

2002 WL 32068971

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United States District Court,  
S.D. New York.

Elsa GULINO et al., Plaintiffs,  
v.

THE BOARD OF EDUCATION OF THE CITY  
SCHOOL DISTRICT OF THE CITY OF NEW  
YORK and the New York State Education  
Department, Defendants.

No. 96 Civ. 8414(CBM). | March 31, 2003.

## Opinion

### **MEMORANDUM OPINION AND ORDER**

MOTLEY, J.

\*1 This court is in receipt of a letter dated March 21, 2003 from defendant Board's counsel requesting "modification of the Court's March 6, 2003 Order regarding the trial testimony of Rudy Crew, Ph.D ." In that Order, the court denied the Board's previous request that Dr. Crew be allowed to testify at trial telephonically instead of in person. According to the instant letter, "the [c]ourt noted the importance of seeing a witness for the purposes of evaluating testimony," which is true but does not fully capture the court's reasoning. In fact, the court noted that the Board had offered no reason, other than the inconvenience to Dr. Crew of traveling to New York from

his home in California, to allow Dr. Crew to testify telephonically and cited the following passage from the advisory committee's note on Rule 43 (which permits witnesses to testify by simultaneous transmission under certain circumstances):

The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth-telling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition. *Transmission cannot be justified merely by showing that it is inconvenient for the witness to attend the trial.*

Fed.R.Civ.P. 43 advisory committee's note (1996 Amendment) (emphasis added).

In the instant letter from defense counsel, the "modification" requested is an order allowing Dr. Crew to testify by video conference instead of by telephone; once again, however, there is no legally sufficient reason offered as to why the request should be granted. To reiterate, "Transmission cannot be justified merely by showing that it is inconvenient for the witness to attend the trial." *Id.*

The Board's request is hereby denied.