

ORIGINAL
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PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

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DKT/CASE NO. 86-475

TITLE DAVID C. FRAZIER, Petitioner V. FREDERICK J. R. HEESE,
CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF LOUISIANA, ET AL.

PLACE Washington, D. C.

DATE April 29, 1987

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -x
3 DAVID C. FRAZIER, :

4 Petitioner :

5 v. :

: No. 86-475

6 FREDERICK J.R. HEEBE, CHIEF :

7 JUDGE, UNITED STATES DISTRICT :

8 COURT FOR THE EASTERN DISTRICT :

9 OF LOUISIANA, ET AL. :

10 - - - - -x
11 Washington, D.C.

12 Wednesday, April 29, 1987

13 The above-entitled matter came on for oral
14 argument before the Supreme Court of the United States
15 at 10:01 o'clock a.m.

16
17 APPEARANCES:

18 CORNISH F. HITCHCOCK, ESQ., Washington, D.C.:

19 on behalf of the Petitioner.

20 CURTIS R. BOISFONTAINE, ESQ., New Orleans,

21 Louisiana, on behalf of the Respondents.
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P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear arguments first this morning in No. 86-475, David C. Frazier v. Frederick J.R. Heebe, et al.

Mr. Hitchcock, you may proceed whenever you're ready.k

ORAL ARGUMENT OF MR. DERNISH F. HITCHCOCK, ESQ.,
ON BEHALF OF THE PETITIONER

MR. HITCHCOCK: Thank you, Mr. Chief Justice, and may it please the Court:

This case presents important questions about the practice of law and the administration of justice in our Federal district courts.

At issue is a rule of the United States District Court for the Eastern District of Louisiana which requires members of that court's bar to live or have an office in the State of Louisiana.

In order to focus on the precise nature of the dispute, it's useful to identify what this rule requires.

Under the rule, members of the Eastern District bar must be located in the Eastern District, the Middle District or the Western District of Louisiana.

And in order to see how the rule operates

1 vis-a-vis the petitioner, it may be useful to consult
2 the map that we prepared in our opening brief as an
3 appendix at page 6A.

4 Mr. Frazier's application was denied because
5 he lives and practices in Pascagoula, Mississippi, which
6 is approximately 110 miles from New Orleans.

7 By contrast, a lawyer located in Lake Charles,
8 Louisiana, which is 200 miles from New Orleans, may be
9 admitted to the Eastern District bar, and a lawyer
10 located in Shreveport, Louisiana, 300 miles from New
11 Orleans, may also be admitted to the Eastern District
12 bar.

13 Indeed, lawyers from Lake Charles or
14 Shreveport may serve as local counsel for lawyers such
15 as Mr. Frazier in practicing in New Orleans, even though
16 they're twice the distance from the courthouse.

17 In our brief, we have advanced several reasons
18 why we believe this rule is invalid, but it boils down
19 to essentially one complaint. As the Court of Appeals
20 recognized, this rule is both overinclusive as well as
21 underinclusive.

22 And however it may be analyzed, we submit that
23 it does not advance the goals of lawyer competence and
24 availability for hearings that are attributed to it.

25 In our view, this Court's decision in Supreme

1 Court of New Hampshire v. Piper provides the proper
2 analytical framework for deciding the case. And in
3 mentioning Piper, I want to focus exactly on what we are
4 arguing and are not arguing.

5 We recognize that Piper was decided under the
6 privileges and immunities clause of Article IV, which is
7 a direct limitation on state action and not on federal
8 action; and we are not making a claim for relief under
9 Article IV.

10 What we are saying is that this rule is a
11 violation of the due process clause of the Fifth
12 Amendment. And in urging the Court to so hold, we are
13 asking the Court to employ the analysis that was used in
14 Piper in the context of analyzing this rule, just as the
15 Court has incorporated equal protection analysis as a
16 component of Fifth Amendment due process.

17 There are several reasons why we believe such
18 analysis is appropriate here. The rule in the Eastern
19 District of Louisiana, with its exclusion of lawyers
20 from out of the state --

21 QUESTION: Excuse me, Mr. Hitchcock, before
22 you go any further, that's a little difficult to do,
23 because the privileges and immunities analysis prevents
24 discrimination between citizens from different states,
25 rights, on the basis of statehood.

1 But the Federal Government does that all the
2 time, and the Constitution specifically says when it is
3 that the government can't discriminate between the
4 states, in certain types of taxation for example.

5 But the government very often provides
6 particular benefits or takes particular action which
7 just affects one state and not others.

8 So how can you possibly apply the state
9 discrimination concept of the privileges and immunities
10 clause to the due process clause?

11 MR. HITCHCOCK: The distinction in this case,
12 as opposed to traditional cases where Congress passes a
13 law, or national body engages in linedrawing of that
14 nature, is, we have here a rule that was adopted by a
15 local unit of the Federal Government that is exercising
16 delegated authority, not --

17 QUESTION: Why would you treat that
18 differently from something enacted by Congress? I mean,
19 supposing the regional director of the EPA in San
20 Francisco adopts a particular rule. Now, it may have
21 problems with parochialism, but nonetheless, we treat is
22 an exercise of delegated authority from the United
23 States.

24 MR. HITCHCOCK: It is an exercise of delegated
25 authority. But when the line is drawn, for example, if

1 the EPA regional officer said that only people in
2 California could practice before us or something of that
3 nature, when the linedrawing by a local entity is on the
4 basis of state lines, there are problems that have been
5 raised -- that are raised by that of the sort that are
6 implicated by the privileges and immunities clause.

7 And to that extent -- it's one thing if a
8 national body had adopted restrictions of this nature,
9 saying -- making that kind of decision and that kind of
10 linedrawing.

11 But it's another thing for a local unit of
12 government, in -- local unit of the Federal Government,
13 in consultation with local lawyers in this case, to try
14 to be exercising that kind of discretion.

15 QUESTION: Well, do you agree that if Congress
16 had adopted this, you would have no claim?

17 MR. HITCHCOCK: If Congress had passed this
18 rule, we would not be arguing that it should be analyzed
19 under privileges and immunities analysis.

20 There would be equal protection that would be
21 made, but the problem here that we think should trigger
22 the type of privileges and immunities analysis is the
23 fact that it's a local unit of the government, using
24 delegated authority, and that it has an exclusionary
25 effect that the court has recognized raised problems

1 requiring heightened consideration if it were enacted in
2 a state court system.

3 QUESTION: I don't know what you mean by a
4 local unit of government. I mean, that has some meaning
5 applied to a state, where you have a state constitution
6 that gives municipalities certain powers, whether the
7 -- whether the county or whether the state government
8 desires it, willy-nilly.

9 But -- but in the Federal context, I don't
10 know of any Federal local units. I know of certain
11 representatives of the Federal Government that exist on
12 a local level, but they're all governed entirely by the
13 will of the entire Federal Government. That have no
14 local autonomy, none of these units, as far as I know,
15 including this Court.

16 MR. HITCHCOCK: Well, in this case, when I
17 refer to the local unit, I'm referring to the United
18 States district court, which has rulemaking authority.
19 But unlike delegated authority in the context of
20 agencies, there are possibilities of dealing with any
21 such rules through the agency process.

22 In this case, the court has some degree -- the
23 local district court has autonomy in this respect. It
24 shares its rulemaking authority with this Court, but it
25 tends to operate on parallel tracks.

1 QUESTION: But you're arguing at the same time
2 that this Court -- you're urging as one of your points
3 in your brief that we should exercise our supervisory
4 authority.

5 Doesn't this necessarily mean that this is not
6 a local unit?

7 MR. HITCHCOCK: Well, the rule is autonomous
8 unless, of course, it comes before this court. The
9 rule, or the exclusion of nonresidence is final unless
10 of course it comes before a higher body such as this
11 Court which would also have the authority to regulate.

12 But the point is, that when rules of this
13 nature are adopted at a regional level or a local level,
14 I mean the exclusion is against residents of other
15 states.

16 The Court has said, admittedly in the context
17 of state discrimination, discrimination by state
18 entities of government, that there are special problems.

19 The Court has also said in the equal
20 protection area -- and we've cited several of the tax
21 cases from recent terms of the Court -- that there are
22 similar problems when the court -- when state
23 governments pass legislation also that discriminate or
24 have the effect of charging higher fees or imposing
25 burdens on out-of-staters as well, under equal

1 protection analysis, which would apply in the context of
2 Federal action as well.

3 But I think there are reasons, even if the
4 Court should not proceed under the privileges and
5 immunities clause analysis, for using a heightened form
6 of scrutiny here.

7 There is no reason why it is that Federal
8 district courts should be able to adopt exclusionary
9 rules of this sort when the Court said in Piper that
10 they cannot be adopted in the context of a state court
11 system; particularly when the reasons that are given for
12 this type of exclusion are the same that the Court
13 considered and rejected in the Piper case.

14 The Court's decision in Hurd v. Hodge, which
15 we cited, suggested that it -- they said in that case,
16 bad public policy, it wasn't constitutionally grounded,
17 for Federal courts to be able to, in that case, enforce
18 certain contracts that state courts couldn't; and it's
19 bad public policy here to allow Federal district courts
20 that could not be adopted in the state court system.

21 State court judges, no less than Federal
22 judges, are concerned with the competence of the lawyers
23 who appear before them. They're concerned with the
24 availability of having lawyers who can appear before
25 them in cases.

1 And there is no reason for saying that there
2 are special problems in the Federal court system that
3 are cured by having this type of restriction on lawyers.

4 QUESTION: Are you sure that it would be
5 unlawful for a state to adopt the kind of rule the
6 Federal court has here?

7 This is not, as in Piper, a restriction
8 against residents of othr -- or against citizens of
9 other states practicing within the state; it's simply a
10 requiremoent that there be an office within the state.

11 Now are you sure that a state couldn't adopt
12 that rule?

13 MR. HITCHCOCK: I believe so. I believe that
14 the Court's decision in Piper and the reasoning in Piper
15 is broad enough to include that.

16 Justice white's concurring opinion in that
17 case read the Court as reaching that far, because the
18 same problems that you have with exclusions based on
19 residence appear also with exclusions -- or with an
20 in-state office requirement.

21 The in-state office requirement acts as a
22 surrogate for a residence requirement.

23 What it does is, it requires lawyers from out
24 of the state who practice out of the state to open an
25 additional office in Louisiana, which is not a burden

1 imposed upon local lawyers.

2 I mean, for Louisiana lawyers, an in-state
3 office requirement is largely not much of a restriction
4 and not much of a burden at all. The chances are, they
5 probably have it.

6 But for the court to require that out of state
7 lawyers must have that office in addition, it places
8 burdens on citizens of other states, which as a
9 practical matter, are not imposed on local courts.

10 That was the holding of the New York Court of
11 Appeals in the Gordon case which we cited, where the
12 same option was available for people applying to the
13 state court bar. You could either take the New York
14 State bar exam, you had to be either a resident of the
15 State of New York to be admitted to the bar, or you had
16 to practice in the state before you were admitted.

17 And the court reasoned that the same type of
18 problems that are posed by a residence requirement are
19 posed by the requirement that you must have an office in
20 the state, when that's not imposed -- or it's not as
21 burdensome as it is on --

22 QUESTION: What do you suggest we substitute
23 for it? If the state wants to preserve the kind of
24 interest that it says is protected by the office
25 requirement.

1 MR. HITCHCOCK: You mean the district court?

2 QUESTION: Yes. 200-mile rule? 300-mile
3 rule? What possible rule could there be?

4 MR. HITCHCOCK: Let me break that down into
5 two parts, Justice Scalia.

6 I think Piper reasoned that one's location or
7 one's distance from the court is not a reason for
8 disqualifying someone for being admitted to the bar.

9 I think the Court answered that question in
10 Piper when it said that there maybe some times, as a
11 practical matter, when a lawyer cannot appear, when the
12 lawyer is, as the Court put it, at a great distance from
13 the court.

14 In those cases, local counsel may be
15 required. We submit that a rule which did have that
16 kind of circular or circumferential approach, would be
17 more closely based on the court's goal. If it were 100
18 miles, or 150 miles, or 200 miles, that's closer in
19 terms of the goal attributed to it, which is assuring
20 that lawyers are available.

21 The vice with this particular rule, as we see
22 it, is that it says, lawyers 300 miles west of New
23 Orleans may be admitted to the bar and may practice
24 without local counsel, but not lawyers who are only 100
25 miles to the east.

1 We submit that it cannot be said that lawyers
2 from 300 miles away are more likely to come over to New
3 Orleans, but not lawyers that are only 100 miles to the
4 east.

5 And however the line may be drawn, 150 miles,
6 200 miles, it's probably likely to be more closely
7 tailored to the goal than the current rule, which
8 focuses on state lines, and excludes people who may be
9 perfectly capable of practicing law.

10 QUESTION: Mr. Hitchcock, do you think this
11 rule would be acceptable if it limited admission to
12 lawyers who were admitted in -- who had offices or
13 resided in the Eastern District of Louisiana?

14 MR. HITCHCOCK: No, Justice Stevens. Part of
15 the problem is that even if you were to limit it to the
16 Eastern District of Louisiana, it's narrower, but in
17 this case, it has some of the same problems.

18 The Court of Appeals recognized in footnote
19 six of its opinion that there are some lawyers in the
20 Eastern District of Louisiana who are further away from
21 New Orleans than Mr. Frazier.

22 The geography of districts is such that in
23 many instances you may have these anomalies. Let me
24 give you a local example.

25 Let us suppose, for example, that there were a

1 rule of this sort in the Eastern District of Virginia,
2 which covers approximately the eastern one-third of the
3 state, and which has divisions that sit in Alexandria,
4 in Richmond, and in Norfolk.

5 And in -district office rule would mean that
6 lawyers from Norfolk, Virginia, could come up and
7 practice in Alexandria without restriction, whereas
8 lawyers in the District of Columbia, which is only ten
9 miles away, as opposed to 180 miles away, could not.

10 Now, that's in a situation where you have
11 multiple districts. You have other states where there's
12 only one district.

13 So an in-district rule, say in the district of
14 Kansas, would let lawyers from Western Kansas come into
15 Kansas City, Kansas, and practice in the district court
16 there, but not lawyers across the street in Kansas City,
17 Missouri.

18 QUESTION: If you require perfect tailoring,
19 you can find some flaw in any rule that lays down any
20 principle like that.

21 But our equal protection clauses in this area
22 have never required perfect tailoring.

23 MR. HITCHCOCK: What we're saying is, whatever
24 kind of tailoring or rule may be adopted, the current
25 rule does not satisfy. 300 miles in one direction,

1 you're in; 100 miles in the other direction, you're not
2 in, is not even close, we submit, even whatever
3 anomalies may occur around the edges with a more closely
4 tailored rule.

5 QUESTION: Doesn't the same rule have to apply
6 to Texas, Alaska, and Rhode Island?

7 MR. HITCHCOCK: Yes -- let me answer the
8 question.

9 QUESTION: That's going to be a little tough?

10 MR. HITCHCOCK: I think what Piper recognized
11 -- I mean, you're right, Justice Marshall, but, again, I
12 would break it down into two parts.

13 I think Piper said that one cannot be excluded
14 from a bar just because one is in Texas or Alaska or
15 another state.

16 Piper also said that if lawyers are at a great
17 distance, and if the court should determine that people
18 more than 300 miles away are a great distance, then one
19 could require Texas lawyers or Alaska lawyers to retain
20 local counsel.

21 We're not challenging that. What we're saying
22 is that the linedrawing that has occurred here has
23 created problems that -- and does not advance the
24 Court's goals in ensuring that lawyers are able to come
25 down to New Orleans.

1 QUESTION: I've been to some states that
2 require you to belong to the bar of the county that you
3 filed a case in --

4 MR. HITCHCOCK: I'm sorry?

5 QUESTION: -- or to hire a lawyer who is a
6 member of the bar of that county.

7 MR. HITCHCOCK: To practice in Federal court?

8 QUESTION: No, sir, in state -- I said state
9 courts. Aren't there states that have that rule?

10 MR. HITCHCOCK: I believe there are states
11 where you are admitted by a particular county. I
12 believe --

13 QUESTION: And if you want to practice in the
14 other country, you have to hire a local lawyer?

15 MR. HITCHCOCK: Well, I'm not sure to what
16 extent that would survive the Court's decision in
17 Piper. I think that particular situation I think is
18 addressed in the Court's decision in United Building
19 Construction Trades Union v. the City of Camden, where
20 certain jobs were reserved only for residents of Camden
21 but not for people in other parts of New Jersey.

22 I think there might be problems in that
23 nature, after the Camden decision and after the Piper
24 decision, with that kind of county-based rule.

25 QUESTION: (Inaudible) Louisiana?

1 MR. HITCHCOCK: In Louisiana?

2 QUESTION: Don't you have to belong to the
3 parish to file a case in the parish?

4 MR. HITCHCOCK: I'm not aware of it. The rule
5 here required membership in the state bar. I am not
6 sure that there are restrictions in terms that if you
7 are admitted -- or if you are admitted in Orleans
8 parish, that means you cannot practice over in Baton
9 Rouge.

10 I don't know the current requirement, but in
11 this case, I don't think it's critical, because the rule
12 says, you must have an office or reside somewhere in the
13 State of Louisiana. It's not specific by parish; it's
14 not specific by district. And that has caused the
15 problems that we have attributed -- that we have cited.

16 QUESTION: Mr. Hitchcock, there is some
17 coincidence, is there not, between this rule of the
18 district court, and the extent of the subpoena power of
19 that court?

20 MR. HITCHCOCK: No, actually, the subpoena
21 power extends further. Under 45(e) the subpoena power
22 would extend, to appear at -- for depositions or trial
23 extends 100 miles into Mississippi.

24 It was an argument that was stated in
25 respondent's brief. And so it's not perfectly

1 contiguous with the state boundaries.

2 But I would point out again, the subpoena
3 power raises issues that are somewhat different. I
4 mean, in that situation people who are disadvantaged are
5 in-state residents. People from Shreveport who are
6 subpoenaed to appear at trial in New Orleans have to
7 travel further than someone from Mississippi.

8 QUESTION: I understand. But it's 100 miles
9 or within the state?

10 MR. HITCHCOCK: Or within the state, correct.

11 QUESTION: Now, that's not a perfectly,
12 equitable match, as you're asking us to adopt for this
13 rule.

14 MR. HITCHCOCK: It's a --

15 QUESTION: Congress didn't think it necessary,
16 you know, to draw concentric circles around each
17 district court and say, the subpoena power is only
18 within that area.

19 It does -- It does produce some inequities.
20 But given that we have a state system, Congress says,
21 the subpoena power runs anywhere within the state.

22 MR. HITCHCOCK: I would turn that around,
23 because I think the point actually helps us here.

24 What Congress said by adopting a rule of that
25 nature, is that we are designing a rule for the

1 convenience of witnesses, and we will make a judgment
2 that it is convenient for witnesses to come in from
3 anywhere in the state; that if they're 300 miles they
4 won't be inconvenienced; and we'll also extend that so
5 that lawyers -- or that witnesses from the other part
6 of the state may be brought in, too.

7 QUESTION: What the district court is saying,
8 we're making a judgment that it's convenient, and
9 therefore possible, for lawyers to come here for quick
10 hearings from anywhere within the state, just as
11 Congress says it's convenient for any witness.

12 I don't know why that doesn't parallel what
13 Congress has done.

14 MR. HITCHCOCK: Well, what it parallels is the
15 fact, again, Congress did let in people from out of
16 state. This rule does not. And therein lies a
17 distinction.

18 Even if it's not perfectly symmetrical, there
19 are people who are allowed in from Mississippi, or from
20 other places, if that falls within the boundary.

21 The problem with this case is that it is drawn
22 strictly on state lines, and even under the
23 availability, the argument that says, let's have
24 lawyers who are available, that still lets in people
25 from 300 miles away.

1 It says, they're convenient enough, they can
2 come down here; but not lawyers, people who are being
3 brought in involuntarily, but not lawyers from Southern
4 Mississippi who voluntarily want to practice.

5 We say, we are willing. We want to build a
6 regular practice in the Eastern District of Louisiana
7 with all the burdens and responsibilities that entails,
8 and we're willing to submit to that. But they are
9 excluded.

10 And the reasons about having lawyers available
11 just cannot apply, we submit, in that context.

12 QUESTION: Well, would you settle for the same
13 rule that applies to subpoenas? That is, you have to
14 have an office within Louisiana or within 100 miles of
15 the court?

16 MR. HITCHCOCK: Well, my client lives 110
17 miles away, so that poses certain problems here.

18 QUESTION: You can't do that.

19 MR. HITCHCOCK: But I think --

20 QUESTION: 110 miles, would that make you
21 happy?

22 MR. HITCHCOCK: I could argue that would be
23 perfectly constitutional.

24 The problem is that, again, Rule 45 deals with
25 different concerns. It deals with the convenience of

1 witnesses who are coming in, not lawyers who are seeking
2 to appear and build a regular practice, and who want to
3 submit to whatever requirements, who insist that they
4 are willing to come on over to New Orleans, to show up,
5 and to do whatever is required.

6 It's, we submit, apples and oranges.

7 I want to deal with one of the other
8 distinctions that was raised by the respondents, and
9 that's the fact that this rule is a continuing
10 requirement, rather than the rule in Piper which was
11 just limited to, lawyers had to reside at the day that
12 they were admitted.

13 The problem is that that was only one of the
14 defects, we submit, that occurred in that particular
15 case. And I don't, as I read the Court's opinion,
16 making the rule in Piper more restrictive would not have
17 addressed the questions there.

18 The problem remains, even with a continuing
19 requirement, that it is as overinclusive as it is
20 underinclusive. It allows in lawyers from far away in
21 New Orleans, even if they don't practice law as
22 litigators. Even if they engage in a real estate
23 practice, and don't ever appear in Federal court. While
24 it excludes experienced litigators, such as the
25 petitioner, who are also closer to the court.

1 So the continuing requirement does not save
2 it.

3 We have argued the reasons why we believe that
4 heightened scrutiny ought to be applied under the
5 Court's decision in Piper. But even if the Court
6 should decide not to adopt the reasoning in Piper here,
7 we submit that the case can still be resolved under the
8 Court's traditional equal protection analysis that's an
9 element of the due process clause of the Fifth
10 Amendment.

11 Heightened scrutiny, we think, would be
12 appropriate under the standards that are used for that
13 analysis, the fundamental right or suspect class, or
14 even the intermediate level of scrutiny.

15 In Piper, the Court declared that the right to
16 practice law, or the opportunity to pursue one's career,
17 was fundamental for purposes of Article IV, and I think
18 the reasoning would apply here as well.

19 But even if it didn't, the distinctions that
20 are drawn about in-state residents are allowed to
21 practice, but not out-of-state practices, if not suspect
22 class, at least raise what the Court referred to as
23 recurring constitutional difficulties, in cases such as
24 Plyler and Cleburne Living Center.

25 There are a number of cases where out of state

1 residents are being excluded, even though there may be
2 many valid for allowing in-state residents, and even
3 though the exclusion may not rationally or in other ways
4 advance the goals that are attributed to it.

5 QUESTION: Mr. Hitchcock, do you think it
6 would be all right if the Eastern District of Louisiana
7 simply cut out the geography rule, but maintained its
8 rule that every member of the bar there had to be
9 admitted to the Louisiana bar?

10 MR. HITCHCOCK: That is not an issue here.

11 QUESTION: No, but I asked you what your
12 opinion was about it.

13 MR. HITCHCOCK: Well, the Tenth Circuit after
14 Piper raised the question as to whether that might be
15 valid or not.

16 I would say -- under the privileges and
17 immunities clause -- I would say, however, that
18 Louisiana might be one step, the only state or the best
19 state, in which that kind of restriction could be
20 upheld.

21 To answer the question, I would have to look
22 at what the arguments were advanced in favor of
23 requiring that sort of a requirement --

24 QUESTION: Well, what about one of them being
25 that, well, a lot of the cases are going to involve

1 elements of Louisiana law, diversity cases and that sort
2 of thing. And we don't give a special bar exam. We
3 want some evidence that you know the Louisiana law.

4 MR. HITCHCOCK: It would depend on the
5 evidence that was put in. As a practical matter, in
6 Federal district courts, something like 70 to 75 percent
7 of cases are Federal cases --

8 QUESTION: But can you say that for the
9 Eastern District of Louisiana?

10 MR. HITCHCOCK: I'm not aware -- I've seen the
11 number generally in several -- broken down by circuits.
12 I'm not aware specifically in Louisiana.

13 But I think that --

14 QUESTION: Well, supposing that the general
15 rule, general percentage were 75 percent, but in
16 Louisiana it were only 40 percent. Do you think the
17 Eastern District can pass a rule that governs it, even
18 though it might not work in other districts?

19 MR. HITCHCOCK: That would be a more
20 substantial reason. But I would note, Mr. Chief
21 Justice, the petitioner in this case is already a member
22 of the Louisiana State bar, so the issue is not
23 implicated here.

24 QUESTION: (Inaudible) he can -- he can try
25 cases in the state court in New Orleans?

1 MR. HITCHCOCK: Absolutely, Justice White.
2 And that is one of the problems here. Mr. Frazier can
3 try cases on his own in the state courts in New
4 Orleans.

5 But if he files a case, and let's suppose the
6 defendant tries to remove it to Federal district court,
7 he can't represent his client any more on his own
8 because he cannot be admitted to the Eastern District
9 bar under this rule.

10 He has to find a local counsel, or affiliate
11 with another lawyer --

12 QUESTION: Mr. Hitchcock, doesn't the court of
13 appeals have a study underway about rules in this
14 respect?

15 MR. HITCHCOCK: The Court of Appeals -- the
16 judicial council of the Fifth Circuit is reviewing the
17 rules of the district courts for consistency.

18 QUESTION: With respect -- and as part of
19 their focus, on these rules permitting -- restricting
20 practice?

21 MR. HITCHCOCK: This may be one of them, yes.

22 QUESTION: May be? Do you know?

23 MR. HITCHCOCK: I don't know for certain. The
24 Court of Appeals said at the end of its opinion that it
25 was unwilling to get into the issue because the matter

1 is under review.

2 We're not aware --

3 QUESTION: Well, so it is, so this very matter
4 must be under review?

5 MR. HITCHCOCK: It may be under review.
6 Perhaps counsel for respondents could answer it.

7 But I would note, Rule 83 was amended -- was
8 adopted by the Court nearly two years ago, and the rule
9 has not been changed yet, and we're not aware of when
10 any change would be imminent, and we're not aware of
11 whether the change in the rule would affect petitioner
12 or allow him to be admitted to the court.

13 QUESTION: Do you know how prevalent these
14 kinds of restrictions are across the country?

15 MR. HITCHCOCK: Yes, the Court of Appeals
16 noted that this type of rule is present in about 24
17 Federal districts across the country.

18 QUESTION: And in the others, what's the rule?

19 MR. HITCHCOCK: In a number of others, this
20 rule puts the two together, where one must have an
21 office or residence in the state. A number of the other
22 districts, there are some such as Southern Mississippi
23 which don't have these kinds of restrictions,
24 interestingly enough. But in other districts, what they
25 may have is two rules.

1 Number one, one can be admitted to the bar if
2 one meets the educational and practice requirements,
3 without any restriction.

4 QUESTION: Of the state? Of the state?

5 MR. HITCHCOCK: Of the state bar -- a member
6 of the state bar, or the bar of any other state. But
7 they then add a restriction that says if any lawyer who
8 enters an appearance in the case must be affiliated with
9 local counsel.

10 So in effect there are two rules, but it has
11 the same practical effect as this particular rule. And
12 if the Court should agree with us, we would hope that
13 they would focus on that as --

14 QUESTION: Well, how many districts have a
15 rule that if you're a member of the state bar, you may
16 practice in the Federal district court, even if you're a
17 nonresident?

18 MR. HITCHCOCK: I'm not aware of exactly how
19 many allow --

20 QUESTION: Are there some?

21 MR. HITCHCOCK: Who allow you to practice in
22 the district court if you're a member of the state bar?

23 QUESTION: Yes.

24 MR. HITCHCOCK: Yes, the Southern District of
25 Mississippi, for example.

1 QUESTION: Is that all, do you know?

2 MR. HITCHCOCK: I don't know. I didn't, when
3 I was surveying the rules, I didn't focus on membership
4 in state bar, and whether that was --

5 QUESTION: Well, if all the district courts in
6 the country except the Southern District of Mississippi
7 have either this rule that this court has here, or its
8 equivalent, that's pretty telling about what local
9 district courts think is good for their -- a good rule
10 for running their business.

11 MR. HITCHCOCK: With respect to the admission
12 to the state bar? I mean, the Mr. Frazier is admitted
13 to the Louisiana State bar.

14 QUESTION: Well, I know. But I take it that
15 other courts that will either have this rule or impose a
16 requirement that he associate with local counsel.

17 MR. HITCHCOCK: Other -- well, other courts --

18 QUESTION: All but the Southern District of
19 Mississippi? k

20 MR. HITCHCOCK: I don't want to limit it to
21 the Southern Mississippi. I have to confess, because
22 Mr. Frazier is a member of the state bar in Louisiana, I
23 didn't focus on how that requirement is applied.

24 There are other districts, I believe in Texas
25 as well, that require one to be either a member of the

1 Texas bar or the bar of any other court.

2 I could submit a summary of those requirements
3 if it would be helpful to the Court.

4 QUESTION: Oh, that's all right.

5 MR. HITCHCOCK: But the point is, whatever
6 educational or bar admission requirements one may
7 impose, this type of rule deals with other questions.

8 Whatever educational qualifications one may
9 require or practice requirements that is not related to
10 the question of whether one lives or practices in the
11 state, and therefore, one is competent practitioner or
12 likely to be available.

13 Mr. Frazier has met whatever educational
14 qualifications and practice and bar admission
15 qualifications that --

16 QUESTION: May I ask you, Mr. Hitchcock, I
17 know that your client now is not a resident or have an
18 office in Louisiana. When he was admitted to the
19 Louisiana bar, was he required to be either a resident
20 or have an office?

21 MR. HITCHCOCK: No, when he was admitted --

22 QUESTION: The Louisiana State bar just
23 doesn't have any requirement of this kind at all?

24 MR. HITCHCOCK: No, Louisiana did not have a
25 residency requirement, and that was the case before

1 Piper as well as after Piper.

2 QUESTION: Is it integrated?

3 MR. HITCHCOCK: I'm not certain. If the Court
4 has no further questions at this point, we'd like to
5 reserve the balance of the time.

6 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
7 Hitchcock.

8 We will hear now from you, Mr. Boisfontaine.

9 ORAL ARGUMENT OF CURIS R. BOISFONTAINE, ESQ.,

10 ON BEHALF OF THE RESPONDENT

11 MR. BOISFONTAINE: Mr. Chief Justice, and may
12 it please the Court:

13 May I quickly answer your question, Justice
14 Marshall? The Louisiana bar is an integrated bar; has
15 been for some 35 years, integrated in both meanings of
16 the word.

17 You must belong to the bar association in
18 order to practice. You must belong -- you must be
19 admitted to practice to belong to the bar association.
20 And it has no color lines whatsoever.

21 Before going into detail specifically, there's
22 one -- there's one point that I think needs repeating if
23 not clarification. The Eastern District of Louisiana
24 admits any licensed lawyer of the 50 states to practice
25 before it.

1 The issue here is not whether or not a lawyer
2 may practice in the Eastern District. The issue is,
3 under what method may he practice in the Eastern
4 District?

5 Take the unlicensed -- the lawyer that is not
6 licensed in Louisiana. Take the lawyer in Nome,
7 Alaska. He may come to the Eastern District; seek and
8 obtain admission pro hac vice; and obtain local counsel
9 to assist him.

10 Under one of the subparts of Rule 21, the --
11 the necessity for local counsel may be waived, and the
12 evidence in the record says that that is done from time
13 to time upon showing of need.

14 Now the lawyer who is licensed --

15 QUESTION: Expand upon showing of need. What
16 does that mean?

17 MR. BOISFONTAINE: The rule itself, sir,
18 provides -- Rule 21.6, I believe -- that if it does a
19 hardship to the client, or if substantial compliance
20 with the rules is assured, the waiver of local counsel
21 is given.

22 And our evidence in the record, which is
23 un rebutted, is to the effect that it is often waived.
24 The pro hac vice is one method of practicing in that
25 court.

1 Two other methods exist. If you're a
2 Louisiana lawyer and you live in the state, you may
3 practice under general admission.

4 QUESTION: Even though you don't have a
5 residency in the state?

6 MR. BOISFONTAINE: Yes, sir. Even if you --
7 if you have an office in the state, and you live in Mr.
8 Frazier's city, you may still practice generally in that
9 court.

10 If you live in New Orleans and have your
11 office in Pascagoula, Mississippi, you may practice
12 generally in that court.

13 So that there are options on general
14 admission, and if you don't fit the options, then you
15 have liberally granted pro hac vice admission.

16 We have no evidence of record where a lawyer
17 has applied and has been turned down admission to
18 practice before this court.

19 QUESTION: But may I ask this question? As I
20 understand the holding in Leis v. Flynt, a local court
21 does not have to allow pro hac vice admissions if it
22 doesn't want to; it's totally up to the discretion of
23 the local judges.

24 Supposing they change their rule on pro hac
25 vice and just say, we decided we want to have the same

1 requirement on pro hac vice. You've got to be -- either
2 have an office or be a resident.

3 Would that change the constitutional or the
4 supervisory power issues in anyway?

5 MR. BOISFONTAINE: I think there are some
6 district courts that allow just such a restriction.

7 QUESTION: So you really -- although you say
8 it really isn't as severe as your opponent makes out,
9 you don't really rely on the fact that there are these
10 alternative methods?

11 Your legal position is --

12 MR. BOISFONTAINE: I think our position is --

13 QUESTION: -- the Judges could just flatly
14 exclude this man if they wanted to?L

15 MR. BOISFONTAINE: I believe Congress has told
16 this Court that it can make necessary rules, and the
17 evidence by the way of record, says these rules are
18 necessary, to make sure that the speedy and efficient
19 administration of justice in that court is carried out,
20 in the eyes of those rulemakers from that court who have
21 the obligation, both judicially and congressionally, to
22 make such rules as are deemed appropriate and necessary.

23 QUESTION: Mr. Boisfontaine?

24 MR. BOISFONTAINE: Yes, sir.

25 QUESTION: You say that leave to practice pro

1 hac vice is liberally granted. But would it be
2 liberally granted to the same person who came back time
3 and again?

4 MR. BOISFONTAINE: Yes, sir. That has been --
5 that is a part of the record, specifically so because we
6 assumed that the Fifth Circuit might be wondering that
7 very fact.

8 There is no restriction on the repetitiveness
9 of pro hac vice admission. In fact, if a person
10 practices there often enough, he will likely get waivers
11 of the local counsel requirement upon simple request,
12 once he demonstrates his own abilities to know the rule,
13 to perform under the rules, to make himself present at
14 all times needed.

15 QUESTION: May I ask how, in a case -- say
16 this man wanted to file a complaint on behalf of a
17 client. What procedure does he follow to get permission
18 to do so?

19 MR. BOISFONTAINE: He files in writing,
20 through the mail, a motion to become enrolled pro hac
21 vice.

22 QUESTION: But it doesn't have a number -- not
23 with reference to any particular case, he just says that
24 --

25 MR. BOISFONTAINE: Oh, you have to say for

1 what purpose, yes.

2 QUESTION: But it's just a letter saying --

3 MR. BOISFONTAINE: It's a motion form --

4 QUESTION: Because he can't file a complaint
5 with his name on it until he first has the pro hac vice
6 permission, I guess.

7 MR. BOISFONTAINE: I don't really know whether
8 the cart and the horse, who comes first. There is a
9 procedure to handle it --

10 QUESTION: Well, he also has -- he also has to
11 be associated with local counsel.

12 MR. BOISFONTAINE: But local counsel will
13 often file the suit, and then file the motion asking
14 permission for attorney X or Attorney Frazier --

15 QUESTION: Well, isn't that how it's done all
16 the time?

17 MR. BOISFONTAINE: That's often how it's
18 done. That's the way I've seen it done in the few cases
19 we've got with local counsel.

20 QUESTION: Does the evidence indicate that the
21 problem with -- it's harder to comply with the rules of
22 the Federal court than it is of the state courts?
23 Because I guess he doesn't have to do this in the state
24 courts, he just files his complaint.

25 MR. BOISFONTAINE: No. As a matter of fact,

1 the Eastern District discovery rules are quite -- are
2 quite intense. They require a lot of face-to-face
3 confrontational meetings.

4 A lot of the pretrial activity is done
5 personally, and is prohibited by telephone or the mail.
6 Some of the early scheduling conferences, under the
7 rules, require the trial attorneys, or one of them, to
8 be present with a magistrate, to go through the whole
9 system.

10 As you approach trial, the routines and
11 regimens of pretrial settlement require the attendance,
12 under all circumstances, of the trial attorneys.

13 There is a need for the personal touch, if you
14 please, if you satisfy the Eastern District rules.

15 QUESTION: But doesn't that -- don't you
16 suppose the lawyers know that in the area?

17 MR. BOISFONTAINE: The lawyers in the area
18 know it.

19 QUESTION: If he is going to file a suit, he
20 must presumably realize that he has that responsibility,
21 assuming he's a professionally qualified person?

22 MR. BOISFONTAINE: Well, again, I'm not
23 trying to answer you in the abstract, because our record
24 contains evidence from accepted experts on the judicial
25 administration in the Eastern District, and that

1 evidence says that attorneys from away give the court
2 more trouble than those who are logically, normally and
3 frequently practicing there.

4 Now, the minority opinion of the Fifth Circuit
5 sort of scoffed at that evidence.

6 QUESTION: Just like those from Shreveport?

7 MR. BOISFONTAINE: Those from Shreveport that
8 practice in the Eastern District usually come the night
9 before and have dinner and are there the next morning.

10 QUESTION: Well, I suppose the ones -- people
11 from Mississippi could do the same thing.

12 MR. BOISFONTAINE: Mr. Frazier's local
13 attorney did the same thing, I suppose. He was admitted
14 pro hac vice to try this very case for Mr. Frazier.

15 There's also this ominous comparison to Piper
16 that we perceive in the applicant's brief. Piper is
17 very different from Frazier, if I may use those names to
18 designate those cases.

19 First of all, we're talking about state law
20 and Federal law. And that alone is a big distinction
21 between the Piper Article IV problems and the Frazier
22 case.

23 In Piper we also have this option of not only
24 living in the state but maintaining an office in the
25 states under either of which gives you automatic,

1 general admission to the Eastern District of Louisiana.

2 And more importantly, the continuing
3 requirement of that eligibility puts the real teeth in
4 the rule in Frazier, and at the same time demonstrates
5 the absurdity of the rule in Piper.

6 Mrs. Piper could have run over to New
7 Hampshire, gotten an apartment or done whatever it was
8 it would take to establish residency, gotten admitted to
9 the court, and run right back 400 yards to her nice
10 house and home. And it would have made no difference
11 under the Piper rule, because once certified, once
12 admitted, that was it; you could go to Nome, Alaska.

13 In the rule under scrutiny here, the
14 continuing need for office or residence is clearly
15 proscribed. And if you have neither, then you must fall
16 back to the other means of practicing before the court,
17 on the pro hac vice side.

18 The subpoena power of the state, of the court,
19 is contiguous with the subpoena power granted in the
20 state proceedings.

21 QUESTION: You know, you're talking about the
22 absurdity in the other case. I take it there are cities
23 in Mississippi that are closer than Pascagoula. Isn't
24 Biloxi closer for example?

25 MR. BOISFONTAINE: Biloxi is closer, yes, sir.

1 QUESTION: I mean, there are some right across
2 the river, aren't there?

3 MR. BOISFONTAINE: Gulfport is even closer.

4 QUESTION: Gulfport was the one I was trying
5 to think of.

6 MR. BOISFONTAINE: Yes, sir, there are cities,
7 there are cities in states that are shorter in distance
8 than the location of Mr. Frazier's residence.

9 QUESTION: But I don't know why you say it was
10 so absurd in the Piper case. I don't know why the
11 lawyer in Gulfport would be any different than the
12 lawyer in Piper.

13 MR. BOISFONTAINE: Well, my comment about the
14 absurdity had to do with the fact that Piper did not
15 have continuing residency or continuing office
16 maintenance as a requirement.

17 That was my comment about the absurdity in
18 Piper, only that you could run over there, get admitted,
19 and then for all time, not worry about it again; whereas
20 the Frazier rule requires that you maintain either an
21 officer or a residence.

22 QUESTION: In a town like Texarkana, you'd
23 have to have offices on both sides of the street?

24 MR. BOISFONTAINE: That might solve a lot of
25 problems. But it's Arkansas and Texas, and they'd

1 still have to come to Louisiana pro hac vice.

2 QUESTION: No, I'm talking about if this was a
3 Texas law, like the Louisiana law, and you lived on one
4 side of Main Street in Texarkana, you'd have to have an
5 office of the other side of the same street?

6 MR. BOISFONTAINE: If that same rule -- yes,
7 sir, Justice Marshall, that would certainly be true.

8 I submit you could live on one side and
9 practice on the other, though, and solve those problems.

10 No rule is safe from better rule writing.
11 There is hardly anything that you can look at a second
12 time and not find a better way of addressing, or a
13 better way of expressing it, or perhaps a somewhat
14 softer impact.

15 But we're not here trying to write a rule. I
16 think we are here trying to review and to see if this
17 rule is constitutional. Is this rule appropriate?

18 Now to look at that issue, as I see it, you
19 look first to the reason for the rule. Is it
20 reasonable? Does it accomplish the purposes for which
21 it's intended?

22 And we say to you that it does.

23 You then look and see if it is harshly
24 discriminatory. No one is going -- everyone is not
25 going to be treated exactly alike. But some disparity

1 In treatment is permitted under the regimens and under
2 rules.

3 And we look at this rule and we ask ourselves,
4 Is this rule appropriate for the purposes for which it
5 is performed? Does it unduly mistreat Mr. Frazier and
6 other people similarly situated?

7 And under the evidence of record, and under
8 the reasons expressed for the rule, we say to you that
9 the rule is the only appropriate way to maintain control
10 over the attorneys that are practicing in the Eastern
11 District of Louisiana.

12 And the only way to do it in such a way as to
13 minimally impose some disparity in how you practice
14 there.

15 It must be remebered that Mr. Frazier can get
16 general admission anytime he wants if he opens an office
17 or if he lives in Louisiana. The rule is there. How it
18 affects a person depends on the person's motives and on
19 the person's conduct.

20 The rule is very objective. It says, any
21 Louisiana lawyer who either lives or practices in
22 Louisiana is generally admitted.

23 That lets lawyers come to Louisiana, leave
24 Louisiana, open offices, close offices. It is their
25 conduct that affects the ultimate effect of the rule on

1 them.

2 We submit that the only way this could better
3 be handled, perhaps, is not to have a rule at all. And
4 I don't believe that that would be the proper carrying
5 out of the Congressional and judicial mandates on the
6 Eastern District court in the exercise of their rights
7 and obligations.

8 QUESTION: Mr. Boisfontaine, may I ask you as
9 kind of a practical matter, what do they do? Do a lot
10 of them just have sort of like a corporation trust
11 company, they have some office where they can go in and
12 have the receptionist take phone calls for them?

13 That will do it, I suppose, put the name on
14 the door?

15 MR. BOISFONTAINE: I suppose. I think that
16 maintaining an office would carry with it the obligation
17 to maintain a lawful office, not just a sham --

18 QUESTION: Well, but it wouldn't be a sham in
19 the sense of --

20 MR. BOISFONTAINE: I know of no dropoffs.

21 QUESTION: -- say one of the larger firms knew
22 about this problem and said, we'll be glad to put your
23 name on the door and take your phone calls and be sure
24 your mail is forwarded?

25 MR. BOISFONTAINE: I suppose if our firm would

1 have put Mr. Frazier of counsel, and give him telephone
2 and address privileges, we would probably satisfy the
3 rule.

4 But then we would be holding ourselves out as
5 vouching for Mr. Frazier, and our firm would in effect
6 be surrounding Mr. Frazier with our reputation and with
7 our obligations to that court.

8 Yes. To answer you more directly, yes. That
9 would satisfy it.

10 QUESTION: Well, I'm not sure your firm would
11 -- say he had a client in the shipping business or
12 something. And they said, well, you can use -- we'll
13 let our switchboard take your calls, and you can use
14 this as an office for taking mail and so forth.

15 And his client just -- and he just listed that
16 office and phone number. Would that satisfy the rule?
17 I don't know it wouldn't.

18 MR. BOISFONTAINE: If the court knew it, I
19 don't believe it would.

20 QUESTION: Oh, it wouldn't?

21 MR. BOISFONTAINE: I don't believe it would.

22 QUESTION: There is a definition of the kind
23 of office he has to maintain?

24 MR. BOISFONTAINE: I would not -- the rule of
25 course does not say, whether it be a fancy office or a

1 small office or --

2 QUESTION: Well, isn't the only purpose of the
3 rule to be sure he gets notice and gets his mail?

4 MR. BOISFONTAINE: The purpose of the rule is
5 to make sure he gets notice, to make sure he gets his
6 mail.

7 QUESTION: Well, why wouldn't it satisfy to
8 have a client say you can --

9 MR. BOISFONTAINE: I'm not saying that it
10 wouldn't. I'm saying that I suspect that the court
11 would require more than a drop, if you please. I don't
12 know that it would.

13 QUESTION: Why? What purpose does it serve,
14 other than the drop purpose?

15 MR. BOISFONTAINE: Well, I think basically the
16 purpose of having the rule, and having the office or the
17 residence is, as you point out, to make sure that
18 notices are timely received.

19 And I suppose a drop would satisfy that.

20 QUESTION: I wonder if a mailbox might do it.
21 If you kept a mailbox at general delivery.k

22 MR. BOISFONTAINE: I don't think a mailbox is
23 an office.

24 QUESTION: I see. But I would think as long
25 as he had a client who was willing to put his name on

1 the door, and a phone number that he could list in your
2 lawyers' directory, I don't know why that wouldn't
3 comply.

4 QUESTION: Are you sure, Mr. Boisfontaine, the
5 only purpose is to give him -- to make sure that notice
6 is received? Certified mail would do that.

7 MR. BOISFONTAINE: It's not just a question of
8 assuring the court that mail is received.

9 QUESTION: I didn't think so. I thought the
10 purpose was to make --

11 MR. BOISFONTAINE: I think I stepped in that
12 answer. There's more to it than that, sir.

13 QUESTION: What is it?

14 MR. BOISFONTAINE: It's to assure the court
15 that the attorneys are available. It's not just a
16 question of getting there. It's a question of --

17 QUESTION: Well, suppose you have one of these
18 multistate law firms, you have them I'm sure in New
19 Orleans as we do in other parts of the country, and
20 you've got a New York partner up there, and he's going
21 to try the case and so forth.

22 Does he have an office there? He's never in
23 New Orleans except for the purpose of this one case.
24 Does he have to get pro hac vice admission? He's a
25 member of the bar. This fellow moves to New York.

1 MR. BOISFONTAINE: I don't believe we have a
2 multi-district firm. And I don't know the answer to
3 your question.

4 I think --

5 QUESTION: But you're saying -- you're
6 suggesting that the rule requires a certain number of
7 days a week in the office, something like that?

8 MR. BOISFONTAINE: No, sir, the rule doesn't
9 deal with firms, it deals with lawyers. It deals with a
10 person.

11 Now if this person were living and practicing
12 in New York City, he obviously wouldn't qualify for
13 general admission --

14 QUESTION: Even if he became a partner of your
15 firm?

16 MR. BOISFONTAINE: Even if he were a partner
17 of the firm, he is still Mr. Smith, and Mr. Smith lives
18 and practices in New York City. As I would interpret
19 it.

20 QUESTION: Let's assume a lawyer leases an
21 office and has a secretary there, but he lives in
22 Mississippi. And he may be able to get his mail, but
23 he's still away, and he's not instantly available.

24 You can -- he's bound to get notice. His
25 office will make sure that he gets notice. But he's

1 still a long distance away.

2 MR. BOISFONTAINE: Justice White, I suppose
3 it's in the interest of trying to be as liberal as
4 possible that this alternative option is granted.

5 If the Court really wanted to be restrictive,
6 and wanted to have its law --

7 QUESTION: Well, what difference -- what
8 difference where he's got his office make if all he has
9 in his office is somebody to notify him that he's got
10 some mail or a phone call?

11 MR. BOISFONTAINE: In my view, people do not
12 frivolously undertake overhead of offices. If a person
13 is going to maintain an office in the State of
14 Louisiana, there is going to have to be a reason for it
15 superior to an ability to generally practice in the
16 Eastern District of Louisiana.

17 Because that can be done by no overhead. That
18 can be done by simple motion for a pro hac vice
19 admission.

20 So the fact that the rule allows the general
21 practice, once you have an office, presupposes good
22 common sense on the part of the attorney.

23 QUESTION: It demonstrates a serious
24 commitment to practice in that district, I take it,
25 doesn't it?

1 MR. BOISFONTAINE: I would think that's true.
2 And I think also the fact that you live there is more --

3 QUESTION: A serious commitment to continuing
4 practice in that district, as opposed to someone who
5 just practices now and then and comes in pro hac vice?

6 MR. BOISFONTAINE: I wish I had said it that
7 way, sir.

8 QUESTION: Counsel, what do you -- I notice if
9 you ever go up to Wilmington, Delaware, and lawyers --
10 you see all these plaques on there, and that's all it
11 is.

12 MR. BOISFONTAINE: Corporate headquarters, I
13 suppose.

14 QUESTION: Would that be sufficient?

15 MR. BOISFONTAINE: Again, we're talking about
16 whether it's a legitimate office of that particular
17 person for that --

18 QUESTION: (Inaudible.)

19 MR. BOISFONTAINE: If it's an office, yes,
20 sir, I suppose it would have to be if it's a legitimate
21 office, if it demonstrates his intent to practice in the
22 state.

23 This could be a lot tougher, you know. This
24 could say, if you're not -- if you're not in Olney's
25 Parish, you're not going to be generally admitted to

1 this court.

2 And a lot of districts have very restrictive
3 admission rules. I think the Eastern District has
4 compromised the liberality with the necessity of the
5 administration of justice in expanding it to the entire
6 state, or so say we.

7 Now, let me touch one more time on this
8 100-mile range for Mr. Frazier, and in his case, I
9 suppose we would make it a 111-mile range.

10 That argument, to me, is an argument that
11 would be made to the rulemaking authority at the time
12 they're making a rule. It is an attempt to write the
13 rule differently, to write the rule perhaps more
14 restrictively in some respects, and less restrictively
15 in others.

16 QUESTION: (Inaudible) if there is one --

17 MR. BOISFONTAINE: There is a judicial
18 conference in effect in the Fifth Circuit. I don't know
19 the precisuity of the review of the admission rules. I
20 know that they are awaiting hearing from this Court,
21 since they are very much aware of this writ.

22 But the rule writing and the rule review is
23 underway. I was not at the Fifth Circuit judicial
24 conference two weeks ago, but I understand that there
25 was a great deal of discussion about admission rules and

1 many other rules of the various district courts within
2 the Fifth Circuit.

3 QUESTION: Was the Fifth Circuit --

4 MR. BOISFONTAINE: I can't give you a time or
5 date by which any work would be completed.

6 QUESTION: Were they thinking about requiring
7 a particular kind of a rule through the circuit?

8 MR. BOISFONTAINE: I understand they're
9 considering, as I understand it, they're considering
10 some uniformity, not requiring -- not requiring total
11 uniformity --

12 QUESTION: Right.

13 MR. BOISFONTAINE: -- but they're looking at
14 the extremes of rules treating the same subject, with a
15 view toward trying to bring the extremes more toward a
16 center -- a center line.

17 I think that's the extent of the uniformity
18 that they seek to achieve.

19 If there are other questions? Otherwise, we
20 submit.

21 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
22 Boisfontaine.

23 Mr. Hitchcock, you have one minute remaining.

24 REBUTTAL ARGUMENT OF CORNISH F. HITCHCOCK, ESQ.,

25 ON BEHALF OF THE PETITIONER

1 MR. HITCHCOCK: Thank you, Mr. Chief Justice.

2 I wanted to follow up on the question of the
3 office requirement, Justice Stevens' inquiry.

4 It was addressed in the record. At page 151,
5 Mrs. White, the clerk, said that a mailbox is not
6 sufficient.

7 At page 255, Judge Wicker testified that the
8 office requirement requires only that there be someone
9 to answer the telephone and communicate with the lawyer.

10 And I would add again that that could be in
11 New Orleans, or it could be in Lake Charles, or it could
12 be in Shreveport, or it could be anywhere else.

13 Mr. Frazier can affiliate with an office --
14 somebody who has an office in Lake Charles, and he would
15 satisfy the office requirement. But there's no reason
16 to believe --

17 QUESTION: Do you understand that to mean he
18 would satisfy it if one of his client's were willing to
19 put his name on the door and forward mail and phone
20 calls to him?

21 MR. HITCHCOCK: The statement was, and I will
22 quote from the record, quote: This means where there is
23 an address with a telephone number to me.

24 Question: Somebody such as a secretary?

25 Answer: Someone who would be able to

1 communicate with that individual if we attempted to
2 reach them.

3 That is the only answer.

4 QUESTION: So your answer is, yes, that would
5 be adequate?

6 MR. HITCHCOCK: Yes. That is permitted.

7 QUESTION: So maybe he needs to get a New
8 Orleans client.

9 MR. HITCHCOCK: Excuse me?

10 QUESTION: Maybe he needs to get a New Orleans
11 client?

12 QUESTION: You think it says that? I don't
13 think it says that.

14 MR. HITCHCOCK: It says someone -- you know, a
15 secretary with the office. And again, it doesn't say
16 where, it doesn't say somebody who is committed to
17 regularly practicing in the Eastern District. It could
18 be somebody --

19 QUESTION: That may well mean that you just
20 can't hire an office and have a vacant office with
21 nobody there to answer the phone.

22 That's how I would have interpreted that.

23 MR. HITCHCOCK: But it doesn't imply that
24 there is someone there who could go over to the
25 courthouse for emergency hearings or something of that

1 naure.

2 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
3 Hitchcock.

4 The case is submitted.

5 (Whereupon, at 10:54 p.m., the case in the
6 above-entitled matter was submitted.)

CERTIFICATION

Anderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

86-475 - DAVID C. FRAZIER, Petitioner V. FREDERICK J. R. HEEBE, CHIEF

JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

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