

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

NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INC., et al.,

) 08 C 3696  
) 08 C 3697

Plaintiffs,

) Chicago, Illinois  
) December 21, 2010  
) 9:00 o'clock a.m.

-vs-

VILLAGE OF OAK PARK, et al.,

Defendants.

NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INC., et al.,

Plaintiffs,

-vs-

THE CITY OF CHICAGO, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

For the Plaintiffs:

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and

For the Plaintiff in  
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For the Plaintiffs  
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BY: MS. REBECCA A. HIRSCH  
MR. MICHAEL A. FORTI

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1 THE CLERK: 08 C 3696, National Rifle versus  
2 Village of Oak Park, and 08 C 3697, National Rifle versus  
3 City of Chicago.

4 MR. DOOLEY: Good morning, your Honor, I am Daniel  
5 Dooley on behalf of National Rifle Association in the Oak  
6 Park case.

7 MR. KOLODZIEJ: Good morning, Steve Kolodziej,  
8 local counsel for plaintiffs in the NRA versus Chicago case.

9 THE CLERK: Hi. Mr. Halbrook, please. Sandy with  
10 Judge Shadur.

11 THE COURT: Counsel, out on the phone, could you  
12 identify yourself for the record. Lawyers here in court are  
13 doing that now.

14 MR. HALBROOK: This is Stephen Halbrook. I am  
15 counsel for the NRA plaintiffs in both the Chicago and Oak  
16 Park cases.

17 THE COURT: Thank you.

18 MS. HIRSCH: Good morning, your Honor, Rebecca  
19 Hirsch on behalf of the City of Chicago in the NRA versus  
20 City case.

21 MR. FORTI: Good morning, your Honor, Michael Forti  
22 on behalf of the City of Chicago in the NRA case.

23 MR. HAKIM: Good morning, your Honor, Ranjit Hakim  
24 on behalf of the Village of Oak Park in NRA versus Village of  
25 Oak Park.

1 THE COURT: Good morning to all of you. I am  
2 really sorry that all of you had to get assembled this way  
3 because as I had thought of the thing, the real purpose of  
4 today's was to deal with the unlikely event in which you  
5 hadn't met head on on issues that I know both sides were  
6 familiar with. I have looked at both submissions -- at all  
7 the submissions I should say -- and it seems to me that is a  
8 non-problem. So I don't need responses other than what are  
9 in hand. But if somebody thinks that there is slippage here,  
10 I will listen, although I am not encouraging filing.

11 So somebody tell me, is -- do you think that -- are  
12 you satisfied that you have -- you have put the matter at  
13 issue as effectively as you can?

14 MR. FORTI: Speaking for Chicago, yes, your Honor,  
15 I think that you -- you have the papers in front of you and  
16 we do not need to add -- add to the weight of the filings.

17 THE COURT: Okay.

18 MR. HAKIM: Oak Park concurs.

19 THE COURT: How about on the plaintiffs' side?

20 MR. HALBROOK: Your Honor, this is Stephen  
21 Halbrook. We would like to reply to the pages that were  
22 raised that we did not address directly. However, I think  
23 probably it is true that the case is presented with our basic  
24 argument. We think some of the cases that are cited by  
25 Chicago and Oak Park are distinguishable. But if your Honor

1 feels like you have sufficient argumentation of the parties,  
2 then we would not request a reply brief.

3 THE COURT: Well, the best definition that I know  
4 of an expert is somebody from out of town. And you have to  
5 understand that one of my flaws is that I read all the cases  
6 that are submitted. So if you are going to tell me that  
7 cases that they cite don't stand for the proposition they  
8 cite them for, trust me, I will take a look at them. So I  
9 think if your only purpose would be to try to distinguish  
10 their cases, that is not -- that is not really particularly  
11 constructive because that is my job, you know, that is my  
12 obligation.

13 What about counsel here in court for the NRA  
14 people, anything else?

15 MR. DOOLEY: Nothing else, your Honor. We would  
16 stand by what Mr. Halbrook said.

17 MR. KOLODZIEJ: Agreed.

18 THE COURT: Okay. Then it is in the category don't  
19 call us, we will call you. And I would expect that we ought  
20 to be in a position to deal with the thing promptly. It is  
21 an issue that was not strange to any of us and not surprising  
22 to encounter it. So you will be getting an opinion as soon  
23 as it is possible to get it out for you.

24 Thank you, all. Honor.

25 MR. FORTI: Your Honor, could I raise one other

1 issue? And if you think it is inappropriate, you can tell me  
2 that it is best not to talk about it in this forum. As you  
3 know honor -- your Honor, one of the cases that is related to  
4 this but not consolidated is the McDonald case.

5 THE COURT: Right.

6 MR. FORTI: And Mr. Gura was surprised to learn,  
7 counsel for McDonald, that we were in the course of briefing  
8 this. Now, we, of course, don't believe that he has been  
9 prejudiced in any way by the briefing and he, of course,  
10 could appear in front of this Court. But our -- Chicago's  
11 viewpoint is because this is already being briefed once,  
12 let's wait before we get embroiled with Mr. Gura on the  
13 prevailing party question because it may no longer be an  
14 issue; we may defer to whatever your judgment is in the NRA  
15 cases. But I want -- I am somewhat in the quandary here. On  
16 the one hand I don't want to talk about a case without  
17 counsel being present. On the other hand, Mr. Gura has  
18 accused me of actively deceiving him, which I took -- take  
19 extreme exception to.

20 THE COURT: I am not sure I understand that. I,  
21 frankly, don't understand why you people don't talk to each  
22 other. If -- the issue is no different, as I understand it,  
23 on -- with McDonald as plaintiff than it would be with  
24 respect to the NRA, unless somebody thinks that there is  
25 somehow a distinction that would not occur to me. So --

1 MR. SIGALE: Good morning, your Honor. I  
2 apologize. David Sigale, S-I-G-A-L-E, on behalf of the  
3 McDonald plaintiffs, 08 CV 3645.

4 THE COURT: Well, counsel was just -- for the City  
5 was just indicating that there was a concern on the part of  
6 you or your associate or partner in connection with the  
7 McDonald's case because of the fact that the briefing has  
8 taken place in the cases that were -- that were brought on  
9 basically by the motion by the National Rifle Association for  
10 an award of fees. And I don't know that -- as I had just  
11 gotten through saying, that to my knowledge there is no  
12 difference in law in terms of the status of plaintiff, your  
13 client in this action, than would be the situation with the  
14 National Rifle Association.

15 To your knowledge or in your sense, is that right  
16 or wrong, or what?

17 MR. SIGALE: Well, your Honor, to answer that  
18 briefly, I believe our positions are different. To answer it  
19 a little lengthier, we are very concerned. And I won't wax  
20 dramatic. We did file a motion very, very early this  
21 morning, which I have a courtesy copy for the Court to be  
22 presented on the 28th because that is the next court date  
23 that your Honor will be holding court that I am able to  
24 attend, so a week from today, to hold this matter in abeyance  
25 until the McDonald plaintiffs have either a chance to weigh

1 in or file their own fee petition.

2 I wish to point out to the Court we are not asking  
3 that our own Rule 56 motion -- Local Rule 56 schedule be  
4 adjusted. We are just asking that this matter be hold in  
5 abeyance for a couple weeks.

6 THE COURT: Rule 56? What does Rule 56 have to do  
7 with it?

8 MR. SIGALE: Because we had been talking to counsel  
9 about the joint statement and that our -- by our  
10 understanding of that rule, our fee petition would be due --

11 THE COURT: Rule 56, that is a motion for summary  
12 judgment.

13 MR. SIGALE: Local Rule -- Local Rule 56, your  
14 Honor.

15 MS. HIRSCH: I believe it is 54, your Honor.

16 MR. FORTI: 54.

17 MR. HAKIM: 54.

18 MR. SIGALE: 54. I am sorry, your Honor. Local  
19 Rule --

20 THE COURT: They all look alike.

21 MR. SIGALE: I guess it depends on how late you are  
22 up.

23 But by our account our fee petition under Local  
24 Rule 54 would be due on about January 11th, I believe is the  
25 date, and we would be asking the Court to hold this matter in



1 abeyance until such time. We are very concerned, your Honor.  
2 We -- while we believe our position is somewhat different  
3 from the NRA plaintiffs, we believe certainly that this issue  
4 impacts us.

5 THE COURT: Why are you -- wait a minute. Why  
6 should I hold in abeyance something that is fully briefed by  
7 competent counsel on both sides? If you think you have got a  
8 different position and you want to file a motion and you are  
9 asserting a different -- some kind of different theory, be my  
10 guest, but that doesn't justify putting this motion on hold.

11 MR. SIGALE: It only would be for a couple weeks,  
12 your Honor.

13 THE COURT: Our schedule -- what does that have to  
14 do with it? Let's try again.

15 MR. SIGALE: Sure.

16 THE COURT: I get fully briefed motions in the two  
17 NRA cases in which everybody has staked out the respective  
18 positions, and at that point they have cited the authorities  
19 that they rely on. Before you came in I just inquired as to  
20 whether there was any need for a reply. And except for  
21 out-of-town counsel who said, well, maybe it might be in  
22 order to talk about whether the defendants have cited the  
23 cases that they have for the propositions that they really  
24 stand for, I said to him, well, that misses the point that I  
25 have to read them anyway, and that is what I am going to do.

1           So the idea of saying, well, let's hold off because  
2     you think that you have a different stance may affect your  
3     client perhaps, but it doesn't affect the -- the plaintiffs  
4     in the cases that are before me now on these motions -- and  
5     so for you to take umbrage about the fact that somehow you  
6     got -- I don't know whether you got sandbagged or what it is  
7     that you are thinking about is just wrong. You want to file  
8     a motion. And you may have the benefit or detriment of what  
9     I have done with the other cases, that is -- that may impact  
10    on your position or not. But you are a free agent and you  
11    have got a separate case.

12           MR. SIGALE: If I may, your Honor, I would submit  
13    that the matter really hasn't been fully briefed only because  
14    the cases were related.

15           THE COURT: What do you mean --

16           MR. SIGALE: The Court did --

17           THE COURT: -- it hasn't been fully briefed? I  
18    don't understand. Are you -- you think you are a better  
19    lawyer than they are?

20           MR. SIGALE: I don't think I am a better lawyer  
21    than anybody in the room. What I am saying is that my  
22    clients are certainly potentially impacted by everything that  
23    has been going on, really without our knowledge, and we would  
24    like an opportunity to weigh in. And we believe that we are  
25    prejudiced by the fact that we haven't had an opportunity to

1 even know about this much less present our position to the  
2 Court.

3 Now, it might be that we are not going to do it  
4 anywhere near as well as counsel for -- for the NRA can -- as  
5 eloquently or as well as they are going to do it, but, you  
6 know, for the purpose of representing our clients and the  
7 fact that our -- that all this is going on and it impacts our  
8 clients, certainly potentially when we are talking about the  
9 prevailing party issue -- and that certainly affects us.

10 And, you know, what is going to happen, I would  
11 think, is that the Court is going to -- if we hadn't showed  
12 up here today, if we had done nothing, if we had never found  
13 out about it, the Court would have ruled on the issue and  
14 then we would have filed our fee petition by January 11th, I  
15 believe is our date, and then we show up here and we find out  
16 for the first time that, well, this has already been ruled  
17 on. You have already won or you have already lost. And we  
18 would be saying, Well, when did all this happen? Why didn't  
19 we know about it?

20 So all I am asking is an opportunity then before  
21 the Court rules -- and I am not -- and I am sorry, I don't  
22 know, maybe the Court was planning on ruling on this issue  
23 right now or maybe the Court is saying you are going to rule  
24 by mail or set another date for ruling, but what we would  
25 like is just an opportunity to weigh in, especially since our

1 rights are going to be impacted.

2 THE COURT: Your rights are not impacted in that  
3 sense. If the Court -- if the Court's approach to the issue  
4 of prevailing party is such that if you are on the downside  
5 of an argument that you have to cope with, that is one of the  
6 products of Court analysis and it is not a matter of your  
7 somehow having been deprived of a right. That is just not  
8 right, if I may make a bad pun. And as a result what you  
9 said is really not persuasive.

10 I expect -- I have got motions that were presented  
11 to me. I don't know about whether you people have talked  
12 with each other or not. That is really is among you, not for  
13 the Court. And you -- and your claim that somehow you have  
14 been disadvantaged because people were doing things behind  
15 your back, I don't understand that.

16 And so short answer is, I am not going to defer  
17 giving people a determination of their rights and  
18 responsibilities because you want to -- you want to weigh in  
19 on their rights and responsibilities. You have just told me  
20 that you think that your client is in a different position.  
21 Maybe so. And that may affect the outcome in your case in a  
22 different way from what is here. But that is not a  
23 justification for what you are here pushing for, frankly.

24 So I am not -- you know, you are -- you have a  
25 right to represent your client, to present the issues as you

1 wish and when you wish, but I have pending before me fully  
2 briefed motions on the issues in the other cases, and I  
3 expect to deal with them.

4 MR. SIGALE: Well, I mean -- if I may, your Honor,  
5 perhaps I misspoke. While I believe that our parties are in  
6 a different position than the NRA plaintiffs that are -- but  
7 I don't think there is any doubt from -- and we only got --  
8 we only found out about this last Friday afternoon, so we  
9 have only had a chance to -- we haven't had a chance to fully  
10 analyze all the briefs that have been filed. But it is  
11 apparent from our reading that we have had an opportunity to  
12 do that there is significant overlap in the issues.

13 THE COURT: Maybe so. Maybe so. That is what  
14 happens when courts decide and they do things that have  
15 precedential value, as District Court decisions do not have.  
16 But that is how -- that is how the legal system works. When  
17 cases get decided, they may have an effect on other cases.  
18 That is how the late Ed Levi, when he wrote Introduction to  
19 Legal Reasoning, explained the growth of the law. And it has  
20 always been thus and it will continue to be thus.

21 MR. SIGALE: Not disputing that, your Honor. We  
22 are -- our umbrage comes from that our cases have -- were --  
23 pursuant to Local Rule 40.4 were all reassigned for  
24 relatedness at the beginning of the case.

25 THE COURT: But they weren't consolidated?

1 MR. SIGALE: No, they weren't consolidated, but  
2 when we were doing anything in the McDonald case, we were  
3 faxing copies over to everybody else to make sure everybody  
4 knew what was going on. And we found out about this almost  
5 by accident.

6 THE COURT: Well, I am not making any comment on  
7 questions of courtesy or lack of it. I am simply dealing  
8 with the issue in the way that you have posed it. And the  
9 short answer is the one that I gave you, and that is if -- if  
10 the -- I resolve the pending issues before you have your  
11 presentation, you will have either the advantage or  
12 disadvantage of that decision in terms of how you present  
13 your case. And you do that on your own time.

14 Thank you.

15 MR. FORTI: Thank you.

16 MR. HAKIM: Thank you

17 MS. HIRSCH: Thank you.

18 MR. DOOLEY: Thank you.

19 MR. KOLODZIEJ: Thank you.

20 (Which were all the proceedings heard.)

21 CERTIFICATE

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

24  
25 s/Rosemary Scarpeilli/

Date: January 7, 2011