

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-CV-1300-MSK-MJW

COLORADO OUTFITTERS ASSOCIATION,
COLORADO FARM BUREAU,
NATIONAL SHOOTING SPORTS FOUNDATION,
MAGPUL INDUSTRIES,
COLORADO YOUTH OUTDOORS,
USA LIBERTY ARMS,
OUTDOOR BUDDIES, INC.,
WOMEN FOR CONCEALED CARRY,
COLORADO STATE SHOOTING ASSOCIATION,
HAMILTON FAMILY ENTERPRISES, INC.,
d/b/a FAMILY SHOOTING CENTER AT CHERRY CREEK STATE PARK
DAVID STRUMILLO,
DAVID BAYNE,
DYLAN HARRELL,
ROCKY MOUNTAIN SHOOTERS SUPPLY,
2ND AMENDMENT GUNSMITH & SHOOTER SUPPLY, LLC,
BURRUD ARMS INC. D/B/A JENSEN ARMS,
GREEN MOUNTAIN GUNS,
JERRY'S OUTDOOR SPORTS,
SPECIALTY SPORTS & SUPPLY,
GOODS FOR THE WOODS,
JOHN B. COOKE,
KEN PUTNAM,
JAMES FAULL,
LARRY KUNTZ,
FRED JOBE,
DONALD KRUEGER,
STAN HILKEY,
DAVE STONG,
PETER GONZALEZ,
SUE KURTZ,
DOUGLAS N. DARR,

Plaintiffs,

vs.

JOHN W. HICKENLOOPER, GOVERNOR OF THE STATE OF COLORADO,

Defendant.

REPORTER'S TRANSCRIPT
FINAL PRETRIAL CONFERENCE

1 Proceedings before the HONORABLE MARCIA S. KRIEGER,
2 Judge, United States District Court for the District of
3 Colorado, commencing at 3:03 p.m., on the 20th day of February,
4 2014, in Courtroom A901, United States Courthouse, Denver,
5 Colorado.

6
7 **APPEARANCES**

8 RICHARD A. WESTFALL and PETER J. KRUMHOLZ, Attorneys
9 at Law, Hale Westfall, LLP, 1600 Stout Street, Suite 500,
10 Denver, Colorado, 80202, appearing for the Plaintiffs.

11 DOUGLAS ABBOTT, Attorney at Law, Holland & Hart, LLP,
12 555 17th Street, Suite 3200, Denver, Colorado, 80202, appearing
13 for the Plaintiffs.

14 MARC F. COLIN, Attorney at Law, Bruno, Colin & Lowe
15 P.C., 1999 Broadway, Suite 3100, Denver, Colorado, 80202,
16 appearing for the Plaintiffs.

17 ANTHONY JOHN FABIAN, Attorney at Law, 510 Wilcox
18 Street, Castle Rock, Colorado, 80104, appearing for the
19 Plaintiffs.

20 DAVID BENJAMIN KOPEL, Attorney at Law, Independence
21 Institute, 727 East 16th Avenue, Denver, Colorado, 80203,
22 appearing for the Plaintiffs.

23 MATTHEW DAVID GROVE, LEEANN MORRILL, KATHLEEN L.
24 SPALDING, and STEPHANIE LINDQUIST SCOVILLE, Assistant Attorneys
25 General, Colorado Attorney General's Office, Ralph L. Carr
Colorado Judicial Center, 1300 Broadway, Denver, Colorado,
80203, appearing for the Defendant.

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

THERESE LINDBLOM, Official Reporter
901 19th Street, Denver, Colorado 80294
Proceedings Reported by Mechanical Stenography
Transcription Produced via Computer

P R O C E E D I N G S

1
2 *THE COURT:* We're convened this afternoon in Case No.
3 13-cv-1300, that has a number of different named parties. The
4 matter is before the Court for purposes of considering the
5 proposed final pretrial order.

6 Could I have entries of appearances, please.

7 *MR. COLIN:* Good afternoon, Your Honor. Mark Colin on
8 behalf U.S.A. Liberty Arms, Rocky Mountain Shooter Supply,
9 Second Amendment Gunsmith and Shooter Apply, Jensen Arms, Green
10 Mountain Guns, Jerry's Outdoor Sports, Specialty Sports and
11 Supply, and Goods for the Woods.

12 *THE COURT:* Thank you.

13 *MR. WESTFALL:* Good afternoon, Your Honor. Richard
14 Westfall of Hale Westfall. With me at counsel table, also of
15 Hale Westfall, is Peter Krumholz. We are appearing David
16 Bayne, Dylan Harrell, Outdoor Buddies, Inc., Colorado
17 Outfitters Association, Colorado Farm Bureau, Women for
18 Concealed Carry, and Colorado Youth Outdoors. Thank you, Your
19 Honor.

20 *THE COURT:* Thank you.

21 *MR. KOPEL:* Good afternoon, Your Honor. David Kopel
22 appearing on behalf of David Strumillo, John B. Cooke, Ken
23 Putnam, James Faull, Larry Kuntz, Fred Jobe, Donald Krueger,
24 Stan Hilkey, Dave Stong, Peter Gonzalez, Sue Kurtz, and Douglas
25 N. Darr.

1 Pursuant to your instructions at the December 19
2 hearing, my Denver University Law School class is present to
3 see how federal courts really work.

4 *THE COURT:* Good. Welcome.

5 *MR. ABBOTT:* I'm Doug Abbott. Good afternoon, Your
6 Honor. I'm here representing Magpul Industries and the
7 National Shooting Sports Foundation.

8 *THE COURT:* Good afternoon and welcome.

9 *MR. FABIAN:* Good afternoon, Your Honor. I am Anthony
10 Fabian, representing Colorado State Shooting Association and
11 Hamilton Family Enterprises.

12 *THE COURT:* Good afternoon and welcome.

13 *MR. GROVE:* Matthew Grove, Your Honor, on behalf of
14 the Governor. With me at counsel table are LeeAnn Morrill,
15 Kathleen Spalding, Stephanie Scoville.

16 *THE COURT:* Good afternoon and welcome.

17 I've had an opportunity to look at your proposed final
18 pretrial order. Without expressing any opinion as to whether
19 the elements of the claims have been appropriately denominated
20 or whether the defenses have been appropriately characterized
21 as affirmative defenses, I approve the proposed final pretrial
22 order. It indicates that there are some issues that still need
23 to be resolved, and it appears to me that your list of
24 witnesses and estimated time and list of exhibits still exceeds
25 the amount allotted for trial.

1 What that means is, you all will have to cull out what
2 it is you're going to present. You have 30 hours on each side.
3 As I told you before, that's for everything, so all the
4 argument you want to make, it's all the examination you want to
5 engage in, it's all of your objections, it's everything. There
6 will not be any extensions of time, so you'll all have to
7 figure out how you want to do that.

8 And as to the plaintiffs, I expect you'll coordinate
9 so there are no repetitive questions asked, there is no
10 repetitive examination or arguing with regard to objections.
11 How you want to structure your presentation of your witnesses,
12 is entirely up to you, and maybe one attorney takes the lead
13 with one witness, another does with another witness. The only
14 thing I ask is that you be sure to tell the opposing side, the
15 defendant, what witnesses you're going to be calling at least a
16 day before they appear.

17 In addition, you'll need to have your witnesses here.
18 If you don't have a witness available to testify, you lose that
19 time.

20 Now, we do have some issues that are noted in your
21 proposed final pretrial order. First, I understand you want to
22 file trial briefs. You're free to file trial briefs. They
23 should be filed by March 14.

24 Secondly, apparently the defendant wants to raise
25 standing issues. Is that right?

1 MR. GROVE: Yes, Your Honor. It would be
2 encompassed -- I think the facts need to come out before some
3 of the standing issues could be raised.

4 THE COURT: Well, that's a problem, because generally
5 standing is determined before any evidence is received.
6 Whether this court has jurisdiction depends upon the facts as
7 they have been alleged, not the facts as established at trial.

8 So are you going to have standing issues before trial?

9 MR. GROVE: Based on some of the stipulations, I do
10 think that we could raise them.

11 THE COURT: Well, we're pretty far down this path. If
12 you intend to raise standing issues -- the reason we raise
13 standing issues, let me start with, is so that we can avoid
14 having a trial if one is not appropriate. If the Court doesn't
15 have jurisdiction to decide something, that's something the
16 Court has to decide before we get to the merits. And that's
17 why I mentioned "standing" back in July. If you want to
18 proceed with standing, you may file a brief addressing standing
19 issues. That brief must be filed by March 7, and any
20 responsive brief must be filed by March 14.

21 Then we have -- it looks like a couple of outstanding
22 motions. The ones that I have before me are an -- a motion for
23 leave to restrict at Docket No. 124 and a motion for an order
24 to close the courtroom, found at Docket No. 123.

25 Ms. Glover, were both of these motions -- would you

1 check and see if these were posted for public review on the
2 website?

3 You're not finding them on the website?

4 *COURTROOM DEPUTY:* It's more my deficiency in doing
5 so.

6 *THE COURT:* Counsel, were they posted?

7 *MR. GROVE:* I haven't actually looked at that, Your
8 Honor.

9 *THE COURT:* Okay.

10 *MR. KOPEL:* Nor have I checked on that.

11 *THE COURT:* Okay. Our local rules provide that they
12 have to be posted on the website, and they have to be posted
13 for at least three days. The reason is because the public has
14 a right to respond. It's not good enough that the parties to a
15 lawsuit agree that something be restricted or that the
16 courtroom be closed, because the public has an interest in
17 having access to the proceedings and the evidence that is
18 presented here in the courtroom. That's how the public can
19 double-check on the process, so we don't have a star chamber.
20 And that's why it's not sufficient for the parties to just
21 agree that certain evidence won't be made available to the
22 public or that the courtroom will be closed at a particular
23 period in time.

24 I don't know whether these have been posted for the
25 full amount of time required. I'm guessing that they may have,

1 because they were filed on February 14. But without being sure
2 that that's the case, I can't be sure that I can rule on them
3 today.

4 With regard to these, however, I will note this: I am
5 disinclined toward closing the courtroom or restricting access
6 to evidence that is presented. Our local rules provide that
7 that kind of restriction of public access will occur only when
8 there is no other viable means to serve the protective purpose
9 that has been articulated.

10 With regard to both of these motions, having looked
11 carefully at them, I am not satisfied that all other available
12 means have been considered. So I strongly request that counsel
13 consider all available means other than the relief requested.

14 Let me give you some examples. First of all, think
15 about whether or not the evidence is really relevant.
16 Secondly, to the extent it is relevant, is all of it relevant?
17 Third, has it been presented in some other time or place or
18 manner?

19 So, for example, testimony you would like to elicit
20 during the trial, if that is part of a record of something
21 else, perhaps that record can be used.

22 In addition, are these facts that can be stipulated
23 to? Many of the references that are made in these motions are
24 of marginal relevance to the issues we're going to be dealing
25 with. Certainly, not everything that is referred to is

1 relevant. So the question is, what is relevant?

2 In addition to that, some of what the parties seek to
3 present may be able to be stipulated to without disclosure of
4 the portion of the information that you're most concerned about
5 keeping confidential. So, creativity.

6 What I'm seeing now from my staff that's looking at
7 the website is, Docket No. 124, the motion to restrict, was
8 posted on February -- I'm sorry, February 18. The objection
9 deadline for the public is February 21. The motion at Docket
10 No. 123 was never posted.

11 Ms. Glover, would you please make a note in the
12 minutes that the clerk is directed to post Docket No. 123.

13 *COURTROOM DEPUTY:* Sure.

14 *THE COURT:* I will wait the requisite time period
15 before I consider these motions. And if you would like to
16 amend the motion in that time period, you're free to do so.

17 Mr. Kopel.

18 *MR. KOPEL:* Your Honor, I, too, found the record
19 showing that the motion on our side was filed on February 14
20 and posted on the 18th. In light of your instructions, we
21 withdraw the motion, for the reasons you have suggested, that
22 the information has been presented elsewhere.

23 Thank you, Your Honor.

24 *THE COURT:* All right. Docket No. 124 is withdrawn.

25 Let me ask you if there is anything you want to know

1 about the trial process that would assist you in preparing.

2 *MR. COLIN:* Your Honor, not so much in the form of a
3 question about the trial process, but I think all of the
4 parties have indicated in the proposed final pretrial order
5 that we believe trial briefs are appropriate. And I think the
6 Court has dealt with that issue. But we've also been
7 discussing among ourselves potentially submitting closing
8 arguments in writing and proposed findings of fact and
9 conclusions of law.

10 *THE COURT:* No, thank you.

11 *MR. COLIN:* All right. That's all I've got on that
12 issue, then.

13 *THE COURT:* Thank you.

14 *MR. KOPEL:* Your Honor, we have one ministerial
15 question on the filing of the pretrial briefs. You had
16 suggested that the date was March 14. Would that be March 14
17 at 11:59 or March 14 by the court's close of business at 5:00.

18 *THE COURT:* That's governed by our local rules.

19 *MR. KOPEL:* Thank you, Your Honor. Then my
20 understanding is that would make it 11:59. Thank you.

21 *THE COURT:* Correct.

22 *MR. GROVE:* I have a few, Your Honor.

23 *THE COURT:* Sure.

24 *MR. GROVE:* So just a couple of structural questions
25 to begin with. As the Court knows, there are about half a

1 dozen -- I think there are half a dozen 702 motions that are
2 outstanding, and the Court has indicated we would take those in
3 stride as part of the trial.

4 *THE COURT:* Let me explain how that works. This is a
5 trial to the bench. I will not be ruling on those 702 motions.
6 I will be taking your objections in mind when I make the final
7 determination on the issues.

8 *MR. GROVE:* And does Your Honor anticipate -- in your
9 702 rules, the way that it is structured is -- for a 702
10 hearing, as I understand it, the experts list out the opinions,
11 and then for any that the opposing party objects to, they
12 conduct a voir dire on that, and then there is a ruling. Does
13 the Court anticipate following that structure, understanding
14 that there wouldn't be a ruling from the bench?

15 *THE COURT:* No.

16 *MR. GROVE:* Just a general direct and then a cross?

17 *THE COURT:* Right. You've made your objections.
18 Since it's a trial to the bench, there is no need for going
19 through that exercise, because to the extent I agree with an
20 objection, I'll disregard the evidence.

21 *MR. GROVE:* That makes sense. Thank you for the
22 clarification.

23 *THE COURT:* Uh-huh.

24 *MR. GROVE:* I have a few other issues, if you don't
25 mind.

1 There is a -- sort of a lingering dispute between the
2 parties about the continued viability of Count 2 of the Fourth
3 Amended Complaint. And we'd like an opportunity to either
4 argue it or file a motion in limine before we get to trial so
5 we know exactly what is at issue here and what is not.

6 *THE COURT:* Well, you're welcome to argue it. I don't
7 think there is a big issue here. I know you think there is a
8 big issue, but for me it's not a big issue. It's a matter of
9 how it's been styled. I have not ruled on anything in a
10 substantive fashion. I regarded two claims as a single claim
11 in my prior ruling. I likely will do the same thing when I
12 rule on this here, but it doesn't change how you're going to be
13 presenting your evidence. There has been no dispositive
14 determination with regard to that.

15 *MR. GROVE:* Okay.

16 *THE COURT:* Does that help?

17 *MR. GROVE:* I think that's the clarification that we
18 needed, yes.

19 *THE COURT:* Okay.

20 *MR. GROVE:* A couple of other housekeeping issues. I
21 don't know how closely we need to adhere to the witnesses who
22 are listed with respect to the pretrial order. There is one
23 omission that I can tell you about now in one of the claims.

24 *THE COURT:* I'm not sure what you mean. There is
25 someone you didn't list that you would like to call?

1 MR. GROVE: She's listed on the exhibit list, we just
2 did not list her with respect to a particular claim.

3 THE COURT: It's not an issue.

4 MR. GROVE: Legislative history is another issue for
5 this case. It's voluminous. We've got it all. We've got it
6 on the exhibit list. I presume the Court doesn't want to read
7 all 1,000 or 2,000 pages of it. I was going to propose that we
8 submit it and highlight for the Court the sections that we
9 think are pertinent.

10 THE COURT: No highlighting.

11 MR. GROVE: Okay.

12 THE COURT: And no repetitive information. If it's in
13 the legislative history, then you shouldn't be presenting
14 evidence on it.

15 MR. GROVE: Would the Court prefer that we don't
16 submit legislative history at all?

17 THE COURT: It's up to you. It's your case. But we
18 don't need to have legislative history and duplicative
19 presentation of evidence.

20 MR. GROVE: The difficulty for us, Your Honor, is that
21 we are -- the state is required to, at least in the plaintiffs'
22 view, advance the same rationale for the legislation as part of
23 our case as was advanced in the legislature. And so what we'd
24 like to do is at least demonstrate that those two things are
25 the same. We can do that in probably 10 or 15 pages of

1 legislative history. If you'd prefer, we could excerpt that
2 and submit it.

3 *THE COURT:* I'm not quite understanding, I'm sorry. I
4 can never understand why you wanted to put on evidence in
5 addition to your legislative history, because you're exactly
6 right, you're bound by the rationale that was articulated at
7 the time that of the enactment. So I presumed your case would
8 be your legislative history. So I'm -- I mean, if your thought
9 is that somehow having people here to talk to me is going to be
10 more persuasive to me, it's not.

11 *MR. GROVE:* I'm sorry. I don't think I explained
12 myself very clearly. All we want to do is make sure that the
13 record that presumably is going to go up to the Tenth Circuit
14 in this case reflects that in the event that we are required --
15 that the state is required to advance the same justifications
16 to the Court as it did in the legislature, that those two
17 things are essentially the same. That for the large-capacity
18 magazine limitation, that the legislature talked about this and
19 this and this and that we present additional justification for
20 it here. We explain that in more detail than perhaps -- and in
21 sworn testimony than perhaps got introduced in the legislature.
22 It's not -- the quality of the evidence, the type of the
23 evidence is not any different. We just want to make sure that
24 we have the record and the Court has what it needs in order to
25 make the rational basis or intermediate scrutiny analysis it

1 needs to make.

2 *THE COURT:* I understand you want to have a good
3 record for the Tenth Circuit. We all do. I don't want
4 duplicative evidence in the record. So if there was testimony
5 by someone before a committee that is part of your legislative
6 history, then I don't want to have the testimony before the
7 committee in writing, as part of an exhibit, and then have the
8 same person come in here and testify before me.

9 *MR. GROVE:* Now I understand. I don't think that we
10 have any duplicative testimony of that type.

11 *THE COURT:* Okay.

12 *MR. GROVE:* It's more, the sponsor says this is why we
13 did this, in the legislative history. We're not having any
14 bill sponsors or anything come in here.

15 *THE COURT:* Okay. I'm concerned about duplication.

16 *MR. GROVE:* That's not a concern.

17 *THE COURT:* Okay. Good.

18 *MR. GROVE:* Rebuttal witnesses, we had some discussion
19 amongst ourselves. Obviously, it's hard to anticipate whether
20 you need a rebuttal witness. I want to make sure, do rebuttal
21 witnesses need to be listed on our current witness list?

22 *THE COURT:* No.

23 *MR. GROVE:* Okay. So we're not psychic, so I wanted
24 to make sure.

25 It sounds like from what you were saying about

1 managing our own time, that you'll be flexible with this. We
2 have -- I think both sides have witnesses who are -- for
3 example, we have a surgeon who has a surgery scheduled, and
4 it -- he's only available for a few hours during one day. Will
5 the Court have some flexibility if we need to fit him in?

6 *THE COURT:* I have no concern about who testifies
7 when. I'm here to listen to what you want to present. And how
8 you want to coordinate the presentation of evidence is entirely
9 up to you. It's a good idea to be thoughtful of the people who
10 have schedules that have to be accommodated.

11 *MR. GROVE:* Okay.

12 Can I have just a moment?

13 *THE COURT:* Sure.

14 *MR. GROVE:* There is one more thing, Your Honor. With
15 respect to the 702 motions, we were very careful to comply with
16 the Court's restrictions on what can be raised and what can't.
17 We have a couple of concerns about whether at least one of
18 those experts has expressed, well, legal opinions. And I
19 wanted to see if the Court had any interest in entertaining a
20 motion in limine on those.

21 *THE COURT:* No. Because if I think it's a legal
22 opinion, I'll disregard it.

23 *MR. GROVE:* Fair enough.

24 That's all for the Government.

25 *THE COURT:* Okay. Thank you.

1 Yes, sir.

2 MR. COLIN: If I may, Your Honor.

3 THE COURT: Uh-huh.

4 MR. COLIN: I apologize for not raising this a few
5 moments ago.

6 One minor procedural question, the due date for the
7 filing of the exhibits, the final exhibit exchange, falls on a
8 Saturday. So would that move us to March 3, which would be the
9 following Monday?

10 THE COURT: I don't care when you exchange your
11 exhibits. You need to have them here for trial.

12 MR. COLIN: Understood.

13 THE COURT: And you need to be -- have them in
14 notebooks for Ms. Glover. So however you're going to do that,
15 please do it.

16 MR. COLIN: All right.

17 THE COURT: It's most helpful if you don't put them in
18 separate notebooks. It's most helpful if you don't put them in
19 large notebooks. It's most helpful if you don't put all of
20 them in, only the ones that you really are going to admit. If
21 you've got other exhibits that you think you might want to
22 admit, you might need to bring them in for rebuttal, or someone
23 says something unexpectedly -- I always call those comfort
24 exhibits -- keep them at counsel table. We can mark them and
25 insert them when you need to admit them.

1 But for witnesses and, frankly, for me, trying to
2 handle large notebooks with lots of exhibits in them, most of
3 which are not being referred to by a witness, is very
4 difficult. If you can put yourselves in the shoes of the
5 witness and my shoes with regard to those exhibits, we'd be
6 most appreciative.

7 *MR. COLIN:* Understood. We'll do that.

8 *THE COURT:* Thank you.

9 And is anyone going to be relying upon deposition
10 testimony?

11 *MR. COLIN:* You anticipated my next question.
12 Actually, it's not really a reliance on deposition testimony in
13 lieu of live testimony, but for one particular witness. There
14 was an individual named Wagner who was identified as an expert
15 by the defense. He was converted to a lay witness as the case
16 proceeded, and we had anticipated that the defense would be
17 calling him at trial. He is not on their witness list. We
18 have spoken to the defense. They have an objection --
19 potential objection to the relevance of this testimony. But
20 the bottom line is, the only purpose for calling him as a live
21 witness would be to introduce a couple of very brief excerpts
22 or recite a couple of very brief areas from his deposition,
23 less than a page apiece.

24 We, I think, have reached a tentative agreement, with
25 the Court's permission, in lieu of calling this witness as a

1 live witness. We would simply offer these two excerpts,
2 subject, however to Mr. Grove and the defendant's objection to
3 relevance.

4 Would that be a procedure that would be acceptable to
5 the Court?

6 *THE COURT:* With regard to deposition testimony, it
7 requires a reader. I'm not going to take depositions back to
8 chambers and read them. So if you plan on and agree to use
9 deposition testimony, you need somebody here to read the
10 deposition. It's up to you to decide whether or not you think
11 that deposition testimony is admissible or you can agree to use
12 it. I'm not going to tell you what to do on that. That's
13 something that you all can work out.

14 *MR. COLIN:* Understood. Okay. That was my question.
15 Thank you, Your Honor.

16 *THE COURT:* Okay.

17 *MR. GROVE:* One more issue. I think both sides have
18 witnesses who are in wheelchairs. I don't know if that's going
19 to be an issue, if the Court needs to know about in advance.

20 *THE COURT:* Appreciate you letting us know. We have
21 the ability to accommodate wheelchairs. I would suggest that,
22 counsel, you not sit on both sides of the table, where you move
23 your seats when you have someone who is going to be testifying
24 by wheelchair. There is an extension that extends from the
25 witness box to allow a person to sit there in a wheelchair, so

1 that's not a difficulty.

2 Any other accommodations we need to make, any
3 accommodations for hearing, sight, things like that?

4 *MR. KOPEL:* Not from the plaintiffs, Your Honor.

5 *MR. GROVE:* No, Your Honor.

6 *THE COURT:* Okay. Any other questions you have about
7 the trial process that you would like to get resolved at this
8 point?

9 *MR. GROVE:* I know these courts are technologically
10 advanced.

11 *THE COURT:* Used to be.

12 *MR. GROVE:* Would it be -- would it be possible to
13 schedule a time with court staff to come in and figure out what
14 we can do?

15 *THE COURT:* That's a good idea. You can talk with
16 Ms. Glover. You make the appointment with her. Don't send
17 your paralegals. Come yourself.

18 Anybody else? Any other questions?

19 Okay. This promises to be an interesting trial. I'll
20 look forward to seeing you on the first day of trial. We will
21 start at 8:30 a.m. that first morning. And I ask you to be
22 sure that everything's ready to roll so we can make the best
23 use of our time beginning that day and each day thereafter.

24 You've got a little bit of time for filing briefs, and
25 you can expect that I will have reviewed your briefs and also

1 all of your 702 objections, categorizing as to each witness
2 what your objections are.

3 Thank you very much. We'll stand in recess.

4 (Recess at 3:37 p.m.)

5 REPORTER'S CERTIFICATE

6

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

9 Dated at Denver, Colorado, this 30th day of September,
10 2014.

11 s/Therese Lindblom

12

Therese Lindblom, CSR, RMR, CRR

13

14

15

16

17

18

19

20

21

22

23

24

25