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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,	: 06-CV-2233 (JBW)
	:
	:
-against-	: United States Courthouse
	: Brooklyn, New York
	:
	:
	: May 22, 2008
A-1 JEWELRY & PAWN, INC., ET AL,	: 11:30 a.m.
Defendant.	:
- - - - - X	

CIVIL CAUSE FOR ORDER TO SHOW CAUSE
BEFORE THE HONORABLE JACK WEINSTEIN
UNITED STATES DISTRICT COURT JUDGE

Proceedings recorded by computerized stenography
Transcript produced by Computer-aided Transcription.

1 THE COURT: Everybody prepared to go ahead?

2 MR. TABER: On the in limine? Yes.

3 THE COURT: I have the letter of the City Law
4 Department dated May 21st, indicating that the parties want to
5 review the exhibit list and deposition designations so that
6 they can be addressed in whatever free time we have next
7 week --

8 MR. TABER: Correct, your Honor.

9 THE COURT: -- when everybody's more fully prepared
10 and I think we'll do that. Today we'll do the remaining in
11 limine motions; and I would prefer, since this is a holiday
12 weekend, if we can avoid coming in tomorrow, to address the
13 questionnaires this afternoon.

14 MR. TABER: I think we'll be prepared to do that.

15 THE COURT: If that's possible so everybody won't have
16 to come in tomorrow.

17 MR. TABER: We had, your Honor, prepared a
18 questionnaire. We have not had a chance to share it with
19 Mr. Renzulli's office.

20 THE COURT: Give it -- give them a copy and we'll go
21 over it after the lunch hour. We'll go over it page by page
22 and question by question.

23 MR. TABER: It's actually en route to the courthouse
24 right now.

25 THE COURT: Okay. Now, we do -- we will have to

1 have -- and maybe you can exchange those lists tomorrow -- the
2 list of names that may come up, Wallace & Wallace and all the
3 others, and exhibits and anything that they may have to know
4 about, right?

5 MR. TABER: Yes, your Honor.

6 THE COURT: You should have no trouble with that,
7 right?

8 MR. RENZULLI: I don't think so, your Honor.

9 THE COURT: No. There's one name, however, I don't
10 want on that list because he's not testifying; and that's Mayor
11 Bloomberg.

12 MR. TABER: No, actually, your Honor, he's testifying.

13 THE COURT: No, he's not. What is he testifying to?

14 MR. TABER: Mayor Bloomberg is going to testify to
15 several topics, your Honor. He would testify to the nuisance
16 in the City of New York.

17 THE COURT: We don't need the mayor for that. There
18 are people who we have on the witness list, and we have police
19 who handle that.

20 MR. TABER: The mayor will speak, your Honor, about
21 the harm to the police force, the cop funerals that he must
22 attend, the grieving widows that he must deal with in
23 connection with that.

24 THE COURT: I don't want that. You can have the
25 police put in information or the head of the police department.

1 I'm not going to permit the case to turn into a media show for
2 either side. I see no reason to have the mayor here. From the
3 City's point of view, he doesn't add a thing to your case. It
4 couldn't be better established through people with independent
5 knowledge.

6 If he were trying a Guantanamo incarceration case, I
7 certainly wouldn't allow anybody to call the president in.
8 We'd have the people that are in charge of Guantanamo and their
9 superiors.

10 I don't see any reason for the mayor to be in here.

11 MR. TABER: Your Honor, the -- first of all, the mayor
12 has been deposed in this case for just shy of seven hours by
13 Mr. Renzulli who obviously thought that there was quite a bit
14 to depose him about.

15 THE COURT: Well, I'll hear from him, why he wants the
16 mayor on; but I'm telling you you haven't indicated to me any
17 reason why the City should call him as a witness. If you have
18 some other reason to call him, let me know; and I'll rule on
19 it.

20 If the defendant wants to call him, I'll hear from the
21 defendant in a moment.

22 What other reason do you have to call him? The fact
23 that he goes to police funerals is obviously not something I'm
24 going to allow him to testify to.

25 MR. TABER: Your Honor, the mayor was also personally

1 involved in the decision to bring this suit and the strategy
2 behind pursuing illegal guns in the City.

3 THE COURT: Excuse me. I'm not interested in that
4 strategy. I'm not interested in reasons. We're going to try a
5 case in this court the way we try every case -- based on
6 charges, on the rule of law, and on evidence that tends to
7 prove or disprove it. I'm not interested in turning this court
8 into a media display, and I won't permit it.

9 MR. TABER: And, your Honor, we have no interest in
10 turning it into a media display either; but the matter of the
11 fact is in every sense of the word it would be accurate to
12 describe Mayor Bloomberg as the client in this case for the
13 City who made the decision to institute the litigation, who
14 made the decisions to pursue the litigation, who was consulted
15 in connection with the sting operations that formulated a
16 significant part of the evidence in this case, who analyzed the
17 nuisance, and concluded it was in the interest of the people of
18 the City of New York to pursue this litigation with the City's
19 resources. He is the --

20 THE COURT: Doesn't make a bit of difference. That's
21 all irrelevant to whether you can prove a case or you can't
22 prove a case. You have a very difficult case to prove. The
23 evidence problems are very broad, as all of you recognize.
24 Certainly you and your team, which is highly experienced,
25 understands it and I understand it and I'm sure defense counsel

1 understands it. It's a difficult case, and I want to try it
2 strictly on the evidence. I don't see any reason to have the
3 mayor here.

4 MR. TABER: Your Honor, it would be, I think, in
5 fairness an extraordinary ruling in a corporate dispute where
6 the president of the corporation was instrumental in the
7 decision to pursue the suit and had firsthand knowledge of the
8 harms that were alleged in the complaint to deny the president
9 of the company the right to testify here if he wanted to come.
10 Now, if he didn't want to come, there might be issue as
11 to -- as to that.

12 THE COURT: No, I wouldn't allow the president of
13 General Motors to come in or the president of Ford to come in
14 on the safety of one of their cars or whether they make a
15 decision or not.

16 MR. TABER: But if the president --

17 THE COURT: That's not the issue in this case. The
18 issue is: Is there the situation in New York that you're
19 relying upon, and is there a causative connection with this
20 defendant? That's the issue.

21 MR. TABER: I agree with that, your Honor, but --

22 THE COURT: And it's got nothing to do with why the
23 mayor authorized the suit.

24 MR. TABER: But --

25 THE COURT: Or why the mayor may or may not have

1 authorized these investigations.

2 MR. TABER: But the mayor, your Honor, has -- I
3 apologize for being so persistent about this but the mayor has
4 firsthand knowledge of the nuisance in the City of New York.

5 THE COURT: No more than I've given you an opportunity
6 to prove by witnesses who are more embedded in the lower levels
7 of city living.

8 MR. TABER: Debra Griffin-Daza who is the witness I
9 believe you're eluding to --

10 THE COURT: And there are going to be other witnesses,
11 experts; and there's going to be other documents. There's
12 going to be police reports, and I assume you're going to have
13 other specific evidence. I have not precluded you from putting
14 in the testimony of Mohammed Ali. I've told you I'll make a
15 decision on it later --

16 MR. TABER: Correct.

17 THE COURT: -- 'cause of the 403 problems. So, you
18 have ample opportunities.

19 MR. TABER: But, your Honor, both Mr. Ali and
20 Ms. Griffin-Daza give us a view of the nuisance on the
21 individual street level portion of the nuisance which is
22 important. I don't want to denigrate that at all. What they
23 do not have the perspective to give and what Mayor Bloomberg in
24 his position has, I think, a unique perspective to give is the
25 broader citywide view of the systemic nuisance that results

1 from the flow of illegal guns.

2 THE COURT: Well, you can prove it -- you've got
3 statistics on gunshot wounds. You've got statistics on crimes.
4 You've got statistics on a variety of issues that establish the
5 facts, not conclusions of an executive at a higher level. You
6 can brief it if you want to but that's -- I don't want it on
7 the questionnaire.

8 Now, what is -- is the defendant going to call the
9 mayor?

10 MR. RENZULLI: Based upon what you're -- the comments
11 of the Court, I don't think I have a chance of convincing your
12 Honor but I do think and agree with Mr. Taber on a couple of
13 items.

14 One is that the mayor was part of the control group to
15 launch this lawsuit.

16 THE COURT: What does that have to do --

17 MR. RENZULLI: Well, I was just getting to that.

18 THE COURT: -- with whether there is or is not a valid
19 cause of action?

20 MR. RENZULLI: Well, one of the issues is, your Honor,
21 based on the information that the City had, based upon in
22 general the nuisance and specifically relative to Adventure
23 Outdoors, we want this jury to know on what evidence the City
24 proceeded; and the ultimate individual that made the decision
25 to sue Adventure Outdoors here is the mayor.

1 THE COURT: I don't see that -- what that has to do
2 with a Federal civil trial. They made a complaint. I've
3 outlined what I think the law is. That's subject to
4 correction. We'll have to deal with drawing up definitions of
5 what the cause of action is that satisfies you and your
6 opponent so that I can explain to the jury what the rule of law
7 is that they're applying and that's the case.

8 I don't care why somebody brought a suit or didn't
9 bring it. If they weren't sufficient to go forward and we had
10 a Rule 11 problem of a suit brought that was designed for
11 purposes other than proper utilization of the court, I'd have a
12 different problem; but that's an ancillary problem. That is
13 not the kind of suit I want tried here.

14 I want a quiet trial without surprises and without
15 undue prejudice to either side. That's is what is going to
16 happen in my courtroom as it has in every case I've tried to
17 supervise.

18 Now, if you want to make a motion to bring in the
19 mayor, make it now and tell me what you want him for and then I
20 can decide whether his name appears on that list, but I do not
21 at the present time want this jury presented with a list in a
22 gun case showing the mayor of the City of New York as one of
23 the prospective witnesses.

24 Do you want to call him as your witness?

25 MR. RENZULLI: Your Honor, I already said I would

1 based upon the reasons that I've articulated to the Court.

2 THE COURT: I haven't heard any reason.

3 MR. RENZULLI: Well --

4 THE COURT: Except the one I've just dealt with.

5 MR. RENZULLI: Right. And I think that that's a large
6 part of this case; and, granted, there is no Rule 11 motion
7 pending in this case. The question is what was the
8 understanding of the chief decision maker to bring this lawsuit
9 specifically against all the dealers and -- generally with all
10 the dealers and specifically --

11 THE COURT: You understand that I've already decided
12 yesterday that the jury's going to be told nothing about suits
13 pending about -- against other dealers.

14 MR. RENZULLI: Yes, your Honor, I acknowledge that. I
15 acknowledge that. We think that the jury should have an
16 understanding of what decision making process and what
17 information the City had before they launched their suit
18 against Adventure Outdoors. I'm not talking about the other
19 dealers. I'm talking about the dealer that's in this case; and
20 that, we think, is critical or potentially critical to one of
21 our defenses.

22 What does the mayor understand is a nuisance, and why
23 are guns sold by this defendant a nuisance in the City?

24 THE COURT: Well, I disagree with you. There's
25 nothing you've said that warrants your calling the mayor. Now,

1 it may be that something will turn up at the trial and I will
2 change my mind. At the moment I don't see any reason to change
3 it. So, I don't want the mayor's name on the list.

4 MR. TABER: Understood, your Honor.

5 THE COURT: Is there any witness of a like quality
6 that I ought to deal with? The police chief it seems to me is
7 in a different category.

8 MR. TABER: The -- your Honor, we do not intend to
9 call the police chief. We do intend to call some police
10 officers or more directly involving the police chief himself.

11 THE COURT: The statisticians in the police
12 department, people like that, people who control the documents,
13 that normal bolts and nuts of the trial, that you can bring.

14 MR. TABER: Well, and also, your Honor, just to be
15 clear with the Court, we intend to bring members of the joint
16 task force on firearms who will speak to the nuisance I think
17 closer to the street level that your Honor has indicated would
18 be relevant.

19 THE COURT: We'll deal with them. Their names and
20 titles ought to at least be in the list so that if anybody
21 knows them, we can get that information.

22 MR. TABER: And they are on the witness list that
23 we've delivered.

24 THE COURT: You can, I suppose -- and this would be
25 useful -- put at the bottom of this list: Are there any other

1 members of the City administration that you know or have a
2 personal relationship with?

3 You want that?

4 MR. RENZULLI: Yes.

5 THE COURT: The defendant?

6 MR. RENZULLI: I would like to know that, yes, your
7 Honor. That would be critical.

8 THE COURT: All right. So, put that in at the end of
9 the list.

10 MR. TABER: And let me also again so that there's no
11 surprise, since I appreciate the Court's sensitivity on the
12 issue, the City's criminal justice coordinator, John Feinblatt,
13 who is also very much involved in these issues with the gun
14 control issues and gun policy in the City of New York is on our
15 witness list. He is also our 30(b)(6) witness who was deposed
16 at considerable length by Mr. Renzulli.

17 THE COURT: I see no objection. Do you?

18 MR. RENZULLI: Mr. Feinblatt, no, your Honor. We want
19 him to be there.

20 Just so we're clear, your Honor, we have in terms of
21 police officers of the type that your Honor envisions would be
22 appropriate for this case, we have a Philip Pulaski and a Peter
23 Shanhai. We do not have any other police officer types --

24 MR. ALLAN: Andrew Thorne, I believe.

25 MR. RENZULLI: Andrew Thorne. I apologize.

1 THE COURT: You can put them on.

2 MR. RENZULLI: We don't expect we're going to have
3 other police officers in this case.

4 MR. TABER: If you'll give me a moment, your Honor, I
5 don't think there's anybody that's on our list; but if there
6 is, we'll certainly let the Court know.

7 THE COURT: The purpose of this is, remember, to see
8 whether a jury member by chance may have had some relationship
9 with a witness that would affect the juror's evaluation of
10 credibility. That's the only purpose of this kind of listing.

11 MR. TABER: Just for clarification, your Honor,
12 because we did not put Commissioner Kelly on our list -- I
13 believe that the defendant did -- he hasn't been deposed in the
14 case.

15 THE COURT: Are you going to call him?

16 MR. RENZULLI: We wanted to, your Honor; but we were
17 told that we could not have a deposition of Commissioner Kelly.

18 THE COURT: Why do you need Kelly?

19 MR. RENZULLI: He's the top police officer in New York
20 City and would have an understanding of the gun issues, more
21 specifically the gun issues as they relate to nuisance; but we
22 have not been permitted to take his deposition.

23 THE COURT: Well, if you haven't taken his deposition,
24 again, that's subject to reevaluation. He's in a position of
25 Gates, G-a-t-e-s, in our Guantanamo hypothetical.

1 Okay? All right. Then let's get on with it and we'll
2 break for two hours for lunch so you can go over this
3 questionnaire and we can move to this afternoon.

4 MR. RENZULLI: Can we use the NAACP questionnaire
5 templates, your Honor?

6 MR. TABER: That's what we've done.

7 MR. RENZULLI: Oh, good.

8 MR. TABER: I think where we broke off was that it was
9 time for the City's arguments as they relate to Professor
10 Webster.

11 THE COURT: Yes. I did want to clarify toward the end
12 of the discussion on the eighth motion, some of the documents
13 showed Wallace & Wallace and that relationship, therefore, may
14 have to be part of the case in order to authenticate and verify
15 the documents we have showing traces. Will their name appear
16 on the traces? Correct?

17 MR. TABER: They may appear on some.

18 MS. ASH: Yes, they do appear on many of the traces.

19 THE COURT: You may have to explain it at the time. I
20 don't want a lot of -- makes the jury suspicious so. So, that
21 may have to come in.

22 Now, Daniel Webster.

23 MR. PROSHANSKY: Judge, Eric Proshansky for the City.
24 The criticism of Dr. Webster's research is really not
25 well-taken. I think initially the objection was that he was

1 using trace data. Your Honor's already ruled that trace data
2 is a reliable database. First criticism offered was that
3 because he uses trace data, his research can't be reliable.
4 That's been dealt with because the trace data has been deemed
5 reliable.

6 Second, he is not even using trace data in the same
7 way that your Honor's probably familiar with it from the NAACP
8 case. He's not using it in statistical aggregates. He's
9 simply doing simple before-and-after comparisons of dealers.

10 How many traces does a dealer have before a police
11 sting and media publicity and how many traces does he have
12 afterwards? And he shows changes in the numbers of traces that
13 are potentially attributable to the fact that there's been
14 publicity and the dealer is now aware of that things could
15 happen, and the dealer then takes steps to reduce his guns
16 being sold illegally. So, it's a fairly straightforward study.

17 The other criticism directed by defendants as to it
18 was that Dr. Webster cannot say definitively that this sting
19 caused the decrease in the firearms, but that's just the nature
20 of social science research. He's offering data to show an
21 association between two events and will then give his opinion
22 as to why they were associated.

23 He's looked at other variables. He's looked at
24 whether police procedures changed. He's looked at whether ATF
25 procedures changed. He's dealing with actually a very short

1 period of time which means that there aren't likely to be other
2 variables involved.

3 So, it certainly passes the test of being
4 scientifically reliable. The rest of it goes to weight,
5 whatever the jury, whatever weight the jury wants to give to
6 his -- to his views.

7 THE COURT: Thank you. Oh, I'm sorry. Have you
8 finished?

9 MR. PROSHANSKY: Yeah. There was one other study I
10 just thought I'd mention which was also quite simple in which
11 he looked at a store that stopped selling "Saturday Night
12 Specials" and -- excuse me -- he looked at a store that stopped
13 selling "Saturday Night Specials" and found very coincident in
14 time again that the number of traces of all guns back to that
15 store decreased and these studies have all been published in
16 journals and I think that the criticisms directed at them is
17 essentially by laymen. There's been no expert criticism of his
18 studies. It shouldn't carry any weight. Thank you.

19 THE COURT: Thank you.

20 Did you want to respond?

21 MR. RENZULLI: Yes, your Honor, just quickly a couple
22 of thoughts here. One is the studies that are done by Daniel
23 Webster involve a Milwaukie dealer, a police sting operation in
24 Chicago and Detroit; and he has not studied here Adventure
25 Outdoors, knows very little about them or the allegation that a

1 nuisance has been caused by Adventure Outdoors in New York
2 City.

3 He readily admits that the studies that he has done
4 which I would argue, your Honor, are more on the issue of
5 remedy than has a public nuisance spin caused by Adventure
6 Outdoors' conduct.

7 Additionally, he readily admits that he cannot testify
8 with reasonable certainty that any of these what I'll call
9 studies that have very little, if at all, to do with the issues
10 in this case by reasonable certainty, that he could testify as
11 to what the conclusions were in those studies. He's very
12 honest about that.

13 My problem with Professor Webster is: What use does
14 this Court have or the jury have relative to his testimony;
15 and, additionally, the reliability of the studies he did which
16 have little or no consequence to the main legal issue in this
17 case?

18 THE COURT: I'm going to permit it. It bears on
19 causation and meets the limited Daubert, D-a-u-b-e-r-t, test.

20 13. To exclude any reference to *Americans for Gun*
21 *Safety Foundation Report* entitled quote, 'Selling Crime: High
22 Crime Gun Stores Fuel Criminals,' unquote.

23 MR. ALLAN: Judge, this is defendant's motion in
24 limine to exclude the report you just mentioned. We have
25 several grounds for excluding this report. This report is

1 supposedly based upon trace data that that was analyzed by Lucy
2 Allen in the NAACP trial which had been produced by the ATF
3 pursuant to a protective order. The defendant and I do not
4 believe the City either has access to the underlying data that
5 was relied upon by the Americans for Gun Safety Foundation in
6 reaching its conclusions.

7 We do not know the actual sources of one of their
8 experts who testified that he believed that the Americans For
9 Fun Safety Foundation was actually using Freedom of Information
10 Act's trace data as opposed to excerpts from the trace data
11 used by Lucy Allen.

12 Ms. Allen came -- the Americans for Gun Safety
13 Foundation came to the conclusion that Adventure Outdoors had
14 254 firearms traced nationally. We have no way of
15 independently verifying that or dispute --

16 THE COURT: Well, you're not putting that in, are you?

17 MR. TABER: The 254 Federal arms traced nationally?
18 We are putting that in for jurisdictional purposes your, Honor.

19 THE COURT: I don't want that. You can't use that.
20 Hearsay for that purpose. You can use his general conclusions
21 or her general conclusions as a scientist but not specific
22 traces to this defendant.

23 MR. ALLAN: Your Honor, the only mention of Adventure
24 Outdoors in this study was a listing on a chart, appendix in
25 the back which said: "Adventure Outdoors 254 traces."

1 THE COURT: No, that's to be redacted.

2 MR. TABER: My understanding, your Honor, is that we
3 have the underlying data itself elsewhere and, therefore, don't
4 need the report for that purpose.

5 THE COURT: Well, then if you have data, we'll have to
6 deal with the data; but I don't want this to come in as hearsay
7 through the report.

8 MR. RENZULLI: Your Honor --

9 MR. ALLAN: Your Honor, if the City has the underlying
10 data, that has never been produced to the defendant in this
11 case.

12 MR. PROSHANSKY: I believe it has. It's data that was
13 produced.

14 MR. ALLAN: The report itself says they relied upon
15 data that Ms. Allen obtained during the NAACP trial directly
16 from the ATF.

17 MR. PROSHANSKY: We don't have that but --

18 MR. RENZULLI: But --

19 MR. PROSHANSKY: We don't have that. So, we don't
20 have the underlying data in that report. We have comparable
21 data that looks at national traces.

22 THE COURT: Well, is she going to testify based on
23 data that's made available to both sides?

24 MR. PROSHANSKY: She's not testifying.

25 THE COURT: What is this report then coming in for?

1 MR. TABER: The report comes in for multiple purposes.
2 It's among the items that are reviewed by the experts. It's
3 among --

4 THE COURT: For what purpose?

5 MR. TABER: For formulation of their ultimate opinions
6 with respect to traces from Adventure Outdoors. It's one
7 of -- it's one of multiple sources that reference Adventure
8 Outdoors.

9 THE COURT: Well, you're not going to use that to
10 determine that Adventure had 250 or whatever number national
11 traces, are they?

12 MR. TABER: If you'll give me a moment, your Honor.
13 Do any of the experts actually use the 254 number?

14 MS. GALENO: I apologize for being late. I had a
15 client emergency this morning.

16 I believe the figure appears in a chart. Mr. Allan
17 can correct me if I'm wrong. That's attached to Mr. Nunziato's
18 report?

19 So, it was one of the factors he looked at in drawing
20 certain inferences about the practices of a particular dealer;
21 and he will explain what the significance of traces are, what
22 they do and what they don't do.

23 THE COURT: But I don't want that --

24 MS. GALENO: The report itself --

25 THE COURT: -- indirect hearsay to be used to put

1 before the jury the conclusion based on that alone, not on the
2 original trace data that this defendant had 250-some-odd
3 national traces. I don't see how you can do that.

4 MS. GALENO: Well, if the -- the report itself would
5 not be admissible. I mean, we wouldn't offer the report
6 itself.

7 THE COURT: All right. The report is out.

8 MS. GALENO: With respect to the experts, I don't know
9 if there's an independent basis that Mr. Proshansky and
10 Mr. Taber want to argue; but with respect to the expert who was
11 working with and Mr. Costa, he will say there's an enormous
12 amount of literature in the industry, this is one of the things
13 he looked at, and it's data concerning this particular dealer.

14 THE COURT: No.

15 MS. GALENO: And he relied upon it in drawing certain
16 inferences.

17 THE COURT: I don't want that. I don't see how we can
18 have that. We have to have with respect to a specific
19 defendant specific data. He can say -- I don't know what he's
20 going to say but I assume he can say based on his analysis of
21 data of secondary sources, et cetera, et cetera, that there is
22 a strong relationship between cross-sales and guns that show up
23 in other states or whatever, any of that generality but not
24 that this defendant had 250 traces based on that secondary
25 data. That you're going to have to prove by independent

1 evidence, unless he has examined it himself.

2 MS. GALENO: Examined the traces in particular?

3 MR. COSTA: And he has. There's a different excerpt
4 of that database for a different time period.

5 THE COURT: He can't rely on secondary sources.

6 MR. COSTA: He has the data. He analyzed the data
7 which shows 212 traces over a different time period.

8 THE COURT: If he has the original data --

9 MR. COSTA: He does.

10 THE COURT: -- as an expert he says it's reliable and
11 draws that conclusion and the defendants know what he's relying
12 on, that comes in.

13 MS. GALENO: He has the Foya trace database from the
14 ATF that was prior to 2002.

15 MR. COSTA: 2000, I believe.

16 MS. GALENO: Or 2000 and during that period if we need
17 him to go back and do additional analysis directly so he can
18 say that, I'm sure --

19 THE COURT: Whatever analysis he does, that's up to
20 you; but I'm not going to permit him to take a table that says
21 this defendant had 250-odd cases as proof that they had 250-odd
22 cases.

23 MS. GALENO: I understand. If it came from a
24 secondary source, that won't be adequate. I understand.

25 THE COURT: Not as to this defendant. As to

1 general -- generality of retailers, that's another problem I'm
2 not dealing with here.

3 MS. GALENO: Okay. Thank you, your Honor.

4 MR. ALLAN: Judge, there was one other issue with the
5 Americans for Gun Safety report; and they also had a list of
6 whether or not a dealer had been inspected by the ATF during a
7 certain period for Adventure Outdoors. They had stated that it
8 had not been inspected. This we do have information on and
9 Adventure Outdoors had, in fact, been inspected during that
10 period.

11 MR. RENZULLI: It's irrelevant. I'm sorry, your
12 Honor.

13 THE COURT: I don't see this has any bearing one way
14 or the other.

15 Fourteen. So, I take it that Motion 13 is granted.

16 Fourteen. To preclude the City from introducing into
17 evidence the video of the simulated straw purchase.

18 I don't understand what that is.

19 MR. PROSHANSKY: Your Honor -- well --

20 MR. RENZULLI: It's my motion, Judge.

21 MR. PROSHANSKY: It's their motion.

22 THE COURT: Let's hear from the defendant.

23 MR. RENZULLI: Okay. Your Honor, the piece of
24 evidence that we're dealing with was a incomplete videotape of
25 the City's investigators' operation in 20'6 at Adventure

1 Outdoors.

2 We are left with a, to be kind, half of a tape which
3 shows half of a transaction that the City wants to play to the
4 jury and --

5 THE COURT: Well, we have the tape?

6 MR. RENZULLI: Yes, you have it.

7 MR. PROSHANSKY: We have it.

8 THE COURT: Can you show it? Arrange to show it this
9 afternoon. I can't rule on it without looking at the tape. I
10 don't know how you're going to show it, but show it. Arrange
11 to show it to me in court, and I'll rule on it then.

12 Okay. We'll defer 14.

13 15. To exclude any claims that the filing of this
14 lawsuit has reduced the number of firearms recovered in New
15 York City.

16 Are you making that claim?

17 MR. TABER: We are making that claim, your Honor.

18 THE COURT: Not coming in. Too remote. The fact --

19 MR. TABER: We will have a supplemental report from
20 Mr. Webster analyzing the data which comes in particular, your
21 Honor -- we're just now receiving this data from Mr. Weisman
22 who has been studying the stores that are under the Court's
23 supervision.

24 THE COURT: But I don't want that.

25 MR. TABER: Well, your Honor, one of the issues -- and

1 this may, frankly, be an issue as much for the Court or perhaps
2 more for the Court than for the jury -- will go to the efficacy
3 or potential efficacy of the relief that's been requested.

4 THE COURT: That, I see. If there's a finding against
5 a defendant, I'll consider that kind of information in
6 determining what, if any, relief to grant; but it should not
7 come before this jury. So, it's granted.

8 MR. RENZULLI: Your Honor, do you envision that the
9 jury will be able to look at or assess the remedies?

10 THE COURT: No.

11 MR. RENZULLI: So, they have no --

12 THE COURT: Unless you want it.

13 MR. RENZULLI: I'd have to give that some more
14 thought, your Honor. I'll return to the Court on that.

15 THE COURT: It's not my intention; but if the parties
16 want it, I'll reconsider.

17 MS. GALENO: Your Honor, I think if we don't, the jury
18 may have some question about what the loss was about or what
19 we're looking for.

20 We wanted to be able to explain. I mean, they might
21 have a sense. They hear that laws are being violated. They
22 might have a sense that the City is trying to put the Wallaces
23 in jail which we're not; the City's looking to put Wallaces out
24 of business, which we're not. I wouldn't be surprised if we
25 hear something along those lines in Mr. Renzulli's arguments in

1 opening or summations.

2 THE COURT: You can argue in your opening what you
3 want as relief which is designed by the Court to limit --

4 MS. GALENO: Control the sales practices. That's
5 basically --

6 THE COURT: The kind of sales practices that leads to
7 that, I think you'll have to explain to them.

8 MS. GALENO: We will need to explain 'cause otherwise
9 they're trying to draw inferences --

10 THE COURT: In general you can do that.

11 16. To exclude any reference to Adventure being one
12 of the dealers listed in Charles' Schumer's "Bad Apple" report.

13 The motion is granted.

14 17. To preclude the City, its witnesses, or experts
15 from referring to certain firearms as "Saturday Night
16 Specials."

17 MR. TABER: Your Honor, we haven't put a written
18 response on that 'cause that motion was late filed.

19 THE COURT: I hear you. Generally, that's the way
20 they're referred to.

21 MR. TABER: The point I was going to make is -- the
22 experts do it. The Court's own decisions have on repeated
23 occasions done it. I don't know how else we would refer to
24 them.

25 THE COURT: The junk guns, I don't remember hearing

1 that. "Saturday night specials" is generally used.

2 MR. RENZULLI: It's a pejorative term to say the
3 least, your Honor. The guns that were chosen to be designated
4 as "Saturday night specials" in this case actually came from
5 the City, and they told their experts that this is the gun that
6 we want to look at.

7 Be that as it may, there are -- there is a way to
8 handle this in a more fair and balanced presentation, by
9 calling them inexpensive guns. When I tried to get a
10 definition from the experts in this case, Mr. Nunziato and
11 Mr. Vince, as to what was a "Saturday night special" was, I get
12 many different varying definitions.

13 THE COURT: I think that's so. I've had that problem
14 in connection with some of the litigations.

15 In general, have them refer to them as cheaper guns.

16 MR. TABER: Well, your Honor, I think that --

17 THE COURT: In some cases where there's literature, I
18 suppose you'll -- you can't avoid some reference.

19 MR. TABER: I think, your Honor, that the phrase is
20 one that is commonly used by experts. It is fair to
21 Mr. Renzulli's point to ask the expert when they use the phrase
22 "Saturday night special" what they mean by it but to outlaw
23 that phrase is inconsistent --

24 THE COURT: I don't see how we can, but the junk guns
25 I haven't heard in general.

1 MR. TABER: Junk guns we're planning to use. The
2 phrase.

3 THE COURT: Granted as to junk guns and the experts
4 will be instructed to minimize the use of "Saturday Night
5 Specials." It's a term of art.

6 18. To change the caption of the case to indicate
7 that only one defendant remains in the action.

8 I don't think it's necessary because the jury will not
9 see anything but that but we will -- any document that the jury
10 sees will have only this defendant. Granted.

11 MR. ALLAN: Your Honor, how will the case be
12 announced? Will it be City of New York versus A-1 Jewelry and
13 Pawn or City of New York versus Adventure Outdoors?

14 THE COURT: Adventure.

15 MR. RENZULLI: Thank you.

16 THE COURT: Nineteen -- that's it.

17 MR. ALLAN: Your Honor, I believe we have one more,
18 our general omnibus motion. Only two aspects of it have been
19 contested by the City. One was legal conclusions by experts,
20 and the other was shootings unrelated to firearms sold by
21 Adventure Outdoors.

22 THE COURT: The first one is they're not to give legal
23 opinions.

24 What's the second one?

25 MR. ALLAN: To exclude evidence of shootings involving

1 firearms that were not sold by Adventure Outdoors.

2 THE COURT: All right. Can't exclude them.

3 MR. TABER: That goes to the fundamental issue of the
4 nuisance in the City of New York.

5 THE COURT: Yes.

6 MR. RENZULLI: Can --

7 THE COURT: If they were illegally brought into New
8 York, it's part of the basic theory that we discussed yesterday
9 of the City that to use the word polluter. This is a polluter
10 of on a small scale, adding to all the other pollution that
11 creates the problem. I can't exclude that.

12 MR. RENZULLI: In general, your Honor, talking about
13 shootings or is the City permitted to discuss sensational
14 shootings here in the City with that jury?

15 THE COURT: I don't think they're going to do that.

16 MR. RENZULLI: Okay. That would be one thing.

17 The second thing, as I understand your Honor's ruling,
18 there would have to be some proof by the City that the gun that
19 is involved in a shooting in the City was illegally sold and
20 came to New York. It just can't be here, right? I mean, there
21 has to be some --

22 MR. TABER: No, your Honor, that's -- that's blatantly
23 unfair, as Mr. Renzulli well knows. We can determine that the
24 gun came from out of state, came perhaps from one of the
25 dealers originally sued in this case; but we can't in the vast

1 majority of instances we can't go back to the point of sale
2 years ago as if we had a video camera watching and describe
3 what happened at that time. There is no way for us to know
4 that. There are many ways for us to prove and we will prove
5 that those dealers engaged in illegal sales practices but we
6 can't prove it with the particular gun that shot the particular
7 person and Mr. Renzulli knows that. That's an unfair burden to
8 place upon us.

9 MR. RENZULLI: Well, I don't know that I don't know
10 that. They have done discovery on these other dealers.

11 The question is this, your Honor. Sensational
12 shooting in New York City where the City cannot establish that
13 that gun was illegally obtained or it was sold in an
14 inappropriate manner and then say to the jury, "You know,
15 you're filling in the blanks, this has to be an illegal gun,"
16 if a 3 year old was shot by this gun, then it's an illegal gun.

17 I think there has to be some kind of threshold proof
18 that this particular gun got to New York City through some
19 illegality. I mean, if this is a gun that was stolen from a
20 police officer, a Glock 19 ends up in a shooting of a 3 year
21 old, well, that's not this case.

22 MR. TABER: Your Honor, if the gun comes from --

23 MR. RENZULLI: I wasn't done.

24 MR. TABER: I'm sorry. I thought you were finished.

25 MR. RENZULLI: No, that's fine. That's fine.

1 MR. TABER: Your Honor, if the gun comes from a dealer
2 whom we establish through independent proof engages in illegal
3 sales transactions and the gun has arrived a thousand miles
4 away in New York and is involved in a shooting, it is exactly
5 the pollution example that you're -- that you've described for
6 us.

7 We have to describe the presence of the pollution in
8 New York. We can't show that the particular drop of the
9 particular chemical came from the particular polluter at a
10 point in time. That's an unfair burden and would never be
11 imposed in a nuisance case; but we can show that the polluter
12 engages in dumping chemicals into the water supply, for
13 example, without tracing the particular molecule that might
14 have ended up in some victim's glass of water here in New York.

15 MR. RENZULLI: I'd like to get out of the abstract for
16 a minute and out of the sesspool and bring this to what I think
17 the City wants to do, okay; and I think your Honor should know
18 that.

19 They want to take a complaint in the amended
20 complaint, and in that complaint for each one of the dealers
21 they talked about guns that may have come from that dealer and
22 crimes that may be associated with those guns. Okay. Like
23 David Chekhov, et cetera, or he may not have been one of the --

24 MR. PROSHANSKY: He was.

25 MR. RENZULLI: My point is this. The conduct, the

1 illegality, the bad sale is assumed. There's no proof of that.
2 There's no proof that this gun was sold by a particular dealer
3 not named in this case, later transferred to another FFL, and
4 then somehow gets to New York.

5 There's no proof with that particular gun that the gun
6 wasn't stolen and brought to New York. There's no proof with
7 that gun that that gun came from a secondary market where a
8 legal purchase was made and that person sold it to somebody
9 else who brought it to New York City.

10 I think that it's highly prejudicial for the City to
11 be able to take all of these incidents of gun crime without at
12 least establishing that there's some conduct on the part of the
13 other dealers that brought that gun to New York City.

14 In general, if the Court takes the position that guns
15 are a part of illegal activity in New York City, I don't know
16 that I could dispute that, Judge, with a straight face. I'm
17 just trying to figure out, you know, where the conduct base
18 comes in here at some point.

19 MS. GALENO: Your Honor, if I may, it would be very
20 nice if for every incident we had we can actually trace the gun
21 from an illegal straw purchase through to New York through to
22 the commission of a crime; but as your Honor knows, proof
23 doesn't work that way. We have a puzzle here, and we have
24 different pieces of the puzzle that we're entitled to put in
25 front of the jury. We have to establish nuisance. We have to

1 sustain illegal guns in New York. The fact that they're used
2 in crime is what makes the pollution so hideous. There are
3 illegal sales practices -- i.e. straw purchases -- by this
4 dealer. We have examples of that to show. We then have to ask
5 the jury to look at all of the evidence as it came in in its
6 various pieces and render a verdict.

7 The arguments Mr. Renzulli is making now goes to the
8 weight of the evidence and I'm sure he'll make all of these
9 very adequately and very competently and persuasive to the jury
10 in cross-examination of the witnesses as he has done in the
11 depositions, in argument to the jury, but to withhold the
12 evidence from the jury or to require that level of proof with
13 respect to every gun that we're going to talk about is not
14 possible. That puts a burden on the City that we can't
15 overcome.

16 THE COURT: Well, but it's analogous to the problem we
17 have in chemical and drug cases, cigarette cases.

18 MR. TABER: Asbestos cases, your Honor.

19 THE COURT: Asbestos cases which I've analyzed. These
20 aren't as large as the numbers in those cases, but they're
21 large. I take it the position of your experts -- and that's
22 what's going to be critical -- is this: That they cannot
23 describe as to any gun except those with Adventure where you're
24 going to have to do that in some way.

25 MR. TABER: We have individual guns from Adventure

1 that we can trace to New York and that we can show were
2 involved in activities here in New York that were criminal in
3 nature such as the Mohammed Ali --

4 THE COURT: Well, you have to do it with the guns to
5 some extent, too. If the expert can say that based upon their
6 analysis of gun movement that the relationship of crimes to
7 guns sold outside the state with respect to these retailers
8 you're talking about was greater than you would expect from
9 lawful sales as a statistical, analytical, historical matter,
10 substantially greater, then you have a basis for attributing as
11 a statistical matter a relationship to sales. If you don't
12 have that statistical basis, I don't see how you can conclude
13 that fact that a weapon was involved in crime here meant that
14 it was sold illegally by a retailer someplace else.

15 MS. GALENO: I think what the experts will say is not
16 that if it was recovered here and traced back a dealer, it
17 means it was a trace.

18 THE COURT: Right. It was -- it was traced to a
19 dealer.

20 MS. GALENO: Correct. Now, the experts, do we know if
21 he's asked, as he was by Mr. Renzulli, do we know that was an
22 illegal sale that resulted in that, the trace without more will
23 not reveal that.

24 THE COURT: Correct.

25 MS. GALENO: However, what he will say is there are

1 many FFLs out there who never have traces. So, the fact that
2 there are traces, what they'll say is it's a red flag. It's an
3 indicator. That's what they call it. It's a reason to look
4 further and say, well, what is the dealer doing that causes --

5 THE COURT: If they can say that -- if they can say
6 that based on a valid statistical analysis that the proportion
7 is so much greater as to these that you can conclude with a
8 reasonable degree of probability as an expert that a
9 substantial number of them were originated in illegal sale,
10 then you have the kind of testimony you have with respect to a
11 medical general causation problem and the kind of evidence that
12 you expect to have in a chemical pollution problem. It seems
13 to me that's what essentially you're paralleling in your
14 approach.

15 I think defendant is right. It could have been sold
16 perfectly legal to Colonel X in Kentucky who carried it across
17 the state line and then shot his wife's lover. I mean, he
18 bought it perfectly legally.

19 MS. GALENO: With respect to any gun, I think the
20 expert will say that. If it's a trace after a trace after a
21 trace, you have to start looking at it --

22 THE COURT: He's got to -- he's got to use statistical
23 analysis. It's the same kind of problem that we have in hair
24 analysis. It's the fingerprints, in -- I was going to say in
25 cigarette causation of disease except the Second Circuit failed

1 to see that.

2 MS. GALENO: It's their problem, your Honor.

3 THE COURT: It applies in pharmaceutical cases as
4 well. Not everybody who has a disease has the disease because
5 they had this particular pharmaceutical; but if the ratios as a
6 matter of epidemiology or the equivalent in this area are such,
7 you can show general causation. So, you have the statistical,
8 analytical problem with your experts; but I think the
9 defendant's right. You can't say that because the gun was used
10 illegally it was sold illegally.

11 MR. TABER: And, your Honor, we have no intention of
12 arguing to the jury that an individual gun used illegally was
13 sold illegally.

14 What we -- what we will argue is that, No. One, that
15 the number of illegal guns that come from Adventure Outdoors is
16 disproportionate to what one would expect for a dealer of their
17 size and that we know that Adventure Outdoors engages in
18 illegal sales practices as established by the facts in the
19 store on the ground and the experts will then draw the
20 conclusion from that.

21 THE COURT: I'm not going to decide whether you have
22 enough proof, but I think that's sufficiently decided in this
23 motion.

24 MR. RENZULLI: Can I add for the record just one item,
25 your Honor? The plaintiff's experts, there's not one

1 statistician in their number and early on in this case -- and
2 this may not have been the vision of what this case was about,
3 there was to be no statistical -- this was not a statistical
4 case from the standpoint of the plaintiffs or the defendants
5 and this was agreed upon. We're not going to see the type of
6 evidence that we saw, your Honor, from Lucy Allen, for example,
7 who's not an expert in this case, the statistical analysis to
8 establish, as your Honor has eloquently stated, general
9 causation.

10 We have two ATF, ex-ATF individuals that have no
11 background in stats or has this defendant been presented with
12 any stats remotely concerning what your Honor has articulated
13 on the record.

14 It would be unfair prejudice today to certainly shift
15 gears now and get statistical records from non-statisticians to
16 establish general causation for the purposes of filling in the
17 blanks on conduct in order to say that a specific sensational
18 shooting must have been precipitated by an illegal sale of a
19 gun.

20 That's all I have, your Honor. Thank you for allowing
21 me to try to make some sense out of that.

22 MS. GALENO: Your Honor --

23 THE COURT: Now we have the City's motions in limine.

24 MS. GALENO: Your Honor, before we proceed, can we go
25 back to the legal opinion from the expert? Because I want to

1 make sure that I understand your Honor's ruling on that.

2 These -- the two -- three principle experts that we
3 have are all former ATF, in one instance the former director
4 himself, and they understand as ATF agents and directors, they
5 understand the law. They know what -- how you legally sell a
6 gun, how you illegally sell a gun.

7 Will your Honor's ruling permit to them to say, for
8 example, a straw purchase is an illegal sale of a gun?

9 THE COURT: They can say the straw purchase, describe
10 it, and I suppose at that time they can give the provision.

11 MS. GALENO: I mean, that's something they're expert
12 in. They have to understand. While they are not lawyers, they
13 are experts in this area.

14 THE COURT: I'll allow it.

15 MS. GALENO: Thank you.

16 THE COURT: Preclude the defendant from referring to
17 the City's integrity test as illegal. You mean --

18 MR. PROSHANSKY: The simulated straw purchases.

19 MR. RENZULLI: Your Honor, just quickly, and it's good
20 that we're talking about this subject now so we can get some
21 clarity. It would appear that the Justice Department in their
22 letter, Mr. Battle's letter at least clearly to me states that
23 these types of operations with nonpolice individuals is an
24 illegal operation. I'm trying to get my arms around it, and I
25 think we all are. The investigators are testifying that the

1 gal that purchases the gun is filling out the 4473 and stating
2 that she is the actual purchaser of the gun, and this will be
3 subject to your Honor's looking at the videotape here. It's
4 not the entire transaction, but you'll get a flavor of that.

5 If, in fact, she is the actual buyer and there was no
6 intent to deceive, this entire simulated straw purchase has
7 very little value other than to say contra to 404(b) that you
8 have a propensity to almost sell straw. Okay.

9 Can we introduce evidence to the jury and let the jury
10 make a determination as to whether the operation, if it's
11 coming in, was illegal? If the intent of the purchaser here
12 was to deceive, then I think the jury should be able to make
13 that particular conclusion; or the jury may make an opposite
14 conclusion.

15 THE COURT: Well, I assume that's part of your
16 argument that you were, in fact, deceived. You thought it
17 was --

18 MR. RENZULLI: Yes.

19 THE COURT: -- they were the purchaser.

20 MR. TABER: Your Honor, I'm not sure what he's going
21 to argue about the test. Our in limine motion seeks to say
22 that he can't allege, can't argue to the jury --

23 THE COURT: That the practice that you engaged in was
24 illegal. Yes, that is -- that motion is granted but as to the
25 particular transaction that your seller, your retail clerk

1 believed he was engaging in in a valid transaction, certainly
2 that's your argument.

3 MR. RENZULLI: We're in a --

4 THE COURT: You were, in fact, deceived. You entered
5 into the transaction in good faith, and you were deceived by
6 these people.

7 MR. RENZULLI: Uh-huh. The issue of the transaction
8 itself though in a court of equity, your Honor, which we are
9 sitting in equity in this case by the judge's ruling, what
10 about the aspect of unclean hands?

11 THE COURT: I'm not going to declare this as an
12 unclean hands transaction. This is like the ruling that I make
13 in many criminal cases where you have police officers seizing
14 narcotics, making an arrest, eavesdropping. I tell the jury
15 you must assume for the purposes of this case that the evidence
16 was obtained legally. That's what we have here, that the
17 technique is not to be ignored because it may or may not be in
18 the defendant's view illegally; but they can obviously take
19 into consideration the fact that they were designed in a sense
20 to mislead.

21 MR. RENZULLI: Uh-huh. Just one --

22 THE COURT: Your motion is granted.

23 MR. RENZULLI: -- one critical distinction, if I can,
24 Judge -- and I hate to beat a dead horse here -- in the cases
25 where your Honor is faced with that predicament, those are

1 police officers. We're dealing with private investigators
2 here. That's one difference.

3 The second difference here is that there is
4 legislation in Georgia where Adventure Outdoors hails from, as
5 well as Virginia, that make this very operation illegal.

6 Can we discuss that with the jury?

7 THE COURT: No. You can make a motion outside the
8 jury's presence to suppress it the way you would in a criminal
9 case on the ground that it's illegally obtained evidence.

10 MR. TABER: It wasn't illegally obtained, your Honor.
11 The statute he's referring to was passed afterwards.

12 THE COURT: I don't want to hear the argument. I'm
13 telling you you can make a motion to suppress the evidence if
14 that's what your view is, that it was evidence illegally
15 obtained like a wiretap which would be suppressed; and I don't
16 plan to grant it but make it for purposes of appeal. I don't
17 think it should be granted.

18 MR. TABER: Your Honor, also on this same in limine
19 motion, there is the letter that's been referenced on a number
20 of occasions from Mr. Battle of the Department of Justice; and
21 I've marked the purchase of that letter that we think ought be
22 redacted, assuming the letter itself is to be put in evidence
23 by the defense which I assume they will do.

24 The portion of the letter that we have no objection to
25 reports on the conclusion of the US attorneys involved, that

1 they would not prosecute any of the dealers who were subject to
2 these operations; and we don't have a problem with that.

3 That closes the loop on what happened and it's fine
4 but the paragraph that I marked insinuates without reaching any
5 conclusion to be sure that in the view of the Department of
6 Justice what the City did was not a good thing and the Court
7 has already ruled that they're not to suggest it's illegal.
8 This is a variation on trying to get the imprimatur of the
9 Department of Justice in a way we think is improper.

10 THE COURT: Mark this as Court Exhibit 1 for this
11 hearing.

12 You want to look at that now?

13 MR. RENZULLI: Yes, your Honor.

14 THE COURT: What's the date?

15 MR. RENZULLI: It's February 6th, 2007; and it is a
16 letter from the US Department of Justice, Mr. Battle, Michael
17 Battle, to John Feinblatt who is the criminal justice
18 coordinator for the mayor's office.

19 THE COURT: We'll have to break. So, we'll pick this
20 up at a quarter to 3:00. By that time you will have gone over
21 the --

22 MR. TABER: We have them now. We'll do that.

23 THE COURT: You're adjourning now 'til 2:45. We'll
24 pick the discussion up at that point.

25 MR. RENZULLI: Okay.

1 (Off the record.)

2 (On the record.)

3 THE COURT: Okay. Are we ready to go?

4 MR. RENZULLI: We had a little bit of a mixup we
5 needed to talk to you about. We were working off a different
6 draft. We now have another copy of the NAACP. I didn't
7 anticipate we were going to do this today and if we can just
8 have, if it's okay with the judge, with you, Judge, a little
9 more time to look through this and this way we won't waste your
10 time.

11 THE COURT: Okay. Do you have your draft?

12 MS. GALENO: We were both doing the same exercise
13 because we --

14 MR. TABER: Our draft was off of an earlier version of
15 the NAACP one. So, we're now doing it afresh. They didn't
16 mesh.

17 MS. GALENO: We did have a markup but Mr. Renzulli
18 prefers the --

19 THE COURT: I'll be working over in the jury room.

20 MS. GALENO: This is very detailed your Honor.

21 MR. RENZULLI: It's your draft.

22 MS. GALENO: This is very detailed.

23 MR. TABER: I don't think it's a draft. That's the
24 final version.

25 THE COURT: You have a copy?

1 I'll be working over there. When you're finished,
2 knock on the door. I'll be in the jury room. It's right
3 across here.

4 MR. RENZULLI: Judge, do we have your opening
5 paragraph yet?

6 MR. TABER: The thing you dictated yesterday.

7 THE COURT: You have a copy of it?

8 MR. FARIDI: Because you said it on the record and you
9 just wanted to give them an idea what to work from.

10 THE COURT: Well, didn't I -- where is the -- we have
11 a copy.

12 MR. TABER: We don't it have. No way to print it.

13 THE COURT: I did change it slightly.

14 MR. FARIDI: I have it here.

15 MR. RENZULLI: It's okay. We'll work on this.

16 THE COURT: Well, I'll give it to you.

17 MR. FARIDI: I think I might have left it upstairs,
18 Judge. I'll have to get it.

19 THE COURT: All right. Give me a copy of the
20 questionnaire. Whe you're finished, run off a couple of copies
21 for them.

22 Why don't you find it and have June run it off from
23 there? Let me have a copy.

24 MR. FARIDI: I'll get it upstairs, Judge.

25 THE COURT: Okay.

1 (Off the record.)

2 (On the record.)

3 MR. FARIDI: Judge, would you like to go over the
4 motion in limine pertaining to the video first?

5 THE COURT: What do you want to do? You want to go
6 over the questionnaire? You're working on it.

7 MR. RENZULLI: We're almost done, Judge. We're almost
8 there.

9 MR. TABER: And we have very few changes on the NAACP
10 version.

11 THE COURT: Well, do you want a little more time?
12 I'll come down in about ten minutes, if you'd like.

13 MS. GALENO: John, could you look at it while the
14 video's running because you don't need to.

15 MR. RENZULLI: I've seen it, Judge.

16 MS. GALENO: Why don't you look at the video?

17 THE COURT: Okay. Start it up, please. What date is
18 this?

19 MS. GALENO: What date is it?

20 MR. PROSHANSKY: March or April of 2006. I don't know
21 the exact date.

22 (Video played for the Court.)

23 THE COURT: This is what? Somebody explain what's
24 going on, please.

25 MS. GALENO: This may be the hat cam, your Honor.

1 There were two investigators in the car, a male and a female.
2 The male was wearing a hat cam or a camera in his hat. The
3 female was wearing a camera in her purse.

4 THE COURT: In her where?

5 MS. GALENO: In a purse.

6 THE COURT: I see.

7 MS. GALENO: That she was carrying or that was
8 strapped on her -- I'm not absolutely certain -- and I don't
9 know which one. I think --

10 MR. ALLAN: This is the hat.

11 MS. GALENO: This is the hat cam? The hat cam went
12 about 25 minutes or so and then malfunctioned, but we do have
13 audio and video for 25 minutes.

14 The purse cam went black very shortly after it started
15 and then I'm not sure exactly how much tape we have on that,
16 but there's no video.

17 (Video continues to play for the Court.)

18 MS. GALENO: Do we have audio running? Because she
19 started the tape by saying, "We're going Adventure Outdoors."

20 And she gave the date.

21 THE VIDEOGRAPHER: It's going to come up now.

22 MS. GALENO: Oh, okay.

23 MR. TABER: While we're waiting here, I should note we
24 have transcribed the audio portion; and that will run on the
25 bottom when we show the video.

1 (Video continues to play for the Court.)

2 MS. GALENO: Your Honor, that's the female
3 investigator, Tanya Nooner.

4 THE COURT: Yes, I see her earrings.

5 (Video continues to play for the Court.)

6 THE COURT: I assume the participants will be
7 testifying and describing what happened?

8 MS. GALENO: The male investigator, Joseph Townsell is
9 available to testify. Ms. Nooner is deceased, your Honor. She
10 was the victim of crime.

11 THE COURT: All right. As long as one of them is.

12 (Video continues to play for the jury.)

13 MS. GALENO: Your Honor, the critical point of the
14 tape occurred probably like 15 or 20 minutes ago. I think this
15 is the purse cam about to start.

16 Is that right?

17 THE COURT: This is the what?

18 MS. GALENO: This may be the second tape that's about
19 to start, the purse cam.

20 THE COURT: Well, what happened to the second -- to
21 the other one?

22 MS. GALENO: The other one malfunctioned.

23 THE COURT: At that point?

24 MS. GALENO: At that point but the critical point in
25 the tape occurred like ten minutes earlier. You want to watch

1 this one first, your Honor, before we discuss it?

2 THE COURT: Well, this one doesn't go any further than
3 the other one?

4 MS. GALENO: It does not. It actually goes dark
5 earlier, and then there's some audio.

6 THE COURT: Well, then we don't want it.

7 MS. GALENO: Well, I'd like to actually -- was
8 plaining to introduce both of them to make them available to
9 the jury in case they wanted to look at them for some reason
10 the case --

11 THE COURT: I don't see any point in having -- this
12 one is too incomplete, unless the defendant wants it.

13 MR. RENZULLI: Of course we do.

14 THE COURT: You want it.

15 MR. RENZULLI: Recognize sure.

16 THE COURT: All right. Then put that one in, too.

17 MR. RENZULLI: Put them both in.

18 THE COURT: Put them both in.

19 MS. GALENO: Are you withdrawing your objection then?

20 MR. RENZULLI: We need to talk about our objections.

21 THE COURT: I don't want to see them. If you agree
22 that both go in together --

23 MR. RENZULLI: I'm not agreeing both go in at all. We
24 still have the argument.

25 THE COURT: I understand. If it's one --

1 MR. RENZULLI: If one or two --

2 MS. GALENO: With respect to the first tape, the
3 critical points occurred.

4 THE COURT: I understand. Let me hear the objections
5 first.

6 MS. GALENO: Very well, your Honor.

7 THE COURT: What is the objections?

8 MR. RENZULLI: Okay. The objection is, your Honor,
9 what we have here, you haven't seen the second tape; but this
10 one goes out about is it five minutes into it? Somewhere in
11 that area. What the tape does not show is the other portions
12 of the transaction. You see here is just at the counter. The
13 transaction goes from the counter to the cashier. At the
14 cashier's stage there's a NCIC check that is done and there's
15 some more paperwork that that's done and, in addition, in this
16 particular transaction the cashier asks some very critical
17 questions of both the male and female investigator.

18 They went along the lines of: Are you purchasing this
19 gun for yourself?

20 We got a response from both of the investigators that
21 the female investigator was purchasing the gun for herself.

22 Later in the transaction when the NCIC was being run
23 and these folks continued to walk around the store, there was
24 another approach by a manager of the store who asked the same
25 questions; and there was an inquiry as between the manager and

1 these two individuals.

2 We were not there. There is no videotape; but if you
3 look at Joseph Townsell -- he is the male investigator -- there
4 could have very well have been questions about the purpose of
5 the purchase. He could not recall in great detail, since they
6 did not do a memoranda concerning what was going on.

7 So, therefore, what we have here is a -- an incomplete
8 transaction. My understanding is that one month after the
9 videotapes were taken, the two investigators were approached by
10 lawyers from the City and told to do a paragraph which is an
11 attempted completion of what occurred on that particular day;
12 but in that paragraph you do not get or see or hear the
13 questions that were directed to these investigators by the
14 various different employees of Adventure Outdoors.

15 We believe that if the tape were complete and the jury
16 were able to see both sides of the equation and what was going
17 on and all the questions that were asked, that that would be
18 fair and not prejudicial. To give them an incomplete first
19 tape and an incomplete second tape with the entire transaction
20 on it would be prejudicial to Adventure Outdoors. There is no
21 reason why the City couldn't have done this transaction. They
22 knew right after they took it that there was a malfunction of
23 not one but two cameras.

24 Because this evidence is being used to establish that
25 Adventure Outdoors has the propensity to make straw sales and

1 there's a big question here and we reviewed this before, if the
2 male purchaser said under oath through the female purchaser
3 that he was the actual buyer and filled out the form
4 truthfully, do we have a straw purchase? Okay. That's where
5 our discussion about the potential illegality of the sale that
6 we had before comes in.

7 With that having been said, it would appear to me that
8 if it's being used for that purpose, it's directly contra to
9 404(b) of the Federal rules of evidence and that it should not
10 be admitted.

11 I have no problem at all, since we do have one of the
12 investigators I just learned who will testify live, to have him
13 discuss the rendition and the actions and what occurred in the
14 store, no problem whatsoever; but that would be the fairer
15 approach to getting this evidence into the record.

16 MS. GALENO: Your Honor, there's nothing better than
17 watching a tape to see what actually occurred in the store.
18 Unfortunately for the City, the tape malfunctioned; but after
19 that, we have witness testimony on both sides. Mr. Townsell
20 will testify as to what was or wasn't asked by the store
21 employees and the store employee, presumably, Mr. Renzulli will
22 have an employee who will give his version of events.

23 The tape is very palpable evidence of what happened at
24 the critical moment because really the important part of the
25 tape -- you want to play the whole thing in the interest of

1 completeness to give the jury a picture but the critical part
2 of the transaction was reported because the jury can see that
3 it was the male investigator who is interacting with the
4 salesperson, talking about caliber, talking about ammunition,
5 talking about recoil, handling the gun, physically holding it,
6 pointing it and then at the moment when he's being shown
7 paperwork by the clerk and then at the moment when he says
8 she's filling it out and the clerk said, "Oh, I'm sorry. I
9 assumed," or something to that effect and turns to the clerk,
10 it was at that point that he should have terminated the sale at
11 best or at a minimum made further inquiry.

12 We actually have videos which we also intend to offer
13 of a clerk who did just that and then refused to make the sale.
14 That's what should have happened in the store and it didn't and
15 at that point it was already completed. That's all on the tape
16 and then she continues to fill out the paperwork and the clerk
17 is on the phone. I don't know if he was -- it was related to
18 this transaction or not but you see him walking about. He's
19 making small talk with her. She's asking a question about the
20 form. At that point it's done.

21 When they later ask that's part of the straw going in,
22 if they ask, "Are you the real purchaser?" Yes.

23 If they were to say, "No, we're here to straw purchase
24 a gun," that isn't the way it happens.

25 So, of course she's going to say at some point, "Yes,

1 I'm the actual purchaser of the gun."

2 All that's sort of after. The moment at which the
3 store should have intervened was when the paperwork is handed
4 to the female and that's all on the record and there's nothing
5 more powerful for the jury than to see this unfold on tape and
6 to hear it and actually have it brought to life with the video.

7 THE COURT: Do you have an audio from the purse that
8 goes beyond this?

9 MS. GALENO: The audio from the purse, the female was
10 apparently -- Ms. Nooner, I should say, was walking about the
11 store for some part of it. I know that there was
12 cross-examination. I don't recall. I haven't listened to that
13 part of the tape in a bit, your Honor. You can overhear, I
14 think, some of the transaction, I think, between Mr. Townsell
15 and the clerk but it doesn't, I don't believe that it would
16 give any audio of the -- of subsequent parts where the first
17 camera cut off.

18 I don't know if Mr. Renzulli or anybody else wants to
19 correct me on that.

20 THE COURT: Well, did that -- how long did that tape
21 play?

22 MR. ALLAN: It was not as long as the hat cam, your
23 Honor.

24 MS. GALENO: It's less, right? It's less than 25
25 minutes?

1 MR. ALLAN: It's less than what you watched on the hat
2 cam, your Honor.

3 THE COURT: Oh, it terminated earlier.

4 MR. RENZULLI: Yes.

5 MS. GALENO: It went dark almost immediately and we
6 lost video almost immediately and you have audio for some
7 period of time.

8 THE COURT: And he's going to testify as to what
9 happened?

10 MS. GALENO: We're hoping to have him live, yes.
11 We've reached out for him.

12 THE COURT: We have his deposition?

13 MS. GALENO: Video deposition as well, just in case.

14 THE COURT: Well, I won't permit any of it in unless
15 he's here. I think it's a critical matter that the jury ought
16 to see him, hear him on direct and being cross-examined. So,
17 you better get him.

18 MS. GALENO: That is our desire of course. We'd
19 rather have him live. He's a very important witness.

20 THE COURT: If you don't have him, I'm not going to
21 put it in. If you do have him, I'll allow it in.

22 MR. RENZULLI: May I just comment, Judge?

23 THE COURT: But I will consider an instruction to the
24 jury that, since it was the City's tape, they're entitled to be
25 sceptical about what happened after the tape shut off.

1 MS. GALENO: Well, presumably they'll have testimony
2 as from both sides as to what happened afterwards. We're back
3 restored to where we would have been had we not had a tape in
4 the first instant.

5 THE COURT: I understand, but it was your tape. Try
6 to agree on what I should say, and I'll try to say it.

7 You wanted to add?

8 MR. RENZULLI: Yes, your Honor, just a couple of
9 comments. One is we do not have testimony from our side
10 concerning what happened that day.

11 THE COURT: I understand.

12 MR. RENZULLI: We don't but there's a
13 representation --

14 THE COURT: You will have testimony, I take it, as to
15 your course of conduct.

16 MR. RENZULLI: We will, your Honor. We will
17 definitely have that testimony; but we will have to say that
18 this particular transaction was not one that the manager, the
19 guy behind the counter, or the cashier have a specific
20 recollection. That's No. One.

21 No. Two is -- and I agree with counsel that videotape
22 is a very persuasive and strong method to communicate to folks,
23 especially jurors.

24 However, we don't have the full videotape; and I'm not
25 sure that some kind of a curative instruction to the jury in

1 some way makes up for the prejudicial aspect of not having the
2 full tape. As you said, it's the City's tape. They could have
3 gone back in. They had teams of investigators. They could
4 have gotten a full tape. They decided not to.

5 THE COURT: I agree with you.

6 MR. RENZULLI: Okay.

7 THE COURT: It's of very slight probative force.

8 MR. RENZULLI: The other issue is I heard and I
9 believe the City has made a motion to use another tape of
10 another dealer and kind of use a comparison as to what another
11 dealer did and I believe that that is highly prejudicial if, in
12 fact, we don't have uniformity of facts. We have a full
13 tape --

14 THE COURT: I don't want it. Your experts, however,
15 can describe what is the appropriate action and what should
16 have taken place here.

17 MS. GALENO: Your Honor, may we re serve decision on
18 that until you've had a chance to look at this tape? Because
19 it was a completed transaction and the tape cuts off --

20 THE COURT: Well, I assume it is. I don't think
21 that's adequate.

22 MS. GALENO: When you see the contrast, your Honor.
23 Your Honor is permitting evidence of other dealers. This is
24 another dealer who's actually doing it the right way and when
25 the jury sees how it's -- how that --

1 THE COURT: The expert can testify to what's wrong
2 here. I'm not going to permit that in view of the tape. It
3 just gives too much weight to this tape.

4 MS. GALENO: Would your Honor consider reserving
5 judgment until you reviewed the Candler (sp) tape which is the
6 tape we're referring to?

7 THE COURT: Anything now I'd say now is subject to
8 review during the trial, but that's my present ruling.

9 What else do we have?

10 MR. RENZULLI: Just one other comment, your Honor.
11 There is a sharp difference of opinion as between experts and
12 industry members as to when do you terminate a sale.

13 THE COURT: Well, I think the sale takes place
14 actually when they pay the money, doesn't it?

15 MR. RENZULLI: Well, that is true. So, you need to
16 look at the entire sale. So, to say that the first tape where
17 the woman is filling out the paperwork is the transaction and
18 to say at that point this transaction should be terminated is
19 actually invading the province of the jury.

20 The jury should hear what -- how transactions go
21 about -- for example, don't lie for the other guys which is
22 some industry admonitions -- and then make that decision.

23 THE COURT: All right. I've ruled on it for the time
24 being. Let's get back to the in limine now, if we may.

25 MR. TABER: Your Honor, we had -- excuse me -- started

1 but not finished the Battle letter which the Court marked as
2 Exhibit 1.

3 THE COURT: The Government's motion is to redact the
4 final paragraph on Court Exhibit 1, February 6, 2007, letter
5 from the Department of Justice.

6 MR. RENZULLI: If I could just see it.

7 MR. TABER: Just for the record, it's actually the
8 next to the last paragraph 'cause there's a small carryover.

9 THE COURT: Last paragraph on that first page, yes.

10 MR. TABER: Yes.

11 MR. RENZULLI: (Reads document.) Your Honor, we
12 believe that -- do you want me to comment?

13 THE COURT: Yes.

14 MR. RENZULLI: Okay. We believe that the jury should
15 be able to hear or be able to view this particular opinion of
16 the US Department of Justice in that it has to be read in the
17 context of the fact that the paragraph before it talks about
18 the ATF's evaluation, as well as the United States attorney's
19 office evaluation of the various different jurisdictions
20 wherein this evidence was looked at. So, we think that this is
21 something that the jury should consider in the entire
22 transaction.

23 THE COURT: This is being offered by the defense, the
24 letter?

25 MR. RENZULLI: Yes, your Honor.

1 MR. TABER: And we don't --

2 THE COURT: (Reads document.) I'm going redact it.
3 If you want to put it in, it will be with that paragraph
4 redacted. It expresses an opinion that isn't called for by the
5 Government in this case.

6 Do you want to put the letter in with the redaction?

7 MR. RENZULLI: Yes, your Honor.

8 THE COURT: You decide that. You can decide it.

9 MR. TABER: Your Honor, there are three other, I
10 think --

11 THE COURT: All right. Let me take it one at a time.

12 Next, to preclude any references to the Second
13 Amendment.

14 MR. TABER: I think that's unopposed, your Honor.

15 THE COURT: All right. That's granted.

16 Three. Preclude the defendant from questioning the
17 City's private investigator, whether he filed his tax returns
18 in a timely manner, his filing of bankruptcy, and whether he
19 had ever been arrested for driving -- is this arrested or
20 convicted?

21 MR. RENZULLI: I think it was convicted for DWI, yeah.

22 MR. TABER: I think it's also unopposed, your Honor.

23 MR. RENZULLI: Your Honor, generally you don't like
24 this stuff.

25 THE COURT: I don't care for that.

1 MR. RENZULLI: I understand that.

2 THE COURT: Okay. And that's it.

3 MR. TABER: Well, there's one other motion, your
4 Honor, which I would actually suggest be held in abeyance. We
5 had filed a motion with respect to ATF-related evidence being
6 improper; but it was premised, frankly, on the magistrate
7 judge's prior ruling that the depositions upon written
8 questions of the ATF agents would not take place. Since those
9 depositions are to take place, I think we ought to await and
10 see what the responses from the ATF are.

11 If, as has been previously indicated by counsel for
12 the ATF, the ATF witnesses have no recollection of what's
13 alleged, then we are going to submit that the evidence which
14 we're calling the ATF-related evidence ought not come in; but
15 we can wait to see what the ATF agents have to say.

16 THE COURT: Well, there's no motion before me. I
17 don't want to have a discussion. We have enough, and we'll
18 have plenty of other issues coming up.

19 Let's turn to the questionnaire.

20 MR. TABER: Your Honor, on the questionnaire, I've
21 shown Mr. Renzulli --

22 THE COURT: You'll have to, of course, change the
23 caption.

24 MR. TABER: The caption.

25 THE COURT: Don't put my initials next to the case

1 number. The caption will only be this individual defendant.

2 MR. TABER: Right.

3 THE COURT: Then you'll change the title on top of the
4 second page.

5 MR. TABER: Correct.

6 THE COURT: Now, in place of the first full paragraph,
7 what do you want?

8 MR. TABER: Your Honor, I've marked up the transcript
9 of what you said yesterday with language that would be
10 acceptable to the City. They are, frankly, minor changes to
11 make it flow; and I've shown it to Mr. Renzulli. I don't know
12 what his reaction to that is.

13 MR. RENZULLI: We've done our own.

14 MR. TABER: Okay.

15 THE COURT: Let's see yours.

16 MR. RENZULLI: Okay.

17 THE COURT: Mark the City's as Court Exhibit 2 and the
18 defendant's as Court Exhibit 3.

19 This is it, the yellow slip?

20 MR. RENZULLI: Yes. You using any language in here?

21 MR. ALLAN: No, I completely --

22 MR. RENZULLI: Completely redone. Okay.

23 THE COURT: You have a copy of that?

24 MR. TABER: No, we've not seen it, Judge.

25 MR. RENZULLI: We just wrote it, Judge.

1 THE COURT: Xerox a copy of this, and Xerox a copy of
2 the City's changes. Make two copies, please. Then we'll go
3 back to that. So, we'll come back to page 2.

4 Page 3, anything?

5 MR. RENZULLI: No.

6 THE COURT: What's the first page --

7 MS. GALENO: Page 3, I had something on page 3, your
8 Honor.

9 THE COURT: Yes.

10 MS. GALENO: Can we ask whether any family member ever
11 lived in a state other than New York State?

12 THE COURT: What question is this?

13 MS. GALENO: It's No. 2. Have you ever lived in a
14 state other than New York State? Can we ask: Has any family
15 member of yours ever lived in a state other than New York or
16 immediate family member perhaps?

17 THE COURT: I guess we can put that in. Make that
18 three.

19 Have -- has any family -- immediate family member?

20 MS. GALENO: Would be fine. "Ever lived in a state
21 other than New York State."

22 THE COURT: "Ever lived in a state other than New York
23 State." "Yes." "No." Just "yes" or "no."

24 MR. TABER: "If yes, which states?"

25 THE COURT: "If yes, which states?"

1 MR. TABER: Your Honor, I'm sorry.

2 THE COURT: That would be 4, the new 4 and the new --

3 MR. TABER: Five.

4 THE COURT: New 5. Okay. You'll have to renumber.

5 Okay.

6 MR. TABER: Your Honor, are you keeping the master; or
7 are we keeping the master?

8 THE COURT: Well, you are the keeper. We have a
9 record, but I'll give you my notes. My handwriting is quick.

10 MR. TABER: Okay. 'Cause if so, just a minor change
11 here. We should put blank lines so that they can put
12 checkmarks here.

13 THE COURT: Oh, okay.

14 Page 4.

15 MR. TABER: Nothing.

16 THE COURT: Five.

17 MR. TABER: Nothing.

18 MR. RENZULLI: Let's go do where we have a -- here.
19 Page 7, your Honor.

20 MR. TABER: Seven.

21 THE COURT: I have under 17: Do you feel safe from
22 crime in your neighborhood? Yes. No. Explain.

23 MR. RENZULLI: That's good.

24 MR. TABER: Fine.

25 MS. GALENO: I also added on -- can we add their

1 family -- "Has your family member ever" -- "an immediate family
2 member owned his or her own business?"

3 THE COURT: "Have you or any immediate family
4 member" -- now, this is Court Exhibit 5.

5 MR. FARIDI: Four.

6 THE COURT: Four? Court Exhibit 4. Okay. My copy.

7 MR. TABER: And, your Honor, on No. 15 --

8 MR. RENZULLI: Did we finish on that one, Judge?

9 THE COURT: Yeah, or any --

10 MR. TABER: "Immediate family member."

11 THE COURT: -- "immediate family member ever owned."

12 MR. RENZULLI: I hope they answer --

13 THE COURT: A business.

14 MR. RENZULLI: Right.

15 THE COURT: A business.

16 MR. RENZULLI: I hope they answer -- they don't answer
17 "yes" and then say the business and then you don't know if it's
18 the immediate family member or them.

19 THE COURT: "Please describe the owner."

20 MR. RENZULLI: Perfect.

21 THE COURT: And business.

22 MR. RENZULLI: And then on 15, your Honor, we needed
23 to change that to retailer.

24 MR. TABER: Instead of distributor or wholesaler.

25 MR. RENZULLI: "Have you ever known anyone who is a

1 retailer of any product or worked for a retailer?"

2 THE COURT: Okay. Eight.

3 MR. TABER: Nothing.

4 MR. RENZULLI: I don't have anything until --

5 THE COURT: Nine?

6 MR. TABER: Nine, just on No. 23, a -- to add the word
7 "principle" in front of occupations. "What are/were the
8 principle occupations?"

9 THE COURT: Okay. Ten.

10 MR. TABER: Nothing on 10. Nothing on 11. Nothing
11 on --

12 MS. GALENO: I had something on 11. Can we ask if the
13 person owns any pets?

14 THE COURT: Any pets?

15 MS. GALENO: Pet. After -- say in between 27 and 28?
16 You can insert it anywhere, but I thought that might be a good
17 place for it.

18 THE COURT: "Do you have any pets?"

19 MR. RENZULLI: You want to know what kind of pets?

20 THE COURT: No. Describe --

21 MS. GALENO: Describe. Thank you, your Honor. God
22 bless you.

23 MR. TABER: God bless you.

24 It's a great big dog.

25 THE COURT: Okay. That's a separate number.

1 MR. TABER: Right.

2 THE COURT: Okay. Twelve.

3 MR. TABER: No.

4 THE COURT: Thirteen.

5 MR. TABER: No.

6 THE COURT: Fourteen.

7 MR. RENZULLI: I don't have anything until 18, Judge.

8 MR. TABER: Sixteen.

9 MS. GALENO: Should we add on 14: "Have you formed
10 general opinions on corporations?" Should we add "small
11 businesses?" I don't feel strongly about it.

12 THE COURT: Where?

13 MS. GALENO: Question No. 40 on page 14.

14 THE COURT: "About corporations or other businesses?"

15 MS. GALENO: That's good.

16 THE COURT: Let's go. Fifteen.

17 MR. TABER: No.

18 THE COURT: Sixteen.

19 MR. TABER: On 16, under No. 48, it begins by saying:
20 "Have you ever owned a handgun," which is fine; but then says,
21 "If yes, did you have a license for your handgun?" That in
22 effect is asking somebody in the state of New York to admit to
23 a crime.

24 MR. RENZULLI: No, it doesn't.

25 THE COURT: Not necessarily. I wouldn't think so.

1 Most people don't have licenses in this country.

2 MR. TABER: No, but in New York if you have a handgun,
3 you must have a license.

4 THE COURT: Yeah, but I think it's general. I think
5 that's okay, unless the defendant wants it different.

6 MR. RENZULLI: No, your Honor.

7 THE COURT: Seventeen.

8 MR. TABER: Nothing.

9 THE COURT: Eighteen.

10 MR. TABER: We'd slightly change the form of 54 to
11 read: "Have you ever filled out the" -- instead of "a "Federal
12 Form 4437?"

13 THE COURT: Okay.

14 MR. TABER: I have --

15 THE COURT: Shouldn't it be "now required"?

16 MR. RENZULLI: Sorry, your Honor?

17 MR. TABER: I'm not sure how far. It goes back a long
18 way.

19 THE COURT: Okay. Then leave it. Okay. Nineteen.

20 MR. TABER: I had nothing until 23.

21 THE COURT: Twenty. 21. 22. 23.

22 MR. TABER: On 23, under No. 73, after asking, "If
23 yes," "no," they've been a victim of a crime, insert a line
24 that says, "If yes, what crime?"

25 THE COURT: "Anyone you have known," I think that's

1 too broad or any --

2 MR. TABER: Any immediate family.

3 THE COURT: Family member.

4 MR. PROSHANSKY: Friends.

5 MR. TABER: "Any of your immediate family or close
6 friends."

7 MS. GALENO: Close friends.

8 THE COURT: Or close friends ever been -- "Have you or
9 any immediate family member or close friend ever been the
10 victim of a crime?" And then explain.

11 MR. TABER: Okay. Before the firearm question.

12 THE COURT: I don't see --

13 MR. TABER: The next question is: "If yes, did this
14 involve a firearm?" I'm suggesting the explanation should go
15 right after "no."

16 THE COURT: Oh, you want to move that up?

17 MR. TABER: I think we need, "If yes, please explain,"
18 for both.

19 THE COURT: Oh, okay. Okay.

20 MR. TABER: Next is on page 24.

21 THE COURT: Twenty-four.

22 MR. TABER: No. 75: "Have you or any members of your
23 family or close friends been involved in manufacturing, sale,
24 distribution or repair?"

25 It should say underneath that, "If yes, please explain

1 including any opinions you have about companies that
2 manufacture" --

3 THE COURT: Wait a minute: Have you or any members of
4 your family or a close friend ever been involved in the
5 manufacturing, sale, distribution of a firearm? If no" --

6 MR. TABER: That's fine.

7 THE COURT: You want to explain it?

8 MR. TABER: In the explanation one that follows, "If
9 yes, please explain, including any opinions you have about
10 companies that manufacture, sell, or distribute firearms."

11 So, we're adding the word "distribute."

12 THE COURT: "Please explain," comma, "including any
13 opinions you have about."

14 MR. TABER: Basically to track the language that's
15 above.

16 MS. GALENO: I don't think you need it.

17 THE COURT: Do you want "repair"?

18 MR. TABER: I don't care about "repair."

19 MS. GALENO: I would leave it.

20 THE COURT: I'd leave it as it is. Twenty-five.

21 MR. RENZULLI: Well, 76.

22 THE COURT: Yes.

23 MR. RENZULLI: Seventy-six: "Do you believe firearms
24 sales by retailers are regulated?"

25 I don't know if we need manufacturers and distributors

1 in there.

2 THE COURT: Okay.

3 MS. GALENO: It's not bad to ask it though. It's not
4 inappropriate to ask it.

5 THE COURT: Anything else on 24?

6 MR. TABER: No.

7 THE COURT: Twenty-five.

8 MR. TABER: No.

9 THE COURT: I would put the quotation marks against
10 "Brady" in the top line and wherever else you use "Brady," also
11 "Sullivan law," "Brady," "Brady Bill," or other legislation.

12 MR. TABER: Okay.

13 THE COURT: Anything else on 25?

14 MR. TABER: No, your Honor.

15 THE COURT: Twenty-six.

16 MR. TABER: 83D, instead of "manufacturers or
17 distributors," we would change that to "dealers."

18 MR. RENZULLI: Retailers.

19 MR. TABER: Retailers is fine.

20 THE COURT: Retailers.

21 Twenty-seven.

22 MR. TABER: In No. 86: "Individuals who misuse guns,
23 not the companies that make or sell them."

24 THE COURT: You want that, or you want "retail them"?

25 MR. RENZULLI: "Not the companies that sell them."

1 THE COURT: "Sell them."

2 Anything else on that page?

3 MR. TABER: No.

4 THE COURT: Twenty-eight?

5 MR. TABER: In No. 90, insert the word "too" after "it
6 is." "It is too easy for criminals to obtain guns."

7 THE COURT: What do you want?

8 MR. RENZULLI: I would just leave it. "It is easy for
9 criminals to obtain guns."

10 THE COURT: I'll leave it as it is.

11 Twenty-nine.

12 MR. TABER: Nothing.

13 THE COURT: Thirty.

14 MR. TABER: Nothing.

15 THE COURT: Now, 31 we have to take out the whole of
16 101, the whole question.

17 MR. TABER: Although what we did was just change it
18 from NAACP to the City of New York is the plaintiff who brought
19 this lawsuit and then we preserved --

20 THE COURT: But you -- you want the City of New York.
21 Okay.

22 MR. TABER: And then what appears as "D," we kept but
23 got rid of "A," "B," and "C" and changed NAACP to the City of
24 New York.

25 THE COURT: Well, some of them are not city residents.

1 MS. GALENO: We would have already listed it, I guess,
2 whether they were employed by the City?

3 MR. RENZULLI: We really haven't. We've done in
4 general where --

5 THE COURT: I think I've taken care of that at the
6 end. We've told them City of New York at the beginning. I
7 would take the whole 101 out.

8 MR. RENZULLI: I would like the: "Do you believe the
9 City of New York represents your interests?"

10 THE COURT: Well, it doesn't in the case of some of
11 the jurors.

12 MR. TABER: I guess that's fair.

13 MR. RENZULLI: Do you have a proposed question, Judge,
14 on anyone who said family members employed by the City?

15 THE COURT: I dictated that. Where is that? People
16 employed by the City.

17 MR. FARIDI: You put it toward the end, Judge.

18 THE COURT: I thought I did dictate it. Oh, yeah,
19 here it is on the bottom of page 38.

20 MR. TABER: Thirty-eight?

21 THE COURT: Yeah, the bottom of page 38, I've added:
22 "Have you had any experience, good or bad, with the City, one
23 of its agencies or employees, or one of its agencies or
24 employees which might affect your decision? Yes, no. If yes,
25 explain."

1 Now, we should add as another number. "Any City
2 employee or official, specify. If any is specified, explain."

3 Something like that.

4 MR. RENZULLI: I'm not quite I caught the last thing.
5 "Specify" --

6 THE COURT: "Do you know any City employee or
7 official?"

8 MR. RENZULLI: Uh-huh.

9 THE COURT: "Yes. No. Specify."

10 MR. RENZULLI: Oh, I got it. Okay.

11 THE COURT: "If any is specified, explain."

12 MR. RENZULLI: Okay.

13 MR. TABER: I'm just wondering. The City employee may
14 sweep too broadly. I mean, so what if they -- if they know
15 somebody who works for the Department of Sanitation? I mean,
16 is that a --

17 THE COURT: Might affect them. Protect the employer
18 of your brother or friend. City gets hit for a suit.

19 Do you want it? Does the defendant want it?

20 MR. RENZULLI: I want what's fair. If that's fair --

21 THE COURT: I understand. I'm trying to give you
22 what's fair. I'm proposing --

23 MR. RENZULLI: And I don't disagree with you. I think
24 we should know everything we can about them, yes.

25 THE COURT: You want that question.

1 MR. RENZULLI: I want to know if they're not happy
2 with their sanitation pickup because that will have an
3 influence over them.

4 THE COURT: All right. If you want to add that --

5 MR. RENZULLI: No, Judge, I'm only adding a little
6 levity in this long afternoon.

7 THE COURT: I didn't consider it levity. I ask in a
8 voir dire, oral voir dire: "Have you ever had any experience
9 with any law enforcement official that dissatisfies you or
10 satisfies you that might affect you?"

11 So, if they like their pickup, they like the City.
12 That's the main thing anyway, garbage pickup, right? The rest
13 of it doesn't really count.

14 Okay. Thirty-two.

15 MR. TABER: At the top, No. 102 should say "City of
16 New York" instead of "NAACP."

17 THE COURT: "Do you believe that the "--

18 MR. TABER: City of New York should be treated
19 differently.

20 THE COURT: Okay.

21 Thirty-three.

22 MR. TABER: No. 106 I think we don't need.

23 THE COURT: No, that whole thing comes out.

24 So, 107: "The following is a list of some of the
25 potential witnesses or names."

1 MR. TABER: I have such a list that I can give the
2 court.

3 THE COURT: Well, I don't want to have it. Just
4 agree. Put in anything you want, both of you, but not the
5 mayor and not the police chief.

6 MR. TABER: Okay.

7 THE COURT: Then I've never heard this person or
8 entity before; and then you'll put in a new list
9 alphabetically, if possible.

10 Thirty-seven is as is.

11 We have a new question at the top of 38. "Do you know
12 any employee of the City? Yes or no. If yes, explain."

13 You want to put in the attorneys' names?

14 MR. TABER: Yes.

15 THE COURT: Okay. So, the attorneys' names come in;
16 and after the attorneys, we have a question: "Have you had any
17 experience, good or bad, with the City or one of its agencies
18 or employees which might affect your decision? Yes, no. If
19 yes, explain."

20 After that, "Do you know any City employee or
21 official? Yes, no. Specify. If any is specified, explain."

22 109, 110, 111, 112 are the same.

23 On page 40, instead of five weeks, it's a month. I
24 think that's right, isn't it? You want to leave it five weeks?

25 MR. RENZULLI: No, four.

1 MR. TABER: One month.

2 THE COURT: Okay. Now, what we could -- we could have
3 a follow-up question if you want.

4 "Is there any other information you think the judge or
5 the court or attorneys should know about yourself that might be
6 relevant in choosing you to serve as a juror?"

7 MS. GALENO: I think 115 captures that.

8 THE COURT: Okay. I think it does. Okay. That's it.

9 Now, so the only thing now is in order to prevail, the
10 City will have to prove up now -- I'm now looking at the City's
11 proposal -- it is by clear and convincing evidence, is the not?

12 MR. TABER: Your Honor, we're going to brief that
13 issue for you. The source of the confusion -- and we're
14 certainly aware of your Honor's prior decision that in a
15 nuisance action --

16 THE COURT: Okay. Why don't we say "prove"?

17 MR. TABER: Right.

18 THE COURT: "That prove, one, that the gun sales,
19 practices of defendant substantially departed" -- I'd put it in
20 present -- "depart from those required by law in safe practice;
21 and, two, that this" -- "this departure, if any, led to a
22 substantial number of guns from defendant's store being
23 available illegally in New York City and that this availability
24 substantial increased risk of harm to people in New York City;
25 and, four, the defendant knew that other retailers were also

1 supplying guns in a like manner that -- in a manner that was
2 likely to be used in criminal conduct in the City of New York."

3 "May have possessed" I don't think is enough.

4 "Five. That the safety of those in the City was
5 substantially impaired by the defendant's conduct when
6 considered with the conduct of other sellers and that defendant
7 was or should have been aware of the activities."

8 I think it gets too detailed. We're going to have to
9 work this over heavily when we come to the final charge. I'm
10 not happy with that.

11 Let's take a look at the Defendant's Exhibit 3.

12 "In order to prevail, the City will have to prove by
13 clear and convincing evidence, one, that defendant knowingly
14 sold handguns in violation of 18 USC 922 and that defendant's
15 violation of 18 USC 922 proximately caused injury to the City
16 of New York.

17 Two. The defendant's knowing violation of 18 USC 922
18 led to a substantial number of guns from defendant's store
19 being available in New York City.

20 Three. That if you find that defendant knowingly
21 violated 18 USC 922 and its handguns illegally came to New York
22 City, that the availability of these handguns substantially
23 increased risk of harm to people in New York City.

24 Four. That if you find that defendant knowingly
25 violated 18 USC 922, that it knew that other retailers were

1 also knowingly selling firearms in violation of 18 USC 922 and
2 that those handguns were likely to be used in criminal conduct
3 in New York City.

4 Five. That the safety of those in the City was
5 substantially impaired by defendant's knowing violation of 18
6 USC 922 when considered with any knowing violation of 18 USC
7 922 by other retailers that the defendant was or should have
8 been aware of."

9 MS. GALENO: Your Honor, the --

10 THE COURT: We have jurors that won't know about any
11 of that. We've been versed in this case for years. So, all of
12 this has a lot of meaning to us. For people coming in off the
13 street, they don't know anything about this. It will
14 thoroughly confuse them.

15 So, the simplest thing we can say is:

16 "This is a civil lawsuit brought by the City against a
17 retailer of handguns in Smyrna, Georgia. It is alleged that
18 actions of the defendant caused a nuisance in New York City,
19 the cause of the way in which it sold some guns that were later
20 found in New York City. The law is somewhat complex, and the
21 burden of proof is on the City. I will explain all this before
22 you will be asked to decide the case."

23 Instead of "caused a nuisance," "caused a substantial
24 increase in danger," something like that. If we get involved
25 in all of this, they're --

1 MS. GALENO: This is not a jury charge that you're
2 giving.

3 THE COURT: I just want -- and then at that point I'll
4 read this to them. This will be the writing, and then at that
5 point I'll say to them:

6 This is the way we're going to proceed. We're going
7 to select you. We're going to start next Monday or Tuesday or
8 whenever, Monday, Tuesday, whenever it is. The City will put
9 on its witnesses because it has a heavy burden of proof.

10 MS. GALENO: We don't know if it's heavy.

11 THE COURT: Well, it is. And then the defendant, if
12 it wishes, can put on its case and any rebuttal, if necessary,
13 then the argument, and I'll charge you.

14 I think the less we tell them at this stage, the
15 better.

16 MR. RENZULLI: I like your first sentence.

17 THE COURT: What?

18 MR. RENZULLI: "It is alleged that the actions of the
19 defendant caused a nuisance in the city, New York City."

20 THE COURT: "Caused a nuisance" instead of
21 "substantial" --

22 MR. RENZULLI: Or either way.

23 MR. TABER: "Nuisance" is better, I think.

24 THE COURT: "Nuisance" they won't know.

25 MR. RENZULLI: "Substantial danger."

1 THE COURT: "Nuisance" everybody thinks is a dog drop.
2 A substantial increase in New York City.

3 MR. RENZULLI: "The defendant denies these
4 allegations. I will explain the law to you at the appropriate
5 time."

6 THE COURT: The defendant denies.

7 MR. RENZULLI: The defendant always denies, doesn't
8 he, Judge?

9 THE COURT: No. Sometimes he stands mute.

10 "The defendant denies these allegations." Then go on.
11 "The law is somewhat complex, and the burden of proof is on the
12 City. I'll explain all of this before you will be asked to
13 decide the case." Okay?

14 MR. RENZULLI: I think that's fine. I think it gives
15 you a good idea; and by the time the month has passed, you'll
16 be able to tell them.

17 THE COURT: They'll know more about it.

18 MS. GALENO: Your Honor --

19 MR. RENZULLI: Just want to make clear, Judge.

20 THE COURT: Excuse me. We can't use the ceremonial
21 courtroom on Tuesday for jury. We have a hundred. Ask
22 June -- here she is.

23 How many can we get in here, June?

24 COURTROOM DEPUTY: If we line everything up, we can
25 do -- all hundred can fit if you're just filling out -- you're

1 just filling out the questionnaires.

2 THE COURT: That we'll have them come up, and we'll
3 probably get 20 or 30 out.

4 COURTROOM DEPUTY: Correct.

5 THE COURT: At which point we'll be able to put
6 everybody else in there.

7 COURTROOM DEPUTY: We will, yes, if they're just
8 filling out the questionnaires, yes, Judge.

9 THE COURT: And they can even can sit up here.

10 COURTROOM DEPUTY: Exactly.

11 THE COURT: Okay. We'll be all right.

12 COURTROOM DEPUTY: Yeah.

13 THE COURT: Yes.

14 MS. GALENO: Your Honor, if we may, if I may revisit
15 the Battle letter we spoke about earlier, I would just like to
16 inquire as to what the hearsay exception is for the admission
17 of that letter at all redacted or otherwise and I apologize for
18 not --

19 THE COURT: May I see it, please?

20 MR. TABER: Court Exhibit 1.

21 MS. GALENO: It's an out-of-court statement. It's not
22 a business record.

23 THE COURT: I don't know why the defendant wants it
24 because it says 15 federally licensed firearms.

25 Why do you want it?

1 MR. RENZULLI: Your Honor, because it's an analysis by
2 the ATF and the US attorney's office.

3 THE COURT: It says they're not proceeding criminally.

4 MR. RENZULLI: That's exactly right.

5 THE COURT: That explains why you're proceeding
6 civilly.

7 MS. GALENO: But their analysis, your Honor, we have
8 no opportunity to cross-examine Mr. Battle and see what his
9 bases were. It may have nothing to do with whether he had
10 proof or not. I mean, that's the whole reason that a document
11 like that is hearsay; and we have no opportunity to
12 cross-examine.

13 THE COURT: All he's saying is he's not going to
14 proceed criminally. That's why you're proceeding civilly.

15 MR. PROSHANSKY: That's their argument that they
16 didn't violate any law because the US attorney has blessed
17 their actions by not prosecuting them.

18 THE COURT: If they argue that, I'll stop them.

19 MS. GALENO: That's what's been argued in
20 cross-examination of our witnesses throughout, that the US
21 attorney's office didn't find anything wrong here and now the
22 City is injecting itself where it doesn't belong and it's a
23 classic out-of-court statement. I don't know what the hearsay
24 exception would be that would permit its admission.

25 MR. RENZULLI: Your Honor, the fact of the matter is

1 when the Federal Government received all of their information
2 from Feinblatt, Mr. Feinblatt, who that letter is addressed to,
3 through the ATF's office in New York City and received all the
4 information, tapes, and documents that the City gave to the
5 US -- the ATF in New York which spread it out to national ATF
6 and the ATF branches in each place where there was a sting
7 operation, they came to the conclusion that this was not
8 criminal conduct. It didn't rise to that level. Now, if they
9 want --

10 MS. GALENO: What's the hearsay exception?

11 THE COURT: Excuse me. That's not what they
12 concluded. They concluded that the circumstances surrounding
13 the purchases do not rise to a level that would support a
14 criminal prosecution.

15 MR. RENZULLI: Okay. Okay.

16 THE COURT: That doesn't mean they found there was no
17 illegality.

18 MR. RENZULLI: Your Honor, if they --

19 MS. GALENO: That's a nuisance --

20 MR. RENZULLI: Excuse me. If they found illegality,
21 your Honor, it would have been the duty of the ATF to prosecute
22 and/or go further with these -- with these dealers.

23 THE COURT: Absolutely not. That is supposedly in
24 Germany where they prosecute, they say every crime. There's no
25 obligation to prosecute every crime or violation. As of this

1 very moment, there are probably 10,000 violations being
2 conducted within the Eastern District of New York.

3 MS. GALENO: Your Honor, that's a nuisance that you
4 appreciate as a jurist and that we --

5 THE COURT: I think you're right. I think we keep it
6 out.

7 MS. GALENO: Thank you.

8 THE COURT: I don't want to get involved in explaining
9 to them what prosecutorial discretion is. I have a matter
10 before me involved with just that issue. All right.

11 MR. RENZULLI: Your Honor, does it say prosecutorial
12 discretion, we're using our prosecutorial discretion and not
13 going forward?

14 THE COURT: No, it doesn't.

15 MR. RENZULLI: Then you're -- then we're filling that
16 in, too.

17 THE COURT: Correct.

18 MR. RENZULLI: And what about the fact that each ATF
19 branch office, more clearly for this one the Atlanta office,
20 looked at this information and did not move forward against
21 Adventure Outdoors?

22 THE COURT: I don't know why they didn't. They may
23 not have had the personnel. I don't know why they didn't, and
24 I'm not going to inquire about it. There's too much
25 prosecutorial -- it gets involved again in why this suit was

1 brought which I don't want. It's brought because there's no
2 criminal prosecution. The City will argue, but I'm not
3 interested in why they brought it. Either they have a suit or
4 they don't. It's a civil suit. Doesn't make any difference
5 what criminal happens. It's excluded.

6 Now, will you be able to put together this
7 questionnaire?

8 MS. GALENO: Of course, your Honor. We'll take the
9 transcript and we'll have somebody --

10 THE COURT: And you want my notes?

11 MS. GALENO: That would be great.

12 THE COURT: Take Court Exhibit 4. It's going to be
13 hard to read.

14 Let me read into the record what I have.

15 "This is a civil lawsuit brought by the City of New
16 York against a retailer of handguns from Smyrna, Georgia. It
17 is alleged that actions of the defendant caused a substantial
18 increase in danger in New York City. The defendants deny that
19 they did anything wrong."

20 You want it that way?

21 MR. TABER: It should be singular, "the defendant."

22 THE COURT: "The defendant."

23 MR. RENZULLI: "The defendant denies this allegation."

24 THE COURT: "The defendant denies these allegations.

25 The law is somewhat complex, and the burden of proof is on the

1 City. I will explain all this before you will be asked to
2 decide the case."

3 Now, when it comes to my oral presentation, I will at
4 this point: "This is the way we're going proceed. We're going
5 select you," blah, blah, blah, and then proceed and then I'll
6 read the whole page. Okay?

7 MS. GALENO: Would your Honor like us to put some
8 bracket information like procedures in there?

9 THE COURT: No.

10 MS. GALENO: No? Okay.

11 THE COURT: This is what they have.

12 Is there anything else we want to do today?

13 MR. RENZULLI: I just want to put one note on the
14 record. Exhibit No. 3 is the defendant's proposal as to what
15 we were going to read to the jury. I want to be very clear on
16 the record that we do not agree and I think I said this
17 yesterday and if I didn't, I want to make it absolutely clear
18 here that the evidence as to other dealers should not be part
19 of this case.

20 THE COURT: I understand.

21 MR. RENZULLI: That it should be a case involving
22 Adventure Outdoors and whether this entity and this entity
23 alone created a public nuisance, assuming the PLCAA has
24 completely viciated any action for public nuisance and the
25 *Beretta* decision interpreting the PLCAA.

1 In addition, what knowledge, if any, Adventure
2 Outdoors had with respect to these other dealers is also
3 irrelevant again for the same reason. This is a case against
4 one defendant and whether this defendant caused a public
5 nuisance, assuming that's a viable cause of action under the
6 PLCAA and the *Beretta* interpretation of that statute.

7 Thank you, your Honor.

8 THE COURT: Okay. Objection's duly noted.

9 Here's Court Exhibit 4. You have everything you need?

10 MS. GALENO: Yes. What I'll do is I'll ask the court
11 reporter to transcribe first this section of the transcript, if
12 that's okay, on the voir dire and if we can get that to us as
13 soon as possible and then we'll prepare a revised
14 questionnaire.

15 When would your Honor require the finished document?

16 THE COURT: Well, we're going to distribute it
17 Tuesday, right? I don't know. Does FedEx -- tomorrow is
18 Friday. If you could finish the document --

19 MS. GALENO: We could have a hundred copies. I
20 suppose we will finish it and send it to chambers.

21 THE COURT: I think everybody ought to look at it
22 before you run off the copies. Just give it a final check.

23 MR. TABER: We'll circulate it by e-mail tomorrow.

24 MS. GALENO: Certainly Mr. Renzulli will be first; and
25 then if both parties are from agreement, we'll circulate it to

1 the Court? I assume -- we've done it. I assume there are no
2 typos; we haven't transcribed anything incorrectly or something
3 like that. We're not going to change anything obviously.

4 THE COURT: You FedEx it tomorrow, I won't get it
5 until Saturday but they want -- your office is probably closed
6 Monday.

7 MR. TABER: It is closed; but we can have people
8 there, if necessary.

9 THE COURT: I hate to bring people in on Memorial Day.

10 MS. GALENO: If we're on trial Tuesday, your Honor,
11 we're going to work on the weekend.

12 THE COURT: When do you think you'll have it typed up
13 tomorrow?

14 MR. TABER: I think it will be done this evening.

15 MS. GALENO: Certainly by midday tomorrow. Sometimes
16 word processing takes a little longer. It's 50 pages.

17 MR. TABER: Actually, as I think about it --

18 MR. RENZULLI: Is that in your system?

19 MR. TABER: No, it's not.

20 Do you have this electronically? If you have it
21 electronically, the changes are very easy.

22 MR. FARIDI: No.

23 MS. GALENO: It's 50 pages that has to be inputted.
24 Certainly by tomorrow, late afternoon we should have it.

25 THE COURT: Don't you have a machine that copies --

1 MR. TABER: Scans.

2 MS. GALENO: It takes a long time. It's almost easier
3 to input the document fresh if it's not in electronic format.

4 THE COURT: I don't think it is. We didn't have
5 electronic filing.

6 Do you have it?

7 MR. RENZULLI: We don't have it in our office, but
8 we'll check with the other defendants to find out if anybody
9 has it.

10 THE COURT: I think you can probably.

11 MS. GALENO: If we can get something to Mr. Renzulli
12 and to the Court late tomorrow afternoon for review and then we
13 can bring copies with us on Tuesday.

14 THE COURT: Yeah. Bringing is not a problem. We can
15 run off.

16 Might as well run off about 90, I guess, would you
17 say?

18 COURTROOM DEPUTY: Yes.

19 THE COURT: Ninety copies. We won't have 90 jurors in
20 the panel when we hear excuses.

21 My law clerk says he can bring it over to the house,
22 my house, tomorrow night.

23 Let me see if I can fiddle with my fax machine to save
24 you the trip. Otherwise, you can bring it out.

25 MS. GALENO: We'd be happy to have something delivered

1 to your home, your Honor. I wouldn't presume to ask for your
2 personal address but if you -- that would be convenient for the
3 Court, we'd be happy do make that accommodation.

4 MR. TABER: Or in the alternative if your Honor has a
5 computer at home, we can e-mail it.

6 MR. RENZULLI: So the defendants don't feel like we're
7 out of the loop, your Honor, I'll be more than happy to take it
8 to your house, too. I'll hand deliver it --

9 MR. TABER: Personally.

10 MR. RENZULLI: -- to you.

11 THE COURT: Either of you are always welcome to visit.
12 I'll be delighted to have you as visitors, anybody. You're
13 always welcome to come to the house.

14 You deliver it to our office as soon as you can. You
15 deliver it to the defendant as soon as you can. It will get to
16 me one way other the other.

17 Are you going to be in the office Saturday --

18 MS. GALENO: Yes, I expect to be, your Honor, yes.

19 THE COURT: -- making final corrections?

20 MR. TABER: I won't be. My daughter's graduating from
21 college.

22 THE COURT: Well --

23 MS. GALENO: I will be in the office Saturday. I'll
24 have someone in the office with me to run -- do the typing.
25 That's not my area of strong suit, your Honor, but I --

1 THE COURT: June, can we run off a hundred copies
2 early Tuesday here?

3 COURTROOM DEPUTY: It's not reliable enough, not the
4 machines. We have one that misses the numbers and one that's
5 out right now.

6 THE COURT: How long -- a fast machine can turn this
7 stuff out fast. A hundred copies is no problem.

8 MR. TABER: Copying is not a problem.

9 MS. GALENO: If we were going to be here at 10:00,
10 we'd be here around 9:00. Is your Honor wanting to get changes
11 to us as late as Tuesday? Is that the --

12 THE COURT: Yeah, I was thinking run them off early
13 Tuesday morning.

14 MS. GALENO: We can do that. We can have a staff
15 person on site prepared to copy for us at 8:30 or 8:00 o'clock.

16 THE COURT: Okay. So, you'll send me the copy.
17 You'll look over it tomorrow, fax it to me at the house or, if
18 necessary, bring it over; and you'll get back with corporation
19 counsel either Friday or depending on how quickly we go through
20 it or Saturday.

21 And you'll do the same thing, make the corrections.

22 MS. GALENO: If the issue is a messenger, we can
23 always have a messenger report to your law clerk to take it to
24 your home.

25 THE COURT: I don't want it by messenger. We'll take

1 care of it. Get it over to -- you could e-mail it, I guess.

2 MS. GALENO: Yes, we can.

3 THE COURT: E-mail it to you.

4 MR. FARIDI: Yes.

5 THE COURT: And then --

6 MS. GALENO: We'll call chambers when we have it
7 ready, and we'll get instructions from you as to how to
8 proceed.

9 THE COURT: Okay. Anything further? Okay. Thank you
10 very much. I'll see you on Tuesday at 10:00 o'clock.

11 Actually, by the time we get the jury here and I read
12 the first part of it and I hear all the excuses, we won't hand
13 out the questionnaire until 11:3. So, you have plenty of time
14 to do it Monday morning -- Tuesday morning. So, there's no
15 problem. It's a question of getting it back to you with any
16 changes.

17 MS. GALENO: We'll be here, but we'll have someone at
18 the office waiting to bring it over.

19 THE COURT: Bring it over. As long as we have it by
20 11:30 and distribute it, that's it.

21 Enjoy your Memorial Day.

22 (Whereupon the proceedings adjourned to May 27, 2008.)

23

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