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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Richard Seeborg, Judge

AMERICAN AIRLINES FLOW-THRU)
PILOTS COALITION, ET AL.,)

Plaintiffs,)

VS.)

NO. CV 15-03125-RS

ALLIED PILOTS ASSOCIATION, ET)
AL.,)

Defendants.)

San Francisco, California
Thursday, June 21, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

KATZENBACH LAW OFFICES
912 Lootens Place - 2nd Floor
San Rafael, CA 94901

BY: CHRISTOPHER W. KATZENBACH, ESQUIRE

For Defendants:

JAMES & HOFFMAN, P.C.
1130 Connecticut Avenue, NW - Suite 950
Washington, DC 20036

BY: DANIEL M. ROSENTHAL, ESQUIRE

ALTSHULER BERZON LLP
177 Post Street - Suite 300
San Francisco, CA 94108

BY: JEFFREY B. DEMAIN, ESQUIRE

Reported By: Pamela A. Batalo, CSR No. 3593, RMR, FCRR
Official Reporter

Thursday - June 21, 2018

1:58 p.m.

P R O C E E D I N G S

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THE CLERK: Calling case C 15-3125, American Airlines.
vs. Allied Pilots Association.

Counsel, please come forward and state your appearances.

MR. ROSENTHAL: Hello. My name is Daniel Rosenthal
from James and Hoffman. I represent the Allied Pilots
Association. Jeff Demain from Altshuler Berzon is also
representing APA.

THE COURT: Good afternoon.

MR. KATZENBACH: Chris Katzenbach representing
plaintiffs.

THE COURT: Good afternoon, Mr. Katzenbach.

So this matter is on for what we have styled an early
Motion in Limine. I said that could be the way we proceed
before, and so you've taken me up on that.

We also have a Case Management Conference, and we'll deal
with that when we conclude the discussion.

I've thought about this, took a look at it, and let me
give you my, again, tentative views on this.

I'm inclined to deny the motion, and the reason for that
is I think evidence as to a period before the union represented
the Eagle pilots, while it's not a basis for actionable
conduct, to take the position now that it's inadmissible and

1 irrelevant is a tall order as a preliminary determination until
2 the evidence is presented.

3 And by that I mean I could certainly see a scenario in
4 which -- I'm not suggesting this is what the evidence would
5 show -- but if the evidence was to demonstrate the buildup of a
6 level of animus towards the Eagle pilots, that once they were
7 represented in the period that's going to be actionable or have
8 the actionable issues, the Letter G 2015 and going forward
9 issues, I could certainly see a scenario in which some of that
10 evidence might be admissible, depending on the particular
11 reason it's being offered and the like.

12 To grant the Motion in Limine would be to effectively just
13 cut off any kind of prior information on the theory that, well,
14 during those years, there was almost a duty on the part of the
15 union to take an adverse position with respect to those that
16 they did not represent because they represented others whose
17 interests might be contrary.

18 And so while it may be that I'm not going to let a lot of
19 that evidence come in and I might conclude that as I hear it,
20 it's not relevant and it's not offered for an admissible
21 purpose, to grant the motion now, I think, is not as easy -- I
22 understood that when you suggested we have this -- and I'm
23 perfectly happy to have you do this and it's a legitimate run
24 at it -- the notion was that well, there was going to be a
25 nice, clean, obvious line that was going to be easy to call and

1 would streamline the case, and so I'm always interested in
2 streamlining the case, but I just -- I don't see how I can do
3 that at this stage of the game.

4 So that being my tentative, let me start with you,
5 Mr. Rosenthal.

6 **MR. ROSENTHAL:** Thank you. And thanks for giving your
7 tentative reaction. I will try to tailor my comments to that.

8 We think that it is appropriate to be resolved now and
9 that it really should be resolved now for a couple of reasons.
10 Let me mention those and then get into kind of the merits of
11 the motion.

12 So, first of all, what's at issue here is going to have a
13 really momentous effect, we think, on the preparation that the
14 parties do for the trial and what the trial ends up looking
15 like because the evidence in question here goes back to 1997,
16 it involves five arbitration proceedings, complicated
17 proceedings with complicated factual background evidence
18 presented, which we believe the plaintiffs are essentially
19 trying to re-litigate, call into question the conclusions
20 reached in those arbitrations.

21 And a long history that if we go into trial not knowing
22 whether it's going to be admissible, our side certainly and
23 probably the plaintiffs' counsel, are going to have to do a
24 massive amount of preparation on what that's going to look like
25 to present that to the jury.

1 So for reasons of efficiency on that end, we do think it
2 makes sense to tackle the issue now.

3 **THE COURT:** Well, but can you honestly say that
4 there's no reasonable scenario in which evidence that is
5 predating the 2015 operative date for the Letter G claims --
6 that none of that would be admissible? There is no scenario in
7 which that would come into evidence?

8 **MR. ROSENTHAL:** Well, our argument is a little
9 narrower than that.

10 **THE COURT:** Okay.

11 **MR. ROSENTHAL:** What we're saying is we are not
12 drawing a line at 2015 -- or actually we're not drawing any
13 strictly chronological line. What we're saying is that
14 evidence that occurs in the context of these particular
15 disputes that took place when APA did not represent
16 Flow-Through pilots -- and, by the way, we think that we've
17 teed -- we have teed up a purely legal issue which has, as I
18 read the briefing, essentially become undisputed, which is that
19 APA did not owe a duty of fair representation to the pilots
20 until they actually came up to American from Eagle.

21 **THE COURT:** Well, and I think my rulings that limited
22 this case down to claims that flow from the Letter G activity
23 more or less has agreed with you on that; right?

24 **MR. ROSENTHAL:** I think that, as I read your decision,
25 you said you were dismissing claims on timeliness grounds and

1 reserving judgment on the representational issue largely.

2 **THE COURT:** Well, okay. I think tentatively your view
3 that prior to the actual representation of those pilots, it
4 would -- it's a tall order to say that you owed them a duty.

5 **MR. ROSENTHAL:** Okay.

6 **THE COURT:** I mean --

7 **MR. ROSENTHAL:** Appreciate that.

8 **THE COURT:** That's a tentative view, but --

9 **MR. ROSENTHAL:** I understand.

10 And we think we've presented everything in the papers that
11 would allow you to take that tentative view and turn it into a
12 firm view.

13 But my point is that what we're targeting with our motion
14 here is much more specific than a chronological cutoff. What
15 we're saying is that these disputes, specifically these five
16 arbitration proceedings, which is what most of this evidence
17 relates to, where APA did not owe a duty to the plaintiffs, it
18 did owe a duty to another group and it acted to advance the
19 interests of its members within its bargaining unit. That's
20 the evidence that we're trying to exclude.

21 So we are not -- first of all, the plaintiffs came to -- I
22 believe most of the named plaintiffs came to American before
23 2015. Anything that -- and certainly many in the class did.
24 So anything that happened to them once they were at American
25 certainly is fair game.

1 But even before that, if there were evidence that kind of
2 was not within the context of these disputes where APA had a
3 duty, we're not asking you to exclude that at this time.

4 **THE COURT:** Well, so give me an example -- I guess,
5 can you crystalize for me what exactly you think the in limine
6 order ought to say? It's excluding what precisely?

7 **MR. ROSENTHAL:** So I think there are a few ways that
8 it could be couched. What we did in our brief is we tried to
9 give you a specific list of evidence that we were seeking to
10 exclude. So it was evidence relating to the five arbitration
11 proceedings chiefly, and then in addition to that, we
12 identified certain, what we would call, stray remarks that --
13 so we were -- we were targeting --

14 **THE COURT:** Let's stop on the stray remarks. I mean,
15 I understand you say they're stray remarks and they're not --
16 they shouldn't be given much credence for purposes of
17 bolstering any of these claims, but if there are remarks that
18 demonstrate -- and let's -- and I'm not suggesting this is in
19 the record, but some really egregious comment about, you know,
20 "When I have my chance, I'm going to get these people" or, you
21 know, I -- something that would really show that even once
22 they -- even when the union is representing these individual
23 pilots, that they're going to be mistreated. I mean, that
24 would be admissible.

25 **MR. ROSENTHAL:** Yeah. So I think that if there were

1 evidence that any of the people involved in the Letter G
2 negotiations certainly, maybe arguably anyone in the leadership
3 of APA at that time, had previously in the past made comments
4 that reflected a personal animus towards the Flow-Through
5 pilots, we're not asking you to exclude that, no.

6 And if you were to hold that -- so what we are targeting
7 are remarks that were made by line pilots, meaning pilots not
8 in the -- involved in APA, but other American pilots --

9 **THE COURT:** How would that, though, go to the union's
10 activities? If stray members, using the "stray" word -- if,
11 you know, the pilot on the -- on the beat is making comments
12 about other pilots, the Eagle pilots, why does that have any --

13 **MR. ROSENTHAL:** Well, that's precisely our question.

14 **THE COURT:** But that's a different objection. That's
15 an objection that's not "oh, exclude this because you're" --
16 that's arguing well, this person isn't in a position to bind
17 the entity or something like that. I didn't think that was
18 what your Motion in Limine was.

19 Your Motion in Limine seems primarily focused on once you
20 determine that there is no duty of representation, then
21 effectively nothing that any of these people say leading up to
22 the point at which they represent them has any relevance or
23 significance, and if -- and it sounds like you're not taking
24 that broad a view.

25 **MR. ROSENTHAL:** No, we're not.

1 And I think that our motion groups in together a few
2 different types of evidence, so one is the evidence regarding
3 the arbitration disputes. And then the remarks are -- and it
4 may be that we would have been better served by separating
5 those into different motions. And we certainly don't think
6 they're necessarily tied together.

7 The remarks we're targeting because many of them that
8 plaintiffs have cited in their discovery responses and in their
9 depositions do not come from APA leadership or people involved
10 in the union at all.

11 And then others come from people who were involved in APA
12 leadership at that time, the late '90s generally, but who then
13 were long gone from APA leadership by the time that Letter G
14 was negotiated. So those could be two different categories.

15 And then I would say a third category altogether would be
16 evidence that doesn't relate to remarks but relates to the
17 positions taken in these arbitrations where I would say we have
18 the strongest argument for excluding that third category, the
19 arbitration-related -- the positions of the parties presented
20 in arbitration where APA was acting in furtherance of its duty
21 and where APA really had a legal duty not to take into account
22 the interests of pilots outside its bargaining unit to the
23 detriment of pilots within its bargaining unit, which is what
24 the Ninth Circuit said in *McNamara Blad*.

25 So we think, in addition to just not seeing the relevance

1 from a, you know, standard perspective of this happened a long
2 time ago or whatever, we think that the kind of -- the labor
3 policy underlying the duty of fair representation compels the
4 conclusion that a union -- it should not be held against a
5 union in litigation for acting in furtherance of that duty, and
6 it would send a terrible message to unions if that were the
7 case.

8 And we also think that federal labor policy says when a
9 dispute is submitted to arbitration, which is the preferred
10 method of resolving disputes about interpretation of a contract
11 and actually the only method under the Railway Labor Act where
12 that can be done, with some narrow exceptions, that once that
13 takes place, a party shouldn't be allowed to then go into court
14 and re-litigate those arbitrations, say the positions were
15 wrong, that decisions were wrong, that decisions were not
16 followed if there was no arbitration proceeding initiated to --
17 over that.

18 So we think that applies with full force to the
19 arbitration proceedings and I think you're right in the sense
20 that those arguments do not necessarily apply so much to the
21 remarks or at all to the remarks, negative comments, that sort
22 of thing, which I think is in a different category and is our
23 argument.

24 So they are more about the passage of time and the fact
25 that those people were not involved in the Letter G

1 negotiations.

2 **THE COURT:** With respect to those issues, I think that
3 has to be done in the course of the trial as opposed to some
4 broad-based pretrial ruling, but okay.

5 Did you want to say something before I turn it over to
6 Mr. Katzenbach?

7 **MR. DEMAIN:** Could I add one thing to what
8 Mr. Rosenthal said?

9 **THE COURT:** Yes.

10 **MR. DEMAIN:** When you were talking about your
11 tentative views at the beginning, I was trying to write them
12 down very quickly. I hope I got them right. But I thought I
13 heard you say that to exclude the evidence from these
14 arbitrations that the plaintiffs want to introduce -- to
15 exclude it at this point -- I think you said to cut it off --
16 would be to say that there was a duty, that APA had a duty to
17 take a position adverse to the plaintiffs in those
18 arbitrations.

19 I actually think that is, in fact, true. There was such a
20 duty. And if you look at the Ninth Circuit case law like
21 *McNamara Blad*, it makes it clear --

22 **THE COURT:** But I guess my point is even accepting
23 that, I'm not sure -- I don't see how pretrial at this stage --
24 you can assume that they had a duty to take an adverse
25 position. There still could be evidence that went on in those

1 proceedings that are nonetheless admissible for another reason.

2 I mean, you know, if you -- it happens to be consistent
3 with your duty to be very negative about the other side, that
4 still may mean that there is relevance to some of the things
5 you said about the other side, even if you were acting
6 perfectly consistently with the duty that you had at that time.

7 I'm just concerned -- I mean, obviously I haven't seen all
8 this evidence, and to take this broad-brush position without my
9 knowing exactly what I'm excluding causes me some concern.

10 At trial, I'll know what it is -- I mean, you know, in the
11 course of an arbitration proceeding, perhaps some evidence or
12 someone says something that may be consistent with their duty
13 to represent their clients at that time but will be relevant to
14 their state of mind when many years later they're representing
15 those people.

16 I guess the better way for me to say this is it's not
17 mutually exclusive, in my mind, that if you are doing your
18 duty, if you will, representing your then-clients, that doesn't
19 necessarily mean the information isn't for another purpose,
20 credibility or something else, not otherwise admissible.

21 **MR. DEMAIN:** Well, let me say, Your Honor, I think --
22 on a theoretical level, I think you're completely correct about
23 that. The problem for this case -- I think there is two
24 problems for this case.

25 The first is, the plaintiffs haven't pointed to -- haven't

1 shown the Court any statements that were made in the
2 arbitrations that are relevant to that. For example, if
3 someone for APA said, "We think that those Eagle pilots were a
4 bunch of bums" --

5 **THE COURT:** Drunks. They're all drunks or something
6 like that.

7 **MR. DEMAIN:** If they had said something like that,
8 that might be relevant, but that's not why they're trying --
9 they haven't pointed to anything like that and we're not aware
10 of anything like that in those arbitration proceedings.

11 They're trying to introduce, for example, the briefs that
12 APA submitted and the arbitration decisions because their
13 purpose in introducing this is to say that the adverse position
14 that APA took -- the position that APA took to represent its
15 bargaining unit members was adverse to the Flow-Through pilots,
16 to Mr. Katzenbach's clients, and because it took that -- that
17 position, that adverse position, therefore that alone shows
18 hostility.

19 **THE COURT:** Well --

20 **MR. DEMAIN:** And that's inadmissible for that purpose.

21 **THE COURT:** -- I think you may well be right about --
22 and I might view it the same way you do, that simply filing a
23 brief that is adverse to the Flow-Through pilots and to expect
24 that that can come into evidence to show animus and the like --
25 I may well agree with you on that.

1 My point is that -- is pretrial -- at trial I'll have the
2 benefit of knowing exactly what Mr. Katzenbach wants to
3 introduce and what he doesn't want to introduce. And you're --
4 it's a tall order for me to just cast this broad brush now and
5 say, "Listen, if this pertains to things that went on during
6 these arbitrations, none of that is going to be admissible
7 because it's -- you know, they were doing their duty and end of
8 story. It's out of bounds. We're not going to go there."

9 And I suppose my basic reaction is you may well, you know,
10 lose this battle but win the war because I'm going to exclude
11 it, and the reason you're saying, "Well, you should do it now
12 is it will streamline our case," and I'm very -- that's a very
13 appealing concept to me, but I am just -- I am uncomfortable
14 with the idea that until I have more specific materials in
15 front of me, i.e., the exhibit list and we can see what they
16 want to introduce and they have to make an offer of why they
17 want it to come in, I'm a little -- I'm reticent to do that.

18 **MR. DEMAIN:** Okay. Well, Your Honor the only thing I
19 guess I can say then is that I think that if he had some
20 evidence that went beyond the positions that APA was taking, it
21 was incumbent upon them to present that now and say, "Look,
22 Your Honor, we're not just using it to try and show that APA's
23 position was adverse. There were these other things that they
24 said in here that show hostility that have nothing to do with
25 the mere fact that they were taking an adverse position." But

1 they haven't done that.

2 And also they said in their opposition briefs they want to
3 show that APA then violated arbitrator's orders and that there
4 was an arbitration decision that wasn't really a decision
5 because it was a corrupt settlement, that the arbitrator
6 conspired with the parties to call an arbitration decision.
7 This is pretty way-out stuff, and they haven't come to you and
8 given you a legitimate reason to introduce this.

9 We made a motion saying here's why they want to use it.
10 They didn't contradict anything that we said. They sort of
11 doubled down on it and said, "Yeah, and we want to show that
12 you violated arbitration awards," which they can't do because
13 there is no federal jurisdiction over that. "We want to show
14 there was this corrupt bargain with the arbitrator to" -- I
15 mean, this is stuff that is going to make the trial into a
16 circus.

17 **THE COURT:** Well, you know, I think, whatever order --
18 even if you were to prevail on this motion, I'm not sure -- the
19 order would sort of beg the question. The order would say
20 well, to the extent that the evidence is only being introduced
21 to recount the fact that there were arbitration proceedings in
22 prior years when the Flow-Through pilots were not represented
23 by these unions, by the union defendants, well, that's not
24 going to be admissible. But we reserve the right or leave open
25 the question if there -- if it's being offered for some other

1 purpose.

2 Well, it's not going to advance the ball any because then
3 we will get some collection of exhibits being designated, and
4 you'll say, "Well, all they're doing is they're doing this for
5 that specific reason," and maybe I'll agree with you, or
6 Mr. Katzenbach will say, "No, no, no, I'm offering this for a
7 different focus and it's to go to the credibility of this
8 witness" or what have you. I'm not sure this is going to
9 streamline anything, is the point.

10 **MR. DEMAIN:** Your Honor, I can tell you it would
11 streamline it to this extent. It would at least give the
12 parties some guidance about what the standards are going to be
13 so that Mr. Katzenbach can look at his exhibit list and say,
14 "Okay, well if I can't get stuff in just because it shows their
15 adverse position, let me whittle this down and find a few
16 things that go beyond that that maybe I have a shot at getting
17 in," and then we can come back and say, "Well, okay, this,
18 this, and this can come in. We agree it goes beyond that. But
19 this, this, and this don't," and we can have that fight later,
20 but at least to give the parties some kind of guidance, I
21 think.

22 **THE COURT:** Okay.

23 **MR. DEMAIN:** And also, again, these stray remarks that
24 had nothing to do with these were line pilots and this was
25 stuff from the 1990s. I can't even think of a scenario in

1 which those should come in.

2 **THE COURT:** Let me hear from Mr. Katzenbach.

3 **MR. KATZENBACH:** Well, Your Honor, I think that the
4 problem here is -- in responding to this is I'm not really sure
5 what they want to exclude and the reasons for their reason to
6 exclude it. I'm not really sure -- I think that one of the
7 problems here is -- well, let me back it up and make a
8 suggestion here.

9 The way they've presented the motion I think that it
10 really -- they're sort of in this area where you can't look at
11 it -- they want to exclude background evidence of motive, but
12 what -- and what we're trying to show -- and undoubtedly we're
13 going to try to put it in evidence to try to -- motive.

14 They have made a argument here today which is a repeat of
15 some of the arguments they've made before about their duty --
16 who do they have the duty to represent.

17 And the problem with that argument -- the reason I'm
18 raising it now, Your Honor, is because I think this will
19 actually come up later on and maybe it's an issue the parties
20 should brief again more to you because this is the real problem
21 that I have with some of this.

22 It's clear that when they were favoring the TWA Staplees,
23 they were not part of the same bargaining unit; in other words,
24 they weren't under the contract so they represented them in the
25 same way that, for example, the Airline Pilots Association

1 represents multiple carriers, employees.

2 But you can't favor the carrier -- ALPA can't favor the
3 carriers at, you know, Simons Air or Envoy Air. What they are
4 saying is we can favor the TWA Staplees at TWA-LLC because
5 they're wholly-owned by American Airlines, but we can
6 discriminate against the Eagle pilots, who are also a company
7 wholly-owned by American Airlines, even though the TWA-LLC
8 pilots aren't in the same bargaining unit. And we know that
9 because if they were in the same bargaining unit, the contract
10 would have automatically flowed over to them and they wouldn't
11 even be negotiating for these benefits for them.

12 So there are some complicated issues here that I
13 feel haven't been as well --

14 **THE COURT:** Complicated in the sense of who they
15 represent at any one time?

16 **MR. KATZENBACH:** Well, more importantly, were they --
17 were the TWA-LLC pilots in the same bargaining unit as the --
18 the American Airlines pilots. The answer is no.

19 So, you know, when you talk about representational duties,
20 what they're really saying is because we represent two distinct
21 groups of people with two distinct employers, that therefore we
22 owe a duty to the TWA pilots as against the Flow-Through
23 pilots. Well, that's not really -- but in the -- in the
24 relationship with American Airlines.

25 And so what they're doing is they're saying because we

1 represent American Airline pilots --

2 **THE COURT:** Yes.

3 **MR. KATZENBACH:** -- right -- we can now treat TWA-LLC
4 pilots as if they are American Airline pilots, even though
5 technically they're not.

6 So what we have pointed out -- and this -- and this
7 distinction not only arises early on, but it manifests itself
8 throughout periods of time when Flow-Through pilots are on
9 board at American, and, I mean, the best -- the -- the Letter G
10 negotiations are one example, but as a sort of side example of
11 that, take the equity distribution case.

12 Now, I don't -- the details of that aren't important. The
13 three facts that are important are that they moved the
14 qualification date to a date so that the last TWA Pilot gets
15 onto the American Airline property and the first Flow-Through
16 Pilot, who has been pushed back because of this earlier
17 arbitration, we think fake arbitration order, can't. So
18 Flow-Through pilots cut off. TWA pilots cut on -- allowed, you
19 know -- they move the date to fit them, and in their own
20 decision, they write, "And by the way, we also made some other
21 good-faith equity adjustments for the TWA-LLC pilots."

22 Well, I don't think it's going to take really a long time
23 to discuss that. What we're really saying is that when you
24 consistently favor one group over another, there becomes a time
25 when it looks like that you're doing that deliberately. When

1 you don't --

2 **THE COURT:** Yes. Although their point -- and I
3 understand there may be more subtleties to it as you've just
4 described in terms of who is representing whom at what time,
5 but if you simply operate on the basic premise that if -- let's
6 assume for purposes of discussion a clean break between
7 entities that are represented by the union and entities that
8 are not.

9 They're right that if -- if they are taking positions on
10 behalf of the members they represent and it's plain that
11 another group of pilots they do not represent -- if you just
12 had a very simple scenario like that, then you would say -- you
13 would have to say -- at the very least, treat with a great deal
14 of skepticism that the positions they took in those arbitration
15 proceedings shouldn't be admissible to show that they are
16 motivated to harm at a later stage when they do represent them,
17 the new members.

18 I mean, if you had -- and I know you're suggesting to me
19 well, it's not that simple here. So that's fine. That's a
20 different sort of point. But do you agree that if we simply --
21 let's say we had, you know -- when United merges with
22 Continental and you have a union before representing each of
23 those airlines separately, their pilots, and then at a certain
24 point in time, the entities merge and the argument is well, the
25 union is now -- even though they represent the Continental

1 pilots are still favoring the United pilots, and we're going to
2 prove that by going five years ago and showing an arbitration
3 proceeding where they were, something like that. You would
4 agree that that wouldn't be admissible.

5 **MR. KATZENBACH:** Probably not. But -- I wish I could
6 say that the -- that the history here was -- is not as discrete
7 as that and that's -- I mean, every year, for example, the --
8 well, since they had the last contract was 11 years. Before
9 the '13 contract.

10 When they renegotiate contracts, what they have do is they
11 have a scope clause in there which is expressly designed to
12 limit the amount of flying that Eagle pilots can do. So there
13 is this ongoing issue of, you know, wanting to keep Eagle
14 pilots from having work and giving the work to APA-represented
15 pilots.

16 So while I understand the idea of remoteness and
17 separateness, there is this consistent thread throughout this
18 of looking -- of trying to keep the Eagle pilots from being
19 American pilots in a variety of different contexts.

20 And in the example that you were giving -- I mean, to make
21 it concrete to this case, if they wanted to negotiate with
22 TWA-LLC, the TWA-LLC pilots could flow down to Eagle; right?
23 Fine. They'd have a real problem doing that because they --
24 you know, because the people flowing -- because then they would
25 have a problem of trying to deal with the Eagle pilots and

1 their Eagle representations because you can't just have
2 American agree for one -- to add a new group of people to the
3 Flow-Through Agreement without getting the agreement of the
4 Eagle pilots. But if they wanted to do that, that would be
5 within their representational structure.

6 But what they can't do is say even though we're going to
7 represent these other people and we're going to give them
8 rights that they don't have at the expense of the Eagle pilots'
9 rights and even in the face of an agreement which -- where
10 we're going to now call them furloughed pilots when they
11 haven't met the one criteria that everyone acknowledges that
12 you have to get in an American Airline plane with American
13 Airline livery and take off before you are an American Airline
14 Pilot and that these guys didn't do that one thing, just like
15 my guys who were called back didn't do that one thing.

16 I think it's a legitimate issue to say why are you
17 favoring one guy -- when they are exactly the same situation
18 and you're saying we're going to give the benefits here and we
19 are going to hurt you there, I think it's a legitimate
20 inference that they are doing it for -- for -- out of hostile
21 motivations, and we have a background to show that.

22 So I agree --

23 **THE COURT:** Do you agree that you can't -- if someone
24 who is not in the management of the -- of the union, just a
25 member of the union, i.e., some American pilots, say nasty

1 things about American Eagle pilots and how they're not up to
2 snuff and "they shouldn't be included within our ranks" and all
3 of that sort of thing, those are stray remarks. And they are
4 not -- they don't -- they don't bind the management of the
5 union, they don't reflect the positions that the union takes.

6 **MR. KATZENBACH:** Well, I do think -- you know, as much
7 as I would like to sit and agree with you, the -- I think that
8 it may depend on other factors; namely, how persuasive is it
9 because, look, these are elected positions so that, you know,
10 it's not -- it is not like an employer, right, where, you know,
11 the employees -- where the employees don't elect their
12 managers. So that, you know, a stray remark by an employee
13 just has no real bearing on -- even logically bearing on what
14 the employer may decide. That's not entirely true, but less
15 so.

16 But here we're talking politics and -- and, you know, one
17 of the factors on whether -- hopefully this will be done easily
18 and quickly. So -- the example here is you have a group, for
19 example, Pilots Protecting the Profession, I believe, they were
20 called, who are adamant that Eagle pilots should not have
21 regional jets. Some of those members -- some of those people
22 ultimately get elected into positions at APA and, in fact, are
23 there at some times at some of these events, the leadership
24 there. So what does -- so, I mean --

25 **THE COURT:** Well, it's a different proposition, at

1 least a different argument, if you are identifying somebody who
2 is in at the relevant time the management -- had been elected
3 to a management position within the union and in earlier days
4 before that person was in management and they were a
5 rank-and-file pilot, they made various comments, well, that's a
6 different proposition. I'm not suggesting that would
7 necessarily be excluded.

8 But if you have somebody who has never had any involvement
9 in union management, elected or otherwise, and just makes
10 comments because they are a member of the union and they don't
11 like Eagle pilots, I mean, so what?

12 **MR. KATZENBACH:** I think we would have to show some
13 form of ALPA involvement in that comment. I mean, for example,
14 not -- this is off the top.

15 For example, if, you know, Bob Jones was handing out a
16 leaflet and Bob Jones is just a representative, right, it would
17 make a difference whether that leaflet was printed by ALPA and
18 given to him by his representative.

19 So I appreciate -- those are issues we intend to address,
20 and I think those are going to be issues that the Court is
21 unfortunately going to have to address at length in the
22 pretrial and that will be I think an appropriate time to do it,
23 unless, of course, the Court never wants to address it, in
24 which case --

25 **THE COURT:** Well, okay. Let me go back to

1 Mr. Rosenthal and --

2 **MR. ROSENTHAL:** Yes.

3 **THE COURT:** Go ahead.

4 **MR. ROSENTHAL:** I have a few comments.

5 So I actually think that the example you will gave with
6 United and Continental is exactly right and exactly on point to
7 what we're saying about the arbitration proceedings. And what
8 Mr. Katzenbach -- I think what Mr. Katzenbach was saying is
9 it's more complicated than that because APA represented the TWA
10 pilots, but they were in a different bargaining unit. That's
11 just not right.

12 If you look at the orders of the NMB, the National
13 Mediation Board, which regulates air and rail unions, they are
14 cited in footnote 1 of our brief. The NMB found that American
15 and TWA-LLC were a single unit, single air carrier, and that
16 APA represented them within its bargaining unit of American
17 Airlines pilots. And there is really no comparison whatsoever
18 to Eagle.

19 Eagle was owned by American, but it had its own exclusive
20 representative and there was, of course, no NMB order ever
21 saying -- during this period that APA represented those pilots
22 and there are bright lines here, I think, as there have to be
23 so unions know who is in their unit and who's not.

24 So I do think it really is that simple to say that during
25 these five arbitration proceedings, APA took positions that

1 advantaged members in its unit and that, as you said, that
2 doesn't show that APA was trying to harm anyone else. It was
3 simply fulfilling its duty. And that its -- so I would -- I
4 would say even if you want --

5 **THE COURT:** Of course that all, for whatever reason --
6 there is -- that some of that comes into evidence, that's --
7 that's your cross-examination. I mean, that's your argument to
8 say well, they had a duty to do this. And that's what you tell
9 the jury. So, I mean, to some extent, you have a response to
10 that.

11 **MR. ROSENTHAL:** We do, but --

12 **THE COURT:** And I understand that your position is
13 not, "Oh, we would be horribly and unfairly prejudiced." Your
14 particular spiel here, which is one that sings to the judge,
15 is, "We really want to make a four-week trial a two-week
16 trial," and I understand that.

17 **MR. ROSENTHAL:** It's actually both, I think, because I
18 think we are worried that a jury of lay people who don't
19 necessarily fully understand kind of a duty of fair
20 representation, they're not lawyers and they don't necessarily
21 understand those bright lines of when a union represent -- has
22 a legal duty to who. I do think there is a real risk of
23 prejudice there that they may be --

24 **THE COURT:** Of course, though, you presumably would
25 ask for an instruction or something that would tell the jury

1 that there is an obligation on the part of the union to
2 represent its members and some -- I mean --

3 **MR. ROSENTHAL:** Hopefully. We would certainly welcome
4 that. And it really is both the length and the prejudice.

5 In terms of equity distribution proceeding, which
6 Mr. Katzenbach raised, I don't need to get too far into that,
7 but that's not covered by our motion because that's something
8 that happened after these pilots were at --

9 **THE COURT:** Right.

10 **MR. ROSENTHAL:** -- APA. So we're not even trying to
11 exclude that at that time. We do have some other issues with
12 that, which we reserve the right to seek to exclude it later.

13 And then finally on the remarks, we did have an
14 opportunity to depose the plaintiffs and go through, in a
15 pretty fine-grained way, what the remarks were that they were
16 trying to introduce, who said them, whether they were APA
17 leadership, and most of them are not from APA leadership or any
18 involvement of APA and we do think that it would be helpful for
19 the Court to issue an order that says that that's not
20 admissible.

21 **MR. DEMAIN:** Your Honor, could I add one thing?

22 **THE COURT:** You are double teaming me. Go ahead.

23 **MR. DEMAIN:** Thank you. I appreciate it.

24 Well, Mr. Katzenbach is very formidable. It takes two of
25 us --

1 **THE COURT:** There you go, Mr. Katzenbach.

2 Go ahead.

3 **MR. KATZENBACH:** I surrender.

4 **MR. DEMAIN:** The only other thing that Mr. Katzenbach
5 brought up that I think I need to address, he brought up
6 American and APA agreeing to allow the TWA pilots to flow down
7 without getting the agreement of the Eagle pilots to do that.

8 Again, that is a cut-and-dried representational situation.
9 The APA represented both -- as Mr. Katzenbach has admitted and
10 we cited his admissions, he has admitted that APA represented
11 both the American pilots and the TWA pilots. They didn't have
12 to consult with the Eagle pilots because the Eagle pilots were
13 adverse to them.

14 When they did that, when they negotiated that agreement
15 and the TWA pilots flowed down, ALPA, the Airline Pilots
16 Association, which was the representative of the Eagle pilots
17 brought agreements, and it went to arbitration, which is one of
18 the five arbitrations we're talking about.

19 They said, "They violated the Flow-Through Agreement by
20 doing this." The arbitrator held that it did not violate the
21 Flow-Through Agreement. It was within the rights of American
22 and APA to reach that agreement to let the -- the TWA pilots
23 flow down, and, again, this is exactly what Mr. Katzenbach is
24 trying to do. He is trying to introduce that and he's trying
25 to re-litigate-litigate that arbitration decision by saying --

1 **THE COURT:** But --

2 **MR. DEMAIN:** -- by saying it did violate --

3 **THE COURT:** -- I guess going back to my concern -- and
4 we'll fight it out at the trial, but -- is -- unless you're
5 saying -- and maybe I should ask Mr. Katzenbach this.

6 If the only reason for introducing the arbitration
7 proceedings is to say they occurred and who took what position
8 in that arbitration, that would be one thing.

9 If there were things said or positions taken during the
10 arbitration that have some relevance to -- in some other aspect
11 of what went on beyond just the positions taken by the parties,
12 I don't know that yet. I mean, I just don't know.

13 I understand what you're saying. If it's being introduced
14 solely for the purpose of saying that the defendants were --
15 took a hostile position to the plaintiffs and your answer to
16 that is --

17 **MR. DEMAIN:** Of course we did.

18 **THE COURT:** -- "of course we did. We were
19 representing our members."

20 **MR. DEMAIN:** Right.

21 **THE COURT:** If that's -- if that's the only reason
22 it's being introduced, that at a point prior to the operative
23 time here, you were adverse to them, I agree with you. That in
24 and of itself is not admissible.

25 But you're then going one step further -- and maybe you're

1 not, but I hear -- I thought you were going a step further and
2 saying, "And, in fact, because of that posture, nothing that
3 went on during the arbitration proceedings can be otherwise
4 admissible for any reason." And I -- and maybe there isn't
5 anything there, but I don't know enough to say that's out of
6 bounds. The arbitration proceeding is entirely out of bounds.

7 **MR. DEMAIN:** Well, Your Honor, Mr. Katzenbach has not
8 told us anything yet as to what other grounds this could be
9 admissible on, so I think it was incumbent on him to do so.

10 But I will say even if there were another reason for it to
11 come in, I think under a 403 analysis, it should still be kept
12 out because he is going to use it to prejudice the jury.

13 **THE COURT:** Perhaps so --

14 **MR. DEMAIN:** We've moved under 403.

15 **THE COURT:** Perhaps so, but I don't think -- a 403
16 analysis is particularly one that is very hard to do at this
17 stage of the game before, you know, I have the witnesses and
18 the exhibits and -- I mean, you can do a 403 analysis when it's
19 something very straightforward like, you know, they want to --
20 prior criminal conviction and you know what it is and you're
21 weighing its prejudicial value -- probative value versus
22 prejudicial effect. Here that's kind of tough to do.

23 **MR. DEMAIN:** Except it's not tough whereas here
24 Mr. Katzenbach has failed to articulate any other ground on
25 which this --

1 **THE COURT:** All right. Let me ask him.

2 Mr. Katzenbach, are you -- this -- the fact of an
3 arbitration proceeding where parties took disparate positions
4 and, in fact, took a position adverse, admittedly, to your
5 clients, are you saying that should be just in and of itself
6 admissible?

7 **MR. KATZENBACH:** No, not particularly.

8 I think that there is -- I think that our major focus
9 is -- is slightly different than that. I think that -- and
10 let's start with, I think, some of -- I don't really -- the
11 outcome of an arbitration provision -- decision seems to me
12 straightforward; right? And under, I think, the law the Court
13 has referred to, the people -- people who now comes --
14 becomes -- the parties are all bound by it; correct? I mean,
15 that's not difficult.

16 So if I come to you and say, "Yeah, I know we lost that
17 arbitration," right, "but screw you, I'm just going to do
18 something to hurt you anyway," why doesn't that show that you
19 have some degree of hostility towards --

20 **THE COURT:** Well, do you have evidence like that?

21 **MR. KATZENBACH:** Yeah. Exactly.

22 **THE COURT:** Well, they're saying they've never seen
23 it.

24 **MR. KATZENBACH:** I pled it in our Complaint, so if
25 they haven't seen it, it's because --

1 **THE COURT:** I think they are telling me that discovery
2 has been done and that nothing -- so they're trying to put the
3 onus back on you to say well, okay, if it's something other
4 than the result of the arbitration that you're looking to
5 introduce, show your cards.

6 **MR. KATZENBACH:** Okay.

7 **THE COURT:** Where is the evidence? Just like you've
8 described.

9 **MR. KATZENBACH:** Exactly.

10 The evidence is this: That before they began the major
11 bit of hiring where my clients were basically completely frozen
12 out, they completely took Staplees ahead of them, there was the
13 arbitration decision that said -- I believe it was LaRocco --
14 that said, no, the TWA Staplees are new higher pilots and
15 therefore the Flow-Through Agreement applies to those
16 positions. That meant that my clients got some of those
17 positions. We can argue whether they got all of them, some of
18 them, or one for one.

19 That was the decision. That was issued in May. When they
20 started hiring the next June, a month later, they ignored it.
21 They ignored it in June, July, August, and all the way up to
22 the end.

23 So our position is really simple. That that is an
24 arbitration decision, that is an outcome. Now, they want to
25 say, "Well, but we were still representing the interests of the

1 TWA pilots at that point to" -- to do what? At that point it's
2 a remedy issue. It's not an issue of what this contract means
3 and it's not an issue of what your obligations under this
4 contract means. It is an issue of how do these -- the
5 particular people who brought this arbitration, you know, get
6 compensated. It doesn't say anything about this -- this
7 decision as to what the contract means is inapplicable. It
8 doesn't mean bring another arbitration. It means follow this
9 arbitration.

10 And when they don't follow that arbitration, I believe
11 that is evidence of bad faith, that is evidence of hostility to
12 my people -- well, the people I represent -- and that we can
13 use it for that purpose.

14 It is not representing someone to ignore your
15 contractual -- to ignore binding decisions. I guess that is
16 the simplest -- you know, and if they can say that ignoring a
17 binding decision is within the scope of our duty of
18 representation, then, you know -- and we can't use it to show
19 that we -- that we were doing this because we're hostile, I
20 think that's wrong. I think that we can show it because it
21 shows hostility to my people and we can show the background of
22 that. We can show that we don't get these jobs because they
23 don't like Flow-Through pilots. They don't like --

24 **THE COURT:** Wait. If Mr. Katzenbach is -- his
25 position -- and it may not be persuasive in the end, but he's

1 saying that sure, you have a duty of representation for your
2 clients, but his position is the evidence will show you went
3 beyond what your duty was.

4 **MR. DEMAIN:** I will explain why that isn't the case,
5 Your Honor.

6 He is referring to a particular arbitration. In that
7 arbitration, the arbitrator did say that the Flow-Through
8 Agreement applies to these Flow-Through pilots, but the
9 arbitrator specifically said, "I am not giving you a remedy.
10 I'm not saying who you have to hire first or second."

11 The parties then went forward with APA representing its --
12 its pilots' interests. It came to a second arbitration. And
13 then that arbitrator said, "Okay, now I'm going to rule" -- or
14 maybe it was even a third arbitration. The arbitrator said,
15 "You have to hire so many FTPs and you can hire -- recall so
16 many American pilots," and APA complied with that decision.
17 This is exactly what I'm saying.

18 He's trying to re-litigate-litigate all of these
19 arbitrations. And the play -- if you have an argument that the
20 union has violated an arbitrator's decision, the forum for that
21 is arbitration and that's why the parties did go back to
22 arbitration.

23 A federal court has no jurisdiction to determine whether a
24 union violated an arbitrator's award. And, again, you know,
25 he's trying to do this --

1 **THE COURT:** Well --

2 **MR. DEMAIN:** If this stuff comes, I'm going to say it
3 will prejudice the jury and we will move for a mistrial on
4 that.

5 **THE COURT:** I wouldn't be making the decision you just
6 teed up. I wouldn't be making the decision on whether or not
7 they violated the arbitration decision or what have you because
8 the only basis on which it would be -- the only basis on which
9 it would conceivably be admissible is if it's demonstrating
10 some motive and animus in how it all developed that the jury
11 could -- could infer carries over into this -- it's not for me
12 to -- to re-litigate-litigate arbitral decisions and say, "Oh,
13 no, that arbitration -- that arbiter was wrong."

14 I don't think he's asking me to do that. He's asking me
15 to say if you look at the positions that were taken, rightly or
16 wrongly in terms of the arbitration decision, they took
17 positions which reflect their bad faith and their intent to do
18 more than just win but to harm these -- I'm not -- I'm not
19 suggesting there's anything there. I'm just saying that that's
20 the -- the rubric I hear he wants to seek to get this
21 introduced.

22 **MR. DEMAIN:** The problem with that theory, Your Honor,
23 is that you can't conclude that it showed animus going beyond
24 what the union needed to do --

25 **THE COURT:** Isn't that what the jury would have to be

1 deciding?

2 **MR. DEMAIN:** In order to decide that, the jury would
3 have to decide that, yes, it violated the arbitrator's award
4 because if it didn't violate the arbitrator's award, then it's
5 clear the union is just -- it went to another arbitration. The
6 union represented its bargaining members.

7 **THE COURT:** Whether or not it violated the arbitral
8 award is not the question. The question is, to a juror I
9 think, does that demonstrate to me that they had developed a
10 legal of antagonism and animus towards these other individuals
11 that members of the other union or Eagle pilots -- that they
12 were going to -- they were going to set out to get them later,
13 is sort of the argument.

14 And so it wouldn't be -- and I understand you're saying
15 even -- you know, "because we are doing our duty to represent
16 our clients, that means that we're taking" -- "whatever
17 positions we're taking, you can't ascribe that to our general
18 attitude towards these other people." I understand that point.

19 But I think you're -- I think to say that the
20 arbitration -- the fact that there's an arbitration proceeding
21 that's ongoing sort of insulates everything that happens in
22 that arbitration proceeding from being admitted for any purpose
23 in -- at any other time is -- is going too far. It's almost
24 like a 408 argument of saying well, it occurred in a settlement
25 discussion so we -- nothing that occurs in that context can

1 ever be used. And that's not really what you're saying.

2 **MR. DEMAIN:** I think it's contrary to federal labor
3 policy, Your Honor, because the union has a duty to exercise
4 its -- to conduct itself to represent its members and to take
5 adverse positions to other people, and if you -- if you say
6 that, "Oh-ho, but if you do it, whatever you do in that
7 proceeding can come in in a later proceeding and say -- show
8 that you were prejudiced against these people," it's putting
9 the union in an impossible position.

10 **THE COURT:** I understand the argument. I think I
11 understand the posture we're in.

12 Let me -- go ahead, Mr. Katzenbach.

13 **MR. KATZENBACH:** No. I think we're just running a
14 treadmill here.

15 **THE COURT:** I think it is. Okay. I will take that
16 matter under submission. Take a look. I will, you know,
17 reassess this, and I'm not exactly sure, as I sit here now,
18 even though I had the tentatively, exactly what I'm growing
19 going to craft. Frankly, it may not be a win or a lose
20 proposition. It may be that there is more of a guidance
21 concept here than -- than the order of the Court is grant or
22 deny the motion. I will take a look at it.

23 Let's now shift to the CMC.

24 So you'll get an order from me on this matter. It may or
25 may not be enlightening.

1 So where do we go from here? Discovery is concluded.

2 Go ahead.

3 **MR. KATZENBACH:** I would like to throw a wrench into
4 the mechanism.

5 **THE COURT:** Oh, why not. Go right ahead.

6 **MR. KATZENBACH:** And you should have before you -- at
7 least it was filed yesterday -- an administrative -- a request
8 for administrative order because we filed a new case involving
9 a new LOS issue, which is basically expanding Letter G to now
10 not be two years, but be full.

11 **THE COURT:** So what is this? This is an amendment or
12 a new lawsuit?

13 **MR. KATZENBACH:** Because of DFR and the short time
14 limits, I get nervous just not filing -- I don't want to file a
15 supplemental -- it seemed like a supplemental Complaint, but
16 that requires a motion --

17 **THE COURT:** Then you are seeking to relate it to this
18 case?

19 **MR. KATZENBACH:** You have an administrative motion to
20 relate it, yes.

21 **THE COURT:** All right. Well, you obviously haven't
22 responded to any of this yet.

23 **MR. DEMAIN:** We've barely seen it, Your Honor. We
24 hadn't heard hide nor hair from Mr. Katzenbach for weeks,
25 despite many attempts to contact him, and then this arrives

1 over the transom.

2 **THE COURT:** Hold on a minute.

3 You do -- Mr. Katzenbach, I feel very strongly about this
4 and I think you know that. I care about --

5 **MR. KATZENBACH:** I may --

6 **THE COURT:** Go ahead. You're going to do a mea culpa,
7 so go ahead.

8 **MR. KATZENBACH:** I'm going to do a mea culpa. I just
9 apologize. A case in Los Angeles is eating me alive and, you
10 know -- I mean literally, and it's been very difficult. I have
11 literally -- they have been filing two or more motions a month.

12 **THE COURT:** Well, you know, going forward -- if you
13 were seeking to amend -- I know this is not an amend situation;
14 you are bringing a new lawsuit and I will take a look at it.

15 But in the nature of things here, you have got to have a
16 line of communication back and forth, and who knows -- you
17 might have been able to work out some arrangement to how to
18 proceed.

19 But starting now -- is that L.A. case over, I hope?

20 **MR. KATZENBACH:** No. It's set for trial in early part
21 of next year.

22 **THE COURT:** Oh, great. Well --

23 **MR. KATZENBACH:** Which is --

24 **THE COURT:** You've got to meet and confer.

25 **MR. KATZENBACH:** I will, Your Honor.

1 **THE COURT:** It's absolutely required. And I don't
2 expect you to respond to whatever this thing is because you
3 haven't had a chance to see it.

4 So where do we go with this? I could start to set dates.
5 I'd like to. This is an old case now. But I also think you've
6 got to figure out what this is all about.

7 **MR. DEMAIN:** Well, Your Honor, maybe if I could make a
8 suggestion.

9 **THE COURT:** Go ahead.

10 **MR. DEMAIN:** We need to take a look at this case and
11 determine what our position is going to be. And also we
12 suggested setting the pretrial at a certain time after you rule
13 on the Motion in Limine because that will inform our thinking
14 about the case.

15 Maybe what --

16 **THE COURT:** You mean divorced from a trial date is the
17 pretrial?

18 **MR. DEMAIN:** Yes.

19 Maybe what we should do is put over another CMC to, say,
20 the middle of July. By that time, we will have been able to
21 formulate a position on this new case and we can talk about
22 where we're going with this case.

23 The discovery did close like six months ago.

24 **THE COURT:** No. It did. I mean, we should get moving
25 on this and get it resolved one way or the other.

1 **MR. KATZENBACH:** Again, that's fine with me, or we
2 could set a trial date. I just want to make sure I don't
3 conflict with what I have to do down in Los Angeles.

4 **THE COURT:** What's this trial you've got -- not the
5 one you're in now, but the one you said is the beginning of
6 next year?

7 **MR. KATZENBACH:** It's a -- it's a little bit of an odd
8 procedural posture, but essentially it's an internal union
9 dispute under Landrum-Griffin.

10 **THE COURT:** How long will it take?

11 **MR. KATZENBACH:** There are two disputes. They should
12 be consolidated for trial, but I don't think they will be, but
13 who knows.

14 I think it's probably about a week trial or two-week
15 trial, depending on what they are.

16 **THE COURT:** Just for my edification, putting aside
17 what this new matter is, when do you think you are going to be
18 asking me to put this on the trial calendar?

19 **MR. KATZENBACH:** April, May.

20 **THE COURT:** April, May.

21 **MR. DEMAIN:** This case? April or May of next year?

22 **MR. KATZENBACH:** Yes.

23 **MR. DEMAIN:** That's a long time.

24 **THE COURT:** It is a long time.

25 **MR. KATZENBACH:** The alternative would be September

1 and that seems to be a little short time.

2 **MR. DEMAIN:** I don't know that September would be
3 short if the Motion in Limine were granted because then this
4 would be a short trial. However, if the Motion in Limine, as I
5 understand, probably won't be granted, this could be a two- to
6 three-month trial because we're going to go very deeply into
7 those arbitrations.

8 **THE COURT:** I'm not willing to accept those as the
9 only two options. I think, even if your motion would be not
10 granted at all, I'll give each side a block of hours, and I'm
11 not going to give you -- a case like this is going to get maybe
12 15 hours per side or something. Don't hold me to that. You're
13 not going to get a two months to try this case.

14 But that all said, I have to say that I -- my calendar is
15 such that September is probably not realistic. So we are
16 talking about later in the year or next year, and so we'll see.

17 But I do want to get it -- I want to get it resolved. It
18 is one of my older cases now, frankly, so I'd like to have it
19 move along.

20 **MR. DEMAIN:** Should we put it over for a month?

21 **THE COURT:** We will have a further case management
22 conference perhaps towards the end of July.

23 **THE CLERK:** The 19th.

24 **MR. DEMAIN:** I'm going to be out of town.

25 **THE COURT:** How about the following --

1 **THE CLERK:** The 26th you're out.

2 **THE COURT:** Yes. The Ninth Circuit conference.

3 **THE CLERK:** August 2nd.

4 **THE COURT:** How about August 2nd?

5 **MR. DEMAIN:** Works for me.

6 **MR. KATZENBACH:** I think that should be okay.

7 **THE COURT:** August 2nd. I think I probably -- you
8 know, I do sometimes these telephonically and then sometimes in
9 person. I think we probably ought to do this one in person.
10 So 10:00.

11 **MR. KATZENBACH:** 10:00.

12 **THE COURT:** Yes.

13 **MR. DEMAIN:** Okay.

14 **MR. KATZENBACH:** All right. 10:00 a.m.

15 **THE COURT:** In the meantime, I am requiring some
16 meeting and conferring to go on. I know you may still be
17 juggling your L.A. stuff, Mr. Katzenbach, but what I don't want
18 to have happen is for you to be here in August and have the
19 parties say, "Oh, we didn't have a chance to talk to each
20 other."

21 **MR. KATZENBACH:** There will be time for that.

22 **MR. DEMAIN:** Your Honor, if I could just ask one
23 scheduling question just so I have this clear in my mind, in
24 your courtroom -- I mean, I imagine there will be other Motions
25 in Limine, the sort of standard trial Motions in Limine that

1 we'll want to bring, maybe about like isolated pieces of
2 evidence or something like that.

3 Do you resolve those at the pretrial? People file them
4 before the pretrial and you resolve them at the pretrial? Or
5 are those filed and resolved between the pretrial and trial?

6 **THE COURT:** Both. It depends. What I'll do is I go
7 through the motions before the Pretrial Conference, and there
8 are certain of those motions that I may even resolve prior to
9 the Pretrial Conference, give you an order that -- if they're
10 very clear to me. Then we'll have argument at the Pretrial
11 Conference. And some of them I can resolve as I'm sitting on
12 the bench and some of them I take under submission. I go back
13 and take a look.

14 So the results -- the answer to your question is the
15 rulings on pretrial motions don't come at one set time. They
16 come on a rolling basis as I deal with them. And my standard
17 practice is on Motions in Limine, unlike Motions for Summary
18 Judgment or other kinds of motions, I don't, in the general
19 course of events, have some long order. I tell you the answer.

20 **MR. DEMAIN:** Right.

21 **THE COURT:** And so in the average case, there will be
22 one order on Motions in Limine, and that will have most of the
23 orders. But then there are the stray ones, which are --
24 sometimes if they're more involved and I need more time, it
25 takes longer. Sometimes I catch them as they come in.

1 So the bulk of them will be addressed and if not ruled on,
2 you will have a pretty good idea at the Pretrial Conference.

3 **MR. DEMAIN:** So we should file those before the
4 Pretrial Conference --

5 **THE COURT:** Absolutely.

6 I'm not so naive to say that I don't -- I'm not inviting
7 this, but in virtually every case there will always be some
8 additional Motion in Limine that comes across the transom and I
9 understand that and I deal with it. But in a perfect world --
10 the local -- my rules -- when you look the pretrial conference
11 requirements, my civil rule is -- tells you when you've got to
12 file your Motions in Limine. It's all set out there. Take a
13 look at my --

14 **MR. DEMAIN:** I probably read it two years ago, but
15 I --

16 **THE COURT:** You probably did. It hasn't changed. It
17 makes good reading. You can read it again.

18 Okay. Thank you very much.

19 (Proceedings adjourned at 2:58 p.m.)
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CERTIFICATE OF REPORTER

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

DATE: Monday, July 2, 2018

Pamela A. Batalo

Pamela A. Batalo, CSR No. 3593, RMR, FCRR
U.S. Court Reporter