



U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

April 21, 1982

The Honorable Alexander L. Stevas
Clerk
Supreme Court of the United States
Washington, D. C. 20543

Dear Mr. Stevas:

I enclose a copy of a memorandum from Charles J. Cooper; which I have just received. For reasons set forth in that memorandum, I request that Mr. Cooper's name be removed from the United States' Amicus Brief in Crawford v. Board of Education, No. 81-38.

Sincerely,

Rex E. Lee
Solicitor General

Enclosure

cc: Honorable Henry C. Lind
Reporter of Decisions
Supreme Court of the United States
Washington, D. C. 20543

cc: Counsel of Record
See attached list



Office of the Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

TO: Rex E. Lee
Solicitor General

FROM: Charles J. Cooper *Charles J. Cooper*
Special Assistant to the
Assistant Attorney General
Civil Rights Division

SUBJECT: Crawford v. Board of Education, No. 81-38

I write to advise you that my participation in the preparation of the argument portion of our amicus brief in Crawford v. Board of Education, No. 81-38, may have constituted an inadvertent infraction of Rule 7 of the Rules of the Supreme Court.

As you know, I served as one of three law clerks to Justice Rehnquist during the 1978 Term of Court. In September 1978 a community organization called Bustop, Inc., requested Justice Rehnquist, as Circuit Justice, to stay an order of the California Supreme Court vacating an order of the California Court of Appeal, which had stayed enforcement of a school desegregation order issued by the Superior Court of Los Angeles County. Justice Rehnquist denied the stay application (Bustop, Inc. v. Los Angeles Board of Education, 439 U.S. 1380 (1978)), as did Justice Powell on reapplication (Bustop, Inc. v. Los Angeles Board of Education, 439 U.S. 1384 (1978)). It has recently come to my attention that the Bustop case was an offshoot of the Crawford litigation; Bustop, Inc., had intervened in the Crawford case during the summer of 1978 to seek a stay of the trial court's desegregation plan. Thus, the Bustop case, although styled differently and presenting entirely different and independent issues, was a part of the Crawford litigation, and Crawford, therefore, appears to be a "case that was pending in [the] court during the period" of my clerkship, within the meaning of Rule 7.

As a clerk I had no involvement whatsoever in the consideration of the stay application in Bustop, nor in the preparation of Justice Rehnquist's in-chambers opinion and order. Accordingly, my participation in the preparation of our amicus brief in Crawford could not have been and was not affected by any knowledge or information about the case acquired during my clerkship. Nonetheless, the Court and the parties to the case should be advised immediately of the above facts, along with my sincerest apologies for this oversight. Additionally, I think the Clerk of the Court should be requested to remove my name from the Government's amicus brief.

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