

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
RICHARD SHEPPARD ARNOLD UNITED STATES COURTHOUSE  
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**April 24, 2009**

The Honorable Raymond W. Gruender  
United States Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton Courthouse  
111 South 10th Street, Suite 23.365  
St. Louis, Missouri 63102

Re: *Little Rock School, et al v. Pulaski County School, et al*, No. 07-1866

Dear Judge Gruender:

Since no Petition for Rehearing *En Banc* has been filed and the mandate issued, I assume it is okay to write you.

In your dissent in the June 26, 2006, Opinion in *Little Rock School, et al v. Pulaski County School, et al*,<sup>1</sup> you disagreed with the “deeply embedded” standard I had used. After considerable cerebration, I decided you were absolutely correct.

When I used a different standard (the one you suggested) in an order of February 23, 2007, you disagreed in your concurrence in the April 2, 2009, Opinion.<sup>2</sup>

This puts me in mind of three things:

1. Before the Civil War, Braxton Bragg (later a Confederate general) was assigned to a remote post “out west.” There was a shortage of officers, so he became both a company commander and the post quartermaster. As a company commander, he submitted a request for certain items. As quartermaster, he denied it. As company commander, he appealed to the Commanding General. When the General got the appeal, he exclaimed “My god! Mr. Bragg has argued with every other officer in the U.S. Army, now he is arguing with himself.”
2. Judge Easterbrook, of the 7th Circuit, authored an opinion in which he warned against another appeal “of this nature.” Sure enough some lawyer took an appeal on the same point. When the opposing lawyer, in oral argument, reminded Judge

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<sup>1</sup>*Little Rock School, et al v. Pulaski County School, et al*, 451 F.3d 528, 541-543 (8th Cir. 2006) (Gruender, concurring in part and dissenting in part).

<sup>2</sup>*Little Rock School, et al v. Pulaski County School, et al*, No. 07-1866, 2009 WL 860357, at \*6-7 (8th Cir. April 2, 2009) (Gruender, concurring).

Easterbrook of his earlier admonition, he responded, "Counsel, don't you recognize dictum when you see it."

3. Several years ago my late father-in-law, Robert C. Compton, Sr., of the El Dorado, Arkansas Bar, and the Honorable Melvin Mayfield (then a Circuit Judge, later a Court of Appeals Judge, now retired) prepared an amendment to the Arkansas Worker Comp Statutes. The Arkansas Legislature passed their proposed amendment. When it came before Judge Mayfield, as Circuit Judge, he held the amendment unconstitutional.

I have verified 2 and 3 above. Professor Gary W. Gallagher, who teaches Civil War at the University of Virginia, tells the Bragg story, but cautions that it may be apocryphal.

Kudos

A handwritten signature in black ink that reads "Bill Wilson". The signature is written in a cursive, slightly slanted style.

Wm. R. Wilson, Jr.

cc: The Honorable Roger L. Wollman  
The Honorable Michael J. Melloy  
The Honorable Joe Thomas Ray  
The Honorable Melvin Mayfield  
Counsel of Record