

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

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., et al.,	)	No. 08 C 3696 No. 08 C 3687
Plaintiffs,	)	Chicago, Illinois
-vs-	)	January 25, 2012
VILLAGE OF OAK PARK and DAVID POPE,	)	9:15 o'clock a.m.
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

For Plaintiff NRA:

FREEBORN & PETERS LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606  
BY: MR. WILLIAM N. HOWARD  
and  
MR. STEPHEN P. HALBROOK  
10560 Main Street  
Suite 404  
Fairfax, VA 22030  
and  
BRENNER FORD MONROE & SCOTT LTD.  
33 North Dearborn Street  
Suite 300  
Chicago, Illinois 60602  
BY: MR. STEPHEN A. KOLODZIEJ

For the Defendants:

CITY OF CHICAGO, DEPARTMENT OF LAW  
30 North LaSalle Street  
Suite 1230  
Chicago, Illinois 60602  
BY: MR. ANDREW W. WORSECK

Court Reporter:

ROSEMARY SCARPELLI  
219 South Dearborn Street  
Room 2304A  
Chicago, Illinois 60604  
(312) 435-5815

1 THE CLERK: This is 08 C 3696, National Rifle  
2 versus Village of Oak Park and 08 C 3687, National Rifle  
3 versus City of Chicago.

4 THE COURT: Counsel out on the phone, do you want  
5 to identify yourself for the record, and then the lawyers  
6 here in court will do the same.

7 MR. HALBROOK: Yes, your Honor, I am Stephen  
8 Halbrook representing the NRA in both cases.

9 MR. WORSECK: Good morning, your Honor, Andrew  
10 Worseck for the City of Chicago in the City of Chicago case.  
11 I am also stepping up this morning on behalf of Oak Park.  
12 Mr. Hakim, their counsel, is recovering from a medical  
13 condition and can't be here this morning.

14 THE COURT: Thank you.

15 MR. KOLODZIEJ: Good morning, your Honor, Stephen  
16 Kolodziej, K-O-L-O-D-Z-I-E--J, local counsel for plaintiffs  
17 in NRA versus Chicago.

18 MR. HOWARD: William Howard on behalf of the NRA in  
19 the NRA versus Oak Park case.

20 THE COURT: Good morning all of you. I have a  
21 couple of questions. You know, I received and looked at the  
22 huge mound of paper that has been submitted. I saw one  
23 reference to rates having changed over time and that was I  
24 think directed toward a limited number. But I do have a  
25 question, and that is, when you picked hourly rates on this

1 one, did that represent current hourly rates? Are there not  
2 situations in which somebody -- for example, the cases go  
3 back several years. People were charging at different rates,  
4 or am I wrong about that?

5 MR. HOWARD: Your Honor, you are correct that the  
6 rates did change over time somewhat. But the majority of  
7 ours were charged at the current rates. I think there may be  
8 two instances in which the rates changed. There were a few  
9 hours that were charged at an older rate, but most of the  
10 hours were at the current rate.

11 THE COURT: Are you really telling me that people  
12 back in '08 were charging at the same hourly rates that they  
13 are now? That isn't my reading of what I have seen, you  
14 know, reported from time to time, for example, in the  
15 National Law Journal and other sources. And it also I think  
16 is not at least reflective of what my understanding had been.

17 Can somebody help me about that.

18 MR. HOWARD: Your Honor, William Howard on behalf  
19 of the NRA in the Oak Park matter. Two answers to your  
20 question. First is the rates that were charged in this case  
21 were not our standard rates. These were discounted rates.  
22 In terms of the change over time, my recollection is -- and I  
23 can verify this -- is that the same discount applied  
24 throughout the time period of the representation. So -- and  
25 I do think it was held --

1 THE COURT: No, let me try again. Something has  
2 happened to hourly rates in the intervening period. And the  
3 something, as I understand it, is an escalation. And I  
4 understand that. But the -- what is a reasonable rate today  
5 does not necessarily coincide with what was a reasonable rate  
6 back in let's say 2008 and 2009. And so I don't think  
7 anybody has directly answered the question that I had.

8 MR. HOWARD: Your Honor, I would be happy to  
9 double-check that. I can't as I sit here -- or stand here  
10 today, rather, tell you verbatim which rate was for which  
11 year and which changed compared to the prior year. I do know  
12 that as a general matter our firm did change rates somewhat  
13 over time.

14 THE COURT: Sure.

15 MR. HOWARD: But I would have -- to be fair I would  
16 have to go back and confirm. And I would be happy to short  
17 -- to develop a short supplementation on the point of whether  
18 they were changed and to the extent that they were.

19 THE COURT: I raise that for a reason, as you might  
20 guess. Some years ago when I was dealing with the approval  
21 of rates, I wrote a piece -- and indeed a book got issued as  
22 a result of that -- that talked about the idea that it really  
23 is not a fair reflection of reasonable value of services to  
24 apply today's rates necessarily to historical rates. The --  
25 now, there is a problem of course and that is historical

1 rates means the loss of the use of money, that is, if the  
2 norm has been for people to get paid, for example, within  
3 30 days after billing or something like that, then money has  
4 value.

5 On the other hand, all of us know that with  
6 interest rates having declined to the vanishing point, that  
7 factor, which is what led in part to the long opinion that I  
8 wrote and the book that was issued in relation to that, means  
9 that it is -- that there is by definition I think some  
10 overstatement and maybe a material overstatement in terms of  
11 applying current rates across-the-board.

12 So if there is going to be a calculation, it seems  
13 to me it ought to be an accurate one. And I recognize that  
14 nobody really talked about that, but it seems to me that that  
15 is -- that is something that ought to be looked at.

16 I wanted to add one other thing which is really a  
17 question, and that is I know that the long presentation  
18 included a statement of position, you know, on behalf of both  
19 the plaintiffs and defendants. But as far as I saw I think  
20 there was only a memo from the -- from the plaintiffs as part  
21 of the package. Was it anticipated that the defendants were  
22 going to be submitting a memo as contrasted -- or I shouldn't  
23 say as contrasted with -- in supplementation of the  
24 statements that were applicable in terms of the various  
25 individual aspects?

1 MR. HALBROOK: Yes, your Honor, we would ask for  
2 leave to file a response memorandum responding to their  
3 memorandum given --

4 THE COURT: How long would you think that might  
5 take you?

6 MR. HALBROOK: We would ask for 45 days for this  
7 reason, Judge, and that is simply that we have a lot of  
8 short-term matters that we are working on in many of the  
9 other pieces of gun legislation --

10 THE COURT: Yeah.

11 MR. HALBROOK: -- litigation against the City.  
12 And Mr. Kolodziej is familiar with some of those. He is our  
13 opposing counsel in at least one of those matters. I don't  
14 think he has an objection to the -- that time frame.

15 MR. KOLODZIEJ: Well, I don't, but of course I will  
16 defer to Mr. Halbrook on this.

17 THE COURT: Mr. Halbrook?

18 MR. HALBROOK: We don't object, your Honor.

19 THE COURT: You do -- you what or do.

20 MR. HALBROOK: We do not object --

21 THE COURT: Don't object.

22 MR. HALBROOK: -- if they need that.

23 THE COURT: All right. You are sort of muffled.  
24 Not faulting you but the system.

25 So 45 days would put us, let's say, to March 12th

1 or so. So let's set a responsive memo for March 12th.

2 Now I am -- I am not -- I shouldn't be  
3 misunderstood as ruling on this thing because obviously I am  
4 not, although I have read a good deal of the stuff here. But  
5 I have to confess that I have -- and I may or may not be  
6 pardoned for saying this -- I have a strong sense here when I  
7 see this multiplicity of activity of too many lawyers -- I  
8 don't mean any disrespect -- feeding from the trough. You  
9 know, what I get is no explanation that I can see of why it  
10 is that the services got carved up in this way.

11 And all of us know -- at least all of us who used  
12 to practice law -- know that by definition when you get  
13 multiplicity of lawyers, you get a lot of time that is spent  
14 in terms of reviewing and conferring and matters like that.  
15 And that is not necessarily chargeable to the other side. It  
16 may be something that the parties that were doing that felt  
17 they ought to do in order to feel comfortable or get the best  
18 internal advice that they are getting, but I must tell you it  
19 doesn't -- it doesn't necessarily find its way into a fee-  
20 shifting situation.

21 Now, I have -- you know, in my ancient past I have  
22 briefed and argued cases before the Supreme Court and  
23 including some I think significant -- all First Amendment  
24 issues as it happened, some significant cases. Of course I  
25 don't want to suggest that anything is a one-lawyer case,

1 although that was I guess my tendency, but I am not -- I am  
2 troubled by what I see here as a sort of lack of explanation  
3 about the process in terms of why it is that we find so many  
4 entries.

5 I am not questioning the entries. Don't  
6 misunderstand. I assume that those are taken from the  
7 commuter entry and that they are valid reflectors of what  
8 those are. But it does seem to me that I ought to have  
9 something better in the way of an explanation of why it is  
10 that we had so much input from so many different parties  
11 which also -- which always in my experience means that there  
12 is a lot of spack that got picked up.

13 Now, I am not paralleling the situation  
14 necessarily. I did see, you know, part of the argument on  
15 the defendant's side that said, well, you know, it only cost  
16 us -- "only" has to be in quotes. I had a much lower hourly  
17 rate, as you might imagine, when I was practicing and my  
18 hourly rate today is even lower. But the -- I really don't  
19 think that I received as part of this extensive submission a  
20 really thorough explanation of why it is that we find so many  
21 people and so much time as having been devoted. And I really  
22 do think if there is going to be an effective analysis, I  
23 need more than that.

24 I guess I should add ultimately that when I looked  
25 at all this stuff, I had the thought that maybe I ought to



1 exercise my prerogative under Section 294(b) and let this cup  
2 pass from my lips, but I haven't decided that. I -- but I  
3 would like to ask plaintiff's counsel, what can you provide  
4 me in terms of that sort of explanation, which I know has to  
5 be more generalized in terms. It is not going to be able to  
6 pick up, well, this one happened to be for that purpose and  
7 this happened to be for another purpose.

8 But I keep -- I must believe that there has been a  
9 great deal of conferring that is involved in which the idea  
10 of charging for multiple lawyers who engage in the conference  
11 is really not something that I think is an appropriate fee  
12 shifter. So is it possible for plaintiffs as movants to  
13 provide me with something that would give me some kind of  
14 sense on that one?

15 MR. HOWARD: Your Honor, are you speaking at this  
16 moment or something that would be similar to --

17 THE COURT: I am not asking for you to do it as you  
18 stand there.

19 MR. HOWARD: Yeah.

20 THE COURT: I am talking about something in which  
21 you could go back and provide me with something better in the  
22 way of explanation than the absence of an explanation that I  
23 find now?

24 MR. HOWARD: Yes, we can certainly do that. I  
25 would be happy to do so. I can give you the Reader's Digest

1 version at this like -- if you would like; otherwise we can  
2 just submit a paper on it..

3 THE COURT: No, I don't want the Reader's Digest  
4 version.

5 MR. HOWARD: Okay.

6 THE COURT: So what kind of timeframe do you think  
7 you might need to supplement this huge submission in a way  
8 that gives some sense of response to the question I have  
9 asked as well as the information that we are talking about,  
10 you know, in connection with rates?

11 MR. HOWARD: Your Honor, I would ask if I could  
12 impose on Steve to make a suggested time frame because I have  
13 no idea what his schedule is as I stand here.

14 THE COURT: Okay.

15 MR. HALBROOK: Your Honor, I think if we had  
16 21 days, that would suffice.

17 THE COURT: Okay. So I will give you then -- that  
18 would put us I think to February 15th, if that is okay. And  
19 that will cover both items of -- that I talked about, one,  
20 the issue about rates and changes over time and also the  
21 question that I have asked about some explanation of why we  
22 find ourselves with all the -- what would seem very likely to  
23 be duplicative rendition of services with A taking an  
24 observation of what B has done and providing some input and  
25 so on. All of us know the phenomenon that I am talking

1 about.

2 Okay. So that is where we are. I am going to get  
3 from the plaintiffs a supplemental submission by  
4 February 15th. I am going to get the responsive memorandum  
5 from the defendants on March 12th. And then we will see  
6 where we are from there.

7 Okay? Anything else?

8 MR. HOWARD: No, sir.

9 MR. HALBROOK: No, your Honor.

10 MR. WORSECK: No, your Honor.

11 THE COURT: Thank you. Thank you all.

12 MR. HALBROOK: Thank you, your Honor.

13 (Which were all the proceedings heard.)

14 CERTIFICATE

15 I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled matter.

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18 s/Rosemary Scarpeilli/ Date: February 3, 2012

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