

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

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS: CIVIL TERM: PART 14

-----X

MTA BUS COMPANY,

PLAINTIFF,

INDEX NO.

-against-

37468/05

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO ("International"), an unincorporated voluntary association; MICHAEL O'BRIEN, individually and as International President, JOHN J. KERRIGAN, individually and as International Secretary-Treasurer, JAMES LITTLE, individually and as International Executive Vice President; LOCAL 100 of TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, an unincorporated voluntary association otherwise known as TRANSPORT WORKERS UNION OF GREATER NEW YORK ("Local 100"); ROGER TOUSSAINT, individually and as President of Local 100, ED WATT, individually and as Secretary-Treasurer of Local 100, DARLYNE LAWSON, individually and as Recording Secretary of Local 100, NEIL WINBERRY, individually and as a Vice President of Local 100, MARY COOPER, JASON MCSHANE, HARRY C. PAULING, individually and as Executive Board Members of Local 100, RODERICK BAILEY, SEAN CONNOLLY, ROBERT ELZNIC, LAWRENCE ENGLEBERT, RONALD FITTS, CHARLES GIBLIN, NEFTALI GONZALEZ, DONALD KAMPING, HENRY KELLY, KENNETH MOEN, THOMAS MONACO, JAMES O'CONNOR, KEVIN PRENDERGAST, SULTAN PREGJONI, MICHAEL TANON, FELIX TORO, individually and as Officers of Local 100; JOHN DOE and MARY ROE (said names of "JOHN DOE" and "MARY ROE" being fictitious, their true names being unknown to plaintiff), being persons employed in the operation and maintenance of the transit facilities operated by the plaintiff; and all other persons acting in concert with them,

DEFENDANTS.

-----X

NEW YORK CITY TRANSIT AUTHORITY and MANHATTAN, and BRONX SURFACE TRANSIT OPERATING AUTHORITY,

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

PLAINTIFFS,
-against-

INDEX NO.
37469/05

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO ("International"), an unincorporated voluntary association; MICHAEL O'BRIEN, individually and as International President, JOHN J. KERRIGAN, individually and as International Secretary-Treasurer, JAMES LITTLE, individually and as International Executive Vice President; LOCAL 100 of TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, an unincorporated voluntary association otherwise known as TRANSPORT WORKERS UNION OF GREATER NEW YORK ("Local 100"); ROGER TOUSSAINT, individually and as President of Local 100, ED WATT, individually and as Secretary-Treasurer of Local 100, DARLYNE LAWSON, individually and as Recording Secretary of Local 100, AINSLEY STEWART, JULIO RIVERA, JOHN MOONEY, RANDY NEVELS, BARRY ROBERTS, BILL PELLETIER, individually and as Vice Presidents of Local 100, CARLOS ALBERT, DENNIS BOYD, ROSLYN CARR, RONALD CARTER, ANITA CLINTON, ANNELLE CRUZ, GREGORY DAVIS, ELADIO DIAZ, GRIGORIY DUNICHEV, CARLOS GALAN, MARTIN GOODMAN, DEBORAH HARDWICK, MARVIN HOLLAND, MITCHELL HOLMES, THOMAS LENANE, CHRIS MAGWOOD, MICHAEL MORALES, DESMOND MUIR, GEORGE PERLSTEIN, NORMAN POU, MILTON RAMOS, DAVID ROSZKOWSKI, CAROL SARAUF, KATHRYN TAYLOR-DAVIDSON, HERMAN THOMAS, DAVID THROWER, MARIETTA THROWER, MARIO TRISCHITTA, ANTHONY VAGLICA, RICARDO VICTORIA, HENRY WILLIAMS, AGNES WOOLFORD-BARRETT, individually and as Executive Board Members of Local 100, MARC ALBRITTON, LLOYD ARCHER, FRANK AUSTIN, CHARLES AYALA, RICHARD BERMUDEZ, JACK BLAZEJEWICZ, GILBERT BOBE, NICHOLAS BRANCO, JOSEPH CAMPBELL, PHILIP CARUANA, BRIAN CLARKE, EDWARD DE CAMILLIS, JOSEPH DE PROSSINO, ROY DOLCH, EDWARD DOS SANTOS, RENEE ENGLISH, JOHN FARRINGTON, RICARDO FIGUEROA, DAVID FRANCIS, THOMAS GOODWIN, MICHAEL HALL, JOSEPH JAMES, CHARLES JENKINS, JOHN JIMISON, JEFFREY LEE, PATRICK LYNCH, CLAUDE MARSHALL, SHIRLEY MARTIN, KEVIN MCCAWLEY, GREGORY MCDONALD, DANIEL O'BRIEN, JOHN O'FARRELL, GLENN O'SULLIVAN, KENNETH ONUNKWO, LAWRENCE PALADINO, CHRISTOPHER PETERSEN, ANDREEVA PINDER, ANTHONY PREDDIE,

1 BRADLEY REESE, RICHARD RIVERA, WILLIAM RIVERA,
 2 FERNANDO ROBINSON, ROBERT ROGERS, CHARLOTTE RUSSELL,
 3 JOHN SAMUELSEN, KRISHNA SHIVRATTAN, JOHN SIMINO,
 4 EUGENE SIRIGNANO, HOWARD SMALLER, DANIEL SMALL,
 5 DONOVAN SMITH, MICHAEL SMITH, JOSEPH SORRENTINO,
 6 DOMINICK SPAGNOLO, DAVID ST. JOHN, MICHAEL STATON,
 7 STEVEN TAAFEE, CURTIS TATE, MICHAEL TUTRONE,
 8 DAVID TUTT, ANTHONY UTANO, ROBERTO WATSON, SHARON
 9 WATTS, GREGORY WHITE, JAMES WILLIS, HARRY WILLS,
 10 WILLIAM WYATT, individually and as Officers of Local 100;
 11 JOHN DOE and MARY ROE (said names of "JOHN
 12 DOE" and "MARY ROE" being fictitious, their
 13 true names being unknown to plaintiffs), being
 14 persons employed in the operation and maintenance
 15 of the transit facilities operated by the
 16 plaintiffs; and all other persons acting in
 17 concert with them,

DEFENDANTS.

-----X

Supreme Courthouse
 360 Adams Street
 Brooklyn, New York 11201
 December 20, 2005

B E F O R E:

THE HONORABLE THEODORE T. JONES,
 Justice.

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

STATE OF NEW YORK OFFICE OF THE
 ATTORNEY GENERAL ELIOT SPITZER
 120 Broadway
 New York, New York
 BY: JAMES B. HENLY, ESQ.
 Assistant Attorney General

PROSKAUER ROSE LLP
 Attorneys at Law
 1585 Broadway
 New York, New York
 BY: NEIL ABRAMSON, ESQ.
 MICHAEL J. LEBOWICH, ESQ.

(Continued)

1
2 NEW YORK CITY LAW DEPARTMENT
3 OFFICE OF THE CORPORATION COUNSEL
4 100 Church Street
5 New York, New York 10007
6 By: MICHAEL A. CARDOZO, ESQ.

7
8 NEW YORK CITY TRANSIT AUTHORITY

9
10 SCHWARTZ, LICHTEN & BRIGHT, P.C.
11 113 University Place
12 New York, New York
13 BY: ARTHUR Z. SCHWARTZ, ESQ.
14 DANIEL R. BRIGHT, ESQ.

15
16 Also:

17 DAVE ROSEN, ESQ.
18 General Counsel, TWU
19 1700 Broadway
20 New York, New York

21
22 COHEN, WEISS AND SIMON LLP
23 By: PETER D. DECHIARA, ESQ.
24 330 West 42nd Street
25 New York, New York

BROWN & GROPPER, LLP
By: JAMES A. BROWN
275 Seventh Avenue
New York, New York

DOLORES LYNCH, RPR
ELLEN NERI
Senior Court Reporters

1 (Proceedings held in chambers on the record.)

2 THE COURT: All right. Let's start again.

3 Counsel, you want to sit down.

4 You were saying you were having trouble
5 locating the Local.

6 MR. HENLY: Yes, your Honor.

7 When we came before your Honor early this
8 morning at 4:30 a.m. or 5 a.m. and presented the Order to
9 Show Cause, we were ambitious in wanting to have the
10 motion returnable this morning. We were ambitious about
11 it because we thought we were facing a very severe
12 problem, but because our search in the week before when,
13 we served numerous papers on the Locals and their
14 leadership and the Internationals had been -- that
15 service was -- had been relatively easily accomplished
16 and we anticipated that the same smoothness might be
17 achieved here. That proved to be optimistic. We have
18 made diligent efforts at personal service upon the
19 leadership of the Locals and, unfortunately, have not
20 achieved service upon the top leadership of the Local,
21 which would provide service upon the Local 100 and the
22 ATU Locals. We -- and Mr. Abramson can describe the
23 circumstances in somewhat more detail, we had reached out
24 to counsel for Local 100 in particular in an effort to
25 expedite the process and to see if there was a way that

1 service could be accomplished without undue delay, and
2 despite messages being left, we did hear back from Mr.
3 Schwartz, but he was not willing or able to provide us
4 with information that would identify the location of the
5 leadership so that we could make service upon President
6 Toussaint and the other top leadership of Local 100.

7 THE COURT: All right. You mentioned before
8 that you believe the leadership to be in a midtown hotel.

9 MR. HENLY: I believe the information conveyed
10 by Mr. Schwartz to Mr. Abramson, although Mr. Abramson
11 and Mr. Schwartz can speak to it more directly than I
12 can, was that there was a location, but we never got the
13 particulars in order to be able to serve them.

14 MR. ABRAMSON: Your Honor, I'll speak to the
15 details because I do think the facts are important. I
16 also believe that the facts, frankly, compel only one
17 conclusion.

18 When we had -- when we came to this
19 courtroom -- when we came to your courtroom, we came to
20 your courtroom prepared to serve an order, and to serve
21 an order even if it required extraordinary efforts.

22 We had 25 MTA police officers attempting
23 service. That is 11 pairs of two, and four other
24 individuals. They attempted service upon the three
25 leaders of Local 100 at their -- where they were supposed

1 to be at the hotel. They made inquiries at the hotel
2 rooms where they were supposed to be. They could not be
3 located. They made inquiries, and attempted service at
4 the Union hall. Those individuals were not -- we were
5 told were not present at the Union hall and we were not
6 allowed, obviously, direct access to search whether they
7 were at the Union hall. Efforts were made to serve those
8 individuals at their various homes, and I had a
9 conversation with Mr. Schwartz because I don't believe
10 that this proceeding should come down to some game of
11 cat-and-mouse, and I said, essentially, where are they?
12 Tell me where they are so we can effectuate service. Mr.
13 Schwartz told me that he did not know where they were,
14 other than that they were at a midtown hotel someplace,
15 that he did not know where they were in the hotel, and
16 that he was not able to reach them by telephone. And,
17 your Honor, given everything that happened this morning,
18 the fact that those individuals, after we had made
19 diligent inquiry, the fact that we have attempted with a
20 mass of MTA police officers, at a time when they could be
21 ill afford to be diverted to something else, attempted to
22 serve those individuals. It is our belief, and speaking
23 on behalf of the Office of the Attorney General, it's our
24 belief that Mr. Toussaint is in your jurisdiction from
25 the prior proceeding, that he should be here, and we ask

1 you that he either be ordered to appear to this courtroom
2 forthwith or that his counsel and representative be
3 directed to divulge the information like where he is in
4 midtown Manhattan so we can go and effectuate service and
5 bring him here, so we can have this proceeding. It is
6 not lost on any of us that the Local strenuously objected
7 to being here at 11 o'clock in the morning and, your
8 Honor, I'm left with very little choice but to conclude
9 that this is a manner of accomplishing, what they could
10 not accomplish directly, by asking you to delay these
11 proceedings, by instead evading service.

12 MR. SCHWARTZ: First of all, I am offended by
13 any assertion either that my client or that I am involved
14 in evasion of service.

15 Mr. Abramson and I spoke at 8:03. I just
16 checked my cell phone. I do know it was low on power, so
17 that calls were not necessarily coming through, but
18 that's when we finally connected at 8:03. And I told him
19 that I had personally tried to reach Mr. Toussaint and
20 will try again, and the Union team had booked rooms --
21 this is what I said to him -- the Union had booked rooms
22 at the hotel through Saturday. It's the Hyatt. It's a
23 Christmas week, and that because negotiation affected the
24 session with the mediator scheduled for two o'clock
25 today, that it was my understanding that instead of going

1 home, that Mr. Toussaint and Mr. Watt were staying at a
2 hotel somewhere near the Hyatt. I do not know which
3 hotel. Mr. Meginniss was staying at a hotel. It took me
4 'til about 9:30 to reach him. Mr. Meginniss, who is the
5 principal lawyer in the negotiations, so as I assumed
6 this morning when we were trying to talk about serving
7 people who had been working more than 24 hours straight,
8 had gone to sleep at three o'clock in the morning, that
9 it wasn't going to be easy to find them.

10 Nobody is evading any service and, you know, I
11 left messages to try to ascertain the location of these
12 individuals and I have not gotten a call back as of yet.
13 And it's entirely possible that Mr. Toussaint is asleep.
14 Although he does have a session at two, and I would
15 assume he is making himself available, I think --

16 MR. MEGINNISS: -- that session was not called
17 for the principals, it was called for the lawyers. I
18 don't want to represent to the Court he is going to be
19 here. I don't know that he is.

20 MR. SCHWARTZ: So there is no evasion and yet,
21 I am not sure what it means they had an easy time before,
22 except that everybody was at the hotel. Every officer
23 was at the hotel. Everybody named in the caption were at
24 the hotel and they were either there or they were at
25 work, working for the Transit Authority. So it was very

1 easy to serve people, I assume. Or they went to -- in
2 almost every case they also serve people at home.
3 Whatever effort this 11 pairs are making, I've gotten
4 calls from only six people named in the Transport Workers
5 Union who got papers delivered to somebody at their home
6 and one person who got handed papers himself, at home,
7 which is where most of these people were during the early
8 hours of the morning, so I'm not sure exactly what
9 efforts were made.

10 We read a case to you this morning that made it
11 clear that the fact that an individual or an entity had
12 appeared previously in the action involving the
13 underlying injunctive relief did not excuse, and did not
14 give the Court jurisdiction in a criminal contempt
15 proceeding. I mean that's the law in this Department and
16 every Department. I read the Fourth Department case as I
17 recall and the argument that Mr. Henly is making that
18 somehow because the Union and Mr. Toussaint appeared in
19 the prior proceeding, that somehow that subjects him to
20 jurisdiction in this criminal contempt proceeding. It's
21 erroneous, it's not based on any case law. I don't think
22 the Attorney General could produce a case that says that.
23 I don't think it's in the interest of anybody for the
24 Court to proceed under that kind of a circumstance
25 because you can have a contempt hearing for somebody who

1 is not before the Court and like the Pisa case, which is
2 one of the -- I think that's the Fourth Department case
3 that was cited, the Appellate Division vacated the
4 relief, so, I don't know how that serves anybody's
5 interest to proceed that way.

6 MR. HENLY: Your Honor, if I may, the
7 suggestion I was making to the Court wasn't that the fact
8 that the Court already has jurisdiction over President
9 Toussaint of the Local. It meant that it had
10 jurisdiction presently to adjudicate a contempt against
11 him, but rather that the Court has jurisdiction of Mr.
12 Toussaint for purposes of issuing an Order to effectuate
13 his either service or his presence here. And the Court
14 certainly has inherent authority to issue orders over
15 persons who are subject to the Court's general
16 jurisdiction as is Mr. Toussaint, and I am encouraging
17 the Court to exercise that inherent power who are over
18 someone who has personal jurisdiction to facilitate the
19 proceeding that needs to move forward. There are
20 different ways that it could be accomplished and we
21 would, maybe there is more than one that can be
22 practicable, one would be for an order to go out and
23 publicize that order that Mr. Toussaint has been ordered
24 by the Court to appear here forthwith.

25 Another possibility would be for Mr. Schwartz

1 to, as an Officer of the Court to cooperate at the
2 direction of the Court to have a short period of time to
3 seek to communicate with the leadership of Local 100.
4 Mr. Schwartz certainly is the counsel for the Local and I
5 have to believe he has a way to communicate with the
6 leadership and to ascertain their whereabouts and to
7 facilitate service at the direction of the Court. That
8 will be another alternative method. I think there are
9 other means that could be used as well, if necessary;
10 it's possible that publication service could be used, but
11 it seems to me that there are simpler means than that,
12 such as the two I just mentioned.

13 MR. SCHWARTZ: I don't think publication
14 service would meet the statute either. Your Honor, I
15 think it would be an abuse of the Court process to order
16 in one case so that somebody can serve somebody in the
17 courthouse in another case. It just smacks, that's
18 something I remember from basic law school, learning
19 about the improper use of process. As I said, I don't
20 know at this moment 'til I walked in I have not heard
21 from Mr. Toussaint. I don't know where he is. He
22 certainly is not somebody who hides from the public, or
23 hides from the media, or hides from the Transit
24 Authority. He hasn't been particularly shy about coming
25 forward and I assume that he will at some point, and I

1 assume that I will receive -- I have my phone on, that I
2 will receive a call from him at some point and I can
3 discuss that with him. Until they serve him or Mr. Watt
4 under the General Association Law, they haven't served
5 Local 100. I anticipated this problem when we were
6 meeting earlier this morning and along with the fact that
7 they only served five other people. In some, and I'm not
8 even sure that that service was sufficient. All I got
9 was messages. 'Cause I gave instructions if you get
10 papers to call me.

11 THE COURT: Who were the people who have been
12 served?

13 MR. SCHWARTZ: By the way, your Honor, for the
14 record, Mr. Abramson said we made many efforts, but he
15 really hasn't detailed what all these efforts were to
16 find Mr. Toussaint. If they went to the Union hall at 6
17 in the morning and they went to the Hyatt where everybody
18 in TA knows he is not there. I'm not sure that that's
19 sufficient effort to say they made these precarious
20 efforts to find them.

21 MR. ABRAMSON: Actually, we were advised by the
22 hotel that they were still there and we had individuals
23 waiting at the hotel. We had individuals waiting at the
24 Union hall.

25 Your Honor, when we started this process, you

1 were very clear to all of us that you wanted an orderly
2 process, you didn't want ex parte orders served, you
3 wanted people to have notice, you wanted the rules of
4 engagement, for want of a better word, to be above-board
5 and professional as we enter into this very difficult
6 time for the City.

7 It is inconceivable to me that when 33,000
8 people in this City suddenly stop working on the MTA
9 subways and buses, that the Union president is
10 unavailable to any of his counsel because he may be
11 sleeping, or in some hotel someplace watching CNN perhaps
12 --

13 THE COURT: Well, we're going to go and put
14 this on the record publically in a minute. Now, I'm
15 going to tell you what I'm going to do.

16 I still don't see any reason why we shouldn't
17 be able to proceed with International.

18 MR. HENLY: May I address that for a moment?

19 THE COURT: I would like to resolve that. I
20 can tell you that I am in favor of whittling the case
21 down as succinctly and as quickly as I can.

22 MR. HENLY: Your Honor, we've spoken to counsel
23 for International and, at this point, without the Local
24 being present, I don't want to speak out of turn here,
25 so, let me, if I say something that's, that steps in your

1 toes, you let me know, but I believe that your Honor had
2 signed a TRO this morning that directs the International
3 to communicate to the members of Local 100 that they're
4 subject to orders of this Court that require those
5 workers to return to work and to cease and desist from
6 striking. I believe that the International intends to
7 honor that Temporary Restraining Order that your Honor
8 issued this morning, and we are prepared to adjourn the
9 contempt proceedings against the International, TWU,
10 given that our understanding that they're prepared to
11 proceed with the notification required by the TRO, as
12 your Honor has ordered, and they have been served with
13 that Order, and I think --

14 THE COURT: You tell me that the problem with
15 the notification is that, if you all can't find these
16 officers, I don't know what makes you think they can.

17 MR. HENLY: Well, the TRO provides specific
18 methods, in addition to requiring methods of
19 communication to communicate to its members, it provides
20 specifically for the -- let me see if I can put my hands
21 on it -- the International to post on its website --
22 prominently post on its website the obligations of
23 Locals, of the Local 100 members. It also requires the
24 same notice to the members by telephone hotlines and text
25 message systems and announcing the existence of those

1 obligations to the media and at any meetings; is that
2 correct?

3 So, if the TWU is prepared to and proceeds with
4 an effort at communicating a very important message, your
5 Honor, to the members of Local 100 --

6 THE COURT: I am certain the International will
7 post that on their website or whatever else, but I'm
8 concerned now about somebody being a party to the
9 contempt proceeding who, apparently, there is reason to
10 believe may not be an appropriate party.

11 MR. DECHIARA: We agree entirely, your Honor.
12 We do not believe, and we're prepared to argue at the
13 hearing and Mr. Rosen, as general counsel to the
14 International, is prepared to testify exactly to that
15 point why the International, which in no way has
16 instigated this strike, which is in no way supported this
17 strike, should not be part of this contempt proceeding.
18 Mr. Rosen will testify that at last night's meeting at
19 the Local 100 Executive Board, the President of the
20 International, Michael O'Brien, used his most persuasive
21 powers to try to persuade --

22 THE COURT: Well, you can put all that on the
23 record in public in a minute. I didn't mean for this to
24 turn into a presentation. I'm merely making the
25 observation that despite the service problems that we're

1 apparently having with 100 and the other Locals, that
2 does not really, in my mind, affect your situation.

3 MR. DECHIARA: I'm not sure we disagree with
4 you, your Honor.

5 MR. BROWN: Your Honor, on behalf --

6 THE COURT: I would be stunned if you did.

7 MR. BROWN: Your Honor, on behalf of ATU
8 International, we'd like to know if that also applies to
9 us, as well?

10 THE COURT: Well, I don't know yet.

11 MR. BROWN: Well, perhaps you can find that out
12 from counsel.

13 MR. HENLY: Is ATU International consistent
14 with the Temporary Restraining Order language prepared to
15 send out messages to the members of --

16 MR. BROWN: We have --

17 MR. HENLY: You have done that?

18 MR. BROWN: We have it on our website, your
19 Honor, and we have done that.

20 MR. DECHIARA: Your Honor, if I may respond to
21 Mr. Dellaverson's point that it appears that the
22 plaintiffs are willing to adjourn the contempt
23 proceedings against the International, if the
24 International is willing to comply with its notification
25 provision of the Temporary Restraining Order requiring

1 the International to notify the members of Local 100,
2 pursuant to Paragraph 2 of the Temporary Restraining
3 Order. We are willing to comply with that provision and
4 so we would, to the extent there's been an offer made to
5 us by the plaintiffs to adjourn this proceeding against
6 the TWU, we would accept that offer and we would comply.

7 MR. HENLY: And you would be willing to comply
8 with the other provisions of the TRO, as well.

9 MR. ROSEN: My understanding, that if we
10 communicated with what was supposed to be communicated
11 that would be sufficient to -- well, what are you saying?

12 MR. HENLY: Well, we will be prepared to
13 adjourn the contempt as against the International, based
14 upon those representations, I believe. Let me confer for
15 a moment.

16 THE COURT: I think what they're looking for is
17 a withdrawal of that application; is that right?

18 MR. ROSEN: We are looking for a withdrawal.

19 THE COURT: A condition that you notify --

20 MR. ROSEN: That we continue to comply --

21 MR. BROWN: And the ATU International, your
22 Honor, would also be looking for that and will be willing
23 to agree to those terms.

24 THE COURT: If that is, in fact, the case, as
25 you pointed out to me this morning, I think that the

1 public and the record has a right to reflect that.

2 MR. ROSEN: Thank you, your Honor.

3 THE COURT: And we can move on here with what
4 we really have, with what our real problem is and then I
5 will take applications from you as to alternative means
6 of service.

7 MR. ABRAMSON: Your Honor, we don't disagree,
8 speaking on behalf of the Authorities, we don't disagree,
9 given that proffer, we would conditionally, we would be
10 prepared to conditionally withdraw the contempt without
11 prejudice; obviously, I just say this as a cautionary
12 measure there are still, until Mr. Toussaint decides to
13 appear, there are still going to be some significant
14 pieces here, that's why we would like it to be without
15 prejudice, at this time.

16 THE COURT: All right. At the moment, I can
17 accept that. Now --

18 MR. DECHIARA: Before you move on, I just
19 wanted to make sure that everyone understands exactly
20 what it is we agreed to.

21 My understanding, if I can state it for the
22 record --

23 THE COURT: You don't need to do that. We're
24 going to go out to the public forum and I'm sure you're
25 going to want to restate it again. There is no reason to

1 do that. You will have time to think about it and get
2 your best thought on the record.

3 MR. DECHIARA: Thank you.

4 THE COURT: But we understand, the gravamen and
5 the intent of what we're doing here.

6 I want to turn my attention now to alternative
7 service and see what, if anything, can be done to solve
8 this service problem. I think probably, if you go on the
9 record, Counselor, as to what -- can I get some water --
10 if you go on the record with regard to your efforts to
11 affect service, it might be that I can direct a manner of
12 service which is, in light of everything that's going on
13 will be able to solve the problem.

14 MR. HENLY: All right.

15 THE COURT: The method of service may be not
16 traditionally recognized in the CPLR but, nevertheless,
17 authorized under that capital provision that the Judge
18 can direct a method of service other than those
19 enumerated in an appropriate circumstance.

20 MR. ABRAMSON: I'm prepared to do that, your
21 Honor.

22 Thank you.

23 THE COURT: So you might want to give some
24 thought to that and you might want to have some
25 suggestions, for the record, as to how that can be

1 effected.

2 Now, assuming that an alternative method of
3 service is directed by the Court, what kind of timeframe
4 are we looking at? What are you looking at here?

5 MR. ABRAMSON: We have MTA police officers who,
6 with all dispatch, will, depending on what the nature of
7 the service is, we can effectuate that immediately. We
8 can have, if your Honor thinks it's appropriate, we can
9 have, the -- if there are transportation or traffic
10 difficulties, we could arrange to have Mr. Toussaint
11 picked up by some type of automobile service and brought
12 here, if he does not have transportation of his own,
13 given the circumstances. We're prepared to proceed --

14 THE COURT: Counsel, have you been in touch
15 with your clients at all?

16 MR. SCHWARTZ: Since we left here?

17 THE COURT: Since this morning?

18 MR. SCHWARTZ: No.

19 THE COURT: What about you, Counsel?

20 MR. REIF: I have not had any contact.

21 MR. SCHWARTZ: I got called by like about five
22 Executive Board members.

23 THE COURT: What about Ms. Margolis?

24 Ms. Margolis --

25 MS. MARGOLIS: Yes.

1 THE COURT: You're a little too short to stand
2 back there behind all those guys.

3 Have you been in touch with your clients at
4 all, since this morning?

5 MS. MARGOLIS: I have spoken to them.

6 THE COURT: Do you have a knowledge of where
7 they are? Can you reach them now?

8 MS. MARGOLIS: I don't know where they are now.
9 I can try and reach them.

10 THE COURT: I assume by that you mean you can
11 reach them by phone or some electronic means.

12 MS. MARGOLIS: I can try.

13 THE COURT: Okay. All right. We're going to
14 go into open session now and then I want to resolve this
15 and then I'll listen to your suggestions on alternative
16 service and I will make a ruling on that.

17 MR. SCHWARTZ: How are we going to deal with
18 the jury issue that we raised?

19 THE COURT: Excuse me?

20 MR. SCHWARTZ: The jury issue that we raised.

21 THE COURT: I'm not even there yet. We're
22 still talking about service and process.

23 All right, gentlemen. I will be in the
24 courtroom in a minute.

25 (Ellen Neri relieved Dolores Lynch.)