

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., WAYNE LAPIERRE, WILSON
PHILIPS, JOHN FRAZER, and JOSHUA POWELL,

Defendants.

Index No. 451625/2020

**AMENDED
SPECIAL MASTER
REPORT ON THE
JULY 7, 2022
HEARING**

This Report is hereby amended to reflect an amendment appearing at the section “Whistleblower Documents”. On July 7, 2022, the parties appeared before the Special Master for a hearing on (i) the National Rifle Association’s (“NRA”) application of June 23 and 30, 2022, regarding unresolved topics from the NRA’s prior Rule 11-f notice to the Office of the Attorney General (“OAG”); (ii) the NRA’s and Wayne LaPierre’s application to extend the duration of the deposition of non-party Peter Brownwell or, in the alternative, for an order declaring that no portion of Mr. Brownwell’s deposition may be used against the NRA at an evidentiary hearing; and (iii) the OAG’s July 6, 2022 application regarding additional outstanding discovery issues. Each of these issues was discussed at length during the hearing. The Special Master’s rulings are summarized here.

Unresolved Topics from the NRA’s Rule 11-f Notice

The NRA seeks to depose a corporate representative of the OAG regarding five topics. Topics 1-3 concern the OAG’s response to the NRA’s discovery requests; topics 4-5 concern public statements made by the Attorney General. The request must be denied for multiple reasons.

First, although the OAG is not immune from compelled deposition (*see* Commercial Division Rule 11-f [a]), it is not a party to this case and cannot provide any facts apart from facts it collected from defendants or third parties during its investigation. The OAG has represented that all of the factual information it has gathered has been provided defendants except for identified information it has retained on the basis of privilege. Defendants have not shown otherwise. The People's contentions can be discovered through answers to interrogatories. As to the remedies plaintiff is seeking, the contours of those remedies are best explored through interrogatories that defendants are free to propound.

Second, examination of a corporate representative of the OAG would invade numerous privileges and the work product doctrine all of which the Special Master has discussed in prior rulings. The federal district court cases on which the NRA relies do not apply to New York law which governs in this proceeding.

Third, the OAG is not a party in this case. It is counsel to the People. In order to proceed with an examination of counsel, the NRA is required to satisfy the requirement set out in *Liberty Petroleum Realty, LLC v. Gulf Oil, L.P.*, 164 A.D.3d 401 (1st Dep't 2018), for examination of counsel of an adversary. Specifically, the party seeking the deposition of counsel must show (i) good cause, (ii) an inability to get the information somewhere else, (iii) that the information sought is not privileged, and (iv) that the information sought is material and necessary *see id.* at 406. The NRA has not met these requirements.

With regard to Topics 1-3, examination on these topics would intrude on the various privileges held by the OAG in connection with its investigation. In addition, the NRA has not demonstrated that inquiry into these topics is material and necessary to any claim or defense, given the Plaintiff's production of its investigative file, privilege log, and certification that the OAG has

produced all information gathered in its investigation except information withheld on grounds of privilege. With regard to Topics 4-5, inquiry into these topics is precluded by Justice Cohen's Decision and Order dismissing the NRA's counterclaims.

The NRA's request to take the deposition of a corporate representative is denied. However, although the Special Master is dubious that there are any legitimate questions that could be asked of a corporate representative, the NRA may, if it so desires, submit a narrower list of topics, stated with specificity, for which it seeks testimony with regard to Topics 1-3, for the Special Master to review.¹ The list should be strictly limited to the claims or defenses that remain alive in this case. It should not include topics ruled protected by one or more privilege or as are likely to be ruled protected based on the multiple rulings the Special Master has made on the subject of privilege.

Extension of Duration of the Deposition of Peter Brownwell

Mr. Brownwell is a non-party witness in this action and resides in Iowa. His Iowa counsel joined the call to inform the Special Master of his position with regard to this application.

Mr. Brownwell voluntarily accepted a subpoena from the OAG last year. He was deposed in October 2021. Counsel for the NRA and other defendants participated. Counsel for the defendants did not reserve time to cross examine Mr. Brownwell or notice their own deposition of him. The OAG examined him on the record for at least seven hours.

The NRA and Mr. LaPierre seek three and one-half hours of cross-examination of Mr. Brownwell and an expansion of the duration of his deposition under the existing subpoena to do so. In the alternative, they seek to preclude the OAG from using the deposition at trial.

¹ Justice Cohen's recent decision dismissing the NRA's counterclaims along with his decision dismissing plaintiff's demand for dissolution of the NRA renders Topics 4-5 irrelevant.

Mr. Brownwell's counsel explained that his client is not willing to voluntarily comply at this time due to the burden it would place on him to get prepared. He also indicated that the subpoena would need to be enforced through the Iowa courts.

The Special Master granted the application to expand the duration of the deposition for an additional two hours because defendants have not yet inquired of him under oath. The Special Master encouraged Mr. Brownwell's counsel to accommodate defendants' request at least to some extent. However, he noted that he is not substituting his authority for that of the court in Iowa and that the Defendants will need to enforce any subpoena they might obtain in the Iowa courts if Mr. Brownwell declines to sit for an expanded deposition.

The Special Master denied the request to preclude the OAG from using the deposition. Defendants participated at the deposition and could have taken steps to examine the witness in 2021 but failed to do so.

OAG's July 6, 2022 Letter Regarding Open Discovery

The OAG's July 6 letter addresses four topics (i) production of the NRA's General Ledger, (ii) production of documents relating to a 2007 whistleblower letter, (iii) production of several alleged episodes of the video series Crime Strike, and (iv) expansion of the duration of the deposition of the NRA's corporate representative.

General Ledger

The Special Master ruled that the NRA should produce the General Ledger, limited to expenditures over \$1,000. These restrictions will adequately protect any constitutionally protected free association rights of NRA members. The parties should meet and confer regarding how long it will take to complete this production.

Whistleblower Documents

The OAG seeks the following: a 2007 complaint letter, the files regarding any investigation into the subject matter of that letter, NRA Board minutes or committee reports discussing such matter and/or related investigation, and the “Franckel Report.”

The NRA requested an opportunity to respond in writing in accordance with the Stipulation appointing the Special Master, which request the Special Master granted.

Crime Strike Videos

The Special Master questioned why the OAG needed the videos given the other documentation that has been produced to it by the NRA.

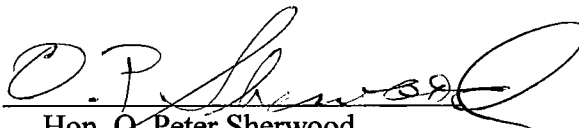
The Special Master directed the parties to meet and confer and for the OAG to narrow its requests with specific time frames.

The NRA requested the opportunity to respond to the application in writing should the parties not reach agreement, which request was granted.

Expansion of Duration of Deposition

The OAG has requested an increase of the duration of the deposition of the NRA’s corporate representative to 14 hours. The request is denied because the application is premature. The time limit remains seven hours. After seven hours, if the OAG decides it needs more time, it should meet and confer with the NRA. If the parties cannot reach an agreement, the OAG may renew its application.

Dated: New York, New York
July 11, 2022


Hon. O. Peter Sherwood
Special Master