UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, SPRING VALLEY BRANCH, et al.,

Plaintiffs,

Case No. 17-cv-08943-CS

-vs-

EAST RAMAPO CENTRAL SCHOOL DISTRICT, et al.,

Defendants.

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United States Courthouse
White Plains, New York
March 5, 2021
12:00 p.m.

** VIA TELECONFERENCE **

Before: HONORABLE CATHY SEIBEL
District Judge

A P P E A R A N C E S:

LATHAM & WATKINS, LLP
BY: ANDREW B. CLUBOK
RUSSELL MANGAS
ANDREJ NOVAKOVSKI
and
NEW YORK CIVIL LIBERTIES UNION
BY: PERRY GROSSMAN
Attorneys for the Plaintiffs

MORGAN LEWIS & BOCKIUS, LLP
BY: RANDALL M. LEVINE
DAVID J. BUTLER
CLARA KOLLM
Attorneys for the Defendants

THE DEPUTY CLERK: Good afternoon, Judge. Judge, this matter is NAACP v. East Ramapo Central School District. We have on here representing plaintiffs, Mr. Andrew Clubok, Mr. Russell Mangas, Mr. Andrej Novakovski, and Mr. Perry Grossman.

And representing defendant we have Mr. David Butler, Mr. Randall Levine and Ms. Clara Kollm. Our court reporter, Darby, is on, and Jenny is on.

THE COURT: All right. Hi, everybody. Let me remind counsel: If you say anything, make sure that the first word out of your mouth is your last name. Please do not say, "This is Andrew Clubok for plaintiff." Just say "Clubok." Don't worry about sounding impolite. You will be doing me, and more importantly, the court reporter, a favor by identifying yourself right upfront. We need to know who is speaking right upfront so that the court reporter can do her job.

I have both sides' objections to Magistrate Judge McCarthy's report and recommendation. Is there anything anybody wants to add that's not covered by the motion papers?

MR. MANGAS: Mangas, Your Honor. Nothing for plaintiffs.

MR. LEVINE: Levine for defendant. Nothing, Your Honor.

THE COURT: All right. So let me tell you where I come out. First of all, the legal standard is well known. A District Court reviewing a report and recommendation, or R&R,

"may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S. Code Section 636(b)(1)(C). I "may adopt those portions of the report to which no 'specific written objection' is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law." *Adams versus New York State Department of Education*, 855 F.Supp.2d 205 at 206, Southern District 2012, quoting Federal Rule of Civil Procedure 72(b). I must review de novo any portion of the report to which specific objection is made. See Section 636(b)(1)(C) and *U.S. versus Male Juvenile*, 121 F.3d 34 at 38. Here, I have objections from both sides. I'm going to start with defendant's objections.

Their first objection is that I should issue no fee award at all or, at best, a nominal award. Defendant argues that plaintiffs have pro bono counsel who had no expectation of payment, so any award of fees would be a windfall to plaintiffs, and on the theory that counsel isn't going to keep the money and didn't take the case to make money and it would be a penalty to defendant without furthering the purposes of the fee provision, which is to get lawyers to take cases. I would punish the Board for defending itself -- excuse me. It wouldn't punish the Board that defended itself, but rather the students that plaintiffs purport to help because the fee award is going to lead to budget cuts, and that it is irrelevant that the Board spent a large sum

to defend itself. That's the gist of the argument.

As to defendant's first point, that the fee award would be a windfall, my main response is two words: *Arbor Hill*. In *Arbor Hill Concerned Citizens Neighborhood Association versus County of Albany*, 522 F.3d 182 at 184, which, like this, was a Voting Rights Act case, the Second Circuit made clear that attorneys from non-profit organizations or attorneys from private law firms engaged in pro bono work are not excluded from the usual approach to determining attorney's fees. A pro bono lawyer is not entitled to be compensated at the lawyer's "customary rate for a different type of practice," that's *Arbor Hill* at 184, but like anyone else, is entitled to be paid at rates prevailing in the community for similar work, "regardless of whether the attorney has agreed to take the case on a pro bono or reduced-fee basis." Again, *Arbor Hill* at 184.

So here, Latham and Watkins is not entitled to the same rate its corporate clients pay, but it is entitled to a fee; as is the NYCLU. As to the latter of which, by the way, there is no indication it would or could have taken the case without the fee incentive. Further, I agree with plaintiffs that an award would serve the fee-shifting provision's purpose of enabling plaintiffs to hire counsel without fear that they will be outspent or worn down by defendant's counsel, and to attract competent counsel and vindicate civil rights, even in cases with little cash value. "The function of an award of

attorney's fees is to encourage the bringing of meritorious civil rights claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel." *Kerr versus Quinn*, 692 F.2d 875 at 877.

And here, very competent counsel with substantial resources were needed to oppose the substantial resources marshaled by defendants, which plaintiffs had every reason to expect based on how the District had litigated an earlier case called *Montesa v. Schwartz*, number 12-cv-6057, in this court. This is far from the situation hypothesized in *Kerr* where a case is so obviously a winner and so obviously going to lead to a large award that it would be easy to find counsel willing to take the case on contingency.

That a fee award to plaintiffs could come out of the school budget and hurt the students of the District is, for better or worse, I am sorry to say, irrelevant. That the fee award comes out of the taxpayers' pockets is frequently true in many civil rights cases against a municipal or other government defendant, and a large fee frequently means that the defendant has to tighten its belt elsewhere. That is something defendants take into account in formulating their litigation position. Here, it is a result the Board could have avoided, but was under no obligation to avoid. So I do not hold it against defendant, but it could have settled this case, and in such a settlement plaintiff would have waived fees all together. Defendant

doesn't have to settle, and maybe it sincerely thought it had a better case than it did.

The Board's choices have resulted in much bigger fees for its counsel and for plaintiffs than if the case had settled before trial, but that is no reason not to award a reasonable fee to plaintiffs. Similarly, that Latham plans to donate its fees to help the public schools in the District, while generous and commendable, has no impact on my calculation of the fee.

That the Board decided to spend money to defend itself is largely irrelevant, but not completely irrelevant. What the Board paid could be relevant to what a reasonable, paying client would pay, which I will discuss later, and relevant to what was necessary to take on the District. As noted, plaintiffs needed substantial resources to go up against defendant's substantial resources. So I do plan to award a fee to plaintiffs.

Defendants next argue that I should exclude fees attributable to plaintiff's first expert, Dr. Cole, and to the first preliminary injunction motion, which was withdrawn. They point out that plaintiffs had said that they excluded those fees and that everyone agrees they are not compensable, but defendant's review shows that there are 366.38 hours relating to Dr. Cole on the first motion that were included, which defendants assume was inadvertent and that Magistrate Judge McCarthy did not subtract those out before making her 25 percent cut. Plaintiff responds that it did cut the hours that went

only toward the PI motion, but the 366 hours were included intentionally because the work done there was used and useful at later phases of the case. So they acknowledge there it was a calculation error in that 40 hours or less of drafting was included which shouldn't have been. Plaintiff argues I shouldn't worry about the 40 hours because it's sufficiently mitigated by its voluntary 34 percent cut, which I will discuss down the road, and by its agreement to cap its fee at what defendants paid Morgan Lewis.

As I will explain as we go along, we are going to have to do some recalculation to the magistrate's numbers, so I don't see why we shouldn't just exclude those 40 hours or less that plaintiffs agree are mistakenly included. I accept Latham's representation that it subtracted all hours relating to Dr. Cole and to the aborted PI motion except those that were used and useful at later phases of the case; but since we are going to have to redo the math, and there are numbers that plaintiff agrees don't belong in there, we should take them out. I'm going to address later defendant's arguments that the magistrate judge didn't sufficiently take into account its voluntary cut and its cap.

Finally, defendants argue that I should exclude fees relating to unopposed third-party discovery specifically relating to motions to compel that plaintiff had to make regarding an entity called Community Connections and to compel

Rabbi Oshry. Defendants argue that they shouldn't be responsible for fees incurred by the actions of third parties, and that if plaintiff had to move to compel those subpoenaed parties, that wasn't because of anything defendant did, so defendant shouldn't have to reimburse those fees.

Defendant's citation to authority for this proposition, which is in Document 676-1 at pages 6 and 7, is, if not misleading, at least unpersuasive. Three of the four cases cited arise under federal statutes allowing for fee-shifting against the federal government, which is a different kettle of fish. The only one that is a Voting Rights Act case involved the exclusion of fees for time for testimony before a state senate subcommittee before the litigation began. Nothing like that is being sought here.

Defendants cite no authority for the proposition that only discovery taken from the defendant is compensable, and it seems to me that any relevant discovery should be compensable. See *Winnemucca Indian Colony versus United States*, 2019 Westlaw 320560 at page 2, District of Nevada, January 24, 2019, where the court said, "Nor does it make sense to exclude attorney labor necessarily expended in...litigating against third parties in the present action when that labor was ultimately necessitated by the defendant's unjustified underlying actions in the first instance." And that appeal was dismissed 2019 Westlaw 4656760, Ninth Circuit July 23, 2019. If the idea is to

incentivize counsel to take the case, that sometimes is going to include discovery with third parties.

Just give me a second. If the idea is to incentivize counsel to take the case, that sometimes, maybe always, is going to include discovery disputes with third parties. I agree that this discovery was relevant and reasonable and led to useful information. Indeed, part of the reason it was so useful is that it did not really involve third parties unrelated to defendant. It involved parties who were essentially -- maybe coconspirators is too strong a word -- but were involved in the VRA violation, and at least were aligned with and supportive of defendant. I do not suggest that defendant put these third parties up to resisting discovery. I do suggest that these third parties may well have thought they were helping defendant by doing so, and it was reasonable for plaintiffs' belief -- for plaintiffs to believe that going after that information was important.

Further, obtaining information, particularly from Oshry, during discovery from the third parties was particularly important because at that time, defendants were resisting having members of the School Board testify and were taking interlocutory appeals of my order affirming Judge McCarthy that they testify. So I'm not going to exclude the fees relating to Community Connections or Rabbi Oshry.

I'm going to turn to plaintiffs' objections. They

first argue that any reduction in their fees below what defendants paid their counsel would be unreasonable. By their math -- well, let me back up. They state that they object only to the extent plaintiffs' fee award would be lower than the fees paid by defendant. So by their math, Latham should get $5,656,312, which, when added to the NYCLU's $1,543,687.99, equals the lower range of what defendant's counsel paid to Morgan Lewis. They have calculated that range as being somewhere from 7.2 to $8.9 million based on what public records they have been able to get.

Plaintiffs point out that the magistrate judge's cuts bring Latham's -- brings plaintiffs' award down to half of what defendant paid Morgan Lewis. They point out that Latham didn't seek payments for lawyers who didn't appear at trial, which reduced the request by 9,000 hours or 34 percent; and that they cut the hourly rate they sought to the same rate that defendant's counsel charged, and that its total ask of 8.5 million was within the range of what defendant paid its counsel who lost the case. So plaintiffs argue, by definition, counsel who won the case should get at least that much. They have mentioned they will donate it all, and they argue that a reasonable, paying client, obviously, would be willing to pay plaintiff's counsel $7.2 million to win the case when a reasonable, paying client paid defendants counsel at least that much in a losing effort. They further argue that it could set a

precedent that plaintiffs only get half of what defendants spend, which will make it harder to attract counsel, or set a precedent that defendants could get more or better representation without the risk of having to pay the same to plaintiffs if they lose, which would make it harder for plaintiffs to recover, and both of which would undermine the purpose of the fee-shift.

They also argue that they don't get paid at least as much as -- if Latham doesn't get paid -- if plaintiffs don't get paid at least as much as Morgan Lewis, it will encourage scorched-earth tactics because the defendant won't have to pay the other side's fees for combatting them.

Let me explain why this objection is overruled. My job here is not to compare what plaintiffs seek with what defendant paid. My job is to determine what a reasonable, paying client would pay by multiplying the reasonable number of hours by a reasonable hourly rate bearing in mind the purposes of the VRA fee-shifting provision, which is to allow plaintiffs to attract competent counsel. I do not think that because defendant paid its lawyers 7.2 million or more, that means a reasonable, paying client would do so. First of all, I don't think any one client can be used to determine what the market will bear, but even if it could, the argument would make sense only if defendant here is a reasonable, paying client, and I do not think it is.

I think the District greatly overpaid. I have never heard of a school district in this area being charged or paying close to $650 an hour for partners or $450 an hour for associates, which is what Morgan Lewis charged. Neither side has provided comparables, but you can go on the Internet and see what school boards pay for legal counsel. In 2020, Nyack paid 225 an hour, and Suffern paid 220 an hour. Even East Ramapo pays its regular counsel 265 an hour for partners and 250 for associates in 2020. It may be that in a case like this you need more quote-unquote "muscle" as *Arbor Hill* put it because this is not a routine employment case or a special ed. case. So you might reasonably go to a different firm than your regular counsel, and you might pay more than your regular 200-something an hour, but defendant in this case paid about triple the normal rate, and it paid it starting back in 2017, and what I have just quoted are 2020 rates.

Moreover, defendant's approach to this case could be described as scorched earth. The record simply contains no indication that defendant's counsel's fee is, in fact, reasonable; and I think there are strong reasons to conclude it's not, so it doesn't make sense to try to match it. Latham's work has obviously been more valuable to its clients than Morgan Lewis's was to its, but that does not mean defendant has to pay Latham what defendant paid Morgan Lewis.

I pause here to note an irony. It was defendant's

position throughout this litigation that the white private school community cared about lower taxes. If that were true, you would think there would be some pushback against the enormous legal fees the District accrued in this case and in *Montesa*. You might also expect some dismay at the fact that the District is now also stuck with plaintiffs' fees when it could have avoided them by settling. And again, defendant was under no obligation to settle, and maybe it sincerely believed it could win at trial, so that settlement to avoid fees did not make sense. I mention this only because the apparent lack of pushback against the District's legal fees and its obligation now to pay plaintiffs' legal fees is consistent with what I saw at trial, which was evidence that the white private school community voted for whoever their religious leaders told them to vote for and little to no evidence that those voters based their votes on the candidates' policies or views about taxes or anything else. But I digress.

Going back to plaintiffs' argument, a ruling in this case that plaintiffs' fee will be less than what defendants paid their lawyers would not set any precedent. It would be based on the unique facts here where a governmental entity paid way more than governmental entities usually pay, so I don't see a risk of setting a precedent. But even if that risk existed, the exercise here is not comparing what each side spent and evening it out. The exercise, as set forth in *Arbor Hill*, is the

reasonable prevailing rate by the number -- multiplied by the number of hours reasonably expended, and I think what plaintiffs will end up with will be sufficient to attract competent counsel to these kinds of cases.

As I mentioned before, that Latham plans to donate everything it receives is terrific, but also irrelevant, just as irrelevant as defendant's argument that the fee award will come out of the school budget. I also find irrelevant defendant's argument that plaintiff did not really achieve anything because the School Board is still 6-3 in terms of white private school members versus minority public school members. I disagree strongly with that argument. First, plaintiffs achieved something really big here. They turned over a big rock, and they exposed a years'-long violation of voting rights.

Second, even if there are only three minority-slash-public school members on the Board, they will be ones chosen by the voters, not by a secretive white slating organization.

I next turn to plaintiffs' objection to the magistrate judge's reduction in the Latham associates' hourly rates. Plaintiffs argue that the magistrate reduced the rates because plaintiffs hadn't provided résumés for the associates, which frankly, I don't understand why they didn't; but they are fortunate that she did a little homework to calculate their experience, and that the magistrate reduced the rates because

there was no indication that any of the associates had civil rights experience. Plaintiff argues Magistrate Judge McCarthy should not have done that because they achieved a landmark victory in a complex case and that the lack of civil rights experience is only one of the so-called Johnson factors, which are set forth in Footnote 3 in *Arbor Hill*. Plaintiffs argue that other of the Johnson factors, such as the associates' ability and the results they achieved, show that a rate of $450 for them, like what defendant paid their associates, is reasonable.

They point out that civil rights experience was not required on the part of the Latham lawyers because the team was structured so that the NYCLU would bring the civil rights experience to the team, and Latham would bring litigation experience, and they further note that each associate did substantive standup work. They cite *Vista Outdoor versus Reeves Family Trust*, 2018 Westlaw 3104631 at pages 6 to 7, Southern District, May 24, 2018, as support for a rate of $500 being reasonable for a big firm associate; and they point out that defendants paid 450 an hour to associates with no civil rights experience, and that Magistrate Judge McCarthy reduced the Latham associates to half that rate.

"The District Court should, in determining what a reasonable, paying client would be willing to pay, consider factors, including but not limited to, the complexity and

difficulty of the case, the available expertise and capacity of the client's other counsel, if any, the resources required to prosecute the case effectively, taking account of the resources being marshaled on the other side, but not endorsing scorched-earth tactics, the timing demands of the case, whether an attorney might have an interest independent of that of his client in achieving the ends of the litigation, or might initiate the representation himself, whether an attorney might have initially acted pro bono, but that the client might be aware that the attorney expected low or nonexistent remuneration, and other returns, such as reputation, et cetera, that an attorney might expect from the representation." That's *Arbor Hill*, 522 F.3d at 184.

A fee award is appropriate, as I noted earlier, even if the lawyer took the case pro bono. *Arbor Hill* at note two.

"The reasonable hourly rate is the rate that a paying client would be willing to pay. In determining what rate a paying client would be willing to pay, the District Court should consider, among others, the Johnson factors. It should also bear in mind that a reasonable, paying client wishes to spend the minimum necessary to litigate the case effectively. The District Court should also consider that such an individual might be able to negotiate with his or her attorneys using their desire to obtain the reputational benefits that might accrue from being associated with the case." *Arbor Hill* at 190.

First, as for Morgan Lewis getting 450 an hour for its associates, that's true for some, but others got 300; but overall, this is the same issue. The comparison is only viable if I thought the District was a reasonable, paying client, which I found it isn't. The *Vista Outdoor* case doesn't help plaintiffs because that was a commercial case. The market rate for civil rights cases is lower. See, for example, *Field versus MTA*, 2021 Westlaw 22817 at page 3, Southern District, January 4, 2021, which found $300 to be an appropriate hourly rate for a senior associate with at least eight years of experience. *Torres versus City of New York*, 2020 Westlaw 4883807 at page 5, Southern District, August 20, 2020, which found typical rates in this District for junior associates to be in the 200 to 350 an hour range at firms specializing in civil rights; and *Brennan versus City of Middletown*, 2020 Westlaw 3820195 at page 12, Southern District, July 8, 2020, finding 250 an hour to be in line with the going rate for an experienced associate.

But looking at the *Arbor Hill* factors, 522 F.3d at 184, and reviewing de novo, I come out a little higher than the magistrate judge. First, the case was difficult and complex, which favors a higher rate. Most civil rights fee cases involve employment discrimination or police misconduct or other one-off individual situations. This case involved a more complex, broader-based issue. It also required substantial statistical know-how, which most civil rights cases don't. There were novel

and difficult issues that required a high level of skill.

Second, the available expertise and capacity of the client's other counsel is basically a neutral factor here because, while the NYCLU lawyers were skilled and experienced in civil rights cases, they did not have the same firepower that a major litigation firm brings to the table.

Third, substantial resources were needed to prosecute the case effectively, taking into account the substantial resources marshaled on the other side but without endorsing scorched-earth tactics. This case was a hard-fought one all around. It had a big law firm on the other side, and while both sides, I will say, fought tooth and nail, all in all, plaintiffs picked their battles reasonably and did not indulge scorched-earth tactics. So this favors a higher rate.

Fourth, the timing demands of the case were substantial, which also favors a higher rate.

The fifth factor is whether an attorney might have an interest independent of the client in achieving the ends of the litigation. I have no reason to think that any of the Latham lawyers live in the District or had any personal alignment with their clients, but it is apparent that the firm had an independent motivation for pursuing the case apart from what I presume is a belief in the righteousness of the case, and that motivation was providing its associates with a valuable training and learning experience. So that favors a lower rate.

The sixth factor is whether an attorney might have initially acted pro bono making the client aware that the attorney expected low or no remuneration. That seems to be the case here. I don't think plaintiffs ever expected to pay Latham anything, so that favors a lower rate.

The seventh factor is other returns such as reputation a lawyer might expect from the representation. I expect that those exist here, not only in the form of praise or approbation for a great result in an important public service case, but also in the form of recruiting advantage from doing that kind of work and giving associates that kind of training and experience. So that also favors a lower rate.

I won't separately discuss the Johnson factors, the most relevant ones of which are pretty well covered by what I have already said; but I have considered all of them as well. Taking all the relevant factors into account, including what I saw during trial, I think above what is typical in normal civil rights cases is appropriate, and I'm going to bump up from Judge McCarthy's numbers, although not up to what plaintiffs asked for.

So for the senior associates, Mr. Mangas and Ms. Calabrese, Judge McCarthy reduced the ask of 450 to 300. I think 375 is more appropriate. For Attorneys Johnson and Pearce, Judge McCarthy reduced them to 275. I'm going to bump them up to 325. And to associates Novakovski, Swaminathan,

Scully, Sahner and Cusick, who were reduced to 125, I'm going to reduce them -- I'm going to raise them to 225.

And finally, Latham's next-to-last objection is that the magistrate judge should not have reduced the hours that were claimed. Plaintiff argues that those hours were necessary because of the scorched-earth tactics of the defendant and its lawyers, which prompted lots of hours by the Latham lawyers. They note that the magistrate judge took 25 percent off for excessive staffing and duplication, but did not consider that Latham had already cut 9,000 hours voluntarily, which more than mitigated any overstaffing. The magistrate judge also cited excessive staffing for expert and 30(b)(6) depositions, but plaintiffs argue that those were very important, so having three or four lawyers present was reasonable. They say they had one lawyer from the NYCLU and two or three from Latham at depositions, and that defendant also had multiple attorneys, including two partners, at the 30(b)(6) depositions. They also note that the magistrate judge cited plaintiffs' motion to compel production of the documents from the *Montesa* case, which was a motion plaintiff won, and plaintiff argues that the defendant was being unreasonable, and that even though those documents turned out not to be of particular use, plaintiffs couldn't have known that until they got them. Plaintiffs further point out that the magistrate judge cited plaintiffs' attempt to subpoena Mr. Butler, but they argue that both I and

the Second Circuit recognized how important that was, and they note that at the time, Harry Grossman was refusing to testify, so there was nobody else available to question about the now-infamous text message where Mr. Grossman purported to pass on to a member of the slating organization some advice from Mr. Butler.

First of all, regarding the 9,000 hours that were voluntarily cut, those were for attorneys and paralegals who did not appear at trial. That reduction did not account for excessive or duplicative fees for the attorneys who did appear and for whom fees were sought. I agree with Judge McCarthy that there were excessive -- that there was excessive staffing and duplication of effort among those timekeepers. I'm not criticizing Latham for staffing the case the way it did. This was a case where associates got terrific experience, but there are a lot of inefficiencies associated with having, you know, ten or more associates involved in the case and -- well, at least nine -- and a bunch of partners, and it just generates a lot of extra meetings and a lot of extra internal consultation and a lot of extra review of other peoples' work. So I do agree with Judge McCarthy that there was excessive staffing and duplication of effort among the timekeepers for whom fees were sought.

On the other hand, the voluntary reduction was for 100 percent of the work done by the non-trial timekeepers, and I

doubt that all of their work was excessive or duplicative; but it is plaintiffs' burden on this motion, and I cannot tell how much of the voluntarily-reduced work would have been compensable, so I must assume it's not very much. I want to make clear I don't doubt that the Latham lawyers did the work they billed for, and I certainly get it that big firm associates bill for everything they do because they need to show their bosses that they are working hard; but the magistrate judge is correct that a reasonable, paying client would not pay, for example, for seven lawyers to read an order or for 13 different lawyers to participate in a trial.

And, again, to be clear, that is entirely appropriate when a law firm is trying to give its associates a valuable and meaningful experience, and that is to be commended, but it is not to be reimbursed by the losing side.

To address the specifics raised by plaintiffs, expert depositions and 30(b)(6) depositions are, of course, important, but a reasonable, paying client would not pay for four lawyers to attend. Likewise, with respect to the motion to compel the documentation from the *Montesa* litigation, a paying client would have much preferred to pay $2,000 in data recovery costs, even if that technically was not the client's responsibility, rather than paying its lawyers $44,000 to get the same material. So I agree with the magistrate judge on those two matters.

I find the subpoena to Mr. Butler to be more

understandable than the magistrate judge did. I did uphold Judge McCarthy's quashing of the subpoena to Mr. Butler finding her decision was not clearly erroneous or contrary to law. That doesn't mean I think it was wrong for plaintiffs to try. Among my reasons for upholding the ruling were the general proposition that subpoenas of opposing counsel are disfavored, and that plaintiff had accumulated other evidence of the existence of the slating organization. Had I known or imagined that members of the School Board and their allies were going to lie so blatantly about the slating organization at trial, I might have gone the other way. And, you know, that text from Mr. Butler to Mr. Grossman was important evidence of the existence of the slating organization.

I further find overall that defendant's approach to this litigation generated a lot of the hours billed by Latham. In the *Montesa* case, defendant's tactics of overwhelming plaintiffs' counsel by fighting just about everything tooth and nail had been very successful for defendants, and in that case, plaintiffs' counsel was overmatched, and that ultimately wore the plaintiffs down.

Plaintiffs in this case knew that they would face a big-firm defense and needed the resources of a big firm for themselves. So while I do find excessive staffing and duplication as a result of Latham letting its associates do so much work on this case, I don't find as much as Judge McCarthy,

and I find that some of it must have been mitigated by the unbilled 9,000 hours. So instead of an across-the-board reduction of 25 percent, I'm going to reduce the across-the-board reduction to 20 percent.

As to the remainder of the report and recommendation, I reviewed it for clear error, and I find none, so I adopt the remainder as the decision of the Court.

I'm going to assign plaintiffs to do a recalculation in line with my ruling and submit it to defendants just to check the arithmetic, and then I will ask plaintiff to submit an order that I can sign.

A couple of final thoughts. Defendant has asked me in connection with this application to address and correct some criticism of Mr. Butler that it regards as baseless. I do not find it to be baseless, and I'm not going to criticize the Second Circuit for criticizing Mr. Butler, and I think it makes more sense for me not to further comment except to say that the conduct criticized by the Circuit was not the only conduct that I found troubling during the case. Defendants are correct that the texts that prompted the criticism was not admitted for its truth under the Rules of Evidence, but in the real world, it says what it says; and I don't see that what the Circuit said is any less valid simply because it was admitted, not for its truth, but to prove the existence of the slating organization.

I'm not going to go into any other specifics. This

has nothing to do with the fee award except that defendant asked me to use the fee litigation as an opportunity to correct the record, and I'm just explaining that I am not going to do that.

Finally, Latham really should not take umbrage at a fee award that I presume is still going to come out to be less than what defendant's counsel got, perhaps a lot less. As I've said, I think defense counsel got paid too much, but two wrongs don't make a right. But Latham accomplished two very important things here: First, it got its associates some invaluable training and experience while also showing them how rewarding and satisfying public interest work can be; and second, it rectified a serious wrong in the community and restored the voting rights of thousands of people, and you cannot put a price tag on either of those things. The firm ought to take pride in both of those accomplishments without diluting it by tying it to an arbitrary number paid to plaintiffs' counsel.

So that is my ruling. The Clerk of Court should terminate two motions, 598 and 640. Once I get the proposed order, which I will set dates for, why don't we say plaintiffs will submit it to defendant by the 12th? They will sign off on it by the 19th, and plaintiffs will submit it to me by the 22nd; and I think once I enter that order, that will be the last order of business, and we will close this case.

Does anybody know of any other outstanding matters? If I don't hear anything, I will take that as a no.

MR. MANGAS: Mangas, Your Honor. Nothing at this time from the plaintiffs.

THE COURT: All right. Then I think that concludes our business. Stay well, everybody, and I will look for the proposed order. Thank you.

(Time noted: 12:49 p.m.)