

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

COLLEEN BERTHELOT, WIFE OF,	*	Civil Action No. 05-4182,
and JACKIE BERTHELOT, ET AL,	*	c/w Nos. 05-4181, 05-4191,
	*	05-4568, 05-5237, 05-6073,
Plaintiffs,	*	05-6314, 05-6323, 05-6324,
	*	05-6327, 05-6359, 06-0020,
v.	*	06-0151, 06-0152, 06-0153,
	*	06-0169, 06-0225, 06-0886,
BOH BROTHERS CONSTRUCTION	*	06-1672, 06-1673, 06-1674
COMPANY, LLC, ET AL,	*	
	*	Section "K"
Defendants.	*	
	*	New Orleans, Louisiana
* * * * *	*	May 10, 2006

EXCERPT OF HEARING
BEFORE THE HONORABLE JOSEPH C. WILKINSON, JR.,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Consol Plaintiff	Lambert & Nelson
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For Consol Plaintiff	Ashton R. O'Dwyer, Jr., Attorney
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APPEARANCES CONT'D.

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P R O C E E D I N G S

(Wednesday, May 10, 2006)

(EXCERPT OF PROCEEDINGS)

MR. O'DWYER: It's very unusual.

THE COURT: I'm loathe to do it, because of the --

MR. O'DWYER: It would lift the veil, Your Honor, I respectfully submit.

Point Number Two, Ashton O'Dwyer on behalf of his clients is serving notice upon the United States of America and whatever witnesses it's going to call in this case whether expert or fact that I have sitting on this table eight packets of photographs that were taken by the internationally renown photographer, David Spielman, who is from New Orleans, and Mr. Pazzos (phonetic), or both of 17th Street, London Avenue North and London Avenue South. I'm holding three of them in my hand. I'm not going to show them to you though, but I'm going to tell you what they depict. Number one, broken concrete housing water stops at the edges of monolith panels. Number two, ripped and torn PVC water stops, and three, broken concrete at the hinge where concrete monolith panels met steel sheet pile.

THE COURT: You have photographs of these things you say?

MR. O'DWYER: I certainly do, Your Honor.

THE COURT: Then why do you need to go see it then?

1 MR. O'DWYER: Your Honor, the point is I wanted the
2 opportunity to verify what I already have by seeing the Corps'
3 evidence. We have not been shown any of that since my
4 discovery war with the United States' gun.

5 THE COURT: Okay. Mr. O'Dwyer, --

6 MR. O'DWYER: Just a moment --

7 THE COURT: -- let me stop you if I can, --

8 MR. O'DWYER: Your Honor --

9 THE COURT: -- because this may be one of these
10 situations where you're arguing yourself into a defeat.

11 MR. O'DWYER: No, Your Honor, you're misinterpreting
12 what I'm saying. You're misinterpreting what I'm saying. I
13 did not have the opportunity to photograph each and every
14 concrete panel's edge or bottom. They were buried shortly
15 after Mr. Spielman and Mr. Pazzos were out there. The Corps
16 has said in affidavits that their unearthing was necessary
17 because they're building a T-wall, but they haven't been shown
18 to us before they've been destroyed. And this T-wall notion is
19 as false as is Mr. Davidson's affidavit.

20 There was no working going on, for instance, at
21 17th Street on Monday or Tuesday -- Saturday or Sunday of this
22 weekend. The T-wall is not even supposed to be installed, if
23 indeed it is installed, until August the 29th. I mean these
24 are not true statements by witnesses for and lawyers for our
25 Government.

1 THE COURT: Oh, Mr. O'Dwyer, since you're so fond of
2 quoting to me from the jury instructions that I read the juries
3 over and over again, let me remind you of a few things, all
4 right. You are a lawyer; you are not a witness. What you say
5 is not evidence. If you have some evidence to show that the
6 Court has been submitted an affidavit that is false, then
7 submit it with an appropriate motion, all right.

8 MR. O'DWYER: Yes, Your Honor.

9 THE COURT: The motion that is before me today is
10 dismissed as moot. There's nothing further on the docket;
11 Court is in recess.

12 MR. O'DWYER: Thank you.

13 * * * * *

14 (Hearing is Concluded)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

/S/Dorothy M. Bourgeois
DOROTHY M. BOURGEOIS

5/19/06
DATE