

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: INTERNATIONAL SOCIETY FOR KRISHNA
CONSCIOUSNESS, INC., AND BRIAN RUMBAUGH,
Petitioners V. WALTER LEE and
WALTER LEE, SUPERINTENDENT OF PORT AUTHORITY
POLICE, Cross-Petitioner V. INTERNATIONAL SOCIETY
FOR KRISHNA CONSCIOUSNESS, INC., ET AL.

CASE NO: 91-155; 91-339

PLACE: Washington, D.C.

DATE: March 25, 1992

PAGES: 1 - 48

ALDERSON REPORTING COMPANY

1111 14TH STREET, N.W.

WASHINGTON, D.C. 20005-5650

LIBRARY
SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

'92 APR -1 P2:33

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -X

3 INTERNATIONAL SOCIETY FOR :

4 KRISHNA CONSCIOUSNESS, INC. :

5 AND BRIAN RUMBAUGH, :

6 Petitioners :

7 v. : No. 91-155

8 WALTER LEE :

9 and :

10 WALTER LEE, SUPERINTENDENT OF :

11 PORT AUTHORITY POLICE, :

12 Cross-Petitioner :

13 v. : No. 91-339

14 INTERNATIONAL SOCIETY FOR :

15 KRISHNA CONSCIOUSNESS, INC., :

16 ET AL. :

17 - - - - -X

18 Washington, D.C.

19 Wednesday, March 25, 1992

20 The above-entitled matter came on for oral
21 argument before the Supreme Court of the United States at
22 10:13 a.m.

23

24

25

1 APPEARANCES:

2 BARRY A. FISHER, ESQ., Los Angeles, California; on behalf
3 of the Petitioners/Cross-Respondents.

4 ARTHUR P. BERG, ESQ., Chief, Appeals Division, Port
5 Authority of New York, New York; on behalf of the
6 Cross-Petitioner/Respondent.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

	PAGE
ORAL ARGUMENT OF	
BARRY A. FISHER, ESQ.	
On behalf of the Petitioners/Cross-Respondents	4
ARTHUR P. BERG, ESQ.	
On behalf of the Cross-Petitioner/Respondent	24
REBUTTAL ARGUMENT OF	
BARRY A. FISHER, ESQ.	
On behalf of the Petitioners/Cross-Respondents	43

1 P R O C E E D I N G S

2 (10:13 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this morning in No. 91-155, International Society
5 versus Krishna Consciousness v. Walter Lee, and Walter Lee
6 v. International Society for Krishna Consciousness.

7 Mr. Fisher.

8 ORAL ARGUMENT OF BARRY A. FISHER

9 ON BEHALF OF THE PETITIONERS/CROSS-RESPONDENTS

10 MR. FISHER: Mr. Chief Justice and may it please
11 the Court:

12 Born at the onset of the Seventies and by the
13 early Eighties the subject of an unusual consensus of 30-
14 plus cases, now in the Nineties the issue presented today
15 of airport crossroads as commerce and idea marketplaces
16 may well serve to shape the future of the public forum as
17 we not long from now end this and enter the next century.

18 And it's from the vantage point today of what so
19 many cases, including six circuits, the Canadian supreme
20 court, findings of Congress and the FAA with its special
21 knowledge and airport expertise, almost 20 years of time,
22 place, and manner regulations that have been tailored by
23 airports throughout the country to ensure and protect the
24 free and unburdened passenger flow at airports, also today
25 some free market and other analysis supplied by amici,

1 Free Congress Foundation and Concerned Women for America,
2 and also unlike perhaps any case in recent times, a kind
3 of special judicial notice because everyone in the
4 courtroom has probably witnessed what's at issue here.

5 Indeed, Your Honors, from the Ninth Circuit's
6 Kuszynski -- the '73 case, not the judge -- to the
7 present, no kind of forum has been the subject of so much
8 analysis covering so many facets, and it's from this
9 vantage point that we present this case today which began
10 17 years ago with a very fast track start of a TRO hearing
11 within less than an hour of filing the case that I had
12 with my colleague here, Mr. Berg.

13 But soon the case took a slow track nose dive,
14 and the first 13 years of the case -- '75 to '88 -- focus
15 solely on the airline leased terminals as opposed to the
16 Port Authority unleased general circulation areas, which
17 the Port Authority months before we filed the case, months
18 before we talked about the case, said was subject to no
19 regulations excluding ISKCON, and the Port Authority
20 agreed to ISKCON's very limited presence and subject to
21 detailed Port Authority tailored time, place, and manner
22 regulations, and these regulations were altered over the
23 ensuing 13 years as the Port Authority saw its needs
24 increase, and I want to give an example.

25 The only place at Kennedy Airport that was

1 allowed then and is allowed to this day is an off-the-
2 beaten-track area in the mezzanine area of the
3 international arrivals building. It's in the vicinity of
4 the stained glass chapel that holds regular Catholic,
5 Protestant, and Jewish services.

6 Now, during the first 13 years of the case the
7 Port Authority neither disputed that those areas that they
8 allowed ISKCON to be in were public fora nor did they
9 complain about the agreement, and the airport deputy
10 director, Mr. Sloane, testified in his deposition in 1985
11 that the arrangement with ISKCON worked out okay.

12 But Your Honors, in 1988, ISKCON settled with
13 all the airlines. At one point the district court ordered
14 in every airline from Aeroflot to Zambia Air, but we
15 settled with all of the airlines and the Port Authority
16 standing alone for the first time in the history of this
17 case and perhaps inspired by Jews for Jesus that not long
18 ago at that point expressly left the public forum issue
19 open, in 1988 for the first time in this case the Port
20 Authority put the nonleased areas at issue when it
21 declared at a summary judgment proceeding --

22 QUESTION: Mr. Fisher --

23 MR. FISHER: Yes, Your Honor.

24 QUESTION: Are you making some point that they
25 have waived that or that the Second Circuit was wrong in

1 dealing with it on the merits? If not, why do you spend
2 so much time on that?

3 MR. FISHER: I think what this case is about,
4 and what the --

5 QUESTION: Can you answer my question?

6 MR. FISHER: The answer is no, Your Honor. I'm
7 not --

8 QUESTION: You're not arguing that --

9 MR. FISHER: I'm not arguing that point, and the
10 reason I'm presenting this is that I think that it's
11 important for the actual factual context of this case and
12 the importance or nonimportance of facts that are now
13 being argued to the Court be put in perspective as to what
14 this case is about, so I think it is important for the
15 Court to understand this, and I'll just spend another
16 minute or two on it.

17 But at the summary judgment hearing it was
18 announced for the first time that a regulation had just
19 been promulgated banning ISKCON's literature distribution
20 and solicitations, but Your Honors, at that summary
21 judgment hearing which was held 4 years ago today on
22 March 25, 1988, Mr. Berg at Joint Appendix 496 underscored
23 that the ban was based on purpose characterization, a
24 legal presentation, and not anything to do with ISKCON's
25 conduct, and that if the Court did in fact determine that

1 the areas in question were public fora, then as far as he
2 was concerned and the Court Authority was concerned, and
3 he said, we don't object to the present arrangement that's
4 been made.

5 Now, for the first time in this case the briefs
6 here say that if it is a forum it can still be excluded.
7 Now, the Port Authority enacted this regulation, announced
8 that day, behind closed doors without any record, without
9 any hearing, except a preamble, and that makes clear that
10 it was directed at ISKCON's scripture ministry which
11 consists of religious book distribution and solicitations
12 from book-takers of a printing cost-defraying donation
13 without which their ministry would be crippled.

14 Now, the regulations preamble singles out ISKCON
15 in a way that is not so different from the way that the
16 Moonies were singled out in the law that was struck down
17 in Larson v. Valente and the laws we cite in our reply
18 brief in the 1880's that were tailored to exclude the
19 Salvation Army from their particular mode of expression.

20 Now, as I've said, the petitioners have
21 continued their activity at the airports during the last 4
22 years, as they have for the 13-plus years before, pending
23 review of this law that categorically bans their
24 literature distribution and solicitations in the terminals
25 if done for any length of time, no matter how innocuously

1 conducted, but the regulation does recognize that the
2 terminals are fora for and does permit continuous
3 preaching, but not 1 Timothy 5, and it allows repetitive
4 singing, but not the praises of solicitations. It does --

5 QUESTION: Mr. Fisher --

6 MR. FISHER: Yes, Your Honor.

7 QUESTION: Would you conceive that the airport
8 could limit access to only ticketed passengers?

9 MR. FISHER: Yes, Your Honor, and in fact the --

10 QUESTION: And it did so rather recently in many
11 areas --

12 MR. FISHER: In Desert Storm.

13 QUESTION: Did it not? Yes.

14 MR. FISHER: Yes, and that wasn't the first time
15 that that happened. Over the 17 years of this case there
16 have been storms, there have been wars, there have been a
17 number of instances where all or part of the airports have
18 been restricted to ticketed passengers.

19 QUESTION: Do you think that that conceded
20 ability of the airport to limit access bears on our forum
21 analysis in any way?

22 MR. FISHER: Not on the question of whether the
23 airport is a forum or not. It bears on the question of
24 what time, place, and manner regulations would be
25 appropriate, and in fact I mentioned airports throughout

1 the country that have time, place, and manner regulations,
2 they typically provide for emergency situations and what-
3 have-you where it's necessary to --

4 QUESTION: Well, I would have thought that it
5 had some relationship to the analysis in Kokinda, for
6 example, and I just wondered how you would characterize
7 that.

8 MR. FISHER: I don't think that the question,
9 again, of whether the airport is a forum which can be
10 subject to time, place, and manner regulation as it has
11 been for these 17 years is answered by the question of
12 whether, in an emergency or some catastrophe or whatever,
13 areas in addition to areas that normally would be no
14 problem for passenger flow or whatever, whether those
15 areas also could be closed at that time.

16 I don't think that answers the question in and
17 of itself, the fact that at some points it could be
18 closed. I mean, obviously the sidewalks and the parks can
19 be closed at certain times, but that doesn't answer the
20 question as to whether they are classic public fora.

21 I was commenting on this regulation of what it
22 allows and doesn't allow. Yes, Your Honor.

23 QUESTION: You would say that if an airport
24 permanently permitted only ticketed passengers that you
25 would think that was invalid.

1 MR. FISHER: Not necessarily. I think --

2 QUESTION: Well, it's hardly a time, place, or
3 manner --

4 MR. FISHER: Well, it wouldn't be --

5 QUESTION: Regulation, is it?

6 MR. FISHER: No. Your Honor, it's true --

7 QUESTION: Just as long as it's forever, that's
8 a time all right.

9 MR. FISHER: That's a time --

10 (Laughter.)

11 MR. FISHER: And what the petitioners do is a
12 manner, I suppose, but the -- you know, we might come back
13 to a Court such as this, if that were the case, and argue
14 that it didn't make any sense whatsoever and challenge it
15 under the Court's jurisprudence regarding time, place, and
16 manner regulations, and say that that isn't the time,
17 place, and manner regulation.

18 QUESTION: What jurisprudence is that? Are
19 things that don't make sense jurisprudence? This is
20 either a public forum, in which case --

21 MR. FISHER: Well, I would hope it at least
22 includes that. Pardon?

23 QUESTION: This is either a public forum, in
24 which case things that make sense have to be allowed, or
25 it's not a public forum, in which even things that make

1 sense don't have to be allowed. I mean, that's simply the
2 issue, isn't it -- whether it's a public forum or not,
3 and --

4 MR. FISHER: Whether it's a public forum --

5 QUESTION: I don't see how you can answer
6 Justice White to say that the airports can keep everybody
7 out except ticketed passengers and yet still maintain that
8 it's a public forum.

9 MR. FISHER: Well, I don't know what it would
10 look like if they really did that. It would not make it
11 a --

12 QUESTION: I don't care what it would look like.
13 You acknowledge they can do it.

14 MR. FISHER: I acknowledge that you can have an
15 airport that did that. It wouldn't have the attraction of
16 shops, and therefore there wouldn't be shops, and there
17 wouldn't be a lot of the things that are at the
18 airports --

19 QUESTION: Well, if it's not a public forum -- I
20 mean, you couldn't do that with the public streets, could
21 you? You couldn't say nobody on the public streets.

22 MR. FISHER: In some places and some times, you
23 can close streets.

24 QUESTION: Yeah, but not forever. Not forever.
25 Let's just talk about Kennedy Airport. Now, do you agree

1 that the Port Authority could ban all people from the
2 airport except ticketed passengers inside the terminal, or
3 not? I thought you said yes a while ago.

4 MR. FISHER: I said yes in the context of the
5 fact that happens on occasion. Now, whether they could do
6 it all the time would --

7 QUESTION: It can't be a public forum if they
8 could do it all the time.

9 MR. FISHER: Well -- all I meant by that was
10 that it would be subject to time, place, and manner
11 regulation, and I would argue that they couldn't, but in
12 fact they do sometimes close the airports.

13 QUESTION: Well, why couldn't they limit it to
14 ticketed passengers?

15 QUESTION: Your answer is because it's a public
16 forum.

17 QUESTION: Well, that's just --

18 MR. FISHER: Thank you.

19 (Laughter.)

20 QUESTION: Well, that's just circular, to say
21 that they can't because it's a -- what we do is look at
22 the way a thing exists and decide whether it's a public
23 forum, not say in advance it's a public forum and
24 therefore it has to exist in a certain way.

25 QUESTION: Why isn't your answer the fact that

1 they have not done that? You can close parks too, I
2 suppose, but that doesn't stop it from being a public
3 forum.

4 MR. FISHER: Well, that obviously is true, that
5 this has never happened. It's happened for short periods
6 of time.

7 We are talking theoretically, and I guess I
8 could envision some airport that wanted to do that, and
9 let me just say that over the years of this litigation
10 where airports decided to close off -- I mean, it wasn't
11 always that ticketed passengers at some airports couldn't
12 go beyond a security check, but now in some places they do
13 that, and generally ISKCON has respected that and not
14 challenged that proposition.

15 If it wasn't open to the general public beyond
16 the security check area, then they sought the general
17 circulation areas where the general public was allowed.

18 QUESTION: Well, is there anything that --

19 QUESTION: What were the findings of fact by the
20 district court? Didn't the district court make some
21 findings as to people -- what class of people use the
22 airport?

23 MR. FISHER: Yes, Your Honor.

24 QUESTION: What I'm trying to get at, do people
25 simply come out to the airport to shop even though they're

1 not meeting anybody or sending someone off or themselves
2 traveling?

3 MR. FISHER: Yes, Your Honor. There's a wide
4 variety of people that come to the airport.

5 QUESTION: Well, did the district court make
6 findings?

7 MR. FISHER: Yes, Your Honor.

8 QUESTION: What are they?

9 MR. FISHER: I cannot refer you to the page.

10 QUESTION: Well, I mean if you could
11 generally --

12 MR. FISHER: The findings were generally
13 characterizing the airport, pointing out that people come
14 to the airport, first of all travelers, and they're there
15 and they're waiting around because of delay, cancelled
16 flights --

17 QUESTION: Could you address yourself to my
18 particular inquiry?

19 MR. FISHER: Yes. Meeters -- there are meeters
20 and greeters, they have art and music exhibits and events
21 at airports that are designed to attract people. There
22 are people that do go to the airport shops to shop. There
23 are very profitable --

24 QUESTION: I realize that, but --

25 MR. FISHER: Yes.

1 QUESTION: Let me rephrase my question, since
2 you apparently didn't understand at first. I'm sorry.

3 Are there people who go out to the airport who
4 are not either meeting planes or to greet someone or send
5 someone off on a plane or to get on a plane themselves or
6 to get off a plane themselves?

7 MR. FISHER: And the answer is yes. There are
8 people that are curious, people that hang out at airports,
9 that go to Anton's at National Airport --

10 QUESTION: Did the district court find on this
11 particular point? Well, maybe -- maybe --

12 MR. FISHER: I'm sorry, I cannot refer you -- I
13 cannot refer you to a specific --

14 QUESTION: Maybe you could cover -- then what
15 was your answer based on that you gave me just now if it
16 wasn't on a district court finding?

17 MR. FISHER: There are materials in our brief
18 that set out statistics regarding the nature and interest
19 of the people that go to the airports, and it's a wide
20 variety, and it's all set out in our brief.

21 QUESTION: To Kennedy Airport?

22 MR. FISHER: Yes, Your Honor, and airports
23 generally in the country.

24 QUESTION: Mr. Fisher, would it make any
25 difference to the significance of your case if the answer

1 was no, that nobody went out there who was not either
2 going out to get a plane or meet somebody, but that they
3 did other things while they were there?

4 In other words, obviously they don't have to go
5 to a Bloomingdale's in order to meet a plane. Wouldn't
6 your position be just as strong or just as weak, as the
7 case may be, if the answer were nobody went out there
8 except to meet a plane, but they also when they did go out
9 there they went out to do other things, and the Government
10 in effect has created a space in which that in fact is
11 done?

12 MR. FISHER: The answer is yes, Your Honor. The
13 airports are designed to attract large numbers of people
14 and to fill their time while they are waiting, and people
15 wait whether they're meeters or greeters or people on
16 journeys.

17 QUESTION: They're designed to attract people.
18 You mean, they're trying to get more people into Kennedy
19 Airport?

20 (Laughter.)

21 MR. FISHER: Yes, they're trying to get people
22 to come there. Isn't that surprising?

23 QUESTION: I know a lot of people who go out of
24 their way to avoid Kennedy Airport.

25 (Laughter.)

1 QUESTION: But I don't know anybody that goes
2 there --

3 MR. FISHER: Your Honor, there are --

4 QUESTION: Just to be part of the crowd.

5 MR. FISHER: There are wonderful shops there.
6 For 17 years there's been the opportunity for spiritual
7 counseling, there's a -- there's such a wide variety of
8 opportunities for spending time out there.

9 QUESTION: Can you argue, counsel, that it is
10 consistent with our precedents to say that a public forum
11 exists in part depending upon the uses to which the
12 Government decides to put the property from time to time?

13 MR. FISHER: Yes, Your Honor, I think that is a
14 factor. This gets into perhaps a designated forum.

15 QUESTION: So the fact that the Government or
16 the airport authority can close the airport is under that
17 theory irrelevant if in fact it has not done so. Is that
18 the theory of your case?

19 MR. FISHER: The theory of the case first of all
20 is that the airport is a transportation crossroads and
21 we've made an argument of crossroads and transportation
22 nodes in history that are marketplaces for commerce and
23 ideas and that are appropriate places for First Amendment
24 expression. That's the first argument.

25 QUESTION: Well, I'm still puzzled as to the

1 answer to my question. Is it your theory of the case that
2 a public forum either exists or doesn't exist depending
3 upon the uses to which the Government has decided to put
4 particular property?

5 MR. FISHER: There would be the argument
6 discussed before that even if arbitrarily and suddenly
7 they decided to close the airport to the nonticketed
8 public that it would still be a public forum.

9 The fact here is that these airports and
10 airports generally serve a billion people a year half of
11 which are nontravelers and they are set aside and
12 designated and utilized by a wide variety of public and
13 the public is encouraged by a wide variety of shops and
14 what-have-you to spend time there, to spend money, and to
15 utilize the airports in ways that public malls are --

16 QUESTION: Well, I'm trying to ask you to focus
17 on the precedents of this Court and to ask you whether or
18 not we approach a public forum by determining whether or
19 not property has certain objective traditional criteria
20 like streets and parks so that we know it's a public forum
21 from that standpoint, or whether or not the analysis is
22 different.

23 We look to see property to property, city to
24 city, airport to airport, how this particular airport or
25 property is now being used, and if it's the latter, I'd

1 like to know what in our cases supports that proposition.

2 MR. FISHER: The cases that we rely on for the
3 proposition that the airports as a general proposition
4 throughout the country, like streets and parks, are
5 thoroughfares and sidewalks and the same sort of
6 enterprise of Government that provides a place for
7 commerce and ideas to be disseminated is the public street
8 cases and all of the park cases and it's a jurisprudence
9 that is not so well developed. There are not so many
10 cases that define the public forum.

11 You have a first case of Hague v. CIO that makes
12 some comment about from time immemorial. You have cases
13 that we cited that go back to the last century. The
14 Salvation Army cases, which were State supreme court cases
15 that talk in terms of natural law and common law, and it's
16 this tradition, it's the accepted social norms that we
17 pointed to in our briefs that show that the fanning out of
18 religious true believers and others throughout the country
19 to transportation centers through history --

20 QUESTION: Perhaps with the consent of the
21 people who owned the transportation centers.

22 MR. FISHER: Sometimes that's the case.

23 QUESTION: Do you have cases that show that
24 these people were sought to be excluded and the court said
25 no, you can't exclude them from, let's say, Penn Station,

1 which was privately owned?

2 MR. FISHER: Well, the Salvation Army cases that
3 we came across from the 1880's, soon after the Salvation
4 Army came through Ellis Island to these shores, were cases
5 where the cities tried to exclude them and they weren't
6 based on First Amendment law but the courts talked in
7 terms of natural law or common law, and it's true, you
8 know, we have a history that we've shown in our brief of
9 the fact of this activity taking place, of the fact of
10 broadsides and pamphlets being distributed everywhere
11 where there were people in the 18th Century, and the
12 American Track Society and others sending out their
13 culpaters to pioneer wagon train trailheads and to docks
14 and to riverboat sidings and everywhere else.

15 QUESTION: I know, and private hotels let the
16 Gideon Society put Bibles in their rooms, too, but that
17 doesn't make that a public forum, just because they choose
18 to allow that.

19 MR. FISHER: I'm not arguing that it does make
20 it a forum, but to the extent that the word tradition
21 comes into play and history is any part of the decision,
22 looking to what was accepted, what really occurred over
23 our history, is something that the Court should consider,
24 and so looking to what has been the history, what has been
25 accepted, what were the social norms, is what we've

1 presented in part in our argument.

2 QUESTION: Maybe you're not making -- it seems
3 to me that what you have to show was accepted is not just
4 that people they like were allowed there, you have to show
5 that people they didn't like were allowed there, that
6 people they didn't want were allowed there. All that your
7 brief shows, I think, is that the people that own these
8 facilities or the municipalities that own these facilities
9 liked to have certain people there, but you never show
10 that somebody that they didn't like could not have been
11 excluded.

12 MR. FISHER: Your Honor --

13 QUESTION: And that's what a public forum is.
14 You have to let the person jump up on a soap box and talk
15 about the most absurd and in the view of the person who
16 owns the place the most objectionable matter.

17 MR. FISHER: Well, many of these religious
18 groups in the 18th Century and 19th Century that we point
19 to are the predecessors of the Hare Krishnas. They were
20 unpopular groups that fanned out, that were going
21 everywhere they could to public places, and this case does
22 not turn on hotels and private places. We don't make that
23 argument in our brief, Your Honor.

24 QUESTION: Yes, but the case does turn on some
25 proposed theory from you as to when we have a public

1 forum, and I must say I infer from your answer to me and
2 your colloquy with Justice Scalia that the approach I
3 suggested is not justified by our cases and would be
4 considerable departure from our analysis. You seem to be
5 resting on the idea that we know if a public forum is a
6 public forum based on tradition.

7 MR. FISHER: That's a factor --

8 QUESTION: An airport is or it isn't, and I --

9 MR. FISHER: No, I think that's a factor --

10 QUESTION: I am rather surprised that you take
11 that approach.

12 MR. FISHER: No, Your Honor, you misperceived
13 what I say.

14 As we said in our briefs, we argue the
15 characteristics of the facility and its similarity to
16 streets and parks, we argue the history of acceptance
17 regarding public transportation centers throughout
18 American history and even English common law history, and
19 we point to the actual facts of the New York Port
20 Authority and the history of the people that are there,
21 and the designation and allowance of this activity for all
22 these years.

23 It's a recent convention, it's a tradition, it's
24 all of these things that come together that make this a
25 public forum, and I'd like to reserve the rest of my time.

1 Thank you.

2 QUESTION: Very well, Mr. Fisher. Mr Berg,
3 we'll hear from you.

4 ORAL ARGUMENT OF ARTHUR P. BERG

5 ON BEHALF OF THE CROSS-PETITIONER/RESPONDENT

6 MR. BERG: Mr. Chief Justice, and may it please
7 the Court:

8 The record in the instant case establishes that
9 virtually everyone who enters the terminal at Kennedy,
10 La Guardia, and Newark, does so for a purpose related to
11 air travel, and that was reflected in the decision by the
12 Second Circuit which is found at appendix 5 in the
13 Petition for a writ of cert.

14 Also, I'd like to make clear that the consistent
15 Port Authority policy has always been to oppose
16 solicitation and distribution of literature in the air
17 terminals. The agreement referred to by Mr. Fisher was
18 made between counsel and was motivated on the part of the
19 Port Authority by a litigation strategy in order to avoid
20 the granting of a preliminary injunction which in our view
21 would have granted greater access to our facilities than
22 the agreement which we reached, and the agreement -- it
23 was always understood that the agreement was during the
24 pendency of the litigation.

25 At a hearing before the magistrate after our new

1 regulations were adopted in 1988 Mr. Lieberman -- and this
2 colloquy is found at page 498 and 99 of the joint
3 appendix -- Mr. Lieberman, representing the Krishnas, said
4 that he just found out about the new regulation a few days
5 ago, but I don't really think it changes anything because
6 the port in their opposing papers made it very clear what
7 their policy was.

8 That is, that the airport terminals are a
9 nonforum, that their policy is to exclude the distribution
10 of literature and solicitation of donations in the general
11 circulation areas controlled by the port.

12 QUESTION: What are you reading from?

13 MR. BERG: This is page 499 of the joint
14 appendix.

15 QUESTION: And you're reading from the district
16 court --

17 MR. BERG: This was a hearing before the
18 magistrate.

19 QUESTION: You were arguing.

20 MR. BERG: Excuse me? No, I was reading what
21 Mr. Lieberman stated.

22 QUESTION: Thank you.

23 MR. BERG: Conceding that the Port Authority had
24 not changed its position, and that the regulations didn't
25 alter the Port Authority's policy that we have always

1 maintained. .

2 QUESTION: Just so I understand it, your
3 regulation would prohibit handing out pamphlets relating
4 to candidates in a presidential campaign at the time of
5 the general election.

6 MR. BERG: That is correct, Justice Kennedy.

7 QUESTION: Does the regulation allow the
8 gathering of signatures on petitions in the airport?

9 MR. BERG: It would allow that as long as there
10 was no distribution of literature and as long as it did
11 not create --

12 QUESTION: I thought the regulation only went to
13 repetitive distribution of literature. Am I wrong?

14 MR. BERG: No, that is correct.

15 QUESTION: Well, by repetitive, does that mean
16 to more than one person, or does that mean on more than
17 one occasion, or what?

18 MR. BERG: Well, there's two words used. It
19 prohibits continuous or repetitive distribution of
20 literature, and Black's Law Dictionary --

21 QUESTION: Well, does that -- as you understand
22 it, would it prohibit a local charity, for example, from
23 going to the airport on a given day and handing out a
24 bunch of leaflets encouraging people to participate in a
25 fundraising activity to many people, or does it just

1 prohibit coming back day after day to do that? I don't
2 understand.

3 MR. BERG: Our understanding is that it would
4 prohibit a one-day activity. That would be continuous or
5 repetitive.

6 QUESTION: To more than one person.

7 MR. BERG: Right, to more than one person. The
8 idea was to exclude a passing of a note, say, to a
9 companion, to make it clear that it did not apply to that
10 situation, or if one traveler said to another traveler,
11 would you like to contribute to my --

12 QUESTION: Well, let me ask you this: suppose
13 it's a nonpublic forum, do the regulations still have to
14 meet a reasonable test, do you suppose?

15 MR. BERG: I believe they do. The regulations,
16 as I read this Court's decisions on nonpublic fora, they
17 must be reasonable and viewpoint neutral.

18 QUESTION: And in an airport that has a lot of
19 commercial activity and permits people to stand around and
20 visit and allows children to play, and petition signatures
21 to be gathered and one thing and another, do you think
22 it's reasonable to prohibit the passing out of literature
23 in the public area? You defend that as being totally
24 reasonable.

25 MR. BERG: I do, Your Honor.

1 QUESTION: And why?

2 MR. BERG: Because our experience has shown that
3 this type of activity solicitation and distribution of
4 literature is inconsistent with the air travel purpose to
5 which the airports are devoted.

6 QUESTION: Well now, how can you say that
7 handing out a leaflet to someone who wants to accept it is
8 inconsistent with the other activities that the airport
9 has allowed, and hasn't this Court drawn a distinction in
10 part for solicitation, which requires much more?

11 MR. BERG: This Court has drawn such a
12 distinction, and I agree that solicitation is more
13 disruptive and that solicitation also has other problems
14 attached to it such as it's conducive to fraud, but I also
15 believe that distribution of literature is also disruptive
16 and that it would be reasonable to prohibit such activity.
17 It has many of the same attributes that solicitation does.
18 It still interferes, creates congestion, delay, interferes
19 with people's passage.

20 QUESTION: Well, does it bother you if you say
21 no thanks, and keep walking? I mean, I don't understand.

22 MR. BERG: Presumably with a solicitor you could
23 also say no, I'm not interested, and keep walking, but the
24 activity at the airports is -- does cause delay by
25 stopping people, even if it stops a person who wants to

1 discuss it. That backs up people behind them.

2 QUESTION: Well, isn't the answer that it does
3 bother you, but there are a lot of things in the First
4 Amendment that bother you? That's what the First
5 Amendment is for, is to bother people.

6 (Laughter.)

7 MR. BERG: The issue, I believe, is where this
8 type of activity is appropriate.

9 QUESTION: Mr. Berg, are you sure you want to
10 concede that the First Amendment requires that even in
11 nonpublic forums any limitations you impose have to be
12 reasonable, it's sort of an overarching reasonableness
13 requirement for all areas that are at all publicly owned
14 or publicly regulated, a sort of general Federal
15 administrative prescription that every rule has to be
16 reasonable?

17 MR. BERG: I believe this Court in *Cornelius* and
18 other cases has stated that even in a nonpublic forum --

19 QUESTION: You can't have content
20 discrimination, I suppose, but does every restriction have
21 to be a reasonable restriction? Now, I -- that's a --
22 I --

23 QUESTION: Well, at least that's what this Court
24 has said, right?

25 MR. BERG: Right. It has said --

1 (Laughter.)

2 MR. BERG: It has also said that it need not be
3 the most reasonable nor the only reasonable, and I think
4 there is a low level of scrutiny in a nonpublic forum.

5 QUESTION: Mr. Berg, doesn't reasonable mean you
6 have to be judged in some kind of a functional term, and
7 doesn't that prevent there being any kind of a blanket
8 rule, necessarily, for all airports?

9 If the Government constructed a comparatively
10 small airport in the City of Washington and said we're
11 sick and tired of having all of the designer shops and the
12 crowd that they attract, we're going to have nothing but
13 plain, narrow corridors leading from a front door to the
14 place where you get on the plane, wouldn't the question of
15 reasonable regulation, and wouldn't the question of
16 whether a public forum had been created or not be affected
17 by simply the physical characteristics and the capacities
18 of the airport as distinguished from the kind of airports
19 that we're talking about here, in which there is an
20 apparent desire to, or a compatibility with attracting
21 crowds for something other than just getting on and off
22 planes?

23 In other words isn't there a functional
24 component to this that forbids us to talk about airports
25 in the abstract?

1 MR. BERG: Well, I believe that our airports are
2 typical of --

3 QUESTION: Well, how about the answer to my
4 question? I mean, don't we have to approach it on a kind
5 of functional capacity basis to begin with?

6 MR. BERG: I believe that you have to look at
7 each individual case and look at the purpose of the
8 facility, the nature of the facility, the characteristics,
9 and to the extent that other airports would be different
10 than our airport, you would have to look at that --

11 QUESTION: Well, do you agree that if an airport
12 is compatible with and has apparently been designed for
13 and used for the kind of functions that historically have
14 taken place in town centers, in courthouse squares, in
15 sidewalks and things like that, that the answer to the
16 question of whether a public forum had been created there
17 would be different from the answer in the case that I gave
18 in which a no-frills airport with narrow corridors had
19 been created? Wouldn't the answer be different?

20 MR. BERG: If an airport terminal was the
21 substitute for a public street, the answer would be
22 different, but the concessions at major airports are
23 designed for the people who are there for an air travel
24 purpose, not for the general public.

25 QUESTION: So that you think that regardless of

1 the characteristics of the particular airport it's the
2 intention of the Government that determines whether or not
3 it may be treated as a public forum?

4 MR. BERG: It is the -- I think the major
5 consideration is the purpose of the facility as shown
6 by --

7 QUESTION: Well, is purpose -- are you
8 talking -- when you say purpose, do you mean intention, or
9 do you mean the apparent functional capacity of what has
10 been created?

11 MR. BERG: I mean the purpose to which the
12 property is dedicated.

13 QUESTION: So that if the Government says we're
14 going to build an airport, we're going to have vast
15 expanses of meeting places, shops, stores, we're going to
16 have restaurants and invite the world in, but we're doing
17 this only for the ultimate purpose of facilitating air
18 traffic and nothing which is in our judgment incompatible
19 with that can be allowed, that would foreclose the
20 question whether there was a public forum or not. Is that
21 a fair summary of what you're saying?

22 MR. BERG: No, I don't believe that the
23 Government by Government fiat can dictate what the purpose
24 is.

25 QUESTION: Okay. Now, what's the distinction,

1 then, between that case in which you don't allow the
2 Government fiat and the case that we've got before us?

3 MR. BERG: In this case all the record evidence
4 supports the finding that the sole purpose of the air
5 terminals at Kennedy, La Guardia, and Newark Airports are
6 to facilitate the safe, efficient, and convenient movement
7 of air travel.

8 QUESTION: So you rest in effect on the factual
9 findings as you understand them that the function of the
10 airport as an airport is inconsistent with leafleting and
11 solicitation, is that the nub of it?

12 MR. BERG: That is correct. We believe that
13 it's demonstrated that it's inconsistent and that such
14 activity causes delay, congestion, that the people at the
15 airport are a captive audience --

16 QUESTION: So -- and I don't mean to interrupt
17 you unduly, but the real difference, then, between you and
18 your brother is a disagreement over the significance of
19 facts in this case, then.

20 MR. BERG: Well, I think it's a disagreement
21 over the controlling factors in public forum analysis. We
22 believe --

23 QUESTION: But it's also a disagreement in fact.
24 I understand him to be saying there is plenty of room for
25 distributing leaflets and soliciting change.

1 MR. BERG: Well, I think he disagrees with the
2 purpose of the facility,, which is uncontested in the
3 record and which was found by the Second Circuit --

4 QUESTION: Oh, he disagrees with more than that.
5 He says that an airport is a traditional public forum.
6 That is, whether you want it to be exclusively for
7 travelers or not, it can't be exclusively for travelers.

8 He says it's like public streets. He says it's
9 like public parks. You cannot stop that from being a
10 public forum. I thought that was his argument, that
11 airports you must allow outsiders into airports, you must
12 allow literature to be passed out, because it's like the
13 public streets.

14 Isn't that more than differing on the facts of
15 what you've allowed in this particular airport?

16 MR. BERG: Well, I think that we have -- we have
17 demonstrated that all the characteristics of the airport
18 distinguish it from public streets. The location of the
19 airport --

20 QUESTION: But he's making a fundamental
21 argument that does not hinge upon what you in this
22 particular airport have in fact allowed the public to do.
23 He's saying all airports, just like all public streets,
24 must allow these things. Isn't that fundamentally
25 different from your contention, and different on something

1 other than the facts?

2 MR. BERG: That is correct. It's the
3 characteristics that we disagree on -- the location, the
4 presence of captive audiences, we think all these --

5 QUESTION: Facts have to do with whether this is
6 a designated public forum, where -- they have to do with
7 whether, even though it isn't a traditional public forum,
8 you have chosen to make it that, and that it seems to me
9 is quite a separate question, and maybe we ought to
10 discuss the two separately.

11 MR. BERG: There is no contention here, from
12 what I understand, and the Second Circuit found there
13 wasn't a contention, that this is a designated public
14 forum.

15 QUESTION: May I ask, Mr. Berg, you had this
16 long history under the sort of tentative settlement or
17 stand-by agreement, or whatever you might call it. Did
18 the district court make any findings about the extent to
19 which there was in fact interruption with access to the
20 planes and the kind of thing that troubles you?

21 MR. BERG: No, Your Honor. This case was
22 decided on a motion for summary judgment so there was not
23 a trial.

24 QUESTION: Do you think we should just presume
25 that there's going to be all this crowding and

1 interruption, or should there be a remand for hearings on
2 that issue?

3 MR. BERG: I don't believe there should be a
4 remand. I think the record, the affidavits in the record
5 and the uncontested facts are sufficient for this Court to
6 find that the air terminals are nonpublic fora and that
7 it's reasonable to prohibit solicitation and distribution
8 of literature.

9 QUESTION: Is it reasonable for us to find that
10 solicitation at this airport causes a serious problem with
11 reference to the convenience of passengers and the
12 congestion of traffic?

13 MR. BERG: Yes, Your Honor.

14 QUESTION: Is that uncontested, in your view?

15 MR. BERG: The Second Circuit made a finding
16 that solicitation would be even more of a problem here at
17 air terminals than it was on the sidewalk involved in the
18 Kokinda case.

19 QUESTION: It made a finding.

20 MR. BERG: They held that because of the nature
21 of air travel, with passengers going through the terminal
22 buildings, rushing to catch a plane or going to secure
23 ground transportation, carrying luggage, that it would be
24 more disruptive here than in Kokinda to allow
25 solicitation.

1 I think that this case is quite close to the
2 recent decision by this Court in Kokinda. In fact, I
3 think Kokinda was a more difficult case than this case,
4 because in Kokinda the Government had to overcome the
5 strong presumption that any sidewalk was a public forum.

6 In the instant case, airport terminals, unlike
7 sidewalks, have not long been devoted to expressive
8 activity. Significantly, in Kokinda, in the course of
9 holding that a postal sidewalk was not a public forum, the
10 court set forth a number of critical factors, all of which
11 are present in the instant case.

12 First, this Court noted that the Government has
13 much greater flexibility in restricting First Amendment
14 activity when it is acting as the operator of a facility
15 rather than as a Government regulator. In the instant
16 case, as in Kokinda, the Port Authority is acting as the
17 operator of a facility rather than as a regulator.
18 Airports, like post offices, are intended to be operated
19 much like private businesses and be as self-supporting as
20 possible.

21 A second critical factor in Kokinda, and also
22 present here, is the special purpose of the forum
23 involved. This Court noted that the sidewalk involved in
24 Kokinda was constructed solely to assist postal patrons to
25 negotiate the space between the parking lot and the front

1 door of the post office and not to facilitate the daily
2 commerce and life of a neighborhood or city.

3 In the instant case, the sole purpose of the air
4 terminals is to facilitate air travel. As an airport
5 operator, the Port Authority has a legitimate, managerial
6 interest to preserve air terminals for their air travel
7 purpose.

8 A final, critical factor set forth in Kokinda
9 which is also present here is the physical separation of
10 the airports from the surrounding community. In Kokinda,
11 the postal sidewalk was held to be akin to the nonpublic
12 forums of the military -- the sidewalks of the military
13 base involved in Greer and distinguished from the public
14 forum sidewalks surrounding this Court involved in Grace.

15 QUESTION: You allow solicitation and
16 distribution of literature on the sidewalks anyway, don't
17 you?

18 MR. BERG: That is correct.

19 QUESTION: So why isn't that enough, anyhow?
20 Why do we have to get into all the rest of the argument?
21 Isn't that a reasonable time, place, and manner
22 restriction?

23 MR. BERG: We do make that argument in our brief
24 that even if it would be found to be a public forum that
25 our regulations are valid because they are narrowly

1 tailored and leave open ample alternative means of
2 communication.

3 QUESTION: I think you have the same opportunity
4 to collect from somebody carrying a lot of baggage at the
5 terminal in the street as you do once they get in to check
6 their baggage.

7 MR. BERG: It gives exposure to those people if
8 they wish to contribute. In the instant case even more
9 than in Kokinda the airports are an enclave clearly
10 separated from the surrounding community. I think the
11 Kokinda decision is also significant for what it finds to
12 be noncontrolling factors.

13 QUESTION: Would you help me on that separation
14 from the rest of the community? Why is that relevant?
15 I'm not sure I understand that.

16 MR. BERG: I think the separation is relevant
17 because people are clearly aware that they are entering a
18 different facility. They do not wander back and forth
19 between city streets and the airport, so they're clearly
20 aware of -- the entrances and exits are clearly marked, so
21 they are aware that they have entered a different type of
22 facility, a special enclave.

23 QUESTION: Where they're protected from this
24 kind of activity.

25 MR. BERG: Where the operator of the facility

1 has the right to protect them from annoying activity,
2 since they're --

3 QUESTION: Would your argument be the same with
4 regard to railroad stations if they were publicly owned?

5 MR. BERG: The railroad -- a railroad station
6 would have many of the similarities of the airport, but
7 they also would have some differences. One difference
8 would be the location, and there's a possibility that the
9 railroad terminal located in the center of the city might
10 be used for other purposes, other than rail travel.

11 In Kokinda, this Court set forth a number of
12 factors that it found to be noncontrolling, and those
13 factors are the principal factors relied upon by the
14 plaintiffs in the instant case. The Court noted that
15 public forum analysis isn't dictated by the mere physical
16 characteristics of the property. There a sidewalk was
17 held not to be a public forum.

18 Here, plaintiffs attempt to argue that because
19 there's some physical similarity between the air terminals
20 and a public street, that they should be a public fora.

21 The Court also --

22 QUESTION: Mr. Berg, let's assume that the
23 airport is not a traditional public forum but that what
24 we're arguing about is whether it's in effect a designated
25 public forum, that you've allowed some forum-type activity

1 and you should therefore have to allow this. I mean, you
2 have stores, you have shops, you have a lot of those other
3 things.

4 Now, you say you need a reasonable basis for
5 excluding this solicitation and this passing out of
6 literature. What is the reasonable basis? Your
7 passengers don't like it, it's annoying to them. Is that
8 a reasonable basis?

9 MR. BERG: Well, the reasonable basis, Your
10 Honor, is that it causes delay, and causes congestion, and
11 that the passengers are a captive audience because they
12 must be in the terminal and they must take designated
13 routes in order to accomplish their air travel purpose.

14 QUESTION: Well, couldn't those problems be
15 solved by restricting the solicitors to certain areas?
16 You wouldn't have to keep them out of the building
17 entirely, would you?

18 MR. BERG: Well, as a practical matter, time,
19 place, and manner regulations are very difficult to
20 administer, and if it's a nonpublic forum, there is no
21 requirement that a regulation be narrowly tailored as long
22 as the regulation is reasonable.

23 QUESTION: What do your lessees do in the forum
24 with respect to handing out literature and soliciting?
25 Say there's a place where -- a fast food place where you

1 can sit down and do sit down. Do your lessees allow
2 solicitation?

3 MR. BERG: As -- they cannot -- they could not
4 distribute literature or solicit on Port Authority-
5 controlled areas of the airports.

6 QUESTION: Well, I know, but don't you lease out
7 areas to stores?

8 MR. BERG: That's correct. Inside their own
9 store they could distribute literature or solicit.

10 QUESTION: Well, but it would be up to the
11 lessee, wouldn't it?

12 MR. BERG: That's correct.

13 QUESTION: You don't require the lessees to keep
14 them out or let them in.

15 MR. BERG: That is correct. The --

16 QUESTION: So it would depend on the lessee as
17 to whether solicitation could take place in, say, a bar.

18 MR. BERG: The Krishnas entered into an
19 agreement with the lessees, with the airline lessees that
20 they would not solicit or distribute literature in their
21 areas. They dismissed their action against the airlines
22 with prejudice.

23 QUESTION: But how about stores?

24 MR. BERG: The issue has never come up. I would
25 doubt very much that the stores would permit them in their

1 areas. We have never had to deal with the problem. We
2 would have to examine the leases and determine what our
3 rights would be under the leases.

4 QUESTION: I take it your -- I take it that your
5 regulation would forbid solicitation or handing out of
6 handbills at the very entrance, say, to a big store.

7 MR. BERG: That is correct.

8 QUESTION: Even though anybody who is entering
9 that store certainly isn't on the way to a gate.

10 MR. BERG: That is correct, but they would be a
11 captive audience.

12 QUESTION: What difference does that make, by
13 the way?

14 MR. BERG: Well --

15 QUESTION: It just means that they are what,
16 going to be bothered against their will?

17 MR. BERG: It means that they have no choice but
18 to be bothered, whereas on a public street you have the
19 option of taking a different route or being in a different
20 location. This Court has acted to recognize --

21 QUESTION: Thank you, Mr. Berg.

22 Mr. Fisher, you have 4 minutes remaining.

23 REBUTTAL ARGUMENT OF BARRY A. FISHER

24 ON BEHALF OF THE PETITIONERS/CROSS-RESPONDENTS

25 MR. FISHER: Thank you, Your Honor.

1 The narrow pavement strip serving the post
2 office parking lot in Kokinda, of course, is wholly unlike
3 the complex environment and the actual use and the reality
4 of the New York area airports that the district court
5 found in its opinion to add up to it being a public forum.

6 The Port Authority, as is clear, allows
7 continuous solicitations of people to read and sign
8 petitions and membership forums, but you can't give out a
9 self-addressed donation mailer, you can't stand there mute
10 holding a bucket, and you can say read this and sign this,
11 but not give or join, distinctions that are not borne out
12 as having any impact difference in the record of this
13 case.

14 And in fact this case was not ever -- was not
15 ever presented by the Port Authority as one dealing with
16 specific impacts justifying the regulation or even before
17 1988 when there wasn't a regulation, they never argued the
18 facts, and in fact the only thing in the record is this.
19 It's a single page, bald table with numbers, and it tells
20 you failure to check in, to wear ID's, and some other
21 problems that they've had in administering this, which are
22 minor and diminished by 1980 and trail off by 1984, and
23 the chart ends in 1986.

24 QUESTION: Mr. Fisher --

25 MR. FISHER: Yes, Your Honor.

1 QUESTION: Let me ask you about a procedural
2 point. The district court ruled in favor of your clients
3 on a motion for summary judgment --

4 MR. FISHER: Yes.

5 QUESTION: And the court of appeals ruled in
6 favor of the Port Authority also. They didn't send it
7 back for trial. It ruled -- it kind of granted summary
8 judgment to the Port Authority, I take it.

9 MR. FISHER: I suppose so, Your Honor, and what
10 it did that none of the litigants asked to be done. What
11 the court -- what the Second Circuit did, even though
12 nobody had argued this and there wasn't any evidence to
13 support it, was to say yes on a literature distribution
14 and no on solicitations, but there's not any evidence in
15 the record of this case to support any such distinction.
16 As I say, nor was it asked for.

17 QUESTION: So the case now -- the court of
18 appeals in its view ended the case. There was no remand
19 for hearing --

20 MR. FISHER: Exactly.

21 QUESTION: Or factual development.

22 MR. FISHER: Yes, Your Honor. Also, the -- you
23 know, there was a question a moment ago about sidewalks.
24 Sidewalks were never mentioned in this case until the
25 brief before this Court. It wasn't argued in the district

1 court, it wasn't argued or mentioned or briefed, or
2 there's no evidence on --

3 QUESTION: It's in the regulations, isn't it?

4 MR. FISHER: It's not even mentioned in the
5 regulations, Your Honor. The regulation that is the
6 subject of this case only refers to the interiors, which
7 have been the forum that has been the focus of this case
8 and the attention of the district court and the Second
9 Circuit in all of the briefs, Your Honor, until the Port
10 Authority's brief before this Court when they mentioned
11 sidewalks, a wholly inappropriate place for which there is
12 no evidentiary record to support, and again it's been the
13 forum of the interior, which is the place where people
14 finally come to realize that they have time, and that's
15 why the very profitable Airport Bloomingdale's and other
16 shops are there.

17 They're not there to serve passenger flow, but
18 they're there for economic reasons because they know when
19 people come to rest they have time, they wander around,
20 and they wander around to the area that the Hare Krishnas
21 are allowed to be there now.

22 I told you that it's an out-of-the-way spot near
23 the stained glass chapel. That's the only place at the
24 Kennedy Airport, in that huge complex, that they're
25 allowed, and they've been allowed to be there for 17-plus

1 years, and there's been no problem.

2 QUESTION: Mr. Fisher, may I --

3 MR. FISHER: Yes, sir.

4 QUESTION: I understand that is a fact. I guess
5 I want to go back to kind of question 1 before your time
6 is up. Do you claim that any airport is a public forum
7 without more?

8 MR. FISHER: We are arguing the general
9 proposition that airports as transportation crossroads and
10 thoroughfares are, in the first instance, to be considered
11 public forum. What I was trying --

12 QUESTION: You say the first instance. What's
13 the second instance?

14 MR. FISHER: Well, let me explain, because I --
15 I obviously --

16 QUESTION: Are they public forums or are they
17 not?

18 MR. FISHER: Well, I'm trying to be, you know,
19 open in this discussion. I did say before, and ran into
20 some trouble, that I could conceive of the structure -- I
21 don't know of any airport that exists like this, and it
22 certainly isn't the New York airports, but you could have
23 a -- you know, a runway with some kind of special security
24 where people are only allowed into the parking lot, or
25 into the terminal, where there are no shops, where there's

1 no characteristics, anything like the not only New York
2 airports but the L.A. airports and the Washington airports
3 and every airport that I know of --

4 CHIEF JUSTICE REHNQUIST: Mr. Fisher --

5 MR. FISHER: But I mean I could theoretically
6 conceive of --

7 CHIEF JUSTICE REHNQUIST: Mr. Fisher.

8 MR. FISHER: Yes, Your Honor.

9 CHIEF JUSTICE REHNQUIST: I think you've
10 answered the question. Your time has expired.

11 MR. FISHER: Yes, thank you, Your Honor.

12 CHIEF JUSTICE REHNQUIST: The case is submitted.

13 (Whereupon, at 11:13 a.m., the case in the
14 above-entitled matter was submitted.)

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents and accurate transcription of electronic sound recording of the oral argument before the Supreme Court of

The United States in the Matter of:

NO. 91-155 - INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC. AND BRIAN RUMBAUGH, Petitioners V. WALTER LEE and

NO. 91-339 - WALTER LEE, SUPERINTENDENT OF PORT AUTHORITY POLICE, Cross-Petitioner V. INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., ET AL.

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

BY Ann-Marie Federico

(REPORTER)