

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JOHN R. LOTT, JR.,

Plaintiff,

-vs-

STEVEN D. LEVITT,

Defendant.

Case No. 06 C 2007

Chicago, Illinois

June 14, 2007

9:49 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE RUBEN CASTILLO

APPEARANCES:

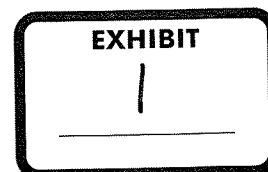
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1 (Proceedings heard in open court:)

2 THE CLERK: 06 C 2007, Lott versus Levitt.

3 THE COURT: Good morning.

4 MR. METCALF: Good morning your Honor.

5 MR. MARCUS: Good morning, your Honor.

6 Stephen Marcus, counsel for the plaintiff. I'm  
7 also here with Mr. Freehling, who's entered his appearance  
8 this morning as local counsel for the plaintiff.

9 THE COURT: Okay.

10 MR. FREEHLING: Good morning.

11 MR. METCALF: Good morning, your Honor, Slade  
12 Metcalf of Hogan & Hartson LLP in New York City, along with  
13 David Sanders of Jenner & Block, here on behalf of defendant  
14 Steven Levitt.

15 MR. MELTON: And, your Honor, Bruce Melton,  
16 associate general counsel at the University of Chicago.  
17 We're not a party to the case. We've been responding to  
18 discovery.

19 THE COURT: Okay. First of all, is there a  
20 protective order in this case, just a general one?

21 MR. MARCUS: No, your Honor.

22 THE COURT: That's because one cannot be agreed  
23 upon, is that it?

24 MR. MARCUS: We attempted to work one out, your  
25 Honor, but we were unable to reach an agreement and, hence,

1 we filed a motion for protective order.

2 THE COURT: Okay. The plaintiff's protective  
3 order, the corrected motion is going to be denied. It's much  
4 too broad. I cannot seal all the documents in a publicly  
5 filed civil lawsuit. It runs contrary to well established 7<sup>th</sup>  
6 Circuit law.

7 Now, having said that and seeing counsel for the  
8 University of Chicago here, I do think that there are certain  
9 things, such as the university's concern that could be  
10 considered confidential on an appropriate basis; but it has  
11 to be done on sort of a deposition-by-deposition,  
12 document-by-document type of analysis, and normally that is  
13 governed by a protective order in the case that is agreed  
14 upon by parties, subject to the final and full approval of  
15 the Court, and that is the way I would like to proceed.

16 So if you cannot agree on one as to what would be  
17 deemed confidential on an appropriate basis, I would suggest  
18 that plaintiff submit Version A and defendants submit Version  
19 B, and I will then compare apple to apple and decide.

20 MR. METCALF: Your Honor, if I may, I think on the  
21 issue that the University of Chicago has raised, both  
22 Mr. Marcus and I are in agreement that we would both like to  
23 have access to the information as to the identity of the  
24 particular referees involved in this single so-called Special  
25 Issue of Journal of Law and Economics.

1           Mr. Melton has taken the position that it should  
2 not be disclosed as set forth in his motion, and the  
3 documents, by and large, that have been produced to us have  
4 been redacted insofar as the identity of those referees are  
5 concerned.

6           We have not -- we just received Mr. Melton's papers  
7 a couple days ago. We haven't had an opportunity to respond  
8 to them in writing, which we will do so promptly. Certainly  
9 I will, and I assume Mr. Marcus will as well.

10           MR. MARCUS: Yes.

11           THE COURT: Okay. Well, I will tell you right now  
12 that just based on what I've seen, this is appropriate to  
13 keep confidential just among the parties to this litigation.

14           I think this is a process that the university has  
15 invested a great deal in; and, accordingly, I would be of a  
16 mindset to keep this confidential.

17           MR. METCALF: Your Honor, I think that Mr. Marcus  
18 and I have not approached that issue. I think in my own --  
19 from my own sense, a typical kind of protective order with  
20 even attorneys' eyes only --

21           THE COURT: Right.

22           MR. METCALF: -- for the identity of the referees  
23 would be something we would be comfortable with. I'm not  
24 sure Mr. Melton would be comfortable with that.

25           MR. MARCUS: Yes, your Honor. Sounds like

1 Mr. Metcalf and I are in agreement on that point. We  
2 proposed to Mr. Melton precisely that kind of order,  
3 essentially an attorneys' eyes only protective order, but  
4 that, I think for institutional reasons on the part of the  
5 university, which Mr. Melton can speak to, was not  
6 acceptable.

7 MR. MELTON: That's right, your Honor. The Journal  
8 of Law and Economics, like virtually all of the other  
9 economic journals at the university that is involved in  
10 publishing, has a very confidential referee process; and  
11 given that the plaintiff is an economist and the defendant is  
12 an economist, we're very uncomfortable releasing any of the  
13 referee identities even to counsel.

14 You know, our sense was that this is a fundamental  
15 way of doing business at these journals, and so we did object  
16 to that.

17 THE COURT: Okay. I'll overrule that objection. I  
18 will tell you, I have to rely on counsel who take oaths to  
19 abide by our rules and to follow the rules; and in this  
20 sense, where we have a contemplated release subject to  
21 attorneys' eyes only, given the issues in this case, the  
22 issue remaining in this case as to Count 2, I don't see how I  
23 get around not disclosing this to the attorneys subject to  
24 not releasing it any further, given who the parties are.

25 Have any depositions occurred in this case?

1 MR. MARCUS: Yes, your Honor.

2 MR. METCALF: Yes, your Honor.

3 THE COURT: Okay.

4 MR. METCALF: We've been very diligent pursuant to  
5 your instructions.

6 THE COURT: Okay.

7 MR. METCALF: In fact, we've completed four  
8 depositions already, including the plaintiff and the sole,  
9 shall I say, recipient of the e-mail, and we have now outside  
10 today along with Mr. Melton tentatively scheduled seven  
11 additional depositions. That should do it.

12 THE COURT: Okay. So let me go back to the  
13 University of Chicago so that the record is clear.

14 The motion for protective order is granted only to  
15 the extent that I'll prevent disclosure of peer referee  
16 identities to anyone other than the attorneys of record in  
17 this case who hereby agree not to disclose it to their  
18 clients.

19 MR. MARCUS: Yes, your Honor.

20 MR. MELTON: Your Honor, another little wrinkle on  
21 that, and I put it in the motion. There were a few redaction  
22 errors in the duplicating process, and I apologize for that.  
23 The information was shared with the clients because they got  
24 the documents from the university.

25 So all I would ask is that those clients, to the

1 extent they have any information about referees through that  
2 mistake, that they keep that confidential because there are a  
3 few, and we'd like to correct it so that, you know,  
4 obviously --

5 THE COURT: I'll let you correct it.

6 MR. MELTON: Thank you. And the other issue that I  
7 think we won't have a problem with is, we can do it on a  
8 case-by-case basis, is maintaining again the confidentiality  
9 of certain editors' comments back and forth. There are a  
10 number of comments that the editors do; and, again, it's a  
11 very confidential process.

12 I have no problem, with the Court's guidance, that  
13 the attorneys should be able to see it. And on that one the  
14 clients can see it, too, we've shown that. I just don't want  
15 it disclosed outside the litigation. That's the only  
16 concern. Editor-to-editor comments about a certain  
17 economist's transcript or manuscript, for example, for  
18 publication, so I think that shouldn't be an issue to work  
19 out, and I think --

20 THE COURT: Attorneys agree?

21 MR. MARCUS: Yes, sir.

22 MR. METCALF: I think so, your Honor. The one  
23 thing that I do think we need, not take your Honor's time,  
24 but need to discuss is the question of how we can use the  
25 attorneys' eyes only information for productive purpose in



1 the case.

2 If Mr. Marcus and I are the only people who know  
3 the identity of the referee, it really doesn't matter, it  
4 doesn't move the ball forward. I think both of us have a  
5 specific purpose as to why we need the identity of those  
6 people. In order to do that, we need some kind of ability to  
7 give some reference to how those people fit in with other  
8 people involved in the Special Issue of the Journal. That's  
9 my position, that certain referees were selected for this  
10 Special Issue who had all previously participated in the  
11 precise conference symposium that was the basis for the  
12 Special Issue. That's -- that's our view.

13 And in order to be able to solidify that particular  
14 theory, we're going to need to bounce that information, I  
15 think, off other people.

16 Now, I don't want to take your Honor's time with  
17 that. I think we need to discuss that, and we may have to  
18 come back to you on that issue.

19 THE COURT: Well, let me just make clear, it's  
20 attorneys' eyes only, and any use that potentially exceeds  
21 that needs to be approved by the Court.


22 MR. METCALF: Very well.

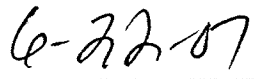
23 THE COURT: So you would have to come back to me.

24 But, you know, the point that you've raised, I  
25 think a stipulation could be agreed without disclosing the

CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

  
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Kathleen M. Fennell  
Official Court Reporter

  
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FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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JOHN R. LOTT, JR.,	}	
Plaintiff,		
-vs-		Case No. 06 C 2007
STEVEN D. LEVITT,	}	Chicago, Illinois
		July 31, 2007
Defendant.		10:21 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE RUBEN CASTILLO

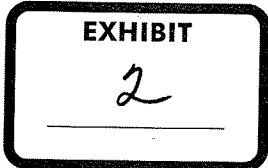
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1 (Proceedings heard in open court:)

2 THE CLERK: 06 C 2007, Lott versus Levitt.

3 THE COURT: Good morning.

4 MR. SANDERS: Good morning, your Honor. David  
5 Sanders for the defendants.

6 MR. FREEHLING: Good morning, Judge. Paul  
7 Freehling and Mark Johnson on behalf of the plaintiff.

8 Your Honor wanted a report with respect to Count 2  
9 of the complaint, and the parties have resolved their  
10 differences on Count 2. There's a little I dotting and T  
11 crossing to be done, exchanging of signed agreements and  
12 such, but Count 2 appears to be totally concluded.

13 With regard to Count 1, we filed two motions.  
14 They're not up for this morning. They are noticed up for a  
15 week from tomorrow, and one is to -- for a reconsideration of  
16 your Honor's dismissal of Count 1, and the other is for leave  
17 to file an amended complaint.

18 THE COURT: Okay. Do you want to take those up?  
19 I'm prepared to take those up.

20 MR. SANDERS: Well, I'd just like to mention, your  
21 Honor, I'm not ready to address the motion for leave to amend  
22 because we only got that last night, so -- and I haven't had  
23 had a chance to talk --

24 THE COURT: The motion to amend is conditioned on a  
25 reconsideration, isn't it, or am I wrong?

1           MR. FREEHLING: I don't think that's necessarily  
2 so, your Honor, but that certainly is one possibility. I  
3 think your Honor could allow us to amend -- it isn't clear  
4 from the Court's order when the Court said back in January  
5 that -- I'm sorry -- in March that leave to amend was allowed  
6 whether your Honor meant Count 1 or Count 2 or both, and I  
7 think -- I think what your Honor meant was Count 2, which was  
8 the only count that was left in the case at that time.

9           THE COURT: Right.

10          MR. FREEHLING: So I think your Honor could quite  
11 reasonably take up the motion for leave to amend the  
12 complaint. The decision of your Honor was interlocutory,  
13 still is interlocutory since there's no final judgment  
14 entered in the case, so your Honor could grant leave to amend  
15 the complaint without reconsidering the order that your Honor  
16 entered, or your Honor could take it the other way around.

17          MR. SANDERS: First, your Honor, with the motion to  
18 reconsider. The only grounds in the motion to reconsider  
19 that I observed was that your Honor committed, and I'm  
20 quoting, "a manifest error of law in its original decision."  
21 The only error in turn is that the Court applied Illinois law  
22 rather than Virginia law.

23                 Our instinct here, your Honor, is we think your  
24 Honor can deny the motion right now without putting us to the  
25 expense of responding in writing. Very, very briefly your

1 Honor --

2 THE COURT: Go ahead.

3 MR. SANDERS: -- Harper Collins argued the choice  
4 of law issue at page 10 of its brief, extensively argued the  
5 choice of law. We contended that Illinois law governed the  
6 Count 1 claim, that it wasn't actionable, it wasn't  
7 defamatory, it wasn't actionable per se. We argued innocent  
8 construction rule.

9 In footnote 5 of the response, your Honor -- I'm  
10 quoting again -- Plaintiff argued that "We agree with  
11 defendants that Illinois law governs the dispute." They  
12 expressly agreed Illinois law governed. They never argued in  
13 the substance of their brief Virginia law. They only argued  
14 Illinois law. They argued the innocent construction rule  
15 didn't apply to what they've alleged, but they didn't cite a  
16 single Virginia case, and they never said Virginia law  
17 applied.

18 This Court merely accepted the agreed choice of law  
19 of the parties. Explicitly, implicitly, every way the  
20 parties argued Illinois law. Now they're saying, your Honor,  
21 that you committed manifest error in applying Illinois law  
22 and that would result as an injustice to them.

23 The upshot of that, your Honor, is there is no  
24 injustice to them. They've had a choice of counsel, and now  
25 they're trying another strategy just as when we get to the

1 motion for leave to amend. It's the same thing all over  
2 again. They want a do-over after we've now been litigating  
3 Count 2 extensively at great expense, thinking Count 1 was  
4 behind us.

5 So with that in mind, your Honor, we don't know  
6 that we need to file a written response on the motion to  
7 reconsider, but I think there may be more to say on the  
8 motion for leave to amend.

9 THE COURT: Okay. You want to address the motion  
10 to reconsider?

11 MR. FREEHLING: Mr. Johnson will address that, your  
12 Honor.

13 THE COURT: Okay.

14 MR. JOHNSON: Your Honor, motions to reconsider  
15 have very limited purpose, as is well known. This is  
16 precisely --

17 THE COURT: What rule are you under, operating  
18 under?

19 MR. JOHNSON: There is no, as best as we could tell  
20 in the federal rules that would address this issue, a  
21 specific rule addressing motions to reconsider. They are,  
22 however, discussed frequently in -- in the case law, and  
23 that's what we're proceeding under today.

24 THE COURT: So you're not proceeding under Rule 59,  
25 which has a ten-day limit --

1 MR. JOHNSON: We are not, your Honor.

2 THE COURT: -- or Rule 60?

3 MR. JOHNSON: We are not, your Honor, and we  
4 believe --

5 THE COURT: So you don't even know what rule you're  
6 proceeding under, just a general motion to reconsider.

7 MR. JOHNSON: Your Honor, the case law discusses  
8 the fact that these motions to reconsider are not  
9 specifically authorized by the Federal Rules of Civil  
10 Procedure, but that case law has been developed that  
11 addresses the circumstances when such motions are  
12 appropriate. Very limited circumstances indeed, one of which  
13 is the manifest error of law.

14 We're not attempting to do a do-over here, your  
15 Honor.

16 THE COURT: If there was a manifest error of law,  
17 wouldn't that be evident as soon as the opinion was issued?

18 MR. JOHNSON: Yes, your Honor, that would be  
19 evident, and in looking at the issue and thinking about the  
20 issue further in terms of the parties' discussion of --

21 THE COURT: The opinion was issued on January 11th  
22 of this year?

23 MR. JOHNSON: That's correct, your Honor.

24 THE COURT: And you filed your motion to reconsider  
25 when?



1 MR. JOHNSON: We filed it last week, your Honor,  
2 and under the rule --

3 THE COURT: So about seven-and-a-half months later?

4 MR. JOHNSON: That's right, your Honor. And under  
5 the case law that we've uncovered, there's no discussion in  
6 those cases in terms of a ten-day limit or 30-day limit or  
7 specific time frame within which a motion --

8 THE COURT: So you believe there is no time frame,  
9 and you can file it seven years later, seven months later,  
10 seven days later.

11 MR. JOHNSON: Certainly not seven years, and I  
12 think it's subject to --

13 THE COURT: You don't think I can take into  
14 consideration that seven-and-a-half months have gone by since  
15 this published opinion was issued?

16 MR. JOHNSON: I'm certainly not suggesting you  
17 shouldn't consider that at all, your Honor. But all we're  
18 trying to seize upon at this moment and while this case is  
19 still before your Honor at the district court level is to  
20 call out to your attention what we believe was a manifest  
21 error of law, which is very important under these  
22 circumstances.

23 We're not alleging --

24 THE COURT: Do you believe -- do you believe that  
25 choice of law, given the footnote that Mr. Sanders quoted

1 from, was something that plaintiff agreed to?

2 MR. JOHNSON: The plaintiff certainly did not  
3 intend to acquiesce to the application of Illinois law that  
4 would -- that affected the outcome of this case. Illinois  
5 law certainly includes --

6 THE COURT: That's a very careful answer.

7 MR. JOHNSON: Illinois law certainly includes --

8 THE COURT: I understand the answer. I'm saying  
9 did you acquiesce to the application of Illinois law, given  
10 that footnote?

11 MR. JOHNSON: We do not believe that the plaintiff  
12 acquiesced at that time and certainly not now to the  
13 application of Illinois law.

14 THE COURT: Certainly not now. I'm saying at that  
15 time. Then certainly you cited Virginia law to me to apply  
16 in deciding the defamation count, Count 1, right?

17 MR. JOHNSON: That is the basis of our motion.

18 THE COURT: No, did you cite Virginia law?

19 MR. JOHNSON: The plaintiff did not cite Virginia  
20 law in the original pleadings and -- and court papers that  
21 were submitted in connection with the --

22 THE COURT: Up until this point, you've never cited  
23 Virginia law, isn't that the case?

24 MR. JOHNSON: That is correct, your Honor.

25 THE COURT: Okay.

1 MR. JOHNSON: But --

2 THE COURT: Do you believe that choice of law not  
3 being jurisdictional is therefore waivable? Do you believe  
4 that that's correct?

5 MR. JOHNSON: If the parties knowingly and  
6 intentionally waive that, yes, I think that there is case law  
7 that supports that, just as there is case law that supports  
8 our coming in now to advise the Court that we do not intend  
9 to and we do not now acquiesce to the --

10 THE COURT: And you don't believe that that  
11 footnote by experienced counsel was a knowing and intentional  
12 waiver.

13 MR. JOHNSON: Not on the -- it -- no, because it  
14 was only partially. It was an indication that Illinois law  
15 applied, but that should have included --

16 THE COURT: Where in the brief was it plain to me  
17 that there was only a partial waiver? Where was that made  
18 known to this Court?

19 Fairness to this Court, where was this made known?  
20 Cite me the sentence where it says that.

21 MR. JOHNSON: The only sentence in that brief, your  
22 Honor, is a sentence that Illinois law applies. We are not  
23 suggesting otherwise. This includes --

24 THE COURT: So you --

25 MR. JOHNSON: This includes the subset of --

1 THE COURT: You concede that there's no language in  
2 the brief where I could somehow intuitively divine that this  
3 was some kind of partial waiver, right?

4 MR. JOHNSON: There -- the only language in the  
5 brief, your Honor, is that footnote.

6 THE COURT: Okay.

7 MR. JOHNSON: But that was not a knowing,  
8 intentional waiver by the plaintiff on an issue that is  
9 outcome determinative under these circumstances, and fairness  
10 would suggest --

11 THE COURT: When you say outcome determinative, no  
12 one knew the outcome at the time you filed the brief. The  
13 outcome wasn't known until you received the opinion.

14 MR. JOHNSON: That's correct, your Honor, and --

15 THE COURT: Then within 30 days after receiving the  
16 opinion, no action is taken. Within 60 days, no action is  
17 taken. Within 90 days, no action is taken, competent counsel  
18 representing Mr. Lott, right?

19 MR. JOHNSON: No action was taken until we filed  
20 the motion last week, your Honor, but we believe under the  
21 case law, it's still timely presented to your Honor for  
22 consideration.

23 THE COURT: Okay. I don't believe it's timely. I  
24 think this is the most inappropriate motion to reconsider  
25 I've seen in my 13 years on the bench, given the fact that

1 plaintiff concedes that there was no citation to Virginia  
2 law, not even a footnote, that could have alerted this Court  
3 to some type of dispute.

4 The only thing that was present was the defendant's  
5 argument against the application of Virginia footnote, which  
6 was met by I won't even say silence, rather acquiescence on  
7 the part of the plaintiff that Illinois law could apply and  
8 that nevertheless there was a valid claim under Illinois law,  
9 which the plaintiff lost.

10 And once the plaintiff determined that it was  
11 outcome determinative, I think in fairness to this Court, any  
12 motion for reconsideration should have been filed either  
13 within ten days or at the very least within 30 days. The  
14 fact that it's being filed now on the eve of a trial with the  
15 dismissal of Count 1 standing all the way through for  
16 seven-and-a-half months just really shows, I think, some of  
17 the lawyering that's going on here and some of the  
18 gamesmanship I think that is unfortunately going on here of  
19 which this Court, I think, is caught in between this  
20 gamesmanship, and I don't think that's appropriate for a  
21 district court to be caught in that situation.

22 I think choice of law is waivable. I think a  
23 knowing waiver occurred. This is not a criminal case, so you  
24 have competent counsel on the part of plaintiff. Parties can  
25 stipulate to substantive law to be applied to their dispute.

1 That's been upheld in the 7<sup>th</sup> Circuit many times. And so, in  
2 fact, the 7<sup>th</sup> Circuit has noted in a case called *Matter of*  
3 *Stoker* that when the parties do not make an issue of choice  
4 of law, there's no obligation on the part of the district  
5 court to make an independent determination of what rule would  
6 have applied if they had made an issue of that matter.

7 But I can tell you this Court was not alerted to  
8 any issue as to choice of law up until this motion for  
9 reconsideration. It's an unfortunate situation. So we'll  
10 leave it at that. I'm going to deny the motion to  
11 reconsider.

12 Let me see the motion to amend.

13 (Tendered.)

14 THE COURT: And this was filed when?

15 MR. JOHNSON: It was filed late yesterday  
16 afternoon, your Honor, noticed for presentment, official  
17 presentment, next Wednesday, August 8th.

18 THE COURT: Do you want to proceed next Wednesday?

19 MR. JOHNSON: We are inclined to -- your Honor's  
20 pleasure, although in deference to counsel who did only  
21 receive it late yesterday afternoon, we can proceed now or  
22 next Wednesday.

23 MR. SANDERS: Your Honor, I think I'd like to  
24 consult with Mr. Metcalf.

25 THE COURT: Okay.

1 MR. SANDERS: If we could have 14 days to respond,  
2 I think that would be better. We wouldn't then need, unless  
3 your Honor wanted us, to have an appearance on the August 8th  
4 date. We could set a schedule now. That might be --

5 THE COURT: Well, let me just ask this: Is a  
6 proposed amendment attached?

7 MR. JOHNSON: Yes, it is, your Honor.

8 MR. SANDERS: Yes.

9 THE COURT: And this is supposedly based on new  
10 information?

11 MR. JOHNSON: In part, it's based on new  
12 information, your Honor.

13 THE COURT: And when was this new information  
14 learned by the plaintiff?

15 MR. JOHNSON: It was learned in the course of  
16 discovery that has occurred largely over the past 30 days,  
17 your Honor.

18 THE COURT: What are we going to do about Count 2  
19 in the meantime?

20 MR. JOHNSON: Count 2 is going to be dismissed. If  
21 I might just indicate for your Honor, under the parties'  
22 settlement agreement, a letter was to be sent and should be  
23 sent within the next few days.

24 THE COURT: Okay.

25 MR. JOHNSON: As soon as we receive a signed copy

1 of that letter from Mr. Levitt, we will then be submitting  
2 with your Honor a Rule 41 stipulation to dismiss Count 2 with  
3 prejudice.

4 THE COURT: Okay.

5 MR. JOHNSON: Count 2 in the amended pleading there  
6 is a new count.

7 THE COURT: How do you want to proceed,  
8 Mr. Sanders? 14 days?

9 MR. SANDERS: I have some visceral reaction to the  
10 motions, but I don't want to take the Court's time. I think  
11 we'd be better off giving you something in writing.

12 THE COURT: Okay, that's fine. I haven't seen it.  
13 You know, we were here with a trial yesterday. I didn't see  
14 it, so I really don't know what time it was filed. I can  
15 only imagine after hours sometime yesterday.

16 MR. SANDERS: I think that's correct.

17 THE COURT: So I will give you 14 days to respond  
18 to the motion to amend, and that will take us to  
19 September 14th.

20 MR. SANDERS: August 14th.

21 THE COURT: Oh, I'm sorry, August 14th. I'm  
22 jumping ahead. Okay. August 14th. And let's set this case  
23 for status on August 16th at 9:45.

24 MR. FREEHLING: Your Honor, may the plaintiff file  
25 a reply to the response of the defendant's?



1 THE COURT: I don't think we're going to need a  
2 reply; but if you desire to do that, I won't prevent you from  
3 doing that.

4 How soon can you do that?

5 MR. FREEHLING: Seven days after we receive the  
6 response.

7 THE COURT: That would be August 21st. Then let's  
8 set it for a ruling on August 23rd at 9:45.

9 MR. SANDERS: Thank you, your Honor.

10 THE COURT: Thank you. Here's your copy back. I'm  
11 sure a copy is forthcoming somewhere.

12 THE COURT: Should we vacate the trial date or wait  
13 until this letter is signed?

14 MR. JOHNSON: I'd be comfortable vacating it, your  
15 Honor.

16 MR. SANDERS: We've already exchanged PDF  
17 signatures. We're just waiting to have the ink-signed ones  
18 turned over.

19 THE COURT: Given that representation, I'll vacate  
20 the trial date.

21 MR. SANDERS: Thank you, your Honor.

22 THE COURT: Thank you.

23 MR. FREEHLING: Thank you.

24 (Which were all the proceedings heard.)  
25

CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

K. Fennell  
Kathleen M. Fennell  
Official Court Reporter

8-2-07  
Date

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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2			
3	JOHN R. LOTT, JR.,	)	
4		)	
5	-vs-	)	Case No. 06 C 2007
6	STEVEN D. LEVITT,	)	Chicago, Illinois
7		)	August 23, 2007
8	Defendant.	)	10:00 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE RUBEN CASTILLO

APPEARANCES:

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EXHIBIT  
 3

1 (Proceedings heard in open court:)

2 THE CLERK: 06 C 2007, Lott versus Levitt.

3 THE COURT: Good morning.

4 MR. FREEHLING: Good morning, your Honor. Paul  
5 Freehling on behalf of the plaintiff.

6 MR. SANDERS: Good morning, your Honor. David  
7 Sanders on behalf of the defendants.

8 THE COURT: Well, since I was assigned this case,  
9 all I've tried to do is move it along, and today I'm going to  
10 bring it to an end before me.

11 I'm issuing an order giving both of you copies  
12 denying the motion to amend the complaint, and what we're  
13 going to do is issue or enter an amended judgment so that you  
14 can appeal also the denial of the motion to amend, and the  
15 reasons are all stated out in the order in writing.

16 Thank you.

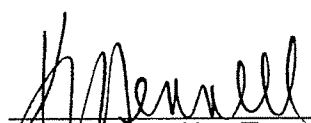
17 MR. SANDERS: Thank you, your Honor.

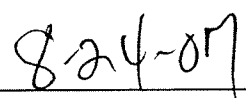
18 MR. FREEHLING: Thank you, your Honor.

19 (Which were all the proceedings heard.)

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript  
22 from the record of proceedings in the above-entitled matter.

23   
24 \_\_\_\_\_  
25 Kathleen M. Fennell  
Official Court Reporter

  
\_\_\_\_\_ Date