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COURT OF APPEALS

STATE OF NEW YORK

JAYVAUN STEPHENSON,

Appellant,

-against-

No. 177

CITY OF NEW YORK, ET AL.,

Respondents.

20 Eagle Street
Albany, New York 12207
September 12, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE THEODORE T. JONES

Appearances:

JONATHAN M. COOPER, ESQ.
LAW OFFICES OF JONATHAN M. COOPER
Attorneys for Appellant
483 Chestnut Street
Cedarhurst, NY 11516

SUSAN B. EISNER, ESQ.
NEW YORK CITY LAW DEPARTMENT
Attorneys for Respondent
100 Church Street
New York, NY 10007

Jessica B. Cahill
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Stephenson v. City.

2 MR. COOPER: May it please the Court,
3 Jonathan Cooper for the plaintiffs.

4 CHIEF JUDGE LIPPMAN: Counsel, you want any
5 rebuttal time?

6 MR. COOPER: If I could have two minutes,
7 please.

8 CHIEF JUDGE LIPPMAN: Sure.

9 MR. COOPER: Thank you. At the outset, let
10 me be clear we're not seeking an expansion of school
11 liability under New York law; we're only asking that
12 this court apply existing laws to this case. It's
13 the City, with all due respect, that is asking this
14 court to shrink considerably - - -

15 CHIEF JUDGE LIPPMAN: What's the proximate
16 cause as to what happened here?

17 MR. COOPER: The proximate cause?

18 CHIEF JUDGE LIPPMAN: Yeah.

19 MR. COOPER: The school's failure to inform
20 the mother is the - - - that's the - - -

21 CHIEF JUDGE LIPPMAN: There's no
22 intervening event?

23 MR. COOPER: No, this was a foreseeable
24 event. The foreseeable event was that - - -

25 CHIEF JUDGE LIPPMAN: Foreseeable that a

1 kid outside of normal school hours, outside of school
2 grounds would pick that day to attack the other
3 student.

4 MR. COOPER: Not necessarily that day, Your
5 Honor, but this is - - -

6 CHIEF JUDGE LIPPMAN: Why couldn't it have
7 been six months later that he did it and would that
8 have been foreseeable?

9 MR. COOPER: I readily concede that as the
10 time - - - the timeline extends the causal link and
11 the proximate cause link actually does become more
12 tenuous, and at some point down the line a court
13 would be obliged to step in and say that, no, that
14 couldn't be - - - this event could not cause this
15 infant's injuries. But that's not this case.

16 JUDGE CIPARICK: So you say that the school
17 may have a duty here, because it was foreseeable, it
18 was close in time to the first attack, and therefore
19 liability - - - in fact, what the dissent said?

20 MR. COOPER: Yeah, absolutely, Your Honor.

21 CHIEF JUDGE LIPPMAN: They have a duty even
22 though they didn't create the danger or they - - -
23 they dealt with it or felt that they dealt with it.

24 JUDGE CIPARICK: And it was off school
25 property.

1 MR. COOPER: Well, yeah, they dealt with
2 it, but that goes into the second issue which is - -
3 -

4 CHIEF JUDGE LIPPMAN: I mean they're not
5 the insurer of the kid's safety, right?

6 MR. COOPER: I'm not saying that they're
7 insurer of the kid's safety. All I'm saying is they
8 had a duty to notify the mother, not - - - don't take
9 it out of the mother's hands.

10 CHIEF JUDGE LIPPMAN: What's the duty come
11 from to notify the mother?

12 MR. COOPER: Common law. Common law.

13 JUDGE GRAFFEO: What if instead of being on
14 their way to school the next morning - - -

15 MR. COOPER: Right.

16 JUDGE GRAFFEO: - - - the next morning was
17 a Saturday, and he was on his way to go to the movies
18 someplace else in the city, and then he's jumped.
19 The school is still responsible, because they had a
20 duty to tell the mother?

21 MR. COOPER: In my view, yes, Your Honor.
22 When it's that close in time - - -

23 JUDGE GRAFFEO: That's not extending the
24 rule beyond - - -

25 MR. COOPER: I don't think so, Your Honor.

1 The question is - - -

2 CHIEF JUDGE LIPPMAN: This is a black and
3 white rule that says what?

4 MR. COOPER: The school has a duty to
5 undertake reasonable, adequate measures, I'm using
6 this court's language from Mirand, adequate measures
7 to protect the children when a threat comes to their
8 attention during school hours - - -

9 CHIEF JUDGE LIPPMAN: And informing the
10 mother about what happened would have been adequate
11 to protect the child?

12 MR. COOPER: I think so, Your Honor, yeah.
13 Had they picked up - - - so much as picked up the
14 phone, and called the mother, and said we want you to
15 be aware, Ms. Sinclair, that there was an incident
16 involving your son today at school, perhaps you want
17 to come in and discuss it. There is an additional
18 threat - - - and that's the law of this case, which
19 wasn't appealed - - - that we're aware of. We just
20 want to make you aware so you can undertake whatever
21 measures you deem appropriate. If that had happened,
22 I lose.

23 JUDGE SMITH: Your rule, if I understand
24 it, and maybe it's right, is that when one child
25 threatens another in school, and the school knows

1 about it, and the school handles it in a way - - -
2 that it fails to exercise due care, whatever due care
3 is in dealing with it, then the school is liable for
4 any - - - if the one kid later beats up the other, no
5 matter where.

6 MR. COOPER: That's correct. That's
7 correct.

8 JUDGE SMITH: How is that not an extension?

9 JUDGE GRAFFEO: And for how long would - -
10 -

11 MR. COOPER: When it gets to that issue of
12 proximate causation over a certain amount of time - -
13 -

14 JUDGE GRAFFEO: I realize this was the next
15 day, but what if it's two weeks later or a month
16 later?

17 MR. COOPER: I don't - - - quite frankly, I
18 don't know where that line is drawn, but what I do
19 know is it shouldn't be decided and dismissed as a
20 matter of law, in this case, after two days.

21 CHIEF JUDGE LIPPMAN: Counselor, won't this
22 have tremendous implications? Do you know how many
23 scuffles there are every day in schools, you know,
24 around this state and beyond? Isn't that an awful
25 expansive rule? Isn't that going to have a

1 tremendous impact on schools and school districts?

2 MR. COOPER: I don't think so, Your Honor.
3 If it was a question that as the City urged in their
4 case - - -

5 CHIEF JUDGE LIPPMAN: And every scuffle,
6 they have to tell the parents this is danger to their
7 son?

8 MR. COOPER: It depends on the severity of
9 the scuffle as well.

10 CHIEF JUDGE LIPPMAN: But now the rule
11 becomes more complicated. What's the severity, where
12 do you draw the line with the severity of the
13 scuffle?

14 MR. COOPER: That may be a fact in a case-
15 by-case inquiry, Your Honor. In this case, the
16 school felt it was at least sufficiently severe that
17 they imposed a one-to-two week suspension on Mr.
18 McDonald. So obviously they didn't think this was
19 nothing with nothing.

20 CHIEF JUDGE LIPPMAN: Well, but the victim
21 had a one day in school - - -

22 MR. COOPER: Because the school
23 administrator felt he wasn't as much at fault. He
24 did throw two punches, but he wasn't as much at
25 fault. He didn't instigate it and that's why they

1 only, I guess, gave him one day as opposed to two
2 weeks.

3 Additionally, it appears, although we only
4 have partial - - - the City didn't provide the
5 records on this, Mr. McDonald did have a disciplinary
6 history. The extent of it, we'll never know, because
7 they lost or destroyed those records.

8 Another point I wanted to make, which is -
9 - - and I think an important point - - - is that what
10 the majority did in the court below is they
11 essentially had a carve-out immunizing the school
12 against any inquiry into the adequacy of whatever
13 disciplinary measures they mete out, whatever
14 protective measures they mete out.

15 Tellingly, the majority doesn't cite any
16 case law for that proposition, and I suggest that
17 that's actually directly contrary to this Court's
18 expressed language in *Mirand*.

19 Moreover, the notion of notifying - - -
20 having to notify a student's parent is not without
21 precedence, not within New York and not outside of
22 New York. Based on the cases I've cited in my brief
23 of *Ferraro*, as well as the case from California that
24 was initially brought up by Justice Saxe in the court
25 below of *Phyllis v. Superior Court*. And those cases,

1 I submit, are pretty much directly on point and
2 relevant to this case where the court said it's the
3 failure of the principal to have alerted the
4 substitute teacher, thereby depriving her of the
5 opportunity of using her own judgment, which I
6 believe constitutes the act of negligence in this
7 case.

8 JUDGE SMITH: But of course it is important
9 for principals and teachers to use their judgment,
10 isn't it? Isn't there a danger that the more you
11 expand this kind of liability, the more the schools
12 and people who run schools are going to be worrying
13 only about am I gonna get sued. There's going to - -
14 - the schools are going to put in a policy that says
15 you hear one kid raise his voice to another you've
16 got to get on the phone with the parents, because
17 we're going to be liable. I mean isn't - - - doesn't
18 this become a problem for a functioning school
19 system?

20 MR. COOPER: In theory, if it's something
21 that is so utterly minimal, yes, but that isn't this
22 case, Your Honor.

23 JUDGE READ: Can you explain what happened
24 to me with the discovery sanction?

25 MR. COOPER: Sure. What happened was over

1 a series of years, beginning in July of 2004, we made
2 demands for certain records from the City pertaining
3 to the assaulting student, Mr. McDonald, as well as
4 the school's investigation and what they learned
5 about both of the incidents, the beginning of the
6 incident on October 22nd, 2003, as well as the threat
7 on October 23rd, and the ultimate culminating
8 incident on October 24th.

9 And the school didn't even bother looking
10 for those records for a period of over four years, by
11 which time that school closed down and all those
12 records were lost. And therefore, Judge Schachner in
13 the Bronx issued an order dated September 2nd, 2008,
14 which said that, therefore, as a sanction the issue
15 of notice - - -

16 JUDGE READ: Notice is out of the case. We
17 have to - - -

18 MR. COOPER: That's correct.

19 JUDGE READ: Okay.

20 JUDGE SMITH: And no one's really debating
21 notice now. And so this appeal doesn't turn on that
22 discovery.

23 MR. COOPER: Well, they tried to bring that
24 in a little bit, Your Honor, but I don't believe it's
25 an issue on this appeal.

1 CHIEF JUDGE LIPPMAN: Okay. Okay, you'll
2 have rebuttal.

3 MR. COOPER: Thank you.

4 CHIEF JUDGE LIPPMAN: Counsel.

5 JUDGE CIPARICK: Why shouldn't there be a
6 duty here?

7 MS. EISNER: It's well established in the
8 law, Your Honor, that the school's duty is limited.
9 It's a duty of care limited by time and space, and
10 only so long as the students are in the custody and
11 care of the school on school grounds.

12 CHIEF JUDGE LIPPMAN: Counselor, don't you
13 think in a normal situation when your child is
14 suspended, even in-house, that the school would
15 notify the parent?

16 MS. EISNER: Not in this case, Your Honor,
17 only because the school - - -

18 CHIEF JUDGE LIPPMAN: No, I'm asking in
19 general. Wouldn't you think that the school would
20 notify the child's parent that your kid is - - - your
21 child has been suspended for a day and more or
22 whatever it is?

23 MS. EISNER: Not necessarily, because as
24 this court recognizes - - -

25 CHIEF JUDGE LIPPMAN: And in the same

1 incident another child has been suspended from school
2 altogether for whatever it is, for two weeks.

3 MS. EISNER: It places too unfair of a
4 burden on the school.

5 JUDGE PIGOTT: What do you do when you
6 suspend somebody, but don't tell the parents? Do you
7 just say you can't come to school tomorrow?

8 MS. EISNER: Well, in this case Jayvaun did
9 attend school.

10 JUDGE PIGOTT: No, I didn't ask you that.
11 I said what do you - - - you said you don't have to
12 notify parents if you suspend a child or student.

13 MS. EISNER: That's right.

14 JUDGE PIGOTT: So my thought is you tell
15 the student you can't come to school tomorrow. Now,
16 he - - - and let's assume he's immature and says if I
17 tell my parents this I'm in real trouble, so I won't
18 tell them. Does that mean that the kid can just tell
19 his parents, well, I'm on my way to school and head
20 someplace else?

21 MS. EISNER: I'm not familiar with the full
22 range of disciplinary - - -

23 JUDGE PIGOTT: Well, I'm asking you - - -
24 talk about your client. I mean your client here - -
25 - you're saying that your client has the right to

1 take an eleven, twelve, thirteen-year-old child and
2 put them on the street and not tell their parents.

3 MS. EISNER: In this case I only know that

4 - - -

5 JUDGE PIGOTT: No, I understand. I
6 understand you want to say in this case that didn't
7 happen, but you're basing your argument on the fact
8 that you have the absolute right to take a minor
9 child, put him in the street, and not tell anybody.
10 I just find that surprising. I would think you would
11 say, of course, we have a duty and in this case it
12 didn't - - - you know, that duty didn't arise or
13 something. But how do you do that?

14 I would be shocked if my kids were going to
15 a school where the principal or the superintendent
16 said, and by the way, if your kid acts up we're
17 putting him out on Delaware Avenue - - - I'm in
18 Buffalo - - - and how he gets home is his business.
19 If he finds you that would be great. If he doesn't,
20 you know, it's not our fault.

21 MS. EISNER: I would imagine that there is
22 a duty to notify in the case that a student is told
23 not to come to school, that he's suspended for
24 outside of school.

25 JUDGE PIGOTT: That's what I thought you'd

1 say in the first place.

2 MS. EISNER: No, no. Oh, I'm sorry, then I
3 misunderstood, but in this case I don't really
4 understand. I mean, as far as we can tell from the
5 record, the Assistant Principal Reed in this case
6 made a determination that Jayvaun should be suspended
7 one day in school and that he served his suspension
8 in the basement, that he did his regular class work,
9 and that he was provided with work to do.

10 I don't know about situations where a
11 student is told not to come to school.

12 JUDGE GRAFFEO: You mean he was separated
13 from his classes, but he was still in the school
14 building during the time of his suspension?

15 MS. EISNER: From what I can tell from the
16 record, that's my understanding, that he was given
17 classwork, but that he did not attend his regular
18 classes, and he also testified at his 50(h) hearing
19 that he - - -

20 CHIEF JUDGE LIPPMAN: So he was like in
21 detention?

22 MS. EISNER: That's probably a fair analogy
23 as to what happened.

24 JUDGE SMITH: I mean is it a fair statement
25 of the law, as you see it, that the school's duty

1 extends as long as the child is in the school and
2 until the child is released to a place of safety?

3 MS. EISNER: I think that's an accurate
4 statement of the school's duty.

5 JUDGE SMITH: Yeah, there are cases where
6 the school has been held where the injury was off the
7 school grounds, but that was generally where the
8 school was at some fault in the actual release of the
9 kid, right?

10 MS. EISNER: I think an example of that is
11 in the Bell case. In the Bell case there were
12 several classes that attended a fair in the park and
13 the teacher - - - the school was responsible for the
14 children while they were in the park, and then when
15 the children were with the teacher, and they went
16 back to their school the class left without one
17 student. When she was looking for her class in the
18 park, she couldn't find them. She proceeded to walk
19 home alone, and she was about a block away from the
20 park when she was accosted and raped.

21 And in that case this court found that the
22 rape was a foreseeable consequence, because the duty
23 in that case was shaped precisely by - - -

24 JUDGE SMITH: That was - - - the duty there
25 was pretty clear. You can't lose a kid. You're not

1 supposed to do that. The problem in that case was a
2 proximate cause problem, do you agree?

3 MS. EISNER: Well, but there was also a
4 duty of supervision in that the teacher failed.

5 JUDGE SMITH: Yeah, but I think it would be
6 very hard, on the facts of that case, to argue that
7 the school didn't breach any duty. You might argue
8 whether the breach of the duty led to the particular
9 harm, but here it's just more the other way around.
10 You're saying we don't get to proximate cause,
11 because there was no breach of duty in the first
12 place.

13 MS. EISNER: That's correct, there was no
14 duty. I think it's really important for this court
15 to understand that the incident - - - there was a
16 scuffle in school, between classes, and the incident
17 ended. Jayvaun went to the very next class. He was
18 taken out of the class, and he was brought to see the
19 assistant principal. She interviewed both students.
20 She determined upon the other student's admission
21 that he had started the fight. She determined to
22 mete out punishment, and then she staggered their
23 dismissal so that Jayvaun was released early from
24 school that day to avoid any further encounter.

25 JUDGE SMITH: But could she not - - -

1 putting aside the duty issue, could she not be found
2 negligent in not making a phone call to the mother?

3 MS. EISNER: No, because I think that the
4 school administrators need to have a certain
5 flexibility and, you know, there are scuffles between
6 students that happen all the time. And in this
7 situation the principal interviewed both students,
8 and she was entitled to the discretion to make a
9 determination that this incident is best resolved by
10 suspending both students in this case, apparently,
11 Jayvaun for one day and for the other student a week
12 or two.

13 JUDGE SMITH: Suppose the facts had been
14 she had - - - the fight happened, the encounter
15 happened, she calls them in, she makes them her
16 speech about how they both misbehaved and one is
17 worse than the other, and you're suspended for one
18 day, and you're suspended for longer, and then she
19 says, okay, goodbye boys and lets them both go out
20 unsupervised into the back yard where the bigger one
21 beats the little one up. Is the school liable for
22 that, for her misjudgment in doing that?

23 MS. EISNER: And the assault happened
24 where, on school property?

25 JUDGE SMITH: Immediately. Yeah, as soon

1 as they're out of her sight.

2 MS. EISNER: Perhaps an argument could be
3 made that, you know, the incident spilled over, but I
4 think here there was a complete break. I don't even
5 think that you can make the argument that this was
6 any kind of a continuous incident. I think that it
7 was addressed, it ended, a day passed, and then the
8 assault happened more than two blocks from school
9 property.

10 JUDGE PIGOTT: Mr. Cooper relies on our
11 Mirand case, and, of course, in there we talked a lot
12 about notice, but you've conceded that you had
13 notice. And then we say that - - -

14 MS. EISNER: Well, but - - - may I just
15 interrupt, Your Honor?

16 JUDGE PIGOTT: - - - that is that the third
17 party acts could reasonably have been anticipated and
18 the school's negligence must be the proximate cause
19 of the injury.

20 MS. EISNER: I just wanted to make one
21 point about notice. I mean in this case,
22 unfortunately, it was a harsh discovery sanction for
23 our failure to turn over records. We're stuck with
24 it. We can't - - -

25 JUDGE PIGOTT: Right.

1 MS. EISNER: - - - there's nothing - - -

2 JUDGE PIGOTT: But you had notice.

3 MS. EISNER: But it's a fictional situation
4 that was created. I mean - - -

5 JUDGE PIGOTT: Well, not really, because I
6 think the reason that sanctions happen, if I remember
7 my experiences, so that they don't happen again, and
8 what generally the court's thinking is, you really
9 did have notice. You don't want to admit it, so
10 you're not turning the records over. So we'll solve
11 that problem for you and prevent you from putting in
12 any documents that otherwise would have shown notice.

13 MS. EISNER: I think there is a significant
14 difference, because in this case nobody's saying that
15 the principal or anybody in the school knew that this
16 assault was going to happen two days later on a
17 street corner when he exited the subway.

18 JUDGE SMITH: Well, no human being could
19 possibly have known that, but on the other hand it
20 would be very hard to say that the school wasn't on
21 notice that there was some tension between these
22 boys.

23 MS. EISNER: Tension doesn't necessarily
24 translate into - - -

25 JUDGE SMITH: Some violence - - - that

1 there had been violence between them.

2 JUDGE PIGOTT: There could have been a note
3 from one person to another saying if we don't do
4 something, this is going to evolve into a very
5 serious situation, perhaps even outside of school.

6 MS. EISNER: This was a vicious, planned,
7 targeted attack. I mean, you know, he brought four
8 friends - - -

9 JUDGE PIGOTT: Picture that note. That's
10 why I think - - - you talk about harshness of the
11 preclusion. Somebody could have said I'm afraid
12 there's going to be a vicious, planned attack on our
13 student, so we got to do something, but you won't
14 turn that over, so the judge says I'll take care of
15 it for you.

16 MS. EISNER: Unfortunately, we don't know
17 what records existed.

18 JUDGE PIGOTT: Exactly, but you can't - - -
19 you can't keep saying that, because if you had turned
20 them over you could say anything you wanted because
21 it's in the records, but because there was a note
22 that said exactly what I just said, which is we are
23 afraid there's going to be a vicious, planned attack
24 on this, you want to deny that's true. You can't
25 because you refuse to turn over the documents. Isn't

1 that what preclusion means?

2 MS. EISNER: But there's still no issue - -
3 - but there's still no duty here in this case,
4 because as the majority recognized, even had the
5 mother been informed about this, it's completely
6 speculative that she could have done anything to
7 prevent the attack.

8 JUDGE PIGOTT: That's what Mr. Cooper's
9 saying: it's a proximate cause issue and a question
10 of fact.

11 MS. EISNER: But as the majority recognized
12 it's not even that. I think on this record this
13 Court can uphold - - - the Appellate Division got it
14 right. They found that we were entitled to summary
15 judgment on two grounds.

16 JUDGE SMITH: If you assume a duty, is it
17 really - - - I mean assume that there was a duty to
18 make the phone call that was breached. I understand
19 your argument's to the contrary, but if you assume
20 that they had a duty to make the phone call, and it
21 was breached, is this really such an unforeseeable
22 consequence of that particular breach of duty?

23 MS. EISNER: I think.

24 JUDGE SMITH: Isn't that the whole point of
25 the phone call was somebody might beat the kid up?

1 MS. EISNER: It was completely
2 unforeseeable. This was a minor scuffle that
3 happened between class periods.

4 CHIEF JUDGE LIPPMAN: The kid got - - - the
5 other kid got suspended for how long?

6 MS. EISNER: According to Jayvaun he heard
7 the assistant principal say a week or two.

8 CHIEF JUDGE LIPPMAN: That's not a minor
9 scuffle. I mean the kid gets suspended from school
10 for a week or two.

11 MS. EISNER: Because I think that after
12 interviewing both students the assistant principal
13 determined that he had started the fight.

14 CHIEF JUDGE LIPPMAN: Right, but it's not -
15 - - yeah, but it's not a minor scuffle if that's what
16 - - -

17 MS. EISNER: No one could - - -

18 CHIEF JUDGE LIPPMAN: - - - you get into a
19 little scuffle and one kid started it, but they break
20 the kids up, and they go about their business.

21 MS. EISNER: This las - - - it was a very
22 short duration. It was between classes. Jayvaun's
23 friends apparently - - -

24 CHIEF JUDGE LIPPMAN: The kid got suspended
25 for a week or two; assume that's the case.

1 MS. EISNER: That was the principal's
2 judgment.

3 CHIEF JUDGE LIPPMAN: Okay. Thanks,
4 counselor.

5 MS. EISNER: Thank you.

6 CHIEF JUDGE LIPPMAN: Counsel.

7 MR. COOPER: Thank you. I just wanted to
8 make one really quick point, which is my adversary
9 was pointing out that what the principal's judgment
10 was, we don't know the basis - - - we don't know what
11 her judgment was, we don't know what the basis for it
12 was, because, again, these are all records they never
13 turned over. We have nothing regarding the
14 investigation of either incident. We don't know, in
15 fact, if there was one. We don't know what she
16 determined, what she didn't determine.

17 So to say that - - -

18 JUDGE SMITH: Did any depositions ever get
19 taken?

20 MR. COOPER: No. No, because there were no
21 records upon which to conduct them.

22 JUDGE SMITH: Well, people have taken
23 depositions without records in the history of the
24 world.

25 MR. COOPER: That's true, Your Honor.

1 JUDGE SMITH: I mean nobody called up the
2 teacher and said, hey, you remember the Stephenson
3 kid who got beat up? Tell me the story.

4 MR. COOPER: I don't disagree with what the
5 Court's saying, but no depositions were taken other
6 than the 50(h) of my clients.

7 The other issue I wanted to point out is,
8 again, I don't think under these particular facts the
9 notion of a principal having to lift the phone
10 receiver and just reach out and call the mother is
11 some extraordinary burden. Far from it.

12 When a kid - - - when there's an incident
13 that has the severity that involves suspension of two
14 students, including one the offending student, Mr.
15 McDonald, for one to two weeks, to pick up the phone
16 and say, we just want to make you aware, Ms.
17 Sinclair, there is such an issue. And by the way,
18 there was also another threat which we had notice of.
19 So this wasn't just one isolated incident, there was
20 also a threat where he says we're going to get you
21 jumped. To say to pick up the phone I don't think is
22 unreasonable at all.

23 CHIEF JUDGE LIPPMAN: Okay, counselor,
24 thanks.

25 Thank you both.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Jessica B. Cahill, certify that the foregoing transcript of proceedings in the Court of Appeals of Jayvaun Stephenson v. City of New York, et al., No. 177 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 700 West 192nd Street
Suite # 607
New York, NY 10040

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