtain school records from them.

In the Court below, the majority opinion, at page 75 of the Appendix, stated that petitioners, quote, "do not challenge the propriety of the investigation or the issuance of

the report, generally -- i.e., absent the use of their names -- nor could they," end quote.

And the dissenting opinion below, at page 104 of the Appendix, stated that, quote, "Indeed, they (the petitioners) do not even challenge the right of Congress to examine and summarize the confidential material involved. They only wish to retain their anonimity."

Thus, we have a committee aide receiving relevant documents in a most routine way.

We submit this is an integral and legitimate part of the preparation for a legislative act.

The gravamen of the petitioners' complaint against the aides, and the Congressmen, too, for that fact, really boils down to the failure of the committee and the House of Representatives to delete their names from the documents included in the official report.

And the Speech or Debate Clause affords complete immunity to the Congressmen, and in this context their aides with respect to the Committee report itself.

As the opinion in Gravel says, at page 17, Slip opinion, a Member's conduct at legislative committee hearings may not be made the basis for a civil or criminal judgment against a Member because that conduct is within the sphere of legitimate legislative activity.

As this Court said in Katz v. United States, 389 U.S.

at 350 in Footnote 5, "Virtually every governmental action interferes with privacy to some degree."

Q Mr. Vinson, if there were allegations that in the course of gathering the information a Congressmen,or an aide at his direction, invaded the constitutional rights of some private person, wouldn't you be called upon to answer that allegation, even if you weren't with respect to the later publication?

MR. VINSON: Yes, sir. I think you would doubtless assert Speech or Debate immunity and you also would respond as to the merits --

Q My question is, you do agree that the Speech or Debate immunity wouldn't cover unconstitutional invasions of other people's rights in the course of gathering information?

MR. VINSON: I think that is correct, Your Honor.

I might add there that the Bivens case,referred to by counsel for petitioners, didn't even reach the immunity, the official immunity doctrine. That merely held there was a Federal cause of action for an illegal search under the Fourth Amendment, a situation that is not present in this case.

Q Are there such allegations made in this case?

MR. VINSON: None, Your Honor.

Q Mr. Vinson, Mr. Justice White's question about having to answer a question or answer a summons based upon a violation of plaintiff's constitutional rights limited to the Speech and

debate immunity, or would you give the same answer if it were a question of the official immunity?

MR. VINSON: Oh, I think the same answer, Mr. Justice.

Q Let me understand, Mr. Vinson, are the constitutional rights that the petitioners here claim were invaded?

MR. VINSON: I think they claim a generalized right of privacy, right of anonimity, a right to be left alone, and, as was stated in Katz, virtually every governmental action interferes with privacy to some degree.

The question in each case is whether that interference violates a command of the United States Constitution.

Now, many people who are named in Congressional hearings, and who are named in committee reports, would much prefer to be left alone, to remain anonimous, but that wish cannot and should not prevail in light of Congress' Constitutional mandates, and the protection --

Q When, in your judgment, then, would this kind of claim reach the state where you would have to answer, as you suggested --

MR. VINSON: I can conceive of no case, Mr. Justice, where in the context of a committee hearing and a committee report, where it is alleged that the contents of the committee report breech some right of privacy where Speech or Debate wouldn't afford complete immunity.

Q I take it you are saying that -- they say what really

hurt them is when the names were published.

MR. VINSON: That's correct, Your Honor.

Q And that breech or that invasion couldn't have and didn't occur until publication.

MR. VINSON: That's correct --

Q Which was in part of a committee report.

MR. VINSON: That's correct, Your Honor.

Q And there couldn't have been any such invasion, publishing a name, prior to that time, because in the process of gathering information, they naturally gathered the name.

Q As to an invasion at the time of publication itself?

Q Really, as I understand this, the argument of their claim is that anonimity --

MR. VINSON: They wish to censor out their names, that's correct.

Q Mr. Vinson, what about this charge that this is outside of the scope -- all of this -- is outside the scope of the committee?

MR. VINSON: Mr. Justice, the resolution authorized the committee --

Q First of all, does it matter if it is published by the committee?

MR. VINSON: I would argue that it does not matter, that Congress made the decision to publish this in a committee report, but I would urge upon you that it is not without the

scope of the committee in its enabling resolution.

Now, there have been other cases of speech on the floor and committee reports that may have been unfortunate, but as the Court's opinion in Brewster points out, at pages 15 and 16 of the Slip opinion, the clause has even enabled reckless men to slander others.

But, as the Court said, that was conscious choice of the framers.

The third group of legislative respondents is made up of the Public Printer and his subordinate, the Superintendent of Documents.

The Public Printer was once officially titled Congressional Printer. He is required by statute to print Congressional documents; committee reports are required by Rules of the House to be printed and a statute requires Congress to have its printing done by the Public Printer.

The printing of committee reports, I think it goes without saying, is an absolutely essential part of the legislative process, and the printer is as much in the process as the investigator or as is the committee clerk who collates the pages.

Q Suppose in fact the publication of the names here was an unconstitutional invasion of the children involved. Just assume that for a moment. Who would have to answer for that, in your view?

MR. VINSON: I don't think anyone would be answerable, Mr. Justice, because I don't believe the Speech or Debate Clause is a balancing type clause. I think it affords immunity to speech on the floor of the House and to committee reports.

Q Even to the House printer who publishes it?

MR. VINSON: Yes, sir. I think the printer in this case -- the Congress is required by statute to use him to print their materials. So he is an essential part of the legislative process, and to hold otherwise would entirely frustrate the intentment of the act --

Q Why wouldn't you at least limit immunity on the publication end of the publication that's reasonably connected with the legislative process?

MR. VINSON: That's exactly what the statute provides. The statute itself, Title 44, which is printed at the outset of our brief, sets up by statute the pattern of publication and distribution.

Q Well, I'll put it to you this way. Do you think the legislative immunity governs sale of committee hearings to the public?

MR. VINSON: I think it well might in view of the informing duty of Congress.

Q What if it doesn't?

MR. VINSON: You perhaps might make a distinction

between sale to the public, although I think --

Q Or distribution to the public?

MR. VINSON: I think it would be a difficult distinction to make in view of Congress' duty to inform.

Q You are assuming that that duty to inform is within Speech and Debate Clause range, aren't you?

MR. VINSON: Well, I think it is. We don't have to get into --

Q You may have a duty to inform, but it may not be a legislative act.

Q If the committee did not publish, and suppose it refused public requests and newspaper requests for copies of the report? Might not the Freedom of Information Act come into play?

MR. VINSON: It could very well, Mr. Chief Justice.

It is our position that the printing of Congressional reports required by Rules of the House is an integral part of the legislative process.

Without the printing, how do the other Members learn of these 36 recommendations and -- 36 findings, 27 recommendations, suggestions for appropriations, etcetera?

Q You are limiting that to printing by the Public Printer, I take it?

MR. VINSON: Yes, indeed.

We feel that the Public Printer comes well within the

intentment and scope of Speech or Debate in printing reports.

Q Are there any allegations that distribution in this case, beyond simply publishing for the purposes of informing the other Members of Congress?

MR. VINSON: There are none that I am aware of.

Q But what about the distribution to the District of Columbia? And their further publication of the information?

MR. VINSON: There is a standing and standard list of those to whom committee reports are distributed. There are people on the list for distribution. I am not aware of how far that list extends. For instance, Federal Agencies get copies of all committee reports.

Q Well, now,why would -- tell me, why would this -- why would you say the distribution of this report to the Secretary of Labor, for example, be within Speech and Debate Clause immunity? What's that got to do with performing the legislative duties?

Q Or to the Members of this Court? We may be on that list, for all I know. What does that have to do with Speech and Debate?

MR. VINSON: The only response I can give to that has to do with the informing function.

Q Again, returning to the Freedom of Information Act, isn't the whole thrust of that Act to require all Government agencies to open their records far more widely than they had

ever done before?

MR. VINSON: To open them totally to the public unless they fall within one of the specific exemptions.

Q Does the Freedom of Information Act --(inaudible)

MR. VINSON: I really can't answer that question, Mr. Justice.

I don't know whether the Freedom of Information Act is applicable to the Legislature or not. It may not be.

Q I was addressing myself to the thrust of the Freedom of Information Act, passed by the same Congress that we are now talking about.

I don't mean the same Congress by number, but the same institution.

MR. VINSON: If need be, the Public Printer also has available to him the protection of the Official Immunity Clause which I will not labor.

My colleague, who respresents the District respondents, will be addressing himself to Barr v. Matteo.

With respect to petitioners' arguments concerning Bill of Attainder and House Rule 11, we would stand on our brief.

In closing, I would point out what this case is not about.

This case does not involve the Grand Jury inquiry, nor private republication of documents introduced into the

committee hearing, as Gravel.

It does not involve criminal charges, as in Johnson and Brewster.

Nor, does it involve a search alleged to be violative of the Fourth Amendment, as in Dombrowski, and we don't have here Kilbourn or Powell situations where legislative decisions lack constitutional underpinnings.

Rather, we have here a case involving the most routine legislative acts, all well within legitimate legislative processes --

Q I gather, Mr. Vinson, that your basic submission is however right the petitioners may be, that there has been an invasion here of personal constitutional rights. Nevertheless, legislative immunity, Speech and Debate, means there may be no judicial inquiry into whether or not those rights have been violated?

MR. VINSON: I would take that position, yes.

My private position would be, however, that there has been no invasion of constitutionally protected rights.

We respectfully urge that the decision of the Court of Appeals should be affirmed.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Vinson.

Mr. Cramer.

ORAL ARGUMENT OF WILLIAM C. CRAMER, ESQ.,

ON BEHALF OF THE APPELLEES

MR. CRAMER: Mr. Chief Justice, and may it please the Court:

Let me first put in focus, as I see it, Speech and Debate, as compared to separation of powers.

Speech and Debate is part of separation of powers, and, as was specifically stated in U.S. v. Johnson, "The Speech and Debate Clause serves a function of reinforcing the Speech and Debate power so deliberately established by the Founding Fathers. Therefore, separation of powers is emphasized and it is reinforced by the Speech and Debate Clause and not limited by it."

Then, let me get in, in view of the questions that have been asked, I would suggest it would be most helpful to the Court to quote some of the questions raised with regards to, for instance, printing information.

Once a committee report properly printed by the Congress, ordered by the Congress to be printed, pursuant to a resolution of the Congress, and unquestionably pursuant to the power of Congress, because here we are dealing with the Congress as the sole legislator and sole governor of, under the Constitution, Article 1, Section 8 of the District of Columbia, that in those instances there is no question but what the committee report itself is beyond question by this Court

or by anyone else.

It is a legislative act.

Being a legislative act, it is beyond the province of this Court, as it would be of the Executive, to inquire into the motives of the Members, why they put the information in.

That is a decision by the duly elected representative. If he makes a mistake, he is answerable to his constituents. And, incidentally, in the House you are answerable every two years. That's a pretty tough test. And that's a good assurance to the public that their discretion is going to be properly exercised.

Now, as to distribution of the papers, this is a report. It is in the public domain. And, the Congress has a duty in representing the people -- has a duty to inform the people. Otherwise, how can the people judge whether the legislator is going a proper job, the Congress is properly representing and properly legislating for them.

So the Congress has a duty. How else can the people determine what additional laws are needed? And, after all, a Congressman is a representative of the people.

And what concerns me about some of the questions, some of the cases that I have read, is that it appears that there is an effort, as my colleague has said, to balance; to balance what?

You cannot balance an individual's constitutional rights in the context of the duty of all of the Congress to legislate.

Some of the cases have clearly pointed this out. And let me refer to, for instance, the Methodist case, which is a Circuit Court of Appeals, by Judge Edgerton as Chief Judge, very fine judge, in which the Court specifically said that the power to declare unconstitutional -- and I think this is what causes a lot of the problems in the thinking of the judiciary -- power to declare law unconstitutional does not support the conclusion that they, the Court, may censor language that they think is libelous.

And, I say to this Court, this is precisely what the petitioners in this case are requesting. I say, further, that to accept their position would, in effect, say that this Court should balance the constitutional legislative powers in its broad sense, not against one Member as compared to a complaining citizen.

We are talking about the broad sense, when you are talking about speech on the floor of the House, when you are talking about the contents of a document, when you are talking about an effort, as these complainants are attempting to impose, an effort to censor, because they are asking then that you waive the constitutional legislative mandate.

As a matter of fact, that comes almost within the

doctrine of the major case recently decided, relating to Powell.

The constitutional mandate for Congress is to legislate and is a separation of powers question when it is exercised, and when within the legislative concept.

Once that's determined, there is no further question.

Q What's the scope of the Congressional order to publish? What does that mean? Does that mean that the Congress is ordering the report that it orders printed to be open to purchase by the public?

MR. CRAMER: The Congress does not, and has not, exercised, and I don't say it couldn't if it saw fit to do so in its wisdom, has not published and printed documents for the purpose of public sale.

Now the Government Printing Office can make them available by request and they should.

Q I just want to know, in this case,you are saying that the Congress ordered, not only the printing of this report, but the report to be available generally to the public.

MR. CRAMER: It did not. However --

Q Was it available to the public?

MR. CRAMER: It was consistent with the Act of Congress that says specific documents shall be made available, and I would not think it would be improper for them to say, yes, it is available to the public, even though, assuming it is

defamatory -- it is a resolution authorized by the Congress.

Q I still don't understand. You say that the authorization in this case was a Congressional --

MR. CRAMER: It is the customary Congressional numbers that go to largely Governmental agencies and the Congress itsdf, by statute.

Q But you aren't saying that there was any authority from the Congress in this case to make the report available to the public?

MR. CRAMER: No, sir. Page 4 of our brief.

Let me close by saying that whether the material in a report is wrongfully acquired, defamatory, erroneous or not in the authority of anyone, as a result of that, there is nothing that the authority of anyone has to prevent Congress from publishing any statement, even if it is erroneous and defamatory, and that's Methodist Federation.

Q I suppose this Court decided the question of prior restraint and a rule held that it was irrelevant how the information was acquired, in the Pentagon Papers case. Did we not?

MR. CRAMER: I would think that's correct, sir.

And Hearst v. Black says, let me close with reading this one comment, "Although the information there was unconstitutionally acquired"-- this is the case in this instance, although I disagree with them on the conclusion on the facts --

"If it be insisted that this is the acknowledgement of a power whose platitude may become a cataclysm," the answer is that the Congress is as much a guardian of liberties and welfare of the people as the Courts, under our separation of powers.

Q Turn to page 4 of that. I guess it is a statute, isn't it, Distribution of Documents and Reports. I notice this seems rather limited, to the Senate 150 copies; to the Secretary of the Senate, 10; to the House Documents, not to exceed 500; to the Office of the Clerk of the House, 20; Library of Congress, 10.

Well, now, what authority in that statute is there for distributing these to the officials of the --

MR. CRAMER: The question was asked, could Congress distribute it?

Q No, my question was, did it?

MR. CRAMER: It did not.

Q It did not. Not in the District of Columbia or any offices?

Q The report was distributed to the District of Columbia.

MR. CRAMER: There are some additional copies made available, such as to the Library of Congress. If the District of Columbia wants one, it can go to the Library to get it.

Q But it didn't.

MR. CRAMER: So the question is, is it distributed?

Q Can you tell us, Mr. Cramer?

Was it distributed by the House to the District of Columbia and its officials?

MR. CRAMER: Not to my knowledge.

Q All right, thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Cramer.

Mr. Sutton.

Q Would you mind, Mr. Sutton, before you begin.

I gather the District did get copies, did it not?

MR. SUTTON: Yes, Your Honor.

There are several copies in our office. Where they came from, specifically, I don't know, but we were furnished with copies.

Q You didn't go to the Library of Congress and get them, did you?

MR. SUTTON: I don't believe so, Your Honor.

Q You didn't buy them, did you?

MR. SUTTON: No, Your Honor.

ORAL ARGUMENT OF DAVID P. SUTTON, ESQ.,

ON BEHALF OF THE APPELLEES

MR. SUTTON: Mr. Chief Justice, and may it please the Court:

I represent the District of Columbia respondents,

consisting of the members of the Board of Education, Superintendent of Schools, a junior high school principal and a junior high school teacher.

Our position, succinctly stated, is that the doctrine of official immunity, as interpreted and applied by this Court in Barr v. Matteo, and Howard v. Lyons, a companion case, forecloses their liability.

We would like to take these respondents individually.

First, we would like to take the Board Members and the Superintendent of Schools.

The gravamen of petitioners' case, as to these respondents, is that they should respond to damages for failure to promulgate regulations governing the confidentiality of school documents, earlier than they did.

We respectfully submit to this Court that this is a quasi-legislative function, a top-level function. It is clearly within the framework of Barr v. Matteo and it is not remediable in damages.

The teacher and the principal, perhaps take on a different light.

In regard to their liability or alleged liability, we emphasize at the very outset that unlike the Barr v. Matteo case, this case in the context of the principal and teacher, involves an inter-Governmental dissemination or communication, a communication within the framework of Government itself.

Let me illustrate that with a comparison.

Let's assume that instead of giving this data to a Congressional committee, the principal and teacher gave the data to the School Board, and the School Board, in turn, published it.

Perhaps, there might be an action for damages against the School Board, but not against the principal and teacher for giving the information.

We submit that Congress, vis-a-vis the District of Columbia School System, may be fairly viewed as supervisory, or senior School Board, and as a kind of employer, and has plenary power to investigate the School System. It controls its purse strings. It certainly may be analogized with top level employer.

It is within the periphery then of an employer-employee relationship that this information was tendered. We submit it is absolutely privileged, even applying the standards articulated by then Chief Justice Warren in his dissenting opinion in Barr v. Matteo.

And we would also emphasize the petitioners do not question the right of these officials to give the information.

We would refer the Court to pages 35 and 37 of the Appendix. I am not going to quote chapter and verse, but they emphasize in the Trial Court, "We don't question the right of Congress to get this information. We don't question the

right of teachers to give it."

As petitioners said, almost verbatim, they can go into schools, they can talk to people as they did. About that, we do not quibble.

What we complain about is the reproduction and the insertion of names. Well, the insertion of names, it so happens, took place twelve hearings later, six months later.

Q We don't know how they were gotten, do we?

We don't know what was said, at all, do we? Between the policeman and the principal and the teacher.

MR. SUTTON: I believe we do, to some extent, Your Honor, because the report contains verbatim interviews conducted with many local school officials, many principals, and --

Q But there was no hearing on it, was there?

MR. SUTTON: No, Your Honor. There was no hearing.

Q We don't actually know, do we?

MR. SUTTON: No. We know that -- what petitioners allege and what the report shows, that there was --

Q We don't know that the principal was turned over to his superior, do we?

MR. SUTTON: We do in the sense that we know that Congress is the ultimate superior. We know that the principal is a subordinate of that superior. We also know that interviews took place --

Q I am just emphasizing what Judge Wright said in a dissenting opinion, that things like this should have a hearing to find out whethere Barr-Matteo applies or not. And the only way to find out is what actually happened. Why do you object to such a hearing?

MR. SUTTON: Because it is clear from the record as to what did actually happen. If what happened was as alleged by petitioners, we would say is it already law; the doctrine of official immunity applies, that we have a kind of employer-employee relationship here, that under the applicable decision of law, that this gives rise to an absolute privilege; and we also have the reported evidence which shows that --

Q What is there in the evidence to show why the principal turned it over? Nothing. Am I correct?

MR. SUTTON: The principal turned it over because he was called by an investigator of a congressional committee to do so.

Q Was it a congressional investigator or was it a policeman or an individual? Where is that in the record?

MR. SUTTON: It is alleged in the complaint, Your Honor, that -- I think it is fairly inferable from the complaint and the record that the investigator was acting in the Committee's behalf.

Q My only point is that a hearing would have straightened

this all out.

MR. SUTTON: A hearing certainly would have been better, but our position is that it is not legally required.

I would like to emphasize, in the few moments I have left, the proposition that the Civil Rights Act does not alter the immunity of the District of Columbia respondents.

Under the Civil Rights Act, petitioners urge that the Civil Rights Act should apply to the District of Columbia respondents, because the District of Columbia is a State.

First of all, that question is pending before this Court. In D.C. v. Carter, petitioners rely essentially upon a statement by Judge Wright, dissenting, "It should be noted that the Courts have consistently held that the District of Columbia is a State or Territory within the meaning of the statute," citing Hurd v. Hodge.

We submit that this is not that clear, that it is now pending before the Court, that the Court has requested supplemental memorandum.

We would also submit that in the peculiar circumstances of this case, we have the Constitutional power of Congress to legislate the District of Columbia. We have Congress vis-a-vis the school system, as a supervisory school board.

Under the circumstances, we submit that it would be inconsistent to apply a Barr v. Matteo standard to the lower

eschelon Federal employees,yet a Civil Rights Act standard to the District of Columbia employees.

Q Are the District of Columbia Board of Education employees of Congress?

MR. SUTTON: In a technical sense, they are not, Your Honor, but in a general sense, they are.

Q I say if they are then they are covered by Gravel.

MR. SUTTON: We don't urge that they are covered by Gravel.

Q Well, I was just wondering how far you were going.

MR. SUTTON: No, we wouldn't go that far.

Q Thank you.

MR. SUTTON: We would also emphasize that even assuming the Civil Rights Act does apply in this case, then the question would be what are the dimensions of the immunity doctrine under that Act?

Now, this Court has not yet articulated the dimensions, but lower Federal Courts have.

We can take standards articulated by lower courts, we can weigh competing interests, certainly, and we can come up with an equitable result.

Now, it seems that at one end of the spectrum you have the right of the Congress to receive information.

At the other end of the spectrum, you have the right of privacy. But the right of privacy is alleged to have been

violated here, not in the context of the right of Congress to receive information, but in the context of publication of information.

So, really, again, it is a question of complete good faith, as conceded by petitioners. And though the Federal Courts do hold that if there is good faith the Civil Rights Act of 1871 does not alter the immunity of the Government.

And we submit that that is fairly applicable here.

One other analogy that I would like to make.

It seems that there was a companion case to Barr v. Matteo, and that was called Howard v. Lyon. That companion case involved the commander of a Boston Naval Shipyard.

It so happened that the Commander of the Shipyard made a press release, limit information to Congress. The information was not requested. It was delivered unsolicitedly by the Shipyard Commander, and was given not to a congressional committee but to the Massachusetts Congressional Delegation.

We submit that that case would indicate that the rule of the immunity doctrine is a fortiori applicable here for two reasons.

First of all, the principal may fairly be analogized, as we see it, to the Commander of the shipyard. He has extensive duties within the periphery of the school system.

Secondly, I would emphasize this. We don't have

an unsolicited inquiry, unsolicited response to a Congressional Delegation.

We have a solicited response by a committee of the Congress.

That leaves only the teacher, as we see it. Now, the teacher will not find analogies with any prior decisions of this Court, we admit, neither with the Barr decision nor with the Howard decision.

But it is not without significance that since Barr was decided and before Barr was decided, many lower Federal Courts have applied the immunity doctrine to low eschelon officials comparable in nature of position to the teacher, personnel officers, game wardens, treasury agents.

We submit that those authorities while obviously not binding on this Court, are persuasive.

So, in all respects, we submit that the Court should apply the doctrine of official immunity to the District of Columbia respondents in this case.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Sutton.

Mr. Valder, you have about five minutes left.

MR. VALDER: Thank you, Your Honor.

REBUTTAL ARGUMENT OF MICHAEL VALDER, ESQ.

ON BEHALF OF THE APPELLANTS

MR. VALDER: First, it is our understanding of the

Freedom of Information Act that before disclosure of this kind of information is permitted, authorized or required, under the Act, that names of private citizens must be excised.

I consulted with counsel, and it is our understanding -- we do not have a copy of the statute with us -- but that is our understanding, the same Congress or the same institution --

Q You mean the Act applies to Congressional documents?

MR. VALDER: If the Freedom of Information Act were applying to this information, I understood that to be the Court's question -- what would be the standards and we understand the standards to require excision of the names.

Q I think, Mr. Valder, that it permits the agency to refuse disclosure where names are involved, rather than requiring them to refuse disclosure.

MR. VALDER: You may be right, Your Honor.

I think the point is that Congress showed a sensitivity in the Freedom of Information Act to that question, and that there is a way to prevent breeches of privacy or anonimity.

Secondly, it is our understanding that the distribution of this report was virtually unlimited.

We called and got copies. I don't know how many copies we have. Mr. Sutton says that they have copies.

I believe our clients called the committee. Come

down and get some copies.

Q This went off on the pleadings in the District Court, didn't it -- your motion to dismiss?

MR. VALDER: On the pleading. It went off the day our complaint was filed. There wasn't --

Q In your pleading. I presume that would be the most authoritative source for us as to whether there was or was not distribution.

MR. VALDER: I am not sure whether it was in the complaint, I am quite sure that in the arguments that day on the motion for TRO there was some discussion that it was becoming circulated. There was newspaper coverage. I believe the local Washington stations had stories.

Q Do you say anything about distribution in your complaint?

MR. VALDER: Your Honor, I am referred to Paragraph 15 in our complaint on information and belief. "Unless restrained, defendants will continue to distribute and publish information concerning plaintiffs, their children and other students," etcetera.

I am not sure that's as good an allegation as might have been made, but I believe that was the thrust of the case in the one day it was in the District Court, that it was being distributed. That's why we went for a temporary restraining order.

The next point I would like to make, Your Honor, is that the District of Columbia respondents are in error when they claim in their brief, and as Mr. Sutton did in his argument, that we made a concession in the District Court --

Q In paragraph 5 of your complaint, said defendants also caused the report to be distributed to members of the public.

MR. VALDER: Okay. Thank you, Your Honor.

The concession is important because it is a fundamental argument made by the respondents in the District of Columbia -- the District of Columbia respondents. The only concession that was made was made by counsel at the hearing before Judge Sirica, when he said that he did not complain about the fact that investigators talked to the teacher and the principal, period.

He did not concede that the teacher and principal had a right to give this information -- these documents -- to the investigators. And that is a pertinent distinction. Talk, yes. Disclosure and passing of documents with names, no. There was no such concession. I am sorry if there has been some confusion on that, but -- and what's more, even if there had been that kind of a concession, we submit that the procedures in the District Court were highly irregular.

We went to Court at 4:30 the day the complaint was filed, on our motion for a temporary restraining order, to be

met by a sui sponte dismissal on the merits, with the judge asserting he thought it was frivolous. We had no idea we were to defend a motion to dismiss, or summary judgment, that no one had made.

And, even if there may have been a concession, we don't think that it is a real concession, but there was no concession on this teacher and principal giving the documents.

And I think you may have to read the transcript of the argument.

Another point is that we submit that as to the District of Columbia respondents, Congress is not the ultimate superior. The law is the ultimate superior of public officials, and because of the peculiar relationship in this city between public officials and the House District Committee, it is tempting to say that the House Committee is the government, but it is not. The real government in this city is the law, and teachers, principals, boards of education, Congressmen, staff and investigators, have to comply with the law.

And that is the ultimate superior. And that is why we are here. We think that the processes of the law and the protections of the Constitution, and the protections of a civil rights act now 101 years old, provide us with a remedy, and that an injunction is possible if only the Court House doors will open. They have been closed to us. This is the last Court we can go to.

Q Civil Rights Act of '71 -- you mean 1983?

MR. VALDER: I am sorry. It is Section 1983 of the Civil Rights Act of 1871, which, incidentally, was passed about two months after a bill creating a Territorial Government in the District of Columbia. That is the reference to the District of Columbia versus Carter, supplemental memorandum.

We adopt that position.

Finally, Your Honors, these children have been hurt and they will continue to be hurt.

For this to follow them throughout their lives, is, we think, unpardonable, and must be remedied.

Q Well, if this document was in the Library of Congress, wasn't it available to every newspaper that wanted to get it?

MR. VALDER: It certainly was, Your Honor.

Q Well, is it illegal for it to be delivered to the Library of Congress?

MR. VALDER: Your Honor, it is water over the damn. It should have never been published with their names. Having been published, we want an injunction that further distribution excise their names and to the practical extent possible the report be recalled with the names excised.

That is limited injunctive relief. It is not broad and sweeping.

My time is up. We submit. Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 3:04 o'clock, p.m., the oral arguments in the above-entitled case were concluded.)