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FILED  
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BY *JA*

IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT

WILLIAM I. KOCH and  
FREDERICK R. KOCH,

Plaintiffs,

vs.

Case No. 88 C 1782

CHARLES G. KOCH, GEORGE  
PEARSON, DAVID H. KOCH, MARY  
R. KOCH, DONALD R. CORDES,  
and THE FRED C. KOCH  
FOUNDATION, INC.,

Defendants.

MOTION TO QUASH NOTICE OF DEPOSITION  
OF MURRAY N. ROTHBARD  
AND  
MOTION IN LIMINE CONCERNING  
PROFFERED TESTIMONY OF MURRAY N. ROTHBARD

COME NOW the defendants in the above entitled action,  
and move the court for an order quashing the Notice to Take  
Deposition of Murray N. Rothbard upon Oral Examination, filed  
by plaintiffs herein on April 3, 1989. In support of said  
motion, defendants submit as follows:

1. On April 3, 1989, plaintiffs filed a notice to take the deposition of Murray N. Rothbard in Las Vegas, Nevada on April 11, 1989, for the purpose of preserving and presenting Mr. Rothbard's testimony at the trial of this action, currently scheduled for April 25, 1989. Defendants seek to quash said notice and request the court rule in limine that the testimony of witness Rothbard is not admissible in evidence for the reason that the proffered testimony, as summarized by counsel for plaintiff, is not relevant to any issue in this action.

2. A brief procedural history is necessary for a complete understanding of the instant motion. The pretrial conference was held in this case on December 15, 1988. In the pretrial questionnaire filed prior to the pretrial conference, plaintiffs did not list Mr. Rothbard as a witness on their behalf. Instead, some 30 days later when the pretrial conference order was finalized, plaintiffs for the first time listed Mr. Rothbard as a "rebuttal" witness, and reserved the right to take Mr. Rothbard's deposition in the event he was unavailable for trial. Plaintiffs originally noticed Mr. Rothbard for deposition for March 31, 1989. Following receipt of that notice, defendants inquired as to the general subject matter of Mr. Rothbard's anticipated testimony, so that defendants could determine whether or not they had a basis for a motion to quash Mr. Rothbard's deposition, based upon grounds of relevancy, materiality, and admissibility of his proposed

testimony. Plaintiffs refused to inform defendants as to the subject matter of Mr. Rothbard's anticipated testimony, stating only that his testimony would be used to attack the "credibility of one or more of the defendants." Accordingly, defendants were required to file a motion in that regard, and at the hearing on said motion before the Honorable Kay Royse on March 28, 1989, Judge Royse ordered plaintiffs to provide a written summary of the substance of Mr. Rothbard's anticipated testimony. Mr. Rothbard's deposition was rescheduled to April 11, its current setting, and on April 3, plaintiffs delivered the required written summary of anticipated testimony.

3. That summary, a copy of which is attached hereto and incorporated herein by reference, clearly demonstrates the utter irrelevancy of Mr. Rothbard's purported testimony to any issue in this action. The great expense to defendants of preparing for and participating in this eleventh-hour deposition is unjustified, because any testimony elicited from Mr. Rothbard will be inadmissible at the trial of this action. Defendants should not be required to go to that useless expense, and plaintiffs' notice to take Mr. Rothbard's deposition should be quashed and his name stricken from plaintiffs' list of witnesses for use at trial.

4. As reflected in the pleadings filed in this action, including the final pretrial conference order, and as reflected in defendants' pending motion for summary judgment,

the central issue for determination in this case is whether or not there was a legally enforceable agreement among all of the shareholders of the Fred C. Koch Foundation, Inc. by which the charitable grants from that foundation would be forever designated by the shareholders in proportion to their share ownership in the Foundation. Mr. Rothbard was never a shareholder in, or in any way involved in, the Fred C. Koch Foundation, Inc., and the matters set forth in the attached summary of anticipated testimony confirm he has no evidence concerning the existence or non-existence of the alleged agreement. That summary, which for purposes of this motion will be treated as a proffer, reflects that plaintiffs propose to elicit from Mr. Rothbard testimony with regard to Charles Koch's involvement in nonprofit foundations other than the Fred C. Koch Foundation, and particularly the relationship between Charles Koch and Mr. Rothbard concerning their involvement as stockholders and board members of the Cato Institute.

5. In the course of the prior motion heard by Judge Royse, plaintiffs indicated that they intended to use Mr. Rothbard's testimony to impeach the credibility of Charles Koch, and the attached summary presumably now indicates the subject matter on which alleged impeachment evidence will be offered. Given the issues in this case, defendants will object to any questions propounded to any of the defendants concerning "other foundations." Kansas statutory and case law is crystal



clear that questions of witnesses on such collateral matters and then any proffered "impeachment" on those matters, such as the proposed use of Mr. Rothbard's testimony, is improper. Neither the foundation questions to defendants, nor the proffered testimony of Mr. Rothbard, is relevant or material, and neither will be admissible at the trial of this action. Accordingly, plaintiffs should not be allowed to waste the time and expense of defendants and this court in taking Mr. Rothbard's deposition and attempting to present it at a trial in this case.

6. Any questions to any defendants concerning their involvement in, or actions taken concerning other stockholders in, any other charitable foundation are clearly not proper. The pretrial order in this case does not place in issue any party's character or trait of character as defined in K.S.A. § 60-446. Accordingly, proof of character trait or proof of conduct pursuant to K.S.A. § 60-447 is not applicable. But even if character or a trait of character were in issue, and if any questions were properly posed to one or more defendants under K.S.A. § 60-447, then exception (a) would control:

evidence of specific instances of conduct other than evidence of conviction of a crime which tends to prove the trait to be bad shall be inadmissible. (K.S.A. § 60-447(a))

# MEMORANDUM

April 3, 1989

To: Robert L. Howard, Esquire  
Richard C. Hite, Esquire

From: Joseph F. Ryan, Esquire

Subj: Murray N. Rothbard -- Summary of  
Anticipated Deposition Testimony

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Murray Rothbard resides at 3151 Camelback Drive, Las Vegas, NV 89109. He is a professor. He will testify to his educational and professional background. It is anticipated that Mr. Rothbard will testify as follows:

1. Charles Koch involves himself in the minutest details related to the non-profit foundations with which he is associated, including Cato Institute, Institute for Humane Studies (IHS), Center for Competitive Enterprise (CCE). He insists on personally approving even the minutest matters, such as \$100 grants, stationery design and color of offices. Charles Koch checks everything. Charles Koch makes it his practice to be intimately knowledgeable concerning even the smallest details and operations of the non-profit foundations with which he is associated.

2. Charles Koch cannot tolerate dissent. He will go to any end to acquire / retain control over the non-profit foundations with which he is associated. If by-laws or other legal requirements stand in his way, he will simply disregard them. Charles Koch considers himself above the law and not bound by any agreements. Charles Koch's response to Mr. Rothbard's expression of dissent was to direct that Mr. Rothbard's shares be ripped up and thrown away, so as to make it appear that Mr. Rothbard had never been a stockholder at all. And, in fact, after Mr. Rothbard expressed dissent at Charles Koch's policies, Charles Koch acted toward Mr. Rothbard as if he (Rothbard) had never been a shareholder and had no rights as a shareholder.

3. Charles Koch has a practice of misusing non-profit foundations for his own personal ends. Charles Koch wants absolute control of the non-profit foundations, but wants to be able to spend other people's money, not his own. He wants to spend that money on things that will enhance his personal image and goals, even if those expenditures are not consistent with the publicly stated goals of the foundation. Amongst other things, Charles Koch uses his involvement with non-profit foundations to



acquire access to, and respect from, influential people in government and elsewhere.

4. Charles Koch used George Pearson as his supplementary eyes and ears to keep track of the details relating to the foundations in which he was involved, and to implement Charles Koch's devices to retain absolute control over the foundations.

5. Mr. Rothbard was one of the founders of the Cato Institute. He was one of three shareholders. The other two stockholders were Charles Koch and George Pearson.

George Pearson pretended to be extremely helpful. He volunteered that "we'll do the accounting [for the Cato Institute] in Wichita." He also volunteered, "We'll keep your shares in Wichita for safe-keeping." All of the bookkeeping was done in Wichita. And Mr. Rothbard agreed to let them hold his shares of stock in the Cato Institute. This enabled Charles Koch and George Pearson to keep absolute control over everything that happened at the Cato Institute; it also enabled them to dispose of Mr. Rothbard's shares of stock in the Cato Institute. As a result of the efforts of Charles Koch and George Pearson, Mr. Rothbard was wrongfully disenfranchised of his interest in the Cato Institute.

6. Charles Koch has, through analogous means and for his personal aims, acquired and asserted control over the other non-profit foundations with which he has been involved, including IHS and CCE.