

**Discussion Regarding Louisiana Justice Fund
LA Board of Ethics Meeting
May 21, 2010**

Allen: The first item deals with the decision of the Ethics Adjudicatory Board with respect to charges issued to the LA Justice Fund. The opinion was issued and what's up for action of the Board is issuance of the determination of the ethics adjudicatory panel consistent with 1141C(5).

Simoneaux: All right, what's the pleasure of the Board?

Schneider: Can I just, I want to comment on this one for a second, because. . .

Simoneaux: Mr. Schneider

Schneider: You know, in part that decision was good, you know, and in part it was immature and in a way that honestly, you know I teach an undergrad business class where we talk about law and had they made a conclusion on this knowingly issue on a test, I would've failed them. Basically let's take it out of the esoteric, legal realm and look at this practically. You have a political committee come down here and spend \$624,000 against a candidate. I don't even know who the candidate is, Royal Alexander. Said some really nasty things about him. The EAB concludes that they had an obligation to file campaign finance disclosure reports but because they came up with, what I think is an incredibly immature interpretation of what the word "knowingly" means, they're not fined at all. And we've sat here and we've fined people \$500 on far less egregious facts and I'm just, I'm really taken aback by that. And the fact that the legislature has said that this group can appeal the parts of the decision they don't like but we're stuck, in essence, with rubber stamping a decision where a group spent \$624,000, didn't file a report and is not sanctioned in any way, it's just unbelievable to me. With that said, I'm done.

Bareikis: On that same basis, you could make the argument that I didn't know that it was illegal to murder somebody so I can go out and take out my worst enemy and walk away from it free and clear.

Schneider: That's right. And when you think of what intent means in the context of criminal law, it's not that I intended to murder someone, it's I intended to commit a certain act. And what follows from that is, ignorance of the law is not a defense. But the EAB, in this decision, has essentially made ignorance of the law a defense which is incredibly indefensible to me in light of all the procedures we have in place for advisory opinions, for instance, declaratory opinions and we've seen people come up today and we've seen people come

up here over the course of a year and a half that we've been doing this. It is, on that issue, an awful decision.

Ingrassia: But we can't paint the EAB with the same brush because this was the three judge panel, wasn't it? I mean, we keep saying, EAB, EAB but we're painting them all with the same brush.

Schneider: The EAB is currently constituted which is this three member panel.

Ingrassia: Yeah.

Simoneaux: But I think he's referring to this particular three member panel, the decision of this particular three member panel. They've got a panel number but I don't know what it is.

Bowman: What are our options?

Ingrassia: We don't have any options, do we?

Allen: None.

Simoneaux: Basically. We could take no action or we could, sorry go ahead, Dr. Leggio.

Leggio: Question in regard to this, apparently, we have to enforce whatever they rule. But to agree with it and if we can't appeal it, can we at least state what our disagreement is?

Simoneaux: I'm sorry I couldn't hear the last part?

Leggio: If we can't appeal the EAB ruling, can we at least state what our disagreement is with the ruling?

Schneider: And that's personally what I was doing. I mean, as a lawyer, I feel an obligation to follow the law and I think that the law on what our obligations are is very clear. I wanted to state my displeasure with the decision and my concerns with it and I think the big picture needs to be addressed in this legislative session or I don't think I can continue to serve on this Board because I don't like having to rubber stamp opinions that are this poor. So.

Leggio: Another question regarding that, I don't like the concept of rubber stamping either. But if we have to enforce the decision, that's one thing but we don't have to publicly state that we agree with it, do we? That's a rubber stamp.

Simoneaux: If you vote to approve it, that's what you're doing. It's a public statement to that effect. I'm not sure that, I think that answered your question.

Leggio: Well, I'm not sure, we can word it differently that we can vote to receive the opinion and to enforce it or whatever we're supposed to do without necessarily agreeing with it. You follow what I mean? There seems to be some difficulty with the group here and I understand what the difficulty is and I'm sure there's going to come a time when I'm going to really howl about something and I would like for it to be in place that we don't have to agree with the opinion to enforce it.

Simoneaux: Well, in this case, there is no penalty that was assessed.

Bareikis: There is no enforcement at all.

Simoneaux: So, I don't know that there would be really due course.

Bareikis: Don't we have some avenue to communicate our displeasure?

Simoneaux: Well, the Ethics Adjudicatory Board is a separate body and under the law adopted in 2008 it oddly positioned the two bodies. We appear before them and yet by statute we then afterwards are supposed to adopt their opinions which the Board apparently is not inclined to do. So, we're not able to really send them messages. I guess they could read the minutes or what have you but I don't know that it'd be appropriate just to sign off on a letter to the board, to that board, the panel that rendered the opinion other than what's been said here today. I don't recommend we get into letter writing.

Bareikis: Well, if I were a member of the public and I heard about this I would be asking myself, what on earth is going on here? This is absurd.

Simoneaux: If you were a member of the public?

Bareikis: Yes.

Simoneaux: Well, that's a fair comment, I think. Of course, maybe members of the public are not aware of it. There are two pieces of legislation that would remove out the requirement that we vote on making their opinion, the EAB panel, our opinion but it would still leave open the issue that Mr. Schneider raises which was if you disagree with it, what do you do? So, that's all I can say. There's a lot of confusion in the law and the way it's set up. I think we have to grant that and just live with it the best we can. Again, today, we could just defer it permanently, defer it temporarily or we could vote on it. I'm personally not in favor of voting to adopt an opinion as our opinion because then we are bound by that. Essentially, it's a precedent and I don't think that's the appropriate way to handle things.

Schneider: In terms of the precedent, I mean, I don't want to overstate the case but I think it's plausible that people could walk in here and say, "I didn't know. I didn't know I had to file". Which happens routinely.

Bowman: They do it all the time.

Schneider: Yeah, and again, to me, it was \$624,000. This was a pretty nasty political piece and the EAB comes back and they said you had an obligation to file yet we're not going to sanction you because you didn't know it was a violation of the law not to file.

Allen: Well, I think, Dr. Leggio, you know, kind of the newest member on the Board, I think, you know, the other Board members had these initial concerns when they first got on the Board. and we first started seeing these decisions so those same concerns they've had and how do they deal with the statutory obligations. Like the Chairman said, there is legislation that is moving that would take that requirement that you would have to issue that opinion away. Hopefully, at least that provision will continue to move. But, perhaps as a suggestion, Deborah as the, in her responsibility with respect to the minutes, if there's something in the minutes that you want to include to be known with respect to whatever action you may take, she can include that and make that part of the minutes of this Board. Also, if there's some sort of press release that you want us to do with respect to the Board which would include those comments that are in the minutes, we can include those as well.

Bowman: There's your option.

Simoneaux: If you want to, you can acknowledge receipt of the opinion and address it to the EAB that we acknowledge receipt of the opinion and here are the minutes of our discussion.

Allen: I guess I wasn't thinking of corresponding with the Ethics Adjudicatory Board with respect to the Board's action. I guess I was making the public known that information through the minute entry and a press release but not necessarily direct that correspondence to the Ethics Adjudicatory Board.

Simoneaux: I would prefer not the press release on this sort of thing. I would, the letter, if we wanted to, we could publish the letter and the minutes. That would be essentially a type of press release.

Allen: And that letter, you would address that to the Ethics Adjudicatory Board or to the person who. . .

Simoneaux: I would probably address it to them. It's awkward in that sense but I don't know what else you do.

Ingrassia: Well, we're going to have a press release. Marsha's sitting in the back. She's going to release it whether we. . .

Simoneaux: That will be what's called a news article.

Ingrassia: That's right. Oh yeah, right. Whether we initiate it or not, it's going to happen.

Simoneaux: That's correct. But I think the idea would be to get it more broadly distributed than The Advocate if you talk about a press release. That's what that amounts to.

Allen: I guess I just have some reservations about corresponding with the Ethics Adjudicatory Board on that seeing them as an adjudicatory body.

Simoneaux: I'm inclined to agree with you. It's a little bit awkward to do that. We could take a minute to just publish it on our website. Period. Call it whatever you want, just publish it. Is that the consensus of the Board?

Bowman: I think that it should be published and I don't think it necessarily needs to go back to the EAB if they didn't think (*inaudible*) but I agree with my colleague in terms of the public's perception. When you do things like this that don't make any sense to the average person reading the newspaper, it really puts us at a disadvantage. Like what are they doing now? They wouldn't let those little cookies go across the table but this over here, this is fine.

Simoneaux: Well, maybe the best thing to do is, what we could do is to announce the decision on our Web site of the EAB panel and then our minutes with it and just simply refer to this is the response of the Board of Ethics of Louisiana. That would be very, very close to what you're saying, Kathleen, the recommendation of the staff. I think that may be the best compromise. So, does someone want to make a motion to that effect?

Hymel: I so move.

Simoneaux: There's a motion. Is there a second?

Boyer: Second.

Simoneaux: The motion's seconded that we post on our Web site the decision of the EAB panel and then some reference there afterward to see the response of the Board of Ethics. Am I capturing this correctly?

Leggio: Sounds like we're observing and noting that what they ruled and then part two is our disagreement and why.

Simoneaux: Yeah, the comments made here primarily by Mr. Schneider. All right, is there any further discussion on that motion? Any objection to the motion? Being none, it's adopted.