

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**THE NATIONAL SPIRITUAL ASSEMBLY)
OF THE BAHÁ'ÍS OF THE UNITED STATES)
OF AMERICA UNDER THE HEREDITARY)
GUARDIANSHIP, INC.)**

Counter-Defendant,)

Civil Action No. 64 C 1878

v.)

The Honorable Amy J. St Eve

**THE NATIONAL SPIRITUAL ASSEMBLY)
OF THE BAHÁ'ÍS OF THE UNITED STATES)
OF AMERICA, INC.)**

Counterclaimant.)

**POST-HEARING RESPONSE BRIEF BY RESPONDENTS
JOEL B. MARANGELLA, FRANKLIN D. SCHLATTER AND
PROVISIONAL NATIONAL BAHÁ'Í COUNCIL TO
NSA'S POST-HEARING SUBMISSION**

The Orthodox Bahá'í Faith Respondents, Joel B. Marangella, Franklin D. Schlatter, and the Provisional National Bahá'í Council (collectively referred to as "OBF"), in response to the NSA's Post-Hearing Brief, and for their own Post-Hearing Submission to summate the testimony, exhibits, agreed factual findings, and other submissions at the January 7, 2008 hearing, state as follows:

The OBF agrees with the NSA that the purpose of the hearing was to resolve lingering fact issues, but the NSA's brief barely references testimony or evidence presented at the hearing, but instead merely relies upon the previously submitted materials which, obviously, were not sufficient to establish privity. This Court's Order of August 8, 2007 specifically called for an evidentiary hearing to resolve material issues of fact whether the OBF is in privity with the Bahá'ís Under the Hereditary Guardianship. Despite the fact that the OBF made available two witnesses, Franklin D. Schlatter and Marilyn K. Meyer, the only available persons with knowledge of the events occurring over 40 years ago, and produced hundreds of documents from that era, the NSA produced

no new evidence on this question at the hearing and therefore failed to prove that the OBF is in privity.

The testimony and other evidence submitted at the hearing, and the agreed findings of fact, demonstrate:

a) The OBF acts and always has been independent of and not legally identified with the Bahá'ís Under the Hereditary Guardianship.

b) The OBF has not aided or abetted the Bahá'ís Under the Hereditary Guardianship to violate the Judgment.

Therefore, the OBF is not in privity with the Bahá'ís Under the Hereditary Guardianship, being legally a stranger to this lawsuit and not bound by the 1966 Judgment.

The NSA asserts that Mr. Schlatter is bound by the Judgment simply because he was an “officer”; that Mr. Marangella was bound because at the time he was a “participant” (asserting he was participating with UHG before the Judgment, not after); and that the Provisional National Bahá'í Council is bound by the Judgment because certain former members and followers of the Bahá'ís Under the Hereditary Guardianship were appointed to the body or to its predecessor. These facts are not sufficient to establish privity under the law.

I. The NSA failed to establish any of the factual elements of privity at the hearing.

As the NSA acknowledges in its Brief, it has the burden to prove the violation of the Judgment by clear and convincing evidence but the NSA argues against this high burden for proving privity, citing *Graves v. Kemsco Group*, 864 F.2d 754 (Fed Cir. 1988)(applying Seventh Circuit law). *Graves* holds that the movant's burden to prove that the respondent violated the order must be clear and convincing, but damages could be proved upon a preponderance of the evidence. However, for the NSA to prove that the OBF is in violation of the order it must also prove the OBF is in privity with the Bahá'ís Under the Hereditary Guardianship. Under the reasoning of *Graves*, ancillary matters such as proofs of damages are held to the ordinary civil standard, but only after the NSA has already proven with clear and convincing evidence that the OBF Respondents are in violation of the Judgment.

Privity is an essential element in proving that a nonparty has violated an Order: "A complaining party must show by clear and convincing evidence that a non-party occupies one of these exceptions [successor in interest or aid and abet] before we will find the non-party subject to an injunction." *Educational Communications, Inc. v. Universal Who's Who Publications*, 1999 WL 618099 at *1 (N.D.Ill.) (movant failed to submit evidence casting doubt on testimony of respondent).

Even if preponderance of the evidence was the legal standard, the NSA has failed to meet its burden of proof.

In the Seventh Circuit, the elements to demonstrate privity for the purposes of claim preclusion were set forth in the case of *Tice v. American Airlines, Inc.*, 162 F.3d 966 (7th Cir. 1998) and these elements of privity were specifically adopted for the purpose of binding nonparties to an injunction in *Chicago Tribune Co. v. U.S. Dept. of Health and Human Services*, 1999 WL 299875 (N.D.Ill.), 27 Media L. Rep. 1911, 27 Media L. Rep. 1906.

The factual elements to demonstrate privity in this case are:

1) Control or participation in the earlier litigation; 2) deliberate maneuvering to avoid the effects of the first case (or a "disingenuous attempt to circumvent this court's judgment" *Chicago Tribune* 1999 WL 299875 at *4.); 3) the close relationship between the parties; and 4) whether that relationship justifies binding the respondents.

A. The OBF Respondents had no control or meaningful participation in the litigation.

The members of the NSA of the Bahá'ís Under the Hereditary Guardianship, including Franklin D. Schlatter and other members of its Legal Committee (78:5 to 78:13)¹, were involved day to day in the lawsuit, but only carrying out the wishes of Mason Remey (78:25 to 79:5; 77:12 to 77:15; 185:19 to 185:21). Joel B. Marangella at one time served as a correspondence liaison between Mason Remey and the NSA of the Bahá'ís Under the Hereditary Guardianship regarding the lawsuit and other matters (100:17 to 102:23; 122:2 to 123:4). Both Franklin D. Schlatter and Marilyn K. Meyer testified that Mason Remey had ultimate authority over the NSA of the Bahá'ís Under the

¹ Except as otherwise noted herein, all references in this Brief are to the Transcript of Proceedings of the Hearing on January 7, 2008.

Hereditary Guardianship and made the decisions regarding the lawsuit (119:18 to 120:3; 123:13 to 123:23) and that nobody else had or exercised any control over the litigation including dropping the appeal of the Judgment (121:8 to 121:17; 213:7 to 214:7). Indeed, the witnesses testified that they disagreed with the decisions of Mr. Remy but had no choice except to obey (129:24 to 130:11; 130:22 to 130:25; 214:18 to 215:11). (*See also Deposition Transcript of Joel B. Marangella* 157:22 to 158:25; 162:4 to 165:18).

The NSA seeks to enforce the injunction against Mr. Schlatter and Mr. Marangella, even though neither was a named party nor, based upon the uncontroverted evidence, had any control over the litigation, including proceeding with appeal. Thus, the NSA seeks to impose an injunction against them personally without their ability to have defended the imposition of an injunction against them personally - violating the most basic tenets of due process. This is why the courts in *Tice* and *Chicago Tribune* require proving control in the litigation as one element of establishing a strong relationship to find privity.

The NSA emphasizes Joel B. Marangella's involvement with the Bahá'ís Under the Hereditary Guardianship, asserting that he is bound because he actively participated². This argument ignores the fact that Mr. Marangella was overseas at a time when international communication was not as swift and regular as it is today. The evidence shows certainly that Mr. Marangella was not involved in the day to day affairs of the NSA of the Bahá'ís Under the Hereditary Guardianship, but merely was exchanging progress reports on behalf of Mr. Remy. A look at the correspondence that the NSA submits as evidence of Mr. Marangella's involvement shows a lack of true involvement and decisionmaking.

The only letter in which Mr. Marangella is submitting his own comments is the NSA's Exhibit TX-49. In that letter, he apologizes for not responding sooner because he was waiting for Mr. Remy to respond. He says he is only now responding because they were proceeding with some teaching project. He even says to disregard his comments if

² The NSA's argument here is confusing. One of the ways a non-party is bound to a Judgment is when he actively participates with the defendant to violate the Judgment (being either legally identified with the defendant or aiding and abetting the defendant). The evidence here at best shows active participation prior to the Judgment, but not in violation of it. See discussion in Part II of this Brief.

Mr. Remy sends a response. The understanding that Mr. Marangella's correspondence is strictly "on behalf of the Guardian" is revealed in NSA's TX-51, in which Mr. Schlatter assures Mr. Marangella that the letters from Mr. Marangella, being "on behalf of the Guardian" would be treated in the same way as letters received directly from Mr. Remy.

In NSA's Exhibit TX-52, a status report on the lawsuit is being given and both Mr. Remy and Mr. Marangella receive a copy. The contents are discussing settlement negotiations in relation to Mr. Remy's instructions to try to get out of the suit because it was divisive. In NSA's TX-57, Mr. Schlatter is correcting Mr. Marangella's understanding of the status of the lawsuit, which reveals that Mr. Marangella had relatively little involvement or understanding. Mr. Schlatter is clearly attempting to keep Mr. Marangella and Mr. Remy informed.

The background of all of the letters between Mr. Marangella and the Bahá'ís Under the Hereditary Guardianship is that everybody is working for Mr. Remy and carrying out Mr. Remy's wishes. They are trying to keep the decision-maker, Mr. Remy, reasonably informed. There is not even a hint that Mr. Marangella has any authority except to correspond on his behalf and at his direction.

The letterhead of the Second IBC supports the witness testimony that the IBC was intended as a succession vehicle, in-name only (122:12 to 21). For example, see NSA's Exhibit TX-56 in which the letterhead lists all of the Vice-Presidents in order of succession. In the contents of that letter, Mr. Marangella is expressly giving direction and comments from Mr. Remy, which was his only function.

Mr. Remy was the sole authority for the Bahá'ís Under the Hereditary Guardianship. Mr. Marangella had no authority. Mr. Schlatter had no authority. Mr. and Mrs. Meyer had no authority. The NSA would have this Court believe Mr. Marangella was a powerful leader in assisting the Bahá'ís Under the Hereditary Guardianship to engage in wrongdoing, yet the NSA failed to name him as a party when this case was pending in 1966. The sound policy of Rule 65 is to bind all persons in identity with the party, but it was not intended to be used as a back door end run around due process to bind someone who should have been named as a party. *See Thaxton v. Vaughn*, 321 F.2d 474, 477 (4th Cir. 1963)(holding that Rule 65 will not extend injunction to persons who are necessary or indispensable parties under Rule 19 unless they are named).

Only Mason Remey was empowered to make decisions. He only controlled the litigation. The OBF Respondents had no control.

B. There was no evidence of deliberate maneuvering by the OBF Respondents to avoid the Judgment.

Every reported case holding nonparties to a Judgment because of privity had some type of scheme, conspiracy, or deliberate activity to avoid the Judgment, in some manner, such as using the same property, employees, processes, or materials but utilizing a different entity than the named party in an attempt to engage in the prohibited conduct with impunity. For example, in *Rockwell Graphics Systems, Inc. v. Dev Industries, Inc.*, 91 F.3d 914 (7th Cir. 1996), the nonparty took the trade secrets that were the subject of the injunction and brought them to the new company; *Regal Knitwear Co. v. National Labor Relations Board*, 65 S. Ct. 478, 324 U.S. 9 (1945), in which the nonparty was "merely a disguised continuance of the old employer;" and *Reich v. Sea Sprite Boat Co., Inc.*, 50 F.3d 413 (7th Cir. 1995), where the president of the company drained the assets of the enjoined company to start a new one to conduct the same operations.

The NSA has proffered no evidence to show a scheme or deliberate maneuvering at all by the OBF Respondents but offers the argument, in a footnote on page 5 of its Brief, that Joel B. Marangella's statements of belief that the Judgment did not apply to the OBF was an evasion. There is no suggestion in his statements of an ulterior motive or any kind of artifice or maneuvering to avoid the effect of the Judgment but only his layperson's belief that he was not and is not bound by it.³

The NSA asserts that the mere dissolution of the NSA of the Bahá'ís Under the Hereditary Guardianship was not enough to prevent the remnant of the Bahá'ís Under the Hereditary Guardianship from being in privity with it. The witness testimony showed, however, that after the Judgment had been entered and the NSA of Bahá'ís Under the Hereditary Guardianship disbanded, Remey's followers not only had no organization but they ceased any activity (142:22 to 143:25) at all, much less violating the Judgment. In Mr. Schlatter's words, "everything was dead in the water" (142:13 to 142:15).

³ The very question now before the Court. The fact that the OBF Respondents deny they are bound to the Judgment does not mean they are evading it.

In fact, the only activity and contact between the remnants was the Easter Letter series of correspondence as described in Franklin D. Schlatter's testimony (139:11 to 142:1). Mr. Schlatter testified that some of the Bahá'ís Under the Hereditary Guardianship, both the members and other followers of Mason Remey, wrote to all of Bahá'ís Under the Hereditary Guardianship in the United States between Easter, 1967 until February, 1968, a series of letters that included the "Easter Letter" (OBF-7), the "Ridvan Letter" (OBF-9), and the letters entitled "Third" "Fourth" and "Fifth" (OBF-10, OBF-11, and OBF-12). These letters are the only evidence introduced of the intent and activity of those who continued as Remey's supporters after the dissolution of the NSA of Bahá'ís Under the Hereditary Guardianship in 1966. In those letters, there is a discussion of whether to organize themselves in some way, and whether it was Mason Remey's intent or instructions that the group must remain inactive. (141:5 to 141:11). Although the Judgment is mentioned, there is no suggestion of violating the Judgment, or taking some maneuver to evade it. (See OBF-7 through OBF-12). Instead, the group was concerned about remaining in compliance out of fear of being prosecuted by the NSA. (215:18 to 216:2). Indeed, Mr. Schlatter's own contribution to the discussion was a suggestion to organize using a name and an organizational structure that would be, in his opinion, in compliance. (135:14 to 136:15). Not all of the persons participating in this discussion became Orthodox Bahá'ís (142:16 to 142:20), and there is no evidence that Joel B. Marangella was a party to or had any knowledge of the correspondence (132:13 to 132:24).

Joel B. Marangella issued his proclamation in November, 1969 (OBF-13), stating that he was presently the third Guardian, even though Mr. Remey was still alive because he had abdicated the office. It is undisputed that some, but not all, of those in the Remey group in the United States then declared their allegiance to Joel B. Marangella effectively resigning from the Bahá'ís Under the Hereditary Guardianship and joining the OBF. (221:11 to 221:20). None of the Bahá'ís Under the Hereditary Guardianship was automatically considered to be an Orthodox Bahá'í, but instead each person who accepted Mr. Marangella's claims wrote to him to declare their acceptance (224:25 to 225:6). According to the unrefuted testimony, there was no prior discussion of Mr. Marangella's proclamation (221:5 to 221:8), nor did the members of the Remey group consult together

as a group, but instead made individual decisions whether to accept Mr. Marangella (225:3 to 225:4). Although all of the NSA of Bahá'ís Under the Hereditary Guardianship members from 1966 accepted Mr. Marangella, the evidence shows that this was not a group decision (144:16 to 145:6).

The testimony demonstrated that Mr. Schlatter's decision to leave Remy's unorganized group of followers and to declare his belief that Joel B. Marangella was the Guardian, effectively joining the OBF, was a religious decision to end a relationship with the Bahá'ís Under the Hereditary Guardianship and come under the spiritual authority of Mr. Marangella (144:5 to 144:15). Likewise, Marilyn K. Meyer testified that her allegiance to Mason Remy was relinquished for religious reasons years before Mr. Marangella issued his proclamation (218:8 to 218:19; 220:10 to 221:2). None of the OBF Respondents ever spoke about it with each other and their decisions were made independently and for independent reasons. (219:20 to 220:9).

The NSA's position on the question of deliberate maneuvering seems to be that the OBF Respondents were practicing their religion following Mason Remy, and they are practicing the same religion following Joel B. Marangella, and therefore they are in privity. The question of belief is not a factor in privity. There were legally two separate organizations with one headed by Mr. Remy and one headed up by Mr. Marangella. Neither leader had any rights in the other's organization (224:19 to 224:24).

The testimony of both Marilyn K. Meyer and Franklin D. Schlatter is that they did not have authority in the OBF (106:21 to 106:23; 229:14), and there is no evidence in the record to suggest that they have anything to do with the name, operation or organization of the OBF, which was solely within the province of Mr. Marangella.

If the NSA is actually taking the position that Mr. Marangella, Mr. Schlatter, Mr. and Mrs. Meyer and the others concocted the OBF as an elaborate scheme and conspiracy to operate the Bahá'ís Under the Hereditary Guardianship in violation of the Judgment, it should have produced evidence of that conspiracy or ruse. The evidence in the record indicates there simply was no deliberate maneuvering to evade or avoid the effects of the Judgment, and that the Bahá'ís Under the Hereditary Guardianship in fact never did violate the Judgment, directly or indirectly.

C. Even if there is some evidence of a relationship between some of the OBF Respondents and the Bahá'ís Under the Hereditary Guardianship, that relationship ended a long time ago.

It is undisputed that Mr. Marangella, Mr. Schlatter, Mr. James Meyer and Ms. Marilyn K. Meyer had some kind of a relationship with the Bahá'ís Under the Hereditary Guardianship. The OBF concedes that the Meyers and Mr. Schlatter were officers or members of the NSA of Bahá'ís Under the Hereditary Guardianship. The OBF concedes that Joel B. Marangella served as the correspondence liaison with Mason Remey and therefore engaged in correspondence on his behalf with the NSA of Bahá'ís Under the Hereditary Guardianship, but asserts there is no evidence of decision-making authority by Mr. Marangella.

More importantly, regardless of the nature of the relationship between the OBF Respondents and the Bahá'ís Under the Hereditary Guardianship, that relationship ended in 1966. There is no evidence of any legal relationship, affinity, identity, acting in concert or participation, or any other legal relation with the Bahá'ís Under the Hereditary Guardianship after 1966 (129:12 to 129:15; 131:1 to 131:5). Although the NSA carefully traces how the PNBC is a successor to the OBF's National Bureau, it fails to show the non-religious connection between the organization of Mason Remey and the organization of Joel B. Marangella. Except for the spiritual authority that flowed from the religious succession of the mantle of the Guardianship, there was no connection. Even that was disclaimed by Mason Remey as early as May, 1967, when Mr. Remey appointed Donald Harvey as the third Guardian, effectively disowning Mr. Marangella (OBF-17).

The two organizations were legally separate in all ways and were not identified with each other. The gist of the close relationship requirement to establish privity is that the enforcement of a Judgment against a nonparty is relational and not personal.

Under the NSA's argument of privity, the officers and members of the NSA of Bahá'ís Under the Hereditary Guardianship, once "bound" by the Judgment now had a permanent status as being personally "bound" regardless of the circumstances. This is not the correct view of privity. They are personally bound only when they have been named as parties.

Franklin D. Schlatter, Marilyn K. Meyer and James Meyer are not bound personally, but always will be bound only if and when they act in their capacity as leaders of the organization of Mason Remey. *Pasco International v. Stenograph Corporation*, 637 F.2d 496, 501 (7th Cir. 1980). As the NSA asserts, they may never act as part of a maneuver to allow the NSA of Bahá'ís Under the Hereditary Guardianship to continue to function as it once did and to thereby violate the Judgment, under a disguise or pretense. Since none of the OBF Respondents were named parties, the obligation is not personal to them. Their subsequent activities to exercise their faith and beliefs with the OBF have been shown to be independent of and wholly unrelated to the Bahá'ís Under the Hereditary Guardianship⁴, and therefore the prohibitions of the Judgment do not apply to that independent activity. Since the OBF is acting independently, the NSA should enforce any rights it has independently, instead of dusting off an outdated Judgment that does not apply to the OBF.

D. The evidence shows that the relationship between the parties does not justify binding the OBF to the Judgment.

This requirement reveals that the decision for the Court is ultimately an equitable question. As this Court cited, in the Order entered in this case on August 8, 2007:

"The best way to approach the question of 'privity' may be to analyze the facts of each case in order to determine whether the requisite relationship exists between those enjoined and those against whom a contempt proceeding has been brought to justify a finding that the latter are in privity with the former." Quoting Wright & Miller, 11 FED. PRAC. & PROC. §2956

In determining whether the former relationship between the Bahá'ís Under the Hereditary Guardianship and the OBF Respondents justifies holding the OBF liable to the Judgment, it will be necessary for the Court to consider all of the facts and circumstances and consider the Judgment itself and the Court's interpretation of it.

⁴ The NSA's brief at footnote 4 on page 6 decries the OBF Respondent's position that they are complete strangers to this case, avoiding the question of legal relationship. The OBF Respondents openly admit that there is a religious relationship and succession between Mason Remey and Joel B. Marangella but that is not a legal succession that would establish privity or convey any legal rights between their two organizations. Legally, their two organizations are strangers to one another.

Among the questions for the Court to consider: was the use of the word "Bahá'í" in a name that did not cause or create confusion, such as "Orthodox Bahá'í", intended by the Court to be enjoined, and would it be equitable to extend the Judgment to the OBF?

Another circumstance is the fact that the Judgment was entered without the knowledge or presence of the Bahá'ís Under the Hereditary Guardianship or its counsel, and therefore was entered at an uncontested hearing (120:12 to 121:7). Therefore, the language of the findings and the Judgment are not necessarily the fruit of great deliberation⁵.

The Court also must compare the activity of the OBF Respondents to the enjoined activity of the Bahá'ís Under the Hereditary Guardianship. Does the conduct of the OBF Respondents display intent to evade the Judgment, or show an identity of interest? It appears from the evidence that the OBF's conduct is so different from the conduct enjoined against Bahá'ís Under the Hereditary Guardianship that it would be inequitable to extend the Judgment against the OBF. There is no evidence that OBF engages in any of the behavior stated in the Judgment that the NSA of Bahá'ís Under the Hereditary Guardianship was found to be engaged in. To see how the NSA of Bahá'ís Under the Hereditary Guardianship engaged in confusing behavior, one only has to look at the caption of this court proceeding, to see that the two sides to this lawsuit had almost identical names.

The OBF does not employ confusing or damaging names, methods, or misrepresentations. The NSA, at page 15 of its Brief, states that the violation it is complaining of is nothing more than the OBF's use of the word "Bahá'í" in its name and on its web sites. This is a matter of the OBF's religious belief that they are followers of Baha'u'llah (136:1) and they plainly use the word generically to describe their religious belief. The NSA also complains of the use of the phrases "Guardian of the Bahá'í Faith", even though its own witness, Dr. Robert Henderson, an NSA member and the former Secretary of the NSA, testified that he did not consider the Guardian to be an Institution of his organization (66:12 - 66:20) and his concerns were about the existence of

⁵ In the NSA's introduction at page 2 of its Brief, it creates the implication that the Court was carefully weighing how to frame the injunction and its findings, when in fact the Judgment was apparently entered by default, or at least without contest. The Court is free to now interpret the Judgment and it must do so to make this determination.

organizations other than the NSA which publicly claim to follow the Bahá'í religion but which do not adhere to the NSA's interpretation of the religion. Dr. Henderson testified that what the NSA found confusing or disturbing about the OBF web sites were "thematic misrepresentations" that there is an alternate Bahá'í faith and an orthodox one disunified with and separate from the NSA's organization (67:9 - 68:4). In other words, the alleged activity that the NSA considers to violate the 1966 Judgment, with respect to the OBF respondents, is the very existence of the OBF and the public presentation of its views, and not any of the conduct that the Judgment sought to enjoin, which was the confusing use of names, marks, and other enjoined behavior of the Bahá'ís Under the Hereditary Guardianship.

The NSA asserts on page 17 of its Brief that the Judgment "was framed to prevent confusion and damage caused by Mason Remey and his followers in the United States..." but the NSA has offered no evidence to show that the OBF is causing confusion or damage, engaging in any of the activity set out in the Judgment's finding of facts, or acting to aid or abet in order to violate the Judgment. The OBF is an independent organization engaged in an entirely different operation, with the sole exception of its religious practice and beliefs. The OBF does not use the same designations and does not engage in misleading or damaging misrepresentations. Its name is not confusing and its activity causes no legal harm to the NSA.

II. As a matter of law, the OBF is not in privity with the Bahá'ís Under the Hereditary Guardianship.

This Court has already decided the law of this case in the August 8, 2007 order: A court may not enter an injunction against a person who has not been made a party to the case before it. The exceptions to this principle, as under Rule 65 "[e]very order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Fed. R. Civ. P. 65(d). This Court has already found that an injunction against a corporation binds that corporation's acting officers even if not personally named in the injunction.

The evidence is uncontroverted that the former officers of the NSA of Bahá'ís Under the Hereditary Guardianship who joined the OBF were no longer active. They were no longer acting in their former capacity or affiliated in any way with their former organization, nor was that organization active in any way.

This Court also found that an injunction also may bind those in "active concert or participation" with the party named in the injunction, noting that there were two lines of cases interpreting that: 1) as successors in interest to parties named in the injunction, and 2) those nonparties who aid or abet the named parties in a concerted attempt to subvert those proscriptions. In other words, "the respondent must either abet the defendant, or must be legally identified with him." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832-33 (2d Cir. 1930). There is no evidence that the OBF abetted the Bahá'ís Under the Hereditary Guardianship, since the evidence showed that group never acted after 1966. There is no evidence that the OBF is legally identified with the Bahá'í Under the Hereditary Guardianship since legally they are separate and unrelated organizations.

WHEREFORE, the OBF Respondents respectfully request this Court to deny the NSA's Contempt Motion and such further relief in favor of the OBF as the Court deems just and proper.

Respectfully submitted,
/s/ Jeffrey A. Goldberg
Attorney for Joel B. Marangella,
Franklin D. Schlatter and
The Provisional National Bahá'í
Council of the United States
PO Box 254
Albuquerque, NM 87103-0254
Tel: 505-321-2932 Fax: 866-373-4890

Marshall N. Dickler and James Slowikowski,
Local Counsel for Joel B. Marangella, Franklin D. Schlatter and
The Provisional National Bahá'í Council of the United States
Dickler, Kahn, Slowikowski & Zavell, Ltd.
85 West Algonquin Road, Suite 420
Arlington Heights, IL 60005
Tel: 847-593-5595 Fax: 847-593-5632

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2008, I filed with the Clerk of United States District Court, Northern District of Illinois, the foregoing Post-Hearing Response Brief, and that a copy was sent electronically to all parties by operation of the CM/ECF electronic noticing system.

Respectfully submitted,

/s/ Jeffrey A. Goldberg
Attorney for Joel B. Marangella,
Franklin D. Schlatter and
The Provisional National Bahá'í
Council of the United States
PO Box 254
Albuquerque, NM 87103-0254
Tel: 505-321-2932
Fax: 866-373-4890