

from Chapter 6: “The System is Broken”

The New Jersey Supreme Court handed down its Abbott I opinion in July 1985, but it wasn't until early October that the lawyers met for their first conference with the administrative law judge assigned to hear the case. Judge Steven Lefelt was in his mid-forties, dark and balding, with a neatly trimmed beard and mustache; in the twenty years since his own graduation from Rutgers Law School, he had served in the Army in Vietnam, worked as an associate law school dean, litigated prisoners' rights for the ACLU, and spent five years in administrative law court. To those he worked with, he seemed even-handed, fair-minded, and meticulous, the epitome of the judicial temperament, but years later education commissioner Saul Cooperman would say that as soon as Lefelt was assigned to the case, allies called to warn him that this judge would surely rule against him. Whatever his own views of the Abbott case, Lefelt knew it would be far more complicated and unwieldy than the average administrative law matter. To house what were sure to be voluminous court papers and exhibits, his staff commandeered a conference room near the judge's chambers in the strip-mall-infested suburbs of Trenton, and Lefelt put his legal assistant to work researching school funding litigation in other states.

For five months, the judge and the lawyers wrangled over logistical and legal issues, while plaintiffs' lawyer Marilyn Morheuser, complaining repeatedly that the state was failing to turn over reports on its witnesses, accused her adversaries of deliberately delaying the trial. The judge had set a March 10 deadline for completing the pre-trial exchange of evidence, and Morheuser's staff at the Education Law Center worked feverishly to comply, spending fourteen hours a day in the office and working weekends. Money was as tight as ever, but Morheuser authorized extra spending on long-distance telephone calls, express mail deliveries, and additional secretarial services. One afternoon in the midst of the frenzy, a man stopped by the office to present ELC lawyer Sheila Dow-Ford with a bottle of Sambuca, a token of appreciation for the help she had given him on his daughter's special education case. As Dow-Ford chatted with her client, Morheuser simmered; when he finally left, Morheuser walked into Dow-Ford's office to berate her for wasting time. Dow-Ford defended herself—she always met her deadlines, and she would this time; besides, special education was an important part of ELC's work. Then she closed her office door. “And don't you yell at me ever again.”

Shockingly, Morheuser began to cry. “I'm sorry. I'm so scared,” she said, as Dow-Ford folded her into a hug. “I'm scared we're going to lose.”

By March 10, 1986, two weeks before the scheduled start of the trial, ELC had given the state forty-seven witness reports totaling 150 pages; in return, the state had handed over almost nothing. Two days later, the lawyers and the judge met to hash out the disagreement, and lead state lawyer Alfred Ramey Jr. dropped a bombshell. “To be perfectly honest, we’re not—we will not be prepared to go to trial on March 24th,” he admitted. “In fact, I think it’s necessary to make a motion for a four-month extension.” Morheuser was furious, and the judge seemed hardly less so. Since October, he noted in apparent exasperation, Ramey had repeatedly promised that the case would be ready by March. “I have to postulate that either there’s not enough lawyers working on this case or they’re not working fast enough, or perhaps there’s an intentional desire to delay this case,” Lefelt said. He denied Ramey’s request for a four-month delay but then backed off his most incendiary suggestions. “I believe that the state is truly interested in a thorough and efficient education for all children in this state,” Lefelt said. “I’m not even sure that the state is, in fact, attempting to delay this case. . . . I have to look at this as plaintiffs have been litigating this issue for six [actually, five] years now, and at some point, they have to have a ruling on the merits.” But by the time the issue had ground through the legal mill, the March 24 trial date was history and the summer, when public school witnesses were sure to be unavailable, was approaching. In the end, Ramey’s proposed four-month delay stretched to six months.

On September 29, 1986, more than five and a half years after the filing of the initial complaint, the Abbott v. Burke hearing began in administrative law court. Like the Robinson v. Cahill trial nearly fifteen years earlier, the Abbott hearing lacked glamor. In the Newark court building where ELC would present its case, the parties met in a long, narrow room with stained acoustic ceiling panels and walls lined with cardboard boxes full of papers. The judge sat at a table, not a raised bench, and everyone else draped coats over plastic chairs; the rumble of the city subway underneath sometimes punctuated the exchanges between lawyers and witnesses. Once ELC was finished, the state’s case was to be heard in Trenton; eventually, the parties agreed to meet at the angular, modern Justice Complex. The trial was expected to last three or four months, and despite the huge sums of taxpayers’ money at stake, reporters had little interest in covering weeks of tedious, highly technical testimony. After a few articles pegged to the opening day, the media decamped; by October, the Associated Press was describing the case as “half-forgotten.”

That fall, ELC called witness after witness, fifty in all, to flesh out the case outlined years earlier in the Abbott complaint. College professors and school principals, mayors, superintendents, and teachers, all took their turn. No one remarked on the absence of the twenty plaintiff schoolchildren and their parents. Just as New Jersey's first school funding case had left Kenneth Robinson behind, so Abbott v. Burke had turned out to have little to do with Ray Abbott and the others. No visitor dropping by Lefelt's courtroom for the day could have mistaken the proceedings for a TV-ready spectacle, complete with dramatic admissions and surprise endings. The lawyers subtly jockeyed for advantage: on her cross-examination days, ELC lawyer Ida Castro rolled in a wheeled cart stuffed with files that bulged intimidatingly and took notes on a yellow legal pad in five different colors of ink, just to keep the state's lawyers wondering what it meant when she dropped the red pen and picked up the blue one. (Nothing, actually.) Progress was measured in inches: years later, ELC lawyer David Long would recall his pleasure at forcing William Fowler Jr., the state's expert witness, who was busily downplaying an old research paper he had co-authored, to admit that he himself had presented the paper's findings at a conference of the American Education Research Association. The testimony could be painfully dry—defending her own statistical methods, ELC expert Margaret Goertz spent half a day's cross-examination arguing about the relative merits of regression analysis, the McLoone index, and the Gini coefficient. The testimony of the state's municipal finance expert featured discussions of r-squares and multi-collinearity. Yet, from time to time, an anecdote or a phrase pierced the tedium like a camera flash, illuminating the landscape of poverty, crime, and despair surrounding the children of the inner city and the educators who struggled to reach them.

In Irvington, a witness testified, children walked to school wearing their old sneakers and carrying the new ones in a bag. If you wore the good ones, they were likely to be stolen right off your feet.

One Camden elementary school had decided to notify parents when their children arrived safely each day, after the morning a kindergartner was raped on her way to school.

At a grammar school in one of Irvington's roughest neighborhoods, a male teacher had been assigned to a crowded, noisy room in a distant wing of the building after

a female colleague had been brutally attacked there. The school's field trip money often ran out by springtime. No big deal? The teacher didn't think so. "It's a vital thing for these children to know that the whole world is not just that neighborhood," he said. An hour's drive from Irvington lay the beaches of the Jersey Shore, but some of his students were fifteen years old and had never seen the ocean.

In Jersey City, elementary schools reused workbooks year after year, until the pages fell apart. Teachers wrote on chalkboards whose green paint was peeling off. "Nobody wants to have their kids in those schools," a former superintendent testified bleakly. "Whenever they can, they get out."

At Camden High School, students often failed physical education because they refused to change their clothes, afraid of having them stolen out of their lockers. The building lacked a cafeteria; the teachers had to share rooms, even desks; and the neighborhood was so dangerous that the school could not schedule nighttime activities. Still, "the school is the hub of everything that the kids in Camden have," the principal testified. "They have no movies, they have no skating rinks, they have nothing to do, nowhere to go, and the school is still the best place that they have."

Suburban South Brunswick spent nearly \$900 per student more than the city of Trenton, \$4,772 to Trenton's \$3,888. "What would be the impact on South Brunswick's school district if it were funded at the level of Trenton?" one ELC lawyer asked the suburban district's superintendent. "Well, they would be looking for a new superintendent tomorrow, that's one thing," he replied. "It would be absolute disaster as we see it."

Soon, everyone knew that the Abbott trial's projected three-month timetable had been hopelessly optimistic. "I don't mean to interrupt your cross-examination—it is your case," the judge interjected in the midst of one lengthy interrogation, "but frankly, I'm facing fifty-something other witnesses by plaintiffs and Lord knows how many by the state, and I really don't want to grow old in this case." State lawyer Phil Isaac thought the judge was the real problem. Although the lawyers had agreed in advance to limit the time spent questioning non-technical witnesses, the judge had quickly given up on expediting anything, Isaac thought. With an explicit directive from the Supreme Court to create a full record, Lefelt told the lawyers he saw the proceedings as something akin to a

legislative hearing; better to allow almost everything into evidence than to exclude something that might later seem relevant. Whatever the merits of that approach, its results were clear enough: it was January 1987 when ELC finally finished presenting its witnesses. By then, the trial transcript filled more than 8,000 pages, the plaintiffs had introduced more than 370 exhibits and the state had not yet begun presenting its case.

Exactly four months after the start of the hearing, state lawyer Al Ramey called the first of his forty-nine witnesses. Just as ELC's testimony had illuminated the desperate conditions urban districts faced, the state's witnesses trained a spotlight on the mismanagement and corruption those districts condoned.

In Hoboken, the Jersey City neighbor whose politically driven hiring practices ELC researcher Steve Block had once criticized, stainless-steel wheeled carts had filled the new high school's storage area—useless accessories the school board had bought from someone influential. “Stories from my colleagues in other buildings were replete with material that they didn't order, stuff that they couldn't get that they wanted, vendors who were involved with the board, or calls from City Hall to see someone,” a former administrator reported.

In the wake of Jersey City's 1981 municipal election, the newly elected mayor and his handpicked school board president had casually eliminated most of the school district's top administrative positions, apparently because their occupants had not backed the winning candidate. Under civil service rules, if the vanished jobs were reinstated, the dismissed administrators had to get first crack at them, so instead the school board forced the superintendent and his deputy to run the state's second-largest district by themselves for three years. One of the dismissed administrators was special education director Charles Williams, who testified that he routinely fielded calls from councilmen, ward leaders, and school board members asking that he sell tickets to fund-raisers or give his staff time off to attend political functions. Employees with political protection were difficult to discipline, and teachers and supervisors who had backed losing candidates risked transfers to unpleasant new assignments. To win them back, Williams would have to send intermediaries to negotiate with whatever godfather his employees had offended. Eventually, Williams himself endured a campaign of petty harassment, culminating in repeated ticketing of his car. “If you look at most urban administrators,” he said, “you'll

see that they all have some kind of heart problem or ulcers, or something else, because of the constant fighting to get things accomplished.”

Most of the state’s witnesses were education department employees charged with monitoring progress in the plaintiffs’ four districts, and nearly everywhere they had looked, they said, they had found sloppy planning, lax implementation, and widespread apathy. “These are among the most inefficient, mismanaged districts in the state,” one education official testified. “The last thing in the world we would want to do at this point would be to put any additional funds in there without some significant needs of accountability.” Some of Camden’s principals “are incompetent, or at least verge on incompetence,” another official said. “They have given up. They have no expectations for their staff and their students. They feel for one reason or another that they are unable to impact positively the programs that are in place.”

But where ELC’s witnesses offered emotional insights into life in inner-city schools, the state’s witnesses offered numbers and checklists. Morheuser and her team saw the case as a quasi-religious crusade, and their witnesses shared that conviction, state lawyer Isaac thought. By contrast, his own side’s witnesses were detached and objective, like doctors examining a troubled patient. If the judge got caught up in the emotion, the state was bound to lose. Fired with zeal, ELC’s lawyers wondered privately if their opponents really believed their own arguments or were just parroting the company line. The enigma of the state’s lead lawyer, unflappable Al Ramey, particularly obsessed them. How, they wondered, could an African-American remain indifferent to the plight of minority children? One day, Ramey dropped by ELC’s office for a conference and, in the idle time before the meeting began, showed ELC lawyer Sheila Dow-Ford pictures of his children. Afterwards, she and Morheuser speculated about the gesture. Was it Ramey’s way of letting them glimpse the human being behind the professional mask? Or was he suggesting something about his true allegiance?

The hearing, and the punishing workload, continued. Daily transcripts of the testimony were prohibitively expensive, so Dow-Ford, who was not examining witnesses, took voluminous notes on everyone else’s work—each day, she practically memorized the testimony. When his witnesses were scheduled, ELC’s out-of-town consultant David Long flew in from California and spent days holed up in Morheuser’s spare room; Long’s

wife took to referring to Morheuser as his second wife. One night, Long stayed up until 1 or 2 a.m. preparing the cross-examinations of two crucial witnesses, and then got up early for the ninety-minute drive to Trenton.

The state's lawyers, too, worked late into the night after the end of each day's testimony. Ramey would go home to eat dinner with his family and then return to the office until 11 p.m. David Powers had struggled for years with illness—asthma, kidney stones, lung infections—and late in the trial his doctor ordered him to limit his workload. Months after the case ended, Isaac's fatigue became debilitating, and his doctor diagnosed Epstein-Barr syndrome. Isaac attributed the illness to the chronic exhaustion he had lived with through the months of the Abbott hearing.

Lefelt's concern over the hearing's gargantuan length was growing. By mid-February, 1987, he worried that the record was "bordering on being unmanageable." In late April, he reported, "Every time I go back to the office and I look at the mountain of documents, it really is an unbelievable record. I have been wracking my brain for ways to make it of more use to the viewers at the end of the case." And in July, a month after testimony had finally ended, he confessed, "This is the only case I've ever been involved with that I didn't feel I had complete command over the record." If the lawyers did not provide cogent summaries of the evidence and arguments, it could take him nine months to write a decision, Lefelt predicted. "That's what I'm trying to grapple with, and it terrifies me," he said. And no wonder. By the time the Abbott hearing ended on June 5, 1987, more than eight months after it had begun, ninety-nine witnesses had testified over ninety-three days in court. The judge had admitted 745 exhibits into evidence—witnesses' resumé's, curriculum and management handbooks, scholarly articles, statistical charts, even postcards of student artwork. The exhibits filled seven file drawers; the transcript of testimony ran to more than 16,000 pages. And the flood of paper was not over yet. In the months following the end of the trial, the lawyers distilled their cases into more than 1,300 pages of proposed factual findings and 400 pages of legal briefs (legal " 'briefs,' " Lefelt called them in one procedural ruling). By the spring of 1988, when the state asked permission to submit yet another reply, Lefelt refused. "After all that has occurred in this matter, my reasoning is simple," he wrote. "I have concluded that enough is enough."