## EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff, -against- INDEX NO.

451625/20
THE NATIONAL RIFLE ASSOCIATION OF AMERICA, WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL,

Defendants.

JURY TRIAL
60 Centre Street
New York, New York
February 5, 2024

BEFORE: HONORABLE JOEL M. COHEN, Justice, and a jury

## APPEARANCES :

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| :---: | :---: |
| 1 | THE COURT: One question I just received. The rule |
| 2 | against witnesses being in the audience typically doesn't |
| 3 | apply to experts. Soo, my understanding is that there's an |
| 4 | expert witness in the audience and in my view, experts are |
| 5 | permitted to watch the testimony; in fact, often times it is |
| 6 | a good idea. |
| 7 | MS. ROGERS: That's correct, your Honor. We have |
| 8 | our expert here. |
| 9 | THE COURT: So, I just wanted to make it clear that |
| 10 | that in my view does not violate the normal rule against |
| 11 | witnesses. |
| 12 | MS. CONNELL: Your Honor, yes, one question. I'm |
| 13 | going to go back to Mr. Hines's discussion of Michael |
| 14 | Marcellin. I did pull up from the record where it had come |
| 15 | up before. |
| 16 | THE COURT: Well, the documents that were cited in |
| 17 | there, are they in evidence? |
| 18 | MS. CONNELL: The underlying document, his contract |
| 19 | did not come in; but Mr. .aPierre admitted that he had -- he |
| 20 | had known about the payments to Michael Marcellin and he |
| 21 | knew that they were $\$ 2.5$ million or he said he wasn't aware |
| 22 | of that number, but that he knew that there had been |
| 23 | payments and that it had been reported to him and it was |
| 24 | over a million and he knows now it was inappropriate. And |
| 25 | we have the underlying 990s that report it in evidence. |

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THE COURT: I see. So, that's listed in the 990s as excess benefits?

MS. CONNELL: It is listed in 990s as transactions with related person.

MS. ROGERS: Your Honor, there are facts on Mr. Hines's slide that are not on the record. So, for example, the contract review signature sheet, the lack of written approval, lack of business case analysis.
Mr. LaPierre said he was aware of payments, but there's no testimony indicating this was inappropriately complex business arrangement, which the slide also asserts. Nothing about the payment being indirect is in the record.

THE COURT: Yes, that was my recollection, as well.
I think there's still things in his testimony that are not in evidence, so I'm going to keep it -- unless, unless any of those exhibits and they haven't been admitted at the moment, I'm not inclined to have this last witness be the one who brings that in.

MS. CONNELL: Your Honor, just to be clear, though, Mr. LaPierre did say that he was aware that Mr. Marcellin received payment indirectly through an NRA vendor, Lockton Affinity.

THE COURT: I understand that, but expert's opinion is not predicated on the existence of the transaction, but on the internal controls issues which are not in evidence.

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1 All the other ones you have the relevant records in 2 evidence.

MS. CONNELL: Final ditch effort, your Honor. On the 990s they acknowledge -- the NRA acknowledges it is their own 990s that Mr. Marcellin received payments by unrelated organization and it was inadvertently excluded from prior years, and they reflected payments from the organization that the NRA ultimately gave.

THE COURT: I'll accept the fact that the existence of some sort of a transaction with him is in the record somewhere; but the predicate for the opinion about that particular transaction not being -- not being in compliance allegedly with internal controls is not. Look, I think it is just where we are.

MS. CONNELL: I understand.
MR. FLEMING: Your Honor, just to be clear, no need to cross-examine him on that; right?

THE COURT: I didn't let him testify about it. I guess it came in and I struck it.

MS. CONNELL: I believe you did, your Honor.
THE COURT: So it is out.
MS. ROGERS: And so that slide in the demonstrative won't be shown then?

MS. CONNELL: No, your Honor.
THE COURT: Well, it may have been shown, but it

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can't be shown again.
Okay, let's get the witness and the jury. It was a busy letter writing weekend even for you guys. I don't really want to discourage it because they are useful, but it's gone a little bit unstructured where everybody just feels like they can just -- we're all close, but we're not pen pals at this point. I do have to have some sort of a limit on how this stuff comes in, but they were very helpful. Thank you.
(Whereupon, at this time the witness,
ERIC HINES, having been previously duly sworn/affirmed by the Clerk of the Court, resumed the witness stand and testified as follows:)

THE COURT: Remind me at the break to speak to 4 and ten.

Have you all worked out the time allocation issues?
MS. ROGERS: So, your Honor, we've reconciled our minutes and hour counts, and I think we're almost exactly synchronized. We had a difference of three minutes, which I think we can further work out.

THE COURT: What do you have?
MS. ROGERS: Our account, the defendants are about 20 hours behind plaintiffs.

THE COURT: Give the numbers.
MS. ROGERS: I can bring up the exact numbers.

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| :---: | :---: |
| 1 | THE COURT: We can do that at a break. I think |
| 2 | once we have that and once the State rests, you'll be able |
| 3 | to figure the math out exactly of each minute of defense |
| 4 | to |
| 5 | case, what's the ratio of government case, if they want to |
| 6 | try to keep track. |
| 7 | Anyway, we'll figure that out, but I would like to |
| 8 | hear the numbers once we have a break. |
| 9 | COURT OFFICER: All rise, jury entering. |
| 10 | (Whereupon, at this time the jury then entered the |
| 11 | courtroom.) |
| 12 | THE COURT: Good morning, everyone. Please have a |
| 13 | seat. Welcome back, everyone. |
| 14 | We're going to continue with the State's expert |
| 15 | witness. Ms. Connell, are you ready? |
| 16 | MS. CONNELL: I am. |
| 17 | THE COURT: The is witness ready and you understand |
| 18 | you're still under oath? |
| 19 | THE WITNESS: I do, your Honor. |
| 20 | THE COURT: Please, proceed. |
| 21 | MS. CONNELL: Thank you, your Honor. |
| 22 | DIRECT-EXAMINATION |
| 23 | BY MS. CONNELL: (Continuing) |
| 24 | Q $\quad$ Good morning, Mr. Hines. |
| 25 | A $\quad$ Good morning. |

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1 Q As part of your analysis in this case, did you look at or summarize the NRA's payments through an ACH system?
3 A Yes, I did.

22 Q Did you prepare this table?
23 A Yes.
24 Q Is it accurate based upon your review of the ACH 25 records?

Q And, Mr. Hines, if I can direct your attention to Tab 13 which is PX 5120 in the binder?
A Yes.
MS. CONNELL: Your Honor, this is a piece of the summary evidence that we had submitted and given notice of. Q Mr. Hines, can you describe is reflected in this table?
A Sure. So, this table reflects by year from 2013 through 2020 the total of the ACH transfers or wire transactions from Wells Fargo, the NRA's bank and it's presented by entity.

A Yes.
MS. CONNELL: Your Honor, I'd move for admission. THE COURT: Okay, it is admitted. MS. CONNELL: Thank you.
(Whereupon, at this time Plaintiff's Exhibit 5120 was admitted and received into evidence.)

THE COURT: Bonnie, we're not getting the realtime. (Brief pause)
Q Mr. Hines, continuing --
MS. CONNELL: Jonathan, I'd like to go to slide 78, if that's possible.
Q Mr. Hines, as part of your work in this case did you look at the NRA's arrangement with an individual named Gayle Stanford?

A Yes.
Q And can you give the jury a brief overview of the type of analysis you did with regard to Ms. Stanford?
A Sure. I reviewed transactions with Ms. Stanford, documented in invoices sent to the NRA. I reviewed underlying supporting information. With respect to those invoices where it existed, I also reviewed deposition sworn testimony, and I reviewed financial transactions on the NRA's general ledger and the ACH transactions we just spoke about and some other supporting information on the financial transactions.

Q And in regard to the transactions with Ms. Stanford,

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did you identify a violation of the NRA's internal controls?
A Yes.
Q And in regard to those transactions, did you identify fraud risk indicators?

A I did.
Q Mr. Hines, did you -- well, can you describe for the jury briefly what you observed that constituted fraud risk indicators or violations of the NRA's internal controls?
A I'd be happy to. So, with respect to the internal control failures, I concluded that there were -- well, based on my understanding of the facts, there were no contracts in place with Ms. Stanford over the better part of over two decades, I believe and that is inconsistent with the NRA's requirement to have contracts and appropriate review and approval procedures.

So, I identified that as an internal control breakdown.
I, also, identified a number of instances where the payment structure with respect to Ms. Stanford was what in my experience as forensic accountant would be overly complex. She was paid through a number of different arrangements, and some of those were direct by the NRA. Some of those were through indirect payments made via Ackerman McQueen.

I observed a number of fraud risk indicators with respect to the billing practices broadly, and those included changing invoice information, in certain circumstances splitting up invoices into smaller pieces, lack of supporting information

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| :---: | :---: |
| 1 and documentation with respect to those particular invoices as | 1 Q And what is it? |
| 2 w | 2 A This table represent fees paid to Ms. Stanford via |
| 3 Q As part of your work, did you quantify amounts of money | 3 Ackerman McQueen primarily through the out-of-pocket expense |
| 4 paid to Ms. Stanford by the NRA directly or indirectly? | 4 arrangement. |
| 5 A Yes, I did. | 5 Q And did you -- is this an accurate reflection of the |
| 6 Q Mr. Hines, I'd like to direct your attention to Tab 15 | 6 records you reviewed? |
| 7 of your binder. This is PX 5127. | 7 A Yes. |
| 8 | 8 Q Is this the type of analysis someone in your field |
| 9 A Okay | 9 would normally pursue? |
| 10 Q Mr. Hines, can you -- did you prepare this table? | 10 A Yes, it is. |
| 11 A Yes. | 11 MS. CONNELL: Your Honor, I move that this be |
| 12 Q Can you describe what it reflects? | 12 admitted into evidence, PX 5129. |
| 13 A It reflects a summary of the monthly fees paid to | 13 THE COURT: It is admitted. |
| 14 Ms. Stanford over the course of the period from 2015 through | 14 (Whereupon, at this time Plaintiff's Exhibit 5129 |
| 152019. | 15 was admitted and received into evidence.) |
| 16 Q Ms. Stanford had been paid by the NRA for longer | 16 Q And this was paid in addition to the two other -- the |
| 17 periods than that, is that right? | 17 retroactive fee and the monthly fee that we previously saw? |
| 18 A Yes. | 18 A That's correct. |
| 19 Q But this just reflects those years? | 19 Q Mr. Hines, going back? |
| 20 A It does. | 20 MS. CONNELL: If we can go to Tab 81, please |
| 21 Q What did you find in regard to the total amounts paid? | 21 Jonathan. |
| 22 A I found and quantified a total of monthly management | 22 Q Did you calculate the amounts that the NRA paid |
| 23 fees of \$1,159,159 | 23 Ms. Stanford overall from January 2015 through February 2020? |
| 24 Q Thank you. | 24 A Ye |
| 25 MS. CONNELL: Your Honor, I'd ask PX 5127 be moved | 25 Q And what did you find? |
| E. Hines - by Plaintiff - Direct/Ms. Connell Page 3075 | E. Hines - by Plaintiff - Direct/Ms. Connell Page 3077 |
| 1 into evidence | 1 A I calculated the total to be $\$ 2,674,320$. |
| 2 THE COURT: It is admitted. | 2 Q And that's just for services? |
| 3 (Whereupon, at this time Plaintiff's Exhibit 5127 | 3 A Yes. |
| 4 was admitted and received into evidence.) | 4 Q That's not just for the underlying travel costs? |
| 5 Q Mr. Hines, I'd like to draw your attention to Tab, 16 | 5 A That is correct. |
| 6 which is PX 5128. | 6 Q Did you -- as part of your analysis, did you take a |
| 7 Did you prepare this table? | 7 look at Ms. Stanford's or the billing practices between the NRA |
| 8 A Yes, I did. | 8 and Ms. Stanford? |
| 9 Q And what does this table reflect? | 9 A Yes, I did. |
| 10 A This table reflects payments to Ms. Stanford for what | 10 Q And what did you find? |
| 11 were referred to as retroactive fees, so amounts that were paid | 11 A I found there were a number of billing anomalies that |
| 12 typically early in the year following services that they were | 12 in my professional education and training would be consistent |
| 13 reported to be related to. | 13 with fraud risk indicator |
| 14 MS. CONNELL: Your Honor, I would move for the | 14 Q What type of anomalies are you talking about? |
| 15 admission of this table. | 15 A Invoices that were changed from draft to draft, |
| 16 THE COURT: It is admitted | 16 including removing information with respect to destinations, |
| 17 (Whereupon, at this time Plaintiff's Exhibit 5128 | 17 passengers, and invoices that lacked supporting information |
| 18 was admitted and received into evidence.) | 18 provided with that when they were actually submitted for |
| 19 Q So, Mr. Hines, if I understand correctly, Ms. Stanford | 19 payment. |
| 20 was paid in January this retroactive fee in addition to the | 20 There were instances where invoices were for a larger |
| 21 monthly fee we just looked at; right? | 21 amount related to the same vendor around the same day, were |
| 22 A That's correct, based on my understanding, yes. | 22 split into smaller pieces; and that process was contemplated |
| 23 Q And if we can turn to Tab 17, please. This is PX 5129. | 23 based on my understanding the fact that a larger amount would |
| 24 Did you prepare this table, Mr. Hines? | 24 have required second approval, that sort of thing. |
| 25 A Yes. | 25 Q Could we quickly walk the jury through some of these |

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1
of one of what you're talking about?
5 A Yes.
$6 \quad \mathrm{Q}$ Can you explain to the jury what's on the screen?

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## right?

billing anomalies I think you mentioned. I think you said you saw invoices that were changed to remove information.

If you look at the screen right now, is this an example A I'd be happy to. So, on this left-hand side is a version of an invoice for charter air flight services, and that is the invoice that would be initially sent to Ms. Stanford based on --
Q Could I stop you there one second. "CAA invoices to Ms. Stanford," can you explain what that means?
A Sure. So, Ms. Stanford is the travel consultant for Mr. LaPierre primarily, would arrange for charter flights; and my understanding is that the vendor for those charter flights was, typically, Corporate America Aviation. They would invoice Ms. Stanford. Ms. Stanford would then bill that through for the underlying services to the NRA by adding a markup.

So, the invoice on the left-hand side here is the actual invoice from that vendor that provided the air charter services to Ms. Stanford.
Q So, in addition to the monthly fees, she was paid -Ms. Stanford got a markup on the travel charges she booked?

A That's correct.
Q What's the farthest right, the document on the farthest

A The farthest right is a version of an invoice sent by Ms. Stanford to the NRA after it had been changed working with certain individuals at the NRA based on my understanding of the facts, and that was the version that was used and provided to the finance group at the NRA to actually process the payment.

Q And did this altered billing have significance to you as a forensic accountant?
A Yes, it did.
Q Can you explain to the jury what that significance is? A Well, the significance, first off, is that the
information, the underlying itineraries was modified from the underlying details on the Corporate America Aviation document.

As you can see from left to right in this particular slide here, the Corporate America Aviation itinerary lists Washington DC, Milwaukee, Wisconsin, Nebraska and the Bahamas.

The middle version of the invoice was sent by Ms. Stanford, as I understand it, to the NRA; and the destination is changed from Washington to Milwaukee and it lists Florida as the destination.

And the final column with the invoice actually provided to the Financial Services Division to process for payment removed the destinations altogether, so that it is significant in my experience as a forensic accountant because it, essentially, makes the audit trail -- the ability to follow the
documentation record, it makes it opaque unless obvious as to what the actual flight is for and what the NRA was paying for.

Q I think you also said larger invoices were sometimes broken up; is that accurate?
5 A Correct.
Q Can you explain why that's significant?
A It is significant because, one, it indicates that based on my review of the underlying records and awareness that the larger dollar value invoices would have required separate approval and signoff; and by those larger dollar amounts being slid into smaller components, it essentially bypasses separate signoff for checks that were disbursed.

Q So, just to move things along, can you describe what the jury is seeing on the bottom half of the screen right now?

A Sure. So, I identified based on my review of the general ledger that there were invoices paid to Ms. Stanford in the amounts that are corresponded on the right where it has invoice amount.

As you can see, there's a total of $\$ 171,000$
approximately of expenses that are just labeled as May 2018 Dallas expenses. They're all consecutively numbered invoices. They're all given the same invoice date, and they're all just about below the threshold that I observed which is $\$ 50,000$ that would have required additional signature.

So, in my experience this is an example of what would

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be an example of a fraud risk indicator with respect to splitting those invoices in contemplation of a control step.

Q Thank you. Mr. Hines, a second ago we referenced CAA as providing invoices to Ms. Stanford; correct?
A Correct.
Q Did you do any analysis of CAA invoices and Ms. Stanford's invoices?

A Yes, I did.
Q If you could turn, please, to Tab 19 of your binder. It is PX 5116.

THE COURT: This one needs to come with a magnifying glass.

MS. CONNELL: I know. I'm sorry, your Honor. It is a lot of information, so it was more pages or smaller type.
Q Mr. Hines, did you prepare this table?
A Yes.
Q And can you describe what it is?
A It is a summary of invoices related to the Corporate America Aviation vendor for charter flights; and it summarizes the invoice number, invoice date, the date of the trip or the itinerary, the passengers that were described on those invoices, the itinerary destinations and the amount indicated as the total due for that charter and it does that for, I believe, it is approximately 180 invoices.

| E. Hines - by Plaintiff - Direct/Ms. Connell $\quad$ Page 3082 | E. |  |
| :---: | :---: | :--- |
|  | MS. CONNELL: Your Honor, I'd ask this be moved | 1 |
| 2 | into evidence. | 2 |
| 3 | MS. ROGERS: The NRA reiterates its previous | 3 |
| 4 | objections to this summary, but has no others. |  |
| 5 | THE COURT: It is admitted. | 5 |
| 6 | If it is possible to make one with larger type even | 6 |
| 7 | if it doubles the number of pages, it's only three pages. | 7 |
| 8 | I think that would be useful, but substantively it is | 8 |
| 9 | admitted. | 9 |
| 10 | MS. CONNELL: We'll circulate one with larger type, | 10 |
| 11 | your Honor, and ask that it be admitted in that fashion; but | 11 |
| 12 | for the time being -- | 12 |
| 13 | THE COURT: Yes, if the only thing that you do is | 13 |
| 14 | make it bigger, you can just remark this as PX 5116 and you | 14 |
| 15 | don't have to seek to have it readmitted. | 15 |
| 16 | MS. CONNELL: Thank you, your Honor. | 16 |
| 17 | Q $\quad$ Mr. Hines, while we have the book open, can you please | 17 |
| 18 | look at Tab 18. | 18 |
| 19 | A $\quad$ Okay. | 19 |
| 20 | Q $\quad$ Did you prepare this table? | 20 |
| 21 | A $\quad$ Yes. | 21 |
| 22 | Q $\quad$ What does this table reflect? |  |
| 23 | A $\quad$ This table reflects a summary of those Corporate | 23 |
| 24 | America Aviation invoices, and it categorizes various attributes | 24 |
| 25 | with respect to those invoices, including grouping them by | 25 |

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flights where Mr. LaPierre was included as a passenger as presented on those invoices.

The column with respect to the middle column are itineraries where Mr. LaPierre was excluded, and it identifies the Sterners as being included on those flights.

And the third column shows the account of itineraries for Mr. LaPierre were excluded for all other itineraries. It shows the total counts, and then on the furthest left-hand side it represents the locations or itineraries that included locations of the Bahamas, Nebraska, both and all other; and it provides specific counts with respect to itineraries that have attributes and the percentages of the total.

Q Did you ever summarize the results of this --
MS. CONNELL: Your Honor, I move this into evidence.

THE COURT: 5117?
MS. CONNELL: I believe this is 5116. I think I
made a mistake. I think I switched the order.
THE COURT: Well, Tab 18 is 5117; isn't it? Is
that the one you were on?
MS. CONNELL: I think it got turned around, your
Honor. I think we just moved 5116 into evidence already.
THE COURT: Okay.
MS. CONNELL: So, let's just move on to 5117.
THE COURT: Wait, 5116 is the small one.

MS. CONNELL: That's right.
THE COURT: 5117 is the one that's Tab 18. That's admitted.
(Whereupon, at this time Plaintiff's Exhibit 5117 was admitted and received into evidence.)

MS. CONNELL: That's right.
Q So, Mr. Hines, did you prepare this table that's at 5117, PX 5117?
A Yes, this is the one I just described. You may have been off.

MS. CONNELL: Your Honor, I move for this to be moved into admission.

THE COURT: I'll move again if you want.
MS. CONNELL: I do want that. Thank you, your Honor.
Q Mr. Hines, can you describe for the jury again just briefly what this reflects?

A Sure. So, this is a summary of the previous table that itemized the invoices with Corporate America Aviation, and it includes line items that represent whether those invoices
included itineraries that referenced the Bahamas, Nebraska and all other.

And the columns as you go from left to right tabulate the amounts with respect to those itineraries and accounts of those itineraries where Mr. LaPierre was included or where

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Mr. LaPierre was excluded; but it identifies the Sterners as being on those itineraries.

And the third column where Mr. LaPierre was excluded for all other transactions, and then it provides totals and itinerary counts on the right-hand side, and then certain summarizations of those in the sections in green and yellow below.

Q So, you found flights that the invoices reflected flights that Mr. LaPierre was not even on and you totalled those?
A Yes.
Q And you found flights where the Sterners were on without Mr. LaPierre?
A Yes.
Q And Mr. Sterners are Mr. LaPierre's niece and her family?
A That is my understanding.
Q And you totalled them up, and that's reflected in this chart?
A Yes.
Q And flights -- can you tell the jury how much you found for flights that on which Wayne LaPierre was not even a passenger?
A It would be the total of the columns to the right -- or the middle and the second column. It is approximately, I
believe, it is 8 . -- or 870,000 so it would be the total of the column Wayne LaPierre excluded and Sterners included and then Wayne LaPierre excluded. So, it would be the total of those dollars.
(Continued on next page)

A I believe so.
MS. CONNELL: Actually, before we move on to black
car services, if we can go to slide 86, please, Jonathan.
Q Does this total your analysis of CAA invoices regarding
car services, if we can go to slide 86, please, Jonathan.
Q Does this total your analysis of CAA invoices regarding 24 the flights that we talked about just before?
25 A Yes.
MS. CONNELL: Jonathan, if we can go back to slide 84 please.
Q Mr. Hines, did you find any other billing practices that you deemed problematic with regard to the NRA's payments to Ms. Stanford?
A Yes, I did.
Q And what were they?
A I noted a number of instances where the charges from Ms. Stanford didn't include detailed descriptions. This table on the slide presented, it showed some examples of that where it would just list gratuities or charges with a city destination name and lack of detailed description with respect to what underlied those particular expenses.
Q And Mr. Hines, did you also look at black car services retained or used by -- booked by Ms. Stanford for the NRA executives?
A Yes.
Q And did you endeavor to quantify the amount spent on

Q And so can you describe for the jury the total amounts that you found?
A Yes, I can. So across a population of 188 invoices from May of 2015 through September of 2019, the total was approximately 6.6 million.

I identified 57 invoices for $\$ 2.6$ million approximately with destinations that included Nebraska or the Bahamas.

I also identified 41 invoices totalling $\$ 872,000$, and
these amounts don't include Ms. Stanford's markup. I should
mention that. But that $\$ 872,000$ did not include Mr. LaPierre as
a passenger and also identified 19 invoices for 686,000 where a
member of the Sterner family was listed as a passenger.
Q Mr. Hines, I'd like you to take a look at Tab 20 in your book. This is PX 5119.
A Okay.
Q Actually, let's first look at Tab 21 which is PX 5118. Did you prepare this table?
A Yes.
Q Can you describe to the jury what's in this table?
A This table represents the line item invoices that were sent to the National Rifle Association for Ms. Stanford which covered the period from late 2011 through October of 2019 and includes each invoice that I was able to identify from remittance information which is essentially a form of support that the invoices were paid, and I've categorized those with the

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invoice number, the remittance reference number, the invoice
date and noted where there were air transportation amounts, not
air transportation amounts, the total invoice amount, and the reference to the particular document number.

MS. CONNELL: Your Honor I'd move PX 5118 into evidence.

THE COURT: It's admitted.
Q Mr. Hines, did you endeavor to take the information reflected on PX 5118 analyze it in a different form?

A Yes.
Q I direct your attention to Tab 20 in your book which is PX 5119.

A Okay.
Q Can you describe to the jury what this reflects.
A Sure. So on this particular document, it reflects a count of -- there is two different pie charts hereby.

THE COURT: The one -- the document that's on the screen is not the document that the witness is describing. I see the jury is looking at the one on the screen.

MS. CONNELL: The jury is looking at the one on the screen, but a easier version of this --

THE COURT: I had a feeling that when you said "describe for the jury," they thought he was going to be describing the one that's on the screen. I don't want you to put it on there, but I just want to make sure they

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| :---: | :---: |
| 1 | understood he is talking about a different thing. |
| 2 | MS. CONNELL: I am trying to move rather quickly |
| 3 | through this. |
| 4 | Q |
| 5 | So Mr. Hines, did you prepare those graphics? |
| 6 | Q |
| 7 | Yes. I think they are not on the screen if that -- |
| 7 | A |
| 8 | Correct. |
| 9 | methodology that would normally be used by a forensic |
| 10 | accountant? |
| 11 | A $\quad$ Yes. |
| 12 | MS. CONNELL: I would move PX 5119 into evidence. |
| 13 | THE COURT: It's admitted. Now you can put it up |
| 14 | so they can see what you were talking about. |
| 15 | Q $\quad$ So now Mr. Hines, can you describe to the jury what's |
| 16 | reflected in these charts? |
| 17 | A $\quad$ I can. So the first pie chart here shows a breakdown |
| 18 | of the invoices paid by the NRA to GS2 which is Ms. Stanford -- |
| 19 | one of her business entity names from December '11 to October of |
| 20 | '19. It showed those invoices that included air transportation |
| 21 | and those without air transportation, an account of those |
| 22 | invoices. |
| 23 | Q And if we move to the second chart. Can you describe |
| 24 | that breakdown. |
| 25 | A $\quad$ So this takes the same population of invoices and |

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A Go ahead. those invoices.
Q So --

A Yes. through Ms. Stanford?
A Yes. costs? travel. Stanford?
A Yes.
breaks it down between the cost. So the red represents the air transportation cost identified from those invoices and the gray area represents the non-air transportation cost itemized in

Q Would it be fair to say that your analysis of the invoices demonstrated that the NRA paid over $\$ 13$ million in flight-related costs or air-related costs.

Q And about $\$ 4.6$ million in non-air related costs booked

Q What would be included in those non-air related costs or what's your understanding of what's included in the non-air

A It would be based on my review of the documents things like black car services, some other miscellaneous travel and business expenses but categories that were outside of air

Q And Mr. Hines, just to recap, you found fraud risk indicators in regard to the NRA's relationship with Ms.

Q And again, can you quickly walk the jury through what
those were.
A Sure. So there were a number of fraud risk indicators that I identified. Specifically the complexity of the transaction.

As I noted before, Ms. Stanford billed through multiple legal entities, names of business that she billed under. There were disaggregated fee structures. She was paid in multiple different ways including commissions or markups on particular travel costs, monthly fees, retroactive fees, indirect payments through Ackerman McQueen.

Documents that were modified or altered including the example we walked through before with respect to travel itineraries being taken off of invoices sent to the National Rifle Association, invoices that were split into smaller component parts. Missing documents and unsupported transactions is another fraud risk indicator based on my experience and education and training.

Ms. Stanford's invoices typically didn't include supporting documents underlying those charges.

I also noted based on my review and understanding of the record that Ms. Stanford was actually instructed on how to bill from the NRA which I thought was also a fraud risk indicator of.

MR. CORRELL: Objection, your Honor. Objection, your Honor. The testimony is in conflict on this, and this

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witness is purporting to resolve credibility issues between different witnesses. I would move to strike.

THE COURT: Look, I think the witness has been pretty clear throughout that he's giving his understanding of the facts.

If the jury disagrees with his understanding of the facts and finds a different set of facts is true, then they can reject this testimony.

MS. CONNELL: Thank you, your Honor.
MR. CORRELL: Thank you, your Honor.
$Q \quad$ Were you finished walking through the fraud risk indicators?

A No. There's a couple more. I can continue if you'd like.

Q Very quickly, please.
A Sure. So transactions not recorded in a timely manner or improperly recorded where there were circumvention of NRA's policies with respect to Ms. Stanford's arrangements. Invoice splitting as we discussed previously are consistent with fraud risk indicators and the documentation of the award of her paid arrangement being undocumented not subject review and approval processes and having those be largely verbal agreements is a fraud risk indicator as well.

Q Mr. Hines, would I be correct in understanding that based upon the review you performed and in your experience,
education and training as a forensic accountant, you identified internal control failures in every vendor relationship that you looked at?

A Correct.
MR. CORRELL: Leading, your Honor. I move to strike.

THE COURT: That was leading.
MS. CONNELL: It was leading, your Honor. I'm sorry. Just trying to move things along, but I can ask.
Q Mr. Hines, how would you describe the results of your review of the NRA's relationship with its vendors that you reviewed?

A I identified internal controls and consistency in internal controls and all the arrangements that I reviewed.

Q How would you describe your review of every NRA vendor relationship that you -- that you looked at in terms of whether or not there were presence of fraud risk indicators?

A I identified fraud risk indicators with respect to each one.

Q Did you form an opinion about whether for the period of time you looked that the NRA had an effective internal control environment.

A I did.
Q What was that opinion?
A My opinion that it did not. Was that it did not.

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MS. CONNELL: Thank you, Mr. Hines. I pass the witness.

THE COURT: Okay.

## CROSS-EXAMINATION

BY MS. ROGERS:
Q Good morning, Mr. Hines. Can you hear me? 7 A Yes.

MS. ROGERS: Can the jury hear me? Okay.
Q My name is Sarah Rogers. I represent the NRA.
Mr. Hines, before you joined us Friday, did you observe any testimony by any other witnesses in this case?

A No.
Q Did you review transcript of any testimony by any other witnesses in this case?

A I did not.
Q You're being paid as you sit here testifying; right?
A Correct.
Q When you gave a deposition earlier in this case, I think you estimated that the Government would pay between 1.1 and $\$ 1.2$ million to your firm for your testimony.

Do you recall that?
A I do.
Q Have you gotten the million dollars yet?
A I believe we have been paid about a million or somewhere thereabouts.

Q All right. Your testified just a moment ago that in every vendor relationship you looked at, you saw fraud risk indicators.

You recall that; right?
A Ido.
Q What percentage of the NRA's vendor relationships did you look at?
A I don't know the total as a percentage of either vendor count. I know in dollar basis it was quite large.
Q And the Government told you which vendor relationships they wanted you to look at.
A They were the ones that were alleged to have been improper in the complaint, so that was the scope of my analysis, yes.
Q If I were to represent to you that you looked at less
than one percent of vendors by vendor count, would you have any knowledge inconsistent with that?
A No, but I would say that dollars are more relevant than vendor count in my experience.
Q We will talk about dollars later.
Now, these fraud risk indicators, I'm going to call them FRIs for short.

We heard testimony that an FRI is absolutely not -those were your words "absolutely not the same thing as actual fraud;" right? It is not a conclusion that there is fraud;

Q Right. And it's not -- setting aside fraud finding, an
FRI or risk indicator doesn't mean that you found actual waste of corporate assets either; right?
A It's an indicator of fraud, waste and abuse
Q An indicator for?
A Correct.
Q But not actual fraud, waste or abuse?
A It's an indicator, so yes.
Q In fact, a transaction could have multiple risk
indicators and not contain any fraud, any waste or any abuse.
A That is possible
Q You're certainly not telling the jury that anybody broke any law.
A I'm not reaching a legal conclusion, no.
Q You're not telling them that anyone at the NRA broke any law concerning related-party transactions; right?
A Again, I'm not reaching any legal conclusions.
Q Right. And you haven't reached the conclusion that anyone broke any law regarding the administration of charitable dollars; right?

MS. CONNELL: Objection, your Honor. The witness can not give legal conclusions.

THE COURT: She can ask.
Q You are not giving a legal conclusion that anyone at
the NRA broke any law governing the administration of charitable dollars; right?

A That's correct.
Q And in fact, when you looked at those dollars, the dollars you said were more important than vendor count, you didn't check whether the dollars you were analyzing came from the NRA's 501c charitable fund or from its general funds; right?

MS. CONNELL: Objection, your Honor.
A I don't know the answer to that question.
MS. CONNELL: One second. This gets into a legal issue that we spoke about previously about the 501(c)(3) versus (c)(4) and the charity and whether the NRA is a charity which it is under New York.

MS. ROGERS: I am only asking if the witness considered the distinction.

THE COURT: Overruled.
Q Did you consider whether any of those dollars were important, the dollars that you were phrasing -- did you look at whether they came from tax deductible charitable donations or from the NRA's general funds?

A I did not perform analysis.
Q Okay. And you did not perform an analysis of whether the NRA broke any law governing whether forms filed with the Government are true or false; right?

A That was not part of the scope of my analysis, no.

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A Correct.
Q In fact, there was a major fraud at your former firm Arthur Anderson; right?

A I don't know if I -- I don't know what the legal conclusion is with respect to that, but I did work at a firm that had a issue.

Q You worked at Arthur Anderson in 2001; right?
A 2001 to 2002.
Q And that was the year that the Enron fraud came out --
A Yes.
Q -- that Arthur Anderson worked on.
A Yes.
Q So even if you can't reach a legal conclusion, as a
layman, do you have a conclusion as to whether that Enron action
was a pretty big fraud?
A I would agree it's a pretty big fraud.
MS. CONNELL: Objection.
THE COURT: On what grounds?
MS. CONNELL: She is asking for a legal conclusion about Enron. It's collateral.

MS. ROGERS: I am asking for a layman's conclusion because some of the lay people in the courtroom heard of Enron too.

THE COURT: I'm failing to understand. Did this witness have anything to do with that engagement?
Q Well, you were at Arthur Anderson at this time.
A I was at Arthur Anderson in a completely different office. Never touched Enron.

THE COURT: I will sustain the objection. This has nothing to do with this witness.
Q But you would agree that even a good company, even a company committed to controls can end up in a transaction that bears fraud risk indicators.
A That's possible.
Q Okay. Now a risk indicator can be remediated; right.
A It could be, yes.
Q Okay. But you didn't offer the jury an opinion about whether or when any of the risk indicators you identified were fixed by the NRA?
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A I did not observe that, but that is not part of my opinion.
Q Okay. All right. I want to put up a demonstrative we made last Friday while you were testifying, and it's just an image of one of your slides.

And what I have done is I've taken these vendors you looked at and put them in buckets for ease of description.

The McKenzie companies. Can you list for the jury what the McKenzie companies are?
A That would be Concord Allegiance MMP and also Associated Television International.
Q Right. Now, is it your understanding that David McKenzie controls each of those companies or is he just a shareholder?
A I understand he's got control of those entities and is also a shareholder.
Q In the context of corporations, have you ever heard the term "alterego?"
A I have, yes.
Q Would be fair to say that an alterego is a shell company different on paper from the person or entity that controls it but really the money is going to the same place? MS. CONNELL: Objection, your Honor. THE COURT: Sustained.
A I don't know.
$1 \quad \mathrm{Q}$ In forming your expert opinion about the transaction, did you check whether the transaction was ongoing or had ended?
$23 Q$ Are you offering the jury any opinion about whether the
24 -- whether the NRA paid MMP too much?

25 A Could you define "too much?"
THE COURT: When there is an objection -- I'm not sure exactly where you're going. That's a complicated question even for lawyers.

MS. ROGERS: All right. Well, I'll ask this.
Q You did not reach a conclusion that any of these
McKenzie companies were alteregos of David McKenzie; right?
MS. CONNELL: Objection, your Honor.
THE COURT: Did you address that question?
THE WITNESS: No.
Q Okay. You did not address or conclude whether these companies were alteregos of each other; right?

MS. CONNELL: Objection, your Honor.
THE COURT: Overruled. You can answer.
A No.
Q Okay. Do you think that the NRA's relationship with every McKenzie company exhibited FRIs or just MMP?
A Well, I would believe that -- the fact there were internal control failures with respect to all of the entities would be consistent with the fraud risk indicator, and my observation that the arrangements were less given the multiple contracts with those multiple companies I think if too would apply to those all of those.
Q But the NRA stopped paying Associated Television International in 2018 six years ago; right?

A I don't recall the specific date.

A I believe that's in my schedules, yes. I just don't recall as I sit here right now.
Q If I were to represent to you that the NRA stopped
paying Associated Television six years ago, would you have any knowledge inconsistent with that?

## A No.

Q You didn't observe the other testimony in this case,
but if one of the Attorney General's own witnesses Chris Cox
testified that MMP was a life blood of the NRA, would you have knowledge inconsistent with that?

A No. I have no way to opine on that one way or the other.
Q Well, let's look back at your slide 29 which is about those companies. All right.

You pointed out -- I think the point you're making on this slide right is that the NRA paid MMP more during the 2010 under the contract it actually signed than would have been allowed under an earlier version that had a ten percent cost increase limit; right?

A That's certainly part of this analysis, yes.
Q Are you offering the jury any opinion about whether the

1 Q Sure. Too much relative to the value it was receiving.
2 A I didn't do a fair market value analysis. This
3 calculates the difference between the contract it actually
4 signed, the contract that was reviewed and approved and what was
5 actually paid.
6 Q Right. And you didn't do any analysis on whether 7 during these years MMP brought in more money than MMP was paid.
8 A No.
9 Q And you didn't do any analysis on whether during these years the contract helped or hurt the NRA's non-profit mission?

A No. That's outside of the scope of my analysis.
Q The earlier version of the contract, the one that was reviewed had a ten percent cost increase allowance; right?

A I believe it was the reviewed version had a ten percent cap on annual fee increases.

Q And you performed no analysis over whether the NRA's membership based, the people serviced by MMP grew more than ten percent during these years.
A I did not.
Q And you performed no analysis on whether the money brought in by MMP increased by more than ten percent during those years.

A No.
Q All right. Now the scarlet segment of this graph is what the NRA actually paid under the contract that was actually

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1 signed; right?
2 A Can you say that one more time?
3 Q Sure. The scarlet red segment of this graph is what
4 the NRA actually paid under this contract, what it actually signed; right.

A It's what it actually paid. It's not what the contract actually called for.

Q Right. And the version of the contract that you compared it to, the one with the ten percent rate increase limiter, what the NRA could have paid under this contract is represented in pink; right?

A Correct. Well, the pink is the differential between the stated contract rate and the ten percent growth rate.

Q Right. So you would agree with me that under your graph, the NRA's fees to MMP increased during the 2010s and then levelled off?

A That's correct.
Q And you would also agree with me that by 2021, the amount paid under the actual contract had pretty much converged with what your version of the contract would have allowed; right?
A In terms of the annual amount?
Q Yes.
A They are approximately in the same vicinity.
Q Okay. Let's look at your -- well, actually, I have one
more question about this graph.
In forming your expert opinions, did you do any work to match these trend lines with trends in the NRA's membership count or fundraising volume?
A No. It wasn't relative to my analysis given I'm looking at the contract rates and reviewed rates and what was actually paid.

Q Would it be fair to say when you looked at the MMP contract, you had looked at what the NRA was paying but not what the NRA was getting?

A That's correct.
Q Mr. Okay. All right. Now, let's look at your slide 35.

Are you telling the jury that the NRA was wrong to renegotiate the MMP contract at a better price in 2022? A No.
Q Okay. And in forming the view that this renegotiation reflected a fraud risk indicator, did you do any assessment of whether the services provided by MMP actually changed?
A I didn't come to a specific analysis of each service, but based on my review of the record, my recollection and understanding was that the NRA employees internally themselves described that the contracts were for similar services and that there were -- it was more market rate and that they were favorable terms for the new contract.

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Q In forming the view that the NRA striking a better deal in 2022 reflected a fraud risk indicator, did you analyze whether MMP fundraising volume changed?
A I did not.
Q All right. Let's go back to go our demonstrative with the four buckets on it.

In addition to the McKenzie companies, you also looked at Ackerman McQueen and two related entities, Mercury Group and Under Wild Skies; right?

A Correct.
Q The NRA stopped paying Ackerman and sued Ackerman in 2019; right?

A That is my understanding.
Q Same for Mercury Group?
A I believe that's correct.
Q And the NRA also stopped paying Under Wild Skies and sued Under Wild Skies.

A I believe that's accurate.
Q Ackerman broke the promise it made in the contract to the NRA?

MS. CONNELL: Objection, your Honor.
A I have no opinion on that.
THE COURT: Hang on when there is an objection. What's the objection?
MS. CONNELL: It calls for a legal conclusion about

Q Do you have a recollection as to whether the contract stated that Ackerman was required to follow NRA's written expense policies?

A I don't recall the explicit language in the contract.
Q Now, let's talk about direction given by Mr. LaPierre and what the record shows and what you looked at.

Have you heard of a firm called Forensic Risk Alliance?
A Yes.
Q They are a forensic accounting firm; right?
A Yes.
Q Would you say they have a good reputation in the forensic accounting field?
A I think it's a fine one. I don't have a specific opinion one way or another.

Q You testified earlier fraud risk indicators can be fixed. Do you remember that?
A They can be in certain circumstances with the appropriate diligence and processes.
Q And one example of an appropriate policy might be to hire a forensic firm like Forensic Risk Alliance to look at the subject expense; right?

A That could be part of the fact finding. I think you need to be careful in my experience not to conflate fact finding with remediation.

1 Q You understand the NRA did hire FRA to look at Ackerman's expenses?

MS. CONNELL: Objection, your Honor.
Q Do you understand that?
MS. CONNELL: Your Honor, may we approach. This addresses an evidentiary issue.

MS. ROGERS: It's in his report.
THE COURT: Yeah. Overruled.
A Can you repeat the question?
Q Sure. You understand the NRA hired a forensic accounting firm FRA to look at Ackerman's out-of-pocket expenses; right?

A I am aware that they hired FRA.
Q In fact, FRA generated a voluminous spreadsheet of its findings.

Do you remember that?
A I recall they had spreadsheets. I don't recall how voluminous.

Q You recall that you relied on that spreadsheet when you did your expert report?

A I reviewed it and considered it, and my recollection is I recall findings being similar and having observations with respect to the issues with the out-of-pocket expense arrangement that were available.
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MS. ROGERS: I'd like to show the witness for identification Plaintiff's Exhibit 2333. This is the spreadsheet.

MS. CONNELL: Your Honor, objection.
THE COURT: So, let me just see what it is first.
Can you just turn the screens off.
MS. ROGERS: I have paper copies, if that's convenient.

THE COURT: Okay.
MS. ROGERS: Paper copy for plaintiff, for the
Court and I've got one for the witness, if he'd like.
THE COURT: Thank you.
(Handed)
MR. CORRELL: Is there a copy for us?
MS. ROGERS: I only have four, but let's see. It is PX 2333.
Q Mr. Hines, do you recognize this as the Forensic Risk
Alliance report that you considered when you formed your expert opinions?

A Looks to be that document.
MS. ROGERS: I move for its admission.
MS. CONNELL: Your Honor, objection, and I would --
I can state the objection on the record, but I prefer to approach the bench.

THE COURT: Okay, why don't you come forward.
(Whereupon, the following ensued at side bar on the record with the Court and all counsel as follows:)

MS. CONNELL: Your Honor, this FRA spreadsheet is something that is at issue in this case. There's no foundation for Mr. Hines to look at it because it was produced by the NRA. However, the NRA's appropriate rep can testify, we propose can he testify. He says that he never presented a spreadsheet to the NRA as part of his work, that they screen share the spreadsheet and he couldn't say this was the final spreadsheet that they actually had prepared.

Furthermore, he didn't know how it got to the NRA and he, himself, didn't have firsthand knowledge of it which is not unusual; but he also wasn't able to speak to certain other people who did have firsthand knowledge. One person who did have firsthand knowledge was Susan Dillon who left the Brewer firm to work at FRA for a brief period of time during this engagement and then returned to the Brewer firm. But we don't have a corporate rep that can say to my knowledge that these were the spreadsheets used, they were the ones drafted and that this witness should not be a vehicle for their admission because Mr. Hines looked at these spreadsheets that were provided and produced by the NRA.

MS. ROGERS: Mr. Hines said his conclusions were
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similar to the ones -- I want to ask the expert questions about how he considered and interpreted this.

There's also been some representations by Ms. Connell that I'd like to address. So, this idea that an employee left the Brewer firm to work at FRA and then come back. As this employee was laid off from COVID -- I just want to note your Honor, FRA filled out a business record --

THE COURT: Hold on. The question is whether this document is what you're describing it to be is what was shown actually used, because there could have been any number of iterations of this.

MS. ROGERS: Well, FRA filled out an affidavit in the bankruptcy offering this document, and the expert testified that he considered it and reached similar conclusions.

THE COURT: Which expert?
MS. ROGERS: This expert just now.
THE COURT: Again, it still -- if you want to -- if you want to impeach him or something about what his testimony, that's okay with this; but putting it in as substantive evidence without -- you can in your case if you can lay a foundation for an FRA report that was shown to the company as part of your defense, that's fine.

The question is whether I have a basis to admit this in as a trial exhibit through this witness. I don't

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| :---: | :---: |
| 1 think so. I think the -- the only thing you can do is if he | 1 A Ye |
| 2 has testified that his assumption is that FRA did something | 2 Q I'd like to direct your attention now to cell four of |
| 3 based on what he reviewed, you can say, well, this is what | 3 the spread from the other accountants that you reviewed. I'm |
| 4 you reviewed, doesn't say that does it? That's not | 4 going to read a sentence to you and you tell me if you have any |
| 5 admitting | 5 knowledge inconsistent w |
| 6 MS. ROGERS: I'm content to question the witness | 6 MS. CONNELL: Objection, your Honor. |
| 7 from the document, reserving rights to admit it later. | 7 THE COURT: Sustained. That's the same thing as |
| 8 THE COURT: Yes, and during your case if you can | 8 admitting the document |
| 9 admit someth | 9 Q Well, I'm going to try to ask this a slightly different |
| 10 MS. CONNELL: Thank | 10 way. |
| 11 (Whereupon, at this time the side bar ended and the | 11 Mr. Hines are you aware of any evidence in the record |
| 12 following ensued in open court as follows:) | 12 to indicate that the out-of-pocket expenses billed by Ackerman |
| 13 THE COURT: Sorry for the side bar part of it, but | 13 were in connection with special assignments or were approved by |
| 14 it is important. | 14 the NRA executive vice president or his designee? |
| 15 I'm going | 15 A Specifically, with respect to the special assignments |
| 16 this document to this witness but since -- if they want to | 16 or I guess -- |
| 17 try to move a document like this into evidence, they can try | 17 Q Well, did you see any written approvals in the record |
| 18 it in their case in chief. | 18 consistent with what we just discussed indicating that Wayne |
| 19 This isn't a witness who can provide a foundation | 19 LaPierre had approved these expenses you reviewed? |
| 20 for admitting it now, so I'm not going to admit the exhibit | 20 A I don't recall |
| 21 yet, but you may see it again. | 21 Q Okay. And when you say you don't recall, do you mean |
| 22 MS. ROGERS: Thank you, your Honor. | 22 you don't recall whether you saw any; or sitting here today, you |
| 23 BY MS. ROGERS: (Continuing) | 23 have no current specific recollection of seeing any document in |
| 24 Q Mr. Hines, I'd like to direct your attention to the key 25 observation section at the top? | 24 the record evidencing a written approval by Mr. LaPierre of <br> 25 these expenses, which you've opined were fraud risk indicators? |
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| $1 \quad \mathrm{~A}$ | 1 A I don't recall specifically whether that exists or not. |
| 2 Q I questioned you before about your understanding of the | 2 I do recall testimony that indicated that the individuals at the |
| 3 provisions of the Ackerman McQueen contract you analyzed. Do | 3 NRA were aware of the arrangement, the out-of-pocket expense |
| 4 you recall that | 4 arrangement given this is what we're talking about. I don't |
| 5 A Yes. | 5 recall specifically if there's a signed document or not. |
| 6 Q And I asked you whether it was your understanding that | 6 MR. CORRELL: Your Honor, objection to the |
| 7 Ackerman adhered to NRA policies; right? | 7 characterization of the testimony and move to strike. |
| 8 A That was your representation, y | 8 THE COURT: Denied. |
| $9 \quad$ Q Would you agree that representation was consistent w | 9 Q I'm going to dig into the characterization. Whose |
| 10 what the other forensic accountants wrote in that first cell of | 10 testimony? |
| 11 that spreadsheet? | 11 A I recall based on my recollection and understanding of |
| 12 A I'd like to read | 12 the facts Mr. Phillips -- |
| 13 Q Of course. You would agree with me what I said about | 13 THE COURT: Hang on a second. Are you talking |
| 14 the contract that Ackerman had to adhere to written procedures | 14 about testimony in the trial or at some other point in |
| 15 established by the NRA vis-à-vis its expenses. That | 15 time? |
| 16 representation is consistent with what the other forensic | 16 THE WITNESS: I'm referring to testimony that I |
| 17 accountants observed; right? | 17 reviewed in deposition transcripts, your Honor. |
| 18 A That language appears to be generally consistent; | 18 THE COURT: If that's not in evidence, then I'll -- |
| 19 although, I haven't analyzed it against the specific contract | 19 I change my mind as to striking it |
| 20 with this document that I'm seeing here, but. | 20 MR. CORRELL: Thank you, your Honor. |
| 21 Q Okay. Now, when I made that representation to you | 21 MS. ROGERS: Then I'll move on. |
| 22 before, you noted that Ackerman was only authorized under the | 22 Q But you don't recall seeing any written approvals in |
| 23 contract to take direction from the executive vice president who | 23 the record consistent with the contract; right? |
| 24 was Wayne LaPierre. | 24 A Not as I sit here right now |
| 25 Do you recall that discussion we had? | 25 Q In forming your expert opinions about the Ackerman |

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relationship, one relevant fact you considered was that Tony
2 Makris was friends with Wayne LaPierre; right?
3 A I think that is a relevant piece of information.
THE COURT: Is a relevant or irrelevant?
THE WITNESS: One relevant piece of information,
yes.
Q I wasn't clear from your earlier testimony, do you think that a friendship poses a conflict of interest for internal controls or not?

A My view would be, one, you'd have to consider the policy and I think the specific receipt of gifts and entertainment accompanies a friendship would be certainly relevant and disclosable as I understand it under the policy; but if you can ask the question again.

Q Sure. Well, I suppose -- is it your testimony or your opinion that the Ackerman contracts should have been subject to a conflict analysis on the basis that Mr. LaPierre and Mr. Makris were friends?

A I don't necessarily have a specific opinion on that directly. I don't believe I have a specific observation about the Ackerman contract with respect to conflicts of interest; but I think if it is based on my experience as a forensic accountant, if there is a personal relationship with a significant vendor and there's goods and services exchanged and potential -- any sort of remuneration of gifts or entertainment,
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I think it would certainly warrant consideration for a disclosure.

Q If plaintiff's other expert, Jeffrey Tenenbaum, told the jury that a friendship is not a conflict of interest for purposes of nonprofit government best practices, would you have any opinions inconsistent with that?

MS. CONNELL: Objection, mischaracterizes his testimony.

THE COURT: Hang on. I sitting here can't remember exactly what the witness said, so why don't you just ask the question of this witness.
Q Well, I'll move on, because we'll revisit that later.
You would agree with me that if a personal connection between Mr. LaPierre and Mr. Makris is relevant to your analysis, it would also be relevant, wouldn't it, to consider whether Ackerman engaged in the same expense misconduct with respect to other clients who had nothing to do with Wayne LaPierre and where there was no personal friendship with the CEO?

A My analysis was looking at what the NRA paid for, and so I considered the information that I had in front of me and I'm not sure what Ackerman did with its other clients would change any of my opinions whatsoever.

Q So, you have no opinion about whether Ackerman's conduct has anything to do with any personal relationship that

1 it had with the NRA. As far as you're concerned, Ackerman might
2 have expensed every single client the exact same way?
A I have no basis to even take a guess at what Ackerman did with its other clients.
Q Did you ask the attorney general whether there were any other Ackerman clients that testified in the cases in which you reviewed testimony?

A I did not specifically do that, no.
Q And they didn't tell you?
A Not that I recall.
Q All right, let's go back to the four buckets, our demonstrative.

Third bucket, contracts with board members and with people who used to work for the NRA.

You left out the largest related-party contract in the NRA history when you did this analysis. You left out the Oliver North contract; right?

A That was not in the scope. I didn't -- it was not part of what I was asked to analyze. As I understand, it was not part of the complaint.

Q Did the Government the tell you that the NRA had a contract worth about 6.9 million dollars with one of its board members, Oliver North?

A I was generally aware there was a contract, yes.
Q Did you omit this from your analysis because Colonel
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1 North agreed to testify for the Government?
2
3

A No.
Q You omitted it from your analysis because they didn't ask you to include it?

A Because it was not part of the complaint, as I understand it.

Q So, if you reviewed the complaint and it didn't talk about that contract, that would be consistent with your recollection?

A I don't recall specifically, but it was not one of the arrangements that I reviewed.

Q Well, setting aside the North contract and looking back at contracts you did consider, you didn't analyze the value of the services provided under any of the contracts; right?

A As a fair value issue?
Q Did you analyze the value provided under these contracts from any perspective?
A That would be from what I understand your question to be is a fair-market value analysis, and no.

Q So, you didn't analyze whether the NRA was getting its money's worth for what it paid under any of these?

A That was not part of the scope of my analysis.
Q All right, so as far as you know, each of those contracts was a fantastic deal for the NRA's members; right?

A Or it could have been a terrible deal. I don't know.

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2 A I have not done that analysis, no.
3 Q And except for Marion Hammer who's a gun lobbyist,

10 Q If I represent to you that that contract, that ended three years ago in 2021; would you have any knowledge inconsistent with that?

A No. I believe that sounds correct.
Q And you looked at one with Dave Butz, do you recall that?

A Yes.
Q If I represent to you that that contract ended in 2019 which was five years ago, you'd have no knowledge inconsistent with that; right?
A I believe that's correct.
Q You looked at a brief contract with Mr. Phillips. If I were to represent to you that that contract had also ended five years ago, you'd have no knowledge inconsistent with that; right?

A No.
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1 Q You looked at a contract with Mike Marcellin. Do you recall that?

A Yes.
Q If I represent to you that contract ended five years ago, you have no inconsistent knowledge; right?

A I believe that is approximately correct.
Q Okay, and then there was -- if I represent to you that there was any lawsuit with Mr. Marcellin that settled, would that be consistent with your review of the record?

A Generally, yes.
Q Okay. And you looked at a contract with a board member named Sandra Froman. If I represent to you that that contract ended six years ago, you'd have no inconsistent knowledge; right?
A I don't recall the specific timing, but, no.
Q Okay. All right, now, let's talk about the travel consultant. One best practice in response -- with respect to a business relationship like this would be to shut it down; right?

A Potentially, I think a better practice would be to understand how it happened in the first place.

Q Do you think the NRA should have continued doing business with Gayle Stanford?
A I did not say that.
Q You'd agree with me that it is probably a good thing
that the NRA stopped doing business with her; right?
A I don't know if it is a good or bad thing -- well, what I would say is the undocumented nature of the arrangement certainly is a bad thing. It is an internal controls issue, a significant one from my perspective.
Q And the fact that the invoices were altered, that's a bad thing; right?
A In my experience, those are consistent with fraud risk indicators, and I would not call them a good thing for sure.
Q The fact there were surcharges added to the invoices which weren't reflected on them, the ten percent, that's a bad thing; right?
A There you're referring to the lack of documentation with respect to the commission?
Q Right. I'm referring to the fact that a private jet invoice would come in for 10,000 dollars and Ms. Stanford would charge the NRA an extra ten percent on top of it. That's a bad thing; right?
A I don't believe I have an opinion that the fact that there's a markup specifically is a bad thing. The undocumented nature of it is something that I would view as a fraud risk indicator certainly.
Q Do you think it is suspicious at all that the markup only appeared on charges like the charges for private aviation where the price wasn't publicly verifiable and Ms. Stanford

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didn't apply the markup to things like commercial tickets where
the NRA could have easily checked the price? As a forensic accountant, was that suspicious to you?

MS. CONNELL: Objection, your Honor.
THE COURT: Overruled.
A Your question kind of lost me. Was-- was what suspicious?

Q Well, you didn't have an opinion on whether it was good or bad for the NRA to end this relationship. So, I guess I want to revisit your opinions about some of the aspects of this relationship.

You told me you didn't have an opinion on whether Ms. Stanford adding this ten percent markup was good or bad; and I guess I'm curious about that because I thought it was bad, right? I mean, she adds this ten percent markup only to purchases like private aviation where the price isn't publicly verifiable.

Did that stand out to you at all?
A No, not specifically. What stood out to me was the fact that the fee arrangement was undocumented that the NRA paid for those amounts without any supporting information, and that the billing was not transparent with respect to the entire arrangement. That there were all the multiple ways that Ms. Stanford was paid. Based on my review of the record, the billing practices involved individuals at the NRA, those are the

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things that really stood out to me.

Q Did it stand out to you that the ten-percent markup was never itemized or disclosed on any of the invoices?
A I believe I did mention that point, and I think that it is significant that the markup was not specifically itemized or called out by contract or disclosed.
Q Would you say it is generally a good practice to run a bidding process for a new vendor contract?
A Yes.
Q And you understand that the NRA stopped paying Gayle
Stanford and ran a bidding process for travel consultancy about four years ago?
A I don't recall the specifics, but my understanding was the NRA had a travel agent even during the period it was using Ms. Stanford, as well.
Q If I represent to you that the NRA stopped doing business with Ms. Stanford four years ago and ran a request for a proposal or RFP bidding process to replace her, would you have any knowledge inconsistent with that?
A I don't know the answer to that one way or another.
Q And you didn't consider whether the NRA fired or placed and ran a bidding process for replacement of Ms. Stanford; you didn't consider that in forming any of your expert opinions, right?
A They would not have had any impact on my conclusions
related to Ms. Stanford or the other control violations I observed.
Q All right. We talked before about how possible to fix control violations or address risk indicators; and I want to run some things by you, and I want you to tell me whether these are things a company might properly do to address risk indicators.

MS. CONNELL: Objection, your Honor.
MS. ROGERS: I was interrupted by the microphone.
Let make the record clear.
Q I'm going to run a few things by you, and I want you to tell me whether in your expert opinion these are things a company might reasonably do to address fraud risk indicators. Does that make sense?
A Yes.
MS. CONNELL: Objection, your Honor. This goes to the post talk remedial discussion we've had. This goes to whether that excuses the violations in the past. This is plaintiff's point. You gave the --

MS. ROGERS: Object to speaking objections.
THE COURT: Yeah, look, Ill instruct the jury at
the appropriate time the relevance or potential relevance of these subsequent efforts, but I'm not going to preclude the defense from asking.

So, overruled.
Q All right, what about doing a risk assessment, that's

1 something a company might reasonably do in the presence of fraud
2 risk indicators; right?
3 A I just want to make sure I understand the question. Is
4 it specific fraud risk indicators or is it internal control
5 failures or both?
6 Q Well, let me ask you said you disapproved of the NRA internal control environment. That's a fair summary of your testimony; right?

## MS. CONNELL: Objection.

## A I believe I said --

THE COURT: Hang on. I think -- overruled on that.

## You can answer.

Q You disapproved of the NRA internal control environment; right?
A I believe my conclusion I found it was ineffective due to poor tone at the top.
Q A company desiring a more effective control environment might perform a risk assessment within the meaning of COSO; right?
A That would certainly be one potential step and one that is typical, yes.
Q And special procedures by the auditors, those might help improve the control environment; right?
A I would not agree with that. Your auditors are not a function -- outside auditors do not serve as an internal control
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for the organization. So, it would be what the organization does, not what its auditors do as part of their standard procedures.
Q If auditors do special procedures specifically focused on internal controls, is that something you'd even consider when you're forming a view of the NRA control environment?
A It would be a relevant data point, but not in and of itself evidence that the organization has addressed or remediated internal controls.
Q Is it a data point you considered here?
A I believe I did consider it with respect to my reports.
Q Which special procedures did you consider?
A My recollection is the ones that were performed at some point in 2020 or '21. I don't recall the specifics.
Q In forming your expert opinions, did you -- did you develop a view of what -- whether the special procedures revealed any control problems?
A I believe in my report, my rebuttal report I did address some of those in response to NRA witnesses.
Q Sitting here today, can you think of any allegations made by the Government that Aronson does not address in its special procedures?
A I don't recall specifically what special procedure document itemized. I do recall that some of the individual transactions they looked at in my view didn't identify or look
at some of the same issues with respect to those contracts that I identified in my analysis, and I don't recall, like, each itemized issue that they particularly focused on.
4 Q Well, let's talk about the specific issues you focused on in your analysis and I want to look at your slide 42.
6 All right, this -- on the left side of slide 42 is one of the summary charts you prepared; right?
8 A Yes.
9 Q And I'll represent to you this is the same chart admitted into evidence Friday as PX 05123. You were here to testify as to the accuracy of the summary; right.

A Correct.
Q And you would agree accuracy is very important in the profession of forensic accounting?

A Sure.
Q Precision is important; right?
A Sure.
Q All right, then let's start with the expense that you highlight here on your PowerPoint slide. On the screen we see you tell the jury that the NRA paid $\$ 42,915$ in flight tickets for Wayne LaPierre, his wife and Tony Makris.

Do you see that?
A Yes.
Q And you got this number from PX 03151, a collection of
Ackerman expense reports; right?
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A I believe that's accurate.
2 Q Let's look at that exhibit, PX 03151, and I'm going to direct the witness to page 127, which I believe is where he got the excerpt he put in his slide.

Let's zoom in.
(Displayed)
All right, this is the source for your PowerPoint slide; right?
9 A It may be.
10 Q This is a purchase of three airline tickets for
Mr. LaPierre, Mrs. LaPierre and Tony Makris for $\$ 14,000$ a piece
totalling about $\$ 42,000$; right?
A Yes.
Q And that's what you show on your slide?
A Yes.
Q But you don't show that the tickets for the LaPierres
were cancelled and credited back to the NRA, not debited from the NRA?

A I'd have to go back and look at the documents and see --

Q Well, we've got the document right in front of us, so let's look at page 284.

A Of this particular schedule?
Q Of this Plaintiff's Exhibit which is the source for your schedule, I believe.
of the expenses you added up were credited back?
A I believe we did in looking at what was actually paid,
yes.
Q All right, let's look at another summary you prepared
and showed to the jury, and this one is going to be PX 5116, and
I would like to show a version of this exhibit on which I've
highlighted just two flights.
Mr. Hines, you prepared an earlier version of this
schedule, which you amended some time last week. Do you recall
that?
A Yes.
Q And the reason you amended it is because we found
that you had double counted several flights in your analysis;
right?
A I believe there were certain invoices that were unclear
whether they had occurred, and that was -- they were removed
based on some review.
Q Agree or disagree with the following statement:
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All right, do you see where it says at the very bottom, "Credit Air for WLP," and it credits the NRA negative $\$ 14,303$ ?
Do you see where it says, "Credit Air WLP could not make the
trip"; and you would agree with me that that cost of negative
of the expenses you added up were credited back?
A I believe we did in looking at what was actually paid, yes.

Q All right, let's look at another summary you prepared and showed to the jury, and this one is going to be PX 5116, and I would like to show a version of this exhibit on which I've highlighted just two flights.

Mr. Hines, you prepared an earlier version of this schedule, which you amended some time last week. Do you recall that?

A Yes.
Q And the reason you amended it is because we found that you had double counted several flights in your analysis; right?

A I believe there were certain invoices that were unclear whether they had occurred, and that was -- they were removed based on some review.

Q Agree or disagree with the following statement:

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When a careful professional sees red flags, he looks closer?
A I would generally agree.
Q Okay. Would you agree with me that it is a red flag when opposing counsel alerts you that there are several invoices in your summary chart, which may or may not ever have occurred or been paid?

A Yes, we removed those from this particular invoice.
Q And a careful accountant would then look at the other invoices to make sure those were real and actually paid; right?

A That's what we did. (Continued on next page)

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THE COURT: Put up 5116 that was actually admitted. Is it possible to use this one?

MS. ROGERS: I was working with the version Plaintiff sent us.
Q Well, let me just ask Mr. Hines. When you say there was an unfiltered version that was the inadvertently sent, what do you mean?

A My understanding was last week in preparing this schedule, there was a version that all the invoices and the final version, and the final version that was sent over didn't have the filter that removed the duplicates on it.

Q Are so you are representing that 5116 has no duplicates in it?

A That's my understanding that based -- our analysis looking at those particular invoices and comparing the trip dates, itineraries and whether they had actual catering charges and a number of other items, yes.

MS. CONNELL: Your Honor, I will represent that in conveying the summary evidence, we did make an error and sent the wrong chart and corrected it, so I want to make sure that wasn't causing the confusion.

MS. ROGERS: I admit I was confused. I was using the chart you sent me.

MS. CONNELL: Your Honor, we corrected it with an explanation.

Q Mr. Hines, do you have an understanding as to how those duplicates got into your chart in the first place?
A I believe there was certain flights that had certain drafts -- drafted those invoices, and some of them had different dates and some of them had different itineraries and different planes and so they were included with duplicates that appeared to have happened.
Q Right. And so sometimes an invoice would be issued and then the flight would be rescheduled or cancelled and that copy of the invoice would still be sitting in the travel consultant's computer; right?

A There were some of those; right.
Q But what if a flight was canceled and never rescheduled. Then there would just be one copy, no duplicate, and you would have no way of knowing whether the flight was real or fake.
A Based on my analysis, we also looked for whether they were credited. It looked for credits for this duplicates, looked for other potential indicators that the flight didn't happen, but I'm obviously placing it on those invoice.
Q Sir, did you compare these to the ACH banking records that you looked at?
A These are not paid by ACH banking records because they go through a -- it's part of the challenge with these invoices as going from -- Ms. Stanford marks them up, takes off

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information, and that's what is ultimately paid by the NRA. So
the ACH and the general ledger transaction would reflect what's actually paid based on Ms. Stanford's version of the bills.

THE COURT: Counsel, when you can find a convenient breaking point --

MS. ROGERS: I have like two more things and then you're done.
Q You've seen numerous cases, right, Mr. Hines, where a
later reconsideration of the transaction leads to a different accounting result.
A That can happen.
Q And looking at something in hindsight can lend a better perspective due to the passage of time?
A Potentially.
Q So the fact that a company restates or changes something does not mean their judgment was inadequate in the first place; right?
A Potentially.
Q Well, potential. That's in fact testimony that you gave verbatim in another case last year; right?
A I don't recall specifically those exact words.
Q If I tell you that the case is SEC v Rosenberger, 22 cv 4736 in the Southern District of New York, would go that refresh your recollection?

MS. CONNELL: Your Honor, if she's going to
impeach, he should be shown the testimony, the question/answer content.

THE COURT: We haven't gotten there yet.
A What was the question?
Q I'm just asking if you agree with this statement that the fact that a company restates or changes something doesn't mean their judgment was wrong in the first place; right?
A That specific matter relates to a technical financial reporting issue with respect to revenue recognition, but I would still agree with that.

Q Would you agree in contrast to a hindsight
investigation, business decision that occurs in real time during
the normal course are limited by what information is available at the time; right?
A That can be the case; right.
Q And those real time business decisions are limited by
the expertise and experience of the individuals involved; right?
A Say that one more time.
Q Those real time business decisions, these real time business judgments, they are limited by the expertise and experience of the individuals involved; right?

A It can be.
Q Okay. In forming your expert opinions, did you even ask to speak to any of the people at the NRA making these

Q And you didn't speak with anyone at the NRA who made any of these decisions; right?
A No, not directly. Reviewing evidence.
THE COURT: We will take our morning break. We will be back shortly.

THE COURT OFFICER: All rise. Jury exiting.
(Whereupon, at this time the jury exits the courtroom.)
(Whereupon at this time there was a recess taken.)
THE COURT: Just a brief update on the jury issues we discussed.

The one juror with the family issue, that juror is going to confirm to me by the end of the day. It seems like that juror -- it's highly likely will not be able to be here either Wednesday or Thursday. And if that is confirmed, I have explained to the juror that we will have to exclude the juror, and the juror understands. So we'll learn more about that at the end of the day.

The second juror who has an issue beginning apparently after -- at end of business on the 20th, so -and potentially can push off what is the conflict even into the 21 st, so the issue with that one is, you know, we are all making assumptions as to when the case is going to be given to the jurors for deliberations. What we can't know
is how long the jurors will deliberate. And I explained briefly that I don't want to be in a situation where if we're into deliberations past the 20th, we lose one of our six jurors. So we don't have to make a decision on that juror right now because we don't know what's going to happen between now and then.

You know, I'd like to think that we would have a verdict by the 20th if we proceed as planned where we have closing arguments on the 15 th and hopefully either finish instructions that same day or complete them in the morning of the 16th. The jury would have all of the 16 th and all of the 20th to deliberate.

I would -- one hopes that's enough, but we can't be sure. So I'd like you to at least think about how we deal with that risk of at least one juror who is already saying in advance that they might not be able to be here past the 21st or something along those lines. So I don't think we have to make any decisions on that. Obviously, we still have extra jurors, so we are not losing -- we are not in any danger of going below six, but that's an update.

MS. CONNELL: Your Honor, I don't know if it's permissible to the Court, but sometimes to speed jury deliberations and avoid delay, we can -- the parties can agree to send in lunch to the jurors during deliberations.

THE COURT: We can do all sorts of things, but none

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of those are going to guarantee, you know -- this has been a long trial, and the verdict sheet which we are -- I'm going to have to work on with you all again, I think in my experience, that's a lot of time for the jury to deliberate and one would hope, but there is a risk, and we have to think about the pros and cons of whether to have somebody go into the deliberations with the possibility of not being able to complete them which, you know, concerns me because as much fun as this trial has been, I only want to do it once.

So -- and then -- we were about to get to the time calculations. Putting aside today, what was the consensus on the allocation of time between the two sides?

MS. ROGERS: So putting aside today, our understanding which we think mirror Plaintiff almost to the second is that Defendants have taken 23 hours 11 minutes and the Attorney General has taken 41 hours and 43 minutes. So they are essentially ahead of us by like 12 hours.

MS. CONNELL: Ours are slightly different by about half an hour I think so.

THE COURT: I can guess which direction, but all right. So they are all going to be rough justice, I'm sure so.

MS. ROGERS: Just to correct something I said, they are ahead of us by 18 hours. Not 12.

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| :---: | :---: |
| 1 THE COURT: Yeah. The way this will work is, you | 1 as Court Exhibit VII |
| 2 know, we will get through the Plaintiff's case. If there | 2 (Whereupon, the aforementioned Jury Note |
| 3 are motions by either side, the party bringing the motion | 3 was marked as Court's Exhibit VIII as of this date |
| 4 will bear the time of arguing the motion. Righ | 4 by the Reporter.) |
| 5 So if -- maybe you both will make motions. I don't | 5 THE COURT: If anyone thinks there is something I |
| 6 know. It will be a little more unusual for the Plaintiff to | 6 should do in response to this -- I don't. You can think |
| 7 make a directed verdict motion, but I guess you can. But if | 7 |
| 8 there are motions by both, then we will split the time for | 8 All right. Anything else before we get the jury? |
| 9 who gets charged for the time to argue that motion. But | 9 All right. Let's get them. Let's get the witness. Let me |
| 10 once we are done with all that and the Defense has started, | 10 just -- I want to make sure we have copies of the Court |
| 11 you should be able to -- I think its been a relatively | 11 exhibits in one place. Ms. Hill can either keep them or the |
| 12 consistent four hours per day and just plan that out | 12 court reporters can keep them. |
| 13 And -- but I appreciate you keeping such careful track of | 13 I think the other Court exhibits were -- I believe |
| 14 it. But I do think it's important that we really work hard | 14 the Plaintiff marked transcript excerpts as Court exhibits; |
| 15 to get the all the evidence in by the end of the day on the | 15 right. So if you want to have us keep a copy of all the |
| 16 14th. And so that we are ready for closing arguments on the | 16 Court exhibits, then just make sure Ms. Hill has a complete |
| 17 15th because you'll probably want to know everything that's | 17 |
| 18 in and not in rather than having that happen in the middle | 18 MS. CONNELL: Okay. We will confer with the |
| 19 of a day. Okay. So I won't do all the math for you, but | 19 Defendants and make sure there is a complete agreed upon |
| 20 you can -- you can figure | 20 |
| 21 So the Plaintiff obviously has -- and this is not | 21 (Witness resumed the witness stand.) |
| 22 unusual, has spent -- has spent more of the time. So you'll | 22 THE COURT: It will be good if we can get to the |
| 23 have to just assess how much time to spend on crossing | 23 motions either right before or after the lunch break so we |
| 24 witnesses, and -- but that's the plan, and I do plan on | 24 don't have to have a stop and a start. So if we can get |
| 25 enforcing it, being done with the evidence at the end of the | 25 through this witness before the lunch break, I won't object. |
| Hines - by Plaintiff - Cross/Ms. Rogers Page 3143 | Hines - by Plaintiff - Cross/Ms. Rogers Page 3145 |
| h. So that's another -- after today, it's on | 1 I'm sure the witness won't object either. |
| 2 three, four, five, six | 2 MR. CORRELL: I'll be quick |
| 3 MS. ROGERS: So after today I think there is like | 3 THE COURT OFFICER: All rise. Jury entering. |
| 428 hours left of trial time basically | 4 (Whereupon, at this time the jury entered the |
| E COURT: Is it even 28 or six more days becaus | 5 courtroom.) |
| 6 Monday is a holiday? | 6 THE COURT: Please have a seat. |
| MS. ROGERS: 24. Oh, because of Monday. | 7 MR. CORRELL: May I proceed, your Honor? |
| 8 THE COURT: Okay. Is the jury ready? | 8 THE COURT: Mr. Correll. |
| 9 (Whereupon, at this time there was a pause in the | 9 CROSS-EXAMINATION |
| 10 proceedings.) | 10 BY MR. CORRELL |
| THE COURT: we received a note from one juror which | 11 Q Good morning, Mr. Hines. I'm Kent Correll, and I |
| 12 we will mark as Court Exhibit VIII. It's not really a | 12 represent Wayne LaPierre |
| 13 question. It's sort of a comment on evidence. I think I'm | 13 A Good morning. |
| 14 just going to give you both a copy of the note. I don't | 14 Q At the beginning of your testimony today, you indicated |
| 15 think there is anything to do with it, but you know, since I | 15 that you had some knowledge of Wayne LaPierre's knowledge |
| 16 have it, you should have it. It just seems to be sort of an | 16 concerning the Marcellin contract. Do you recall testifying |
| 17 observation by one juror about evidence, so we will give one | 17 about that? |
| 18 to each side. I couldn't entirely make all of the words | 18 MS. CONNELL: Objection, your Honor. |
| 19 out. Again, it seems to be more of a musing. So I don't | 19 A I don't recals |
| 20 want to spend really too much time scrutinizing it since | 20 THE COURT: Hang on. Is that the testimony I |
| 21 there is really nothing to be done other than for me to just | 21 struck? |
| 22 give it to you. | 22 MR. CORRELL: I don't believe so, your Honor. |
| 23 Just for the public record, it just says we hav | 23 MS. CONNELL: Your Honor, this is what we discussed |
| 24 seen certain evidence of a certain thing or a certain type | 24 before the jury came in this morning as to whether we would |
| 25 and ends with that. So I will mark this -- can we mark that | 25 revisit the Marcellin. That's what you struck the other |


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| :---: | :---: |
| 1 day | 1 personal knowledge of anything. The testimony is based on |
| 2 THE COURT: Well, there was a slide that came up, | 2 his review of the record and so if you want to ask it that |
| 3 and it turned out that it was based on some -- the exhibit | 3 way |
| 4 that are referenced weren't admitted into evidence, so I | 4 MR. CORRELL: Your Honor, if I could just get a yes |
| 5 struck the portion of that testimony. If there was | 5 or no, do you have any personal knowledge. Then I can go to |
| 6 subsequent testimony and there was a little bit and just in | 6 the next question, do you have any secondhand knowledge. |
| 7 the last round, you can ask about that. | 7 THE COURT: Okay. If you want to spend the time |
| 8 MR. CORRELL: Yes, your Honor | 8 asking a witness who has no personal knowledge whether he |
| 9 Q You indicated that Wayne LaPierre had some knowledge | 9 has no personal knowledge, go ahead. |
| 10 the Marcellin contract earlier in your testimony; correct? | 10 Q Sir, can we agree that you have no personal knowledge |
| 11 MS. CONNELL: Objection. Misrepresenting the | 11 of any of the facts of this case; correct? |
| 12 testimony | 12 A Correct. If you're speaking of personal knowledge as |
| 13 MR. CORRELL: Well, we can read it back if you'd | 13 in my participation, then correct. |
|  | 14 Q Right. You are not a percipient witness with respect |
| 15 | 15 to this case; correct? |
| 16 Q Do you recall testifying -- using the word "Marcellin" | 16 A No, |
| 17 earlier today in your testimony? | 17 Q You have looked at some documents; correct? |
| 18 A I don't recall today or the other | 18 A More than some. Quite a few. |
| 19 Q Do you recall saying earlier today that Mr. LaPierr | 19 Q And you have said things that are based on your looking |
| 20 knew about the indirect payments to Marcellin? | 20 at documents; correct? |
| 21 THE COURT: That it was your understanding of the | 21 Q And based on your looking at documents, you haven't |
| 22 facts that he knew | 22 seen anything that indicates that Wayne LaPierre knew that Gayle |
| 23 Q It was your understanding of the facts that he -- that | 23 Stanford was marking up invoices; correct? |
| 24 Mr . LaPierre knew about the indirect payments to Marcellin. | 24 A What do you mean by marking up? Are you talking about |
| 25 A I'm a little confused. I don't specificaly | 25 adding a percentage on top of invoices or adjusting the |
| Hines - by Plaintiff - Cross/Ms. Rogers Page 3147 | Hines - by Plaintiff - Cross/Ms. Rogers Page 3149 |
| 1 that exact poi | 1 descriptions. |
| 2 Q So let me make it easier for you. Do you have as you | 2 Q I am talking about adding a cost, a charge to an |
| 3 sit here today any knowledge that Wayne LaPierre knew about | 3 invoice. |
| 4 these indirect payments to Mr. Marcellin that you say you saw | 4 A I don't recall specifically anything that indicated Mr. |
| 5 evidence of in the documents? | 5 LaPierre's knowledge of that as I sit here today. |
| 6 A Not that I recall as I sit here right at this moment. | 6 Q And you didn't see anything that indicated that any of |
| 7 Maybe we were referring to specific testimony that I reviewed | 7 those invoices were sent to Wayne LaPierre; correct? |
| 8 before. | 8 A I don't believe so |
| 9 Q I'm getting to just your testimony as you sit here | 9 Q Okay. So as you sit here today, you can't say that Mr. |
| 10 right now | 10 LaPierre was aware of -- that those -- that Gayle Stanford was |
| 11 Do you have any knowledge that Mr. LaPierre knew that | 11 doing anything to these invoices; correct? |
| 12 there were indirect payments to Marcellin? | 12 MS. CONNELL: Objection |
| 13 A I don't recall at the moment, no. Not that I recall | 13 Q I'll withdraw the question and go to the next one. |
| 14 Q Do you have any knowledge -- personal knowledge as to | 14 Q Do you know whether Wayne LaPierre has paid for any of |
| 15 whether Mr. LaPierre knew that Gayle Stanford was marking up | 15 the flights that you included in your summary? |
| 16 invoices? | 16 A I'm generally aware that there's been some |
| 17 A Can you ask the question one more. | 17 reimbursements, but I don't know specifically. |
| 18 Q Do you have any personal knowledge as to whether Mr. | 18 Q But you didn't include those in your summaries? |
| 19 LaPierre knew that Gayle Stanford was marking up invoices? | 19 A No. Those are summaries of the invoices that were |
| 20 A Personal knowledge as in my own direct experience with | 20 submitted to Ms. Stanford. |
| 21 the individuals? | 21 Q Okay. And if you had knowledge that Mr. LaPierre had |
| 22 Q Yes or by looking at documents. | 22 paid for flights, would you have adjusted your charts to reduce |
| 23 THE COURT: Yeah. I think it would be helpful to | 23 the figures? |
| 24 be clear about | 24 A It would not have changed those summary of invoices |
| 25 Just so the jury is clear, the witness doesn't have | 25 that were sent to Ms. Stanford from CAA. |

25 Q Did you make any attempt to make a materiality our case in chief.
Q So fair to say that you really didn't care about how much money MMP was bringing in. You only cared about how much money the NRA was paying MMP when you did your analysis.
A I would say my analysis was focused on the specific expenditures and the controls related to those expenditures which is separate and apart from the receipt of donations and funds. So as in a financial matter, as a controls matter, they are separate.

Q And you are an accountant; right?

1 determination by comparing the cost versus the benefit that the
2 NRA was getting from this relationship with MMP?

## MS. CONNELL: Objection, your Honor.

THE COURT: Overruled.
A Again, I did not look at the revenue reflected from that particular arrangement which would be separate and distinct from the expenditures. Nor do I think you would do a materiality analysis purely based on the ratio of that number.

In my experience, it's not how materiality is done, and it would consider both the quantitative and qualitative factors with respect to the arrangement.
Q Let's talk about quantitative.
What would be a typical range of materiality in terms of percentage in your view?
A Materiality of what?
Q Of forensic risk analysis looking for fraud risk indicators.
A Well, typically, materiality is in reference to either financial statements or internal controls.

With respect to internal controls, materiality is typically looking at the likelihood of a risk occurring and the potential for that to have an impact on the financial statements.

Where I do analyses in the forensic world, materiality can be focused on specific subparts of a financial statement.

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It can be on specific transactions. It can be on specific contracts. So I think the question is generally too broad for me to answer that specifically.

It's purely facts and circumstances based, but you would consider the magnitude of the dollars. You would consider other factors qualitative.
Q So as you sit here right now, you can't give us a range of one percent to ten percent or anything in between that might be -- kind of bracket your analysis in terms of materiality with respect to the -- this assignment? This particular assignment.
A Well, again, there is different benchmarks for materiality, some based on a percentage of revenue or a percentage of change in assets. So obviously, it's highly dependent on the particular facts and each particular materiality assessment.
Q What is your hourly rate?
A In this matter \$520 an hour.
Q How much hours did you spend working on this case?
A Hundreds. I don't know exact number.
Q Did you enter into a contract with respect to this work?
A Yes. We have a contract with the State -- the Attorney General's Office.

Q Did you sign the contract?
A I believe I did with our financial group that handles
all the contracting processes.
2 Q Did anyone else sign the contract for your firm?
3 A I honestly don't recall.
4 Q How many people signed the contract for the AG?
5 A I don't recall.
MS. CONNELL: Objection, your Honor.
Q Who signed the contract for the AG?
A I don't recall.
9 Q Did you see any fraud risk indicators for that contract?

## A No.

(Continued on the following page.)

2 A My firm?
3 Q Yes.
4 A I believe it is just under or above $\$ 1$ million.

A I don't know. I haven't looked at it over the last month.
Q And that's taxpayer money that you're being paid? MS. CONNELL: Objection, your Honor. THE COURT: Sustained.
Q Who writes you the check?
MS. CONNELL: Objection, your Honor. THE COURT: He can ask.
A I'm not sure if it comes from the State controller's office. I don't recall. I don't process our incoming checks because we have segregation of duties for that.
Q Have you ever developed a friendship through a working relationship?
A Yes.
Q And when that happened, did you view that as a fraud
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1 risk indicator?
2 A Not that I can recall.
3 Q Did you ever disclose to your firm that you had develop 4 a friendship through someone that you developed a relationship
5 through your work for the firm?
6 A I may have. I don't recall.
7 Q But you would agree that developing a friendship
8 through a business relationship doesn't necessarily turn into a
fraud risk indicator; correct?
A I would agree with that, not necessarily. It could.
Q Do you know who Pete Ricketts is?
A No.
Q Governor of Nebraska?
A No.
Q You tabulated a bunch of flights to Nebraska. Why did you pick Nebraska?

A I was asked by the Attorney General's office to include that as one of the categories.
Q And did they tell you why they asked you to include that?
A I-- my understanding is that it was a destination that they found was related to Mr. LaPierre's flights.
Q Did they tell you why they found it of interest?
A I understand it is where certain family members live.
Q And it is also where Governor Pete Ricketts lives,

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correct?
A It may be.
Q Did you see any indication that Mr. LaPierre traveled there to meet with Governor Ricketts?
A That's not information that's available on the itineraries.

Q Did you see any indication in the documentation that there were gun shows in Nebraska?
A Again, that's not on the --
Q So, Mr. LaPierre could have been traveling there for gun shows; correct?
A It is possible.
Q Did you see any indication that there were friends dinners, friends of the NRA dinners that were held in Nebraska?

A Again, that's not on the itineraries or the Stanford invoices.
Q And the attorney general didn't tell you that any friends dinners were held in Nebraska; correct?

MS. CONNELL: Objection, your Honor.
MR. CORRELL: Your Honor, it is fair enough. They picked Nebraska.

THE COURT: There's nothing unfair about the question. There's just whether there's an evidentiary -- do you have an evidentiary basis for that question?

MR. CORRELL: Mr. LaPierre will testify to it when

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Q Well, did you come up with the idea of focussing on the
he comes on in the case in direct.
THE COURT: Overruled.
Q Do you know whether pheasant hunts are held in Nebraska for NRA members and supporters?
A No.
Q So, when you did what the AG told you and just added up trips to Nebraska, were you trying to get the jury to believe that these were all trips to see his family in Nebraska?
A I was not trying to get the jury to believe anything.
I was preparing summary evidence and summarizing information in
the format I was asked to summarize it, yes.
Q Based on the AG's request; correct?
A Based on my discussions with counsel about the schedules, yes.
Q And were you asked to segregate out the flights that landed in Kearney, Nebraska, versus the flights that landed in Kearney, Nebraska, versus the flights that landed in Omaha versus the flights that landed in Rapid City?

A No, but that detail was all included in the summary evidence prepared.
Q Assuming the itinerary is properly or do include the destination cities you just mentioned, did the AG also ask you just to hone in on flights to the Bahamas?

A No. It was one of the categories; but, obviously, there's a schedule that had every single invoice included in
.
Bahamas on your own or was that something the AG gave to you?
A No, it was in discussion with the AG and, also, in understanding certain allegations in the case.
Q Did they tell that you Mr. LaPierre went to the Bahamas every year for a celebrity retreat to try and develop relationships with celebrities to benefit the NRA?
A I understand that's one of the concepts. I don't have specific -- it's not certainly something that was told to me. I recall reading that certain information.
Q But you didn't separate out the data for those trips from any other trips Mr. LaPierre took to the Bahamas; correct?
A I'm not sure how I would do that, but --
Q Well, how about by date? Do you know the celebrity retreat was held each year in December?
A That's possible. I don't know that.
Q And do you know that the allegations that Mr. LaPierre traveled to the Bahamas during off season in the summer where he stayed on David McKenzie's yacht?

MS. CONNELL: Objection, your Honor.
THE COURT: Well, the objection is overruled. You said, Yes, I am aware of that?

THE WITNESS: I'm generally aware based on looking
at flight information at what points Mr. LaPierre and others

1 were in the Bahamas.

A I do not.
Q Do you of any basis for suggesting that Wayne LaPierre
knew about any flights taken by Tony Makris when he wasn't present?

A Can you ask the question again?
Q Yes. Do you have any basis for suggesting to the jury

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or anyone else that Wayne LaPierre knew about flights Tony Makris took when Wayne wasn't present?

A I'm not sure if -- are you referring to the summary schedules for the CAA invoices.

Q So, you could have segregated out the flights in December from the flights in the summer; correct?
A Again, they're all included in the same detailed schedules, but that same information in it so it's in there.
Q But the AG didn't ask you to filter the data in that fashion; correct?
A No. Again, it is summary evidence, summarizing the
information across the population of invoices, which is what I do.

Q Do you know where he lives?
A I don't.
Q Nebraska. I'll represent to you he lives in Nebraska.
Do you know that he's an NRA supporter?
A No.

Q Let me ask it another way. Did you include flights or invoices for flights listing Makris as a passenger when Wayne LaPierre was not listed as a passenger?
A I believe so.
Q And do you have any idea whether Wayne LaPierre was aware that Tony Makris had taken those flights?
A I don't have any direct personal knowledge about that.
Q So, to the extent that your data might have suggested that Wayne knew, that is pure supposition; that would be pure supposition on your part, correct?

MS. CONNELL: Objection, your Honor. THE COURT: Overruled.
A I'm not sure it suggests one way or another.
Obviously, the information summarizes those CAA invoices given the attributes and facts included on them.
Q In the course of your work, your millions of dollars of work, did you see any documents showing payments from the NRA to vendors for security purposes?

MS. CONNELL: Objection, your Honor.
THE COURT: The millions of dollars?
MR. CORRELL: I'll put it another way.

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| :---: | :---: |
| 1 Q In the course of your work, did you see any documents | 1 caused by Woody Phillips; have you? |
| 2 showing payments for security for Wayne LaPierre? | 2 A N |
| 3 A Not that I recall. There may have been. I just don't | 3 MS. CONNELL: Objection. |
| 4 recall as I sit here. | 4 Q You said earlier that you didn't interview any |
| 5 Q Did you make an attempt to sort invoices according to | 5 witnesses; is that correct? |
| 6 whether they were -- whether they were for air travel expenses | 6 A Correct. |
| 7 incurred for security purposes? | 7 Q Did you ask, yes or no? |
| 8 A No, not specifically to that particular point. | 8 A No. |
| 9 MR. CORRELL: Pass witness, your Honor. | 9 Q I assume you've read all the trial transcripts in the |
| 10 CROSS-EXAMINATION | 10 last four, five weeks that we've been here; is that right? |
| 11 BY MR. WERBNER: | 11 A Not a single one. |
| 12 Q You can't say what damages, if any, Woody caused the | 12 Q With your 1.1 to 1.2 million dollars you didn't think |
| 13 NRA to lose; can you? | 13 it was necessary to review the people who have testified based |
| 14 A My analysis -- | 14 on the available transcripts here? |
| 15 Q Sir, can you tell us what damages, if any, were caused | 15 A No, I didn't want to potentially have any impact on my |
| 16 by Woody Phillips; yes or no? | 16 opinions that I've already reached given in my analysis. |
| 17 A I have not calculated damages | 17 Q So, you don't know that LaPierre testified in this |
| 18 Q And, therefore, you can't say what damages, if any, | 18 case that Woody did work under his post-retirement agreement? |
| 19 Woody Phillips caused the NRA; correct? | 19 MS. CONNELL: Objection, your Honor. There's |
| 20 A Again, I haven't calculate | 20 contradictory testimony on that point. |
| 21 Q And that's why you can't say, right? | 21 THE COURT: Yeah, rather than summarizing the |
| 22 A I can't say because I haven't performed that analysis. | 22 testimony which is kind of difficult, you can ask it without |
| 23 Q All right. And you're not offering any specific | 23 asking the witness to accept your characterization. |
| 24 opinion about what intent Woody Phillips had; are you? | 24 Q So, you don't know one way or the other what Mr. Wayne |
| 25 A No. | 25 LaPierre said to this jury when he testified; do you? |
| E. Hines - by Plaintiff - Cross/Mr. Werbner Page 3163 | E. Hines - by Plaintiff - Cross/Mr. Werbner Page 3165 |
| 1 Q Okay -- | 1 A No. |
| 2 A My experience intent is a legal conclusion, and I'm not | 2 Q And you don't know what Mr. Erstling or Ms. Rowling |
| 3 rendering a legal conclusion. | 3 testified about the MMP contract; do you? |
| 4 Q So, you're not saying that Woody had any bad intent or | 4 A No. |
| 5 did anything wrong; are you? | 5 Q You don't know if Woody was even asked to do something |
| 6 MS. CONNELL: Objection, your Honor. | 6 under his agreement that he failed or refused to do; do you? |
| 7 THE COURT: Overruled. | 7 A Well, based on my review of the record evidence, I'm |
| 8 A Again, no, my understan | 8 aware of just based on my understanding of testimony outside of |
| 9 Q Okay, I don't want your understanding. | 9 the trial from deposition transcripts that individuals were not |
| 10 Are you able -- have you formed an opinion, have you | 10 aware of his services. But if you're asking specifically about |
| 11 formed an opinion about Mr. Phillips' intent? | 11 trial testimony, then I'm not aware of that. |
| 12 A No. | 12 Q Doesn't that leave a pretty big hole in your |
| 13 Q And, therefore, you can't say whether he's done | 13 understanding if you haven't read any of the testimony from over |
| 14 anything wrong with intent; isn't that true? | 14 four or five weeks? |
| 15 MS. CONNELL: Objection, your Honor, whether he's | 15 A No. My understanding is that I shouldn't be reading |
| 16 done anything wrong -- | 16 trips. |
| 17 THE COURT: Overruled. You can answer. | 17 Q Who told you that you should not read transcripts that |
| 18 These are yes or no questions. You can answer them | 18 the jury has heard for the last four, five weeks? |
| 19 yes or no; or if you don't think you can, you can explain | 19 A Based on my understanding. |
| 20 why. | 20 Q Who told you? |
| 21 A What was the -- what was the last question? | 21 MS. CONNELL: Objection, your Honor. |
| 22 Q That you're not saying that Woody Phillips acted with | 22 THE COURT: Let him answer. |
| 23 intent knowing something he did was wrong; are you? | 23 A My understanding in discussion with counsel. |
| 24 A No. | 24 Q What counsel? |
| 25 Q Okay. You haven't specifically calculated any damages | 25 A The attorney generals. |

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$1 \quad \mathrm{Q}$ They told you it wasn't necessary to read what's been going on in the trial so you would know what people have testified to?

1 A Again, are you talking about his salary, his compensation?

23 Q All right. Now, you know Woody Phillips retired five 24 years ago; don't you?
25 A Yes.
witness has that number.
A I do not have payroll information, so I don't know the answer to his specific paycheck and payroll; but what my analysis did calculate was the amount received post his employment.

Q And that was \$170,000; right?
A Correct.
Q So, Woody Phillips received \$170,000 and you've gotten over a million pursuant to your contract; correct?
A That would be factually accurate.

9 A I believe that's true.
10 Q And it was signed by the first vice president of the 1 NRA; right?

A I believe there's a signature at the bottom.
Q So, isn't -- aren't those two signatures appropriate?
A They're part of the population of individuals that would have to sign that contract, but not all of those.
Q Are you just nitpicking there?

## MS. CONNELL: Objection, your Honor.

 THE COURT: Overruled.A Certainly not nitpicking. Those policies and procedures are, one, they were set by the board a number of years ago; and they're in place for a particular reason and that's to ensure that the NRA complies with its own spending procedures and it's an internal control feature so I don't classify it --

THE COURT: Hang on. You can finish your answer.

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Q And I think in your chart that dealt with Woody Phillips, you said that he hadn't gotten any written approval from the appropriate parties; correct?
A I'm not sure that's the exact words, but -- but that the agreement with the Mr. Phillips was not subject to proper review and approval.

Q Well, it was signed by the president of the NRA; wasn't

A I do not view that as nitpicking. I view those as crucial controls with respect to the expenditures of the organization.
Q Do you make room for the possibility that it was an honest mistake to get the president of the association and the first vice president to sign it; that that wouldn't be sufficient, do you make room for that possibility that that was a good-faith error? Do you make room for that possibility?

A Is it possible that it was --
Q In your mind --
A I'm not sure what the question is.
Q You're not sure of the question?
A No.
Q What don't you understand about the question? Let me repeat it.

Do you make room for the possibility that when Woody Phillips got the president and the first vice president to sign his post-retirement consulting agreement, that he did that in good faith?

A That's a possibility. I'm not offering any opinions on good faith or intent.

Q So, you don't know if he acted in good faith or not?
MS. CONNELL: Objection, your Honor.
THE COURT: Sustained.
Q You had a chart that showed the out-of-pocket expenses
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## from Ackerman McQueen.

Do you remember that?
3 A Yes.

## recollection.

Q For parking at Ackerman McQueen? Do you find anything wrong with Woody Phillip getting parking when he went to Ackerman McQueen offices?
A Other than the fact that --
Q Do you find anything wrong with that; yes or no?
MS. CONNELL: Objection, your Honor. The witness
was answering. He should be permitted to answer.
THE COURT: Agreed.
Q Do you find anything wrong with him getting parking at Ackerman McQueen?
A I find given its part of the out-of-pocket expense
billing scheme which I do find, I do have a problem with and I
do think is an internal control example of internal control failure.

Q Right --
THE COURT: Let him finish, please. Hang on. Are you done with your answer?

THE WITNESS: I kind of lost my train of thought.
Q Let me repeat the question for you.
We know that you don't like the out-of-pocket arrangement at Ackerman McQueen. We know that.

But the fact is is that all you can say that Woody Phillips benefitted from that was 2 to 3,000 dollars in parking, and I'm asking you do you think it is wrong that he had his

1 parking paid for when he went to Ackerman McQueen; yes or no?
2 A Yes, I think it is wrong given it was not through the
3 proper overview and approval processes.
4 Q So, you fault him for the parking at Ackerman McQueen in the way that it was paid; yes?

A Well, I fault the entire arrangement for being not consistent with its own internal controls.

Q Right, but not to repeat the point you itemize that
based on your work at $\$ 2.7$ million; correct?
A Yes.
Q And there's this tiny, tiny fraction of the benefit
that Woody Phillips got; isn't that true?
A It is.
Q You said that you've been paid at the time of your
deposition between 1.1 million and 1.2 million; correct?
A I don't believe I said that.
Q What did you say?
A At my deposition?
Q As of the time of your deposition, how much had you been paid?
A I believe it was much less than that, and the question I was asked about my estimate for this case.
Q Oh, so have you put that much more work into it since your deposition?

MS. CONNELL: Objection.

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THE COURT: Overruled.
2
month and a half.
4 Q Hundreds of thousands of dollars?
5 A I don't know the precise amount.
6 Q Meeting with the attorney general staff?
7 A Yes, we've met.
8 Q How much have you met?
9 A If I had to guess, several days, maybe 24, 28. I don't 10 know the exact number.

Q Did they help you do your slides?
A We prepared slides --
Q Did they help you do your slides?
THE COURT: Let him answer.
Q Did they help you do your slides?
A We did have assistance with the slides through trial graphics folks that they engaged.
Q So, the slides aren't all your work; are they?
A It's certainly --
Q Excuse me, your Honor --
THE COURT: No, I think I know what he's -- I'd like to let him answer.
A It is my work, summary of my work and my findings and my opinions based on my professional education, experience and training.
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2 A With assistance in terms of the preparation in the visual presentation.
$4 \quad$ Q And that was given to you by the AG's lawyers?
5 A Trial graphics individuals and the attorney general's office had insight as how to make it accurate and understandable.
$8 \quad \mathrm{Q}$ You needed help from them on how to make it accurate?
9 A Help ensure that it was easily digestible by the fine 10 folks of the jury here.

Q Presented in a certain way?
A Just --
Q Presented in a certain way?
A Sure.
MR. WERBNER: Pass the witness.
CROSS-EXAMINATION
BY MR. FLEMING:
Q Hello, Mr. Hines.
A Hi.
Q You testified last week that you were engaged by the attorney general to analyze whether the defendants adhered to policies, procedures and internal controls; is that correct?

A Yes, as part of my engagement.
Q Part of your work you familiarized yourself with the policies of the National Rifle Association?
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A Yes.
Q The NRA's conflicts of interest and related-parties transaction policy is, of course, a policy of the NRA; is that right?
A Yes.
Q Were you aware that it was adopted by the board in January 2016?
A The current version of the policy you're referring to?
Q Yes.
A I don't have the exact date, but that sounds consistent with my memory.
Q Okay. And you know that Mr. Frazer led the effort to have the organization adopt that policy in January 2016; right?
A I don't know that detail.
Q Okay. Well, do you know that your client, the attorney general, has characterized that policy as comprehensive?

MS. CONNELL: Objection, your Honor.
THE COURT: I think you have to be more specific, if you're referring to --

MR. FLEMING: Your Honor, it is in the three-time verified complaints.

MS. CONNELL: Your Honor, this is not admissible evidence to put in front of the jury. He can ask about his view of the policy I guess. He's not a government expert, but --

THE COURT: You can reference things in the complaint. It is a statement by the plaintiff.

MR. FLEMING: It is a judicial admission.
THE COURT: I just don't have it all in front of me to know --

MR. FLEMING: I can connect it later. I can assure you it is in there. I have two questions, your Honor.

THE COURT: Go ahead.
Q Are you aware that your client has characterized that policy as comprehensive?

A I believe I was aware of this from my deposition.
Q Are you also aware that they have characterized that the policy defines conflict of interest more broadly than required by New York law?
A I don't recall that specifically.
Q Now, did you learn in part of your work that Mr. Frazer expanded the NRA's financial disclosure questionnaire?
A I don't -- I believe I have a recollection that that is the case, but I don't recall the specific document as I sit here.
Q Okay, and you would view expanding a questionnaire to obtain more potential conflicts a good thing; right?
A Yes.
Q It is not a negative internal control; correct?
A I would agree.

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1 Q Now, you reviewed a lot of e-mails as part of your work?
A Yes.
4 Q Now, did you know that Mr. Frazer from these e-mails
5 worked with the NRA's Financial Services Division accountants to
6 crosscheck to determine whether any payments were made to board members?

A I don't recall that specifically from e-mails.
Q Okay. Well, if that happened as a way of detecting whether a payment was made to a board member who had not disclosed a conflict of interest or related-party transaction, that would be an additional measure that you would consider good; is that right?

A I would agree so as long as the crosscheck was thorough and looked in the various ways and places that payments might be made.

Q Well, if they look at the accounts payable function to see if payments were made to known directors, that would be what you're talking about?
A That would be one step. I just also observed in my analyses that some payments to directors were not always in the general ledger or identifiable as such.

Q But that step, if it was taken, would not be a negative; is that right?
A No.

Q Okay. Now, after the adoption of the conflicts of interest and related-party transaction policy you were aware, were you not, that the Audit Committee soon thereafter met to consider related-party transactions?

MS. CONNELL: Objection, your Honor.
THE COURT: Scope or what?
MS. CONNELL: It's outside the scope, your Honor, and it's also not based on evidence.

THE COURT: Sustained, because none of his testimony went to that issue.
Q Well, Mr. Hines, you testified that as part of your work you reviewed Audit Committee minutes; isn't that right?

A Some, yes.
(Continued on next page)

Q And in fact, in your report, you specified that you looked at March 16 Audit Committee minutes; right?

THE COURT: That's not in evidence.
MR. FLEMING: But he reviewed it. I'm asking him if he reviewed it?

THE COURT: The cross is about what his testimony was.

MR. FLEMING: Well, your Honor, I mean, the cross is about his analysis.

His testimony is about his analysis, and his analysis is based upon a review of the minutes. I don't know how I could be foreclosed from asking about that.

THE COURT: Well, your crossing his testimony at trial. Not his -- and if you think some of his prior work is inconsistent with that, you can get into that.

MR. FLEMING: It's not a inconsistency, but he looked at minutes, so he knows what the minutes reflect.

MS. CONNELL: Your Honor, we haven't seen the minutes. The minutes that Mr. Fleming's referred to, they haven't been admitted in this case.

Mr. Hines in his thorough review looked at a number of documents. It doesn't render the document admissible.

THE COURT: Well, look. If what you're talking about in your view undermines the facts that he testified he is basing his opinion, then I'm happy to have you -- you can
do that. But if it's separate things that he hasn't talked about the fact related to, then that's beyond the scope. If you think it goes to the facts that he testified to -- many times he was assuming or based on his understanding, and if these are facts that go to his things that he told the jury he was basing his opinion on, that's fine.
Q Mr. Hines, you testified, did you not -- correct me if I'm wrong, that related-party transactions were not approved by
the NRA until late 2018, 2019. Isn't that what your testimony was?

## MS. CONNELL: Objection.

THE COURT: Overruled.
A I think it sort of mischaracterizes.
Q How? Tell me how it does.
A I believe my testimony reflected that the transactions with related parties included board members typically were
not -- prior -- did not receive prior approval from the Board or
Audit Committee and lacked written contracts or properly authorized contracts.

I don't recall specifically addressing the timing or minutes that you just referred to.
Q But you reviewed minutes, right, by the Audit Committee?
A I have reviewed certain minutes, yes.
Q And you saw that those minutes at least reflected that

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1 the Audit Committee had addressed related-party transactions; 2 isn't that true?

A My recollection is that the minutes in some instances reflected a discussion about related parties.

In some instances, it was unclear exactly what was discussed or whether the minutes were signed or formalized or not. And in some instances, there were related-party
transactions with board members that were specifically included
in minutes, and I don't recall all the specifics in terms of timing.

My recollection is the documentation around that was very inconsistent and unclear.
Q Okay. If it was unclear, that's fine, but I'm asking you a separate question. I'm asking you whether the minutes showed correctly or incorrectly that the Audit Committee addressed related-party transactions in 2016.

MS. CONNELL: Objection, your Honor. THE COURT: Overruled.
A I don't -- my recollection is that there is a reference to a discussion of related-party transactions. I don't know what you mean by the Board addressed in this particular instance, but there is a reference to that term. But again, I'm going to minutes. I don't have the minutes committed to memory as I sit here.
Q You talked about four board members; right?

| Hines - by Plaintiff - Cross/Mr. Fleming Page 3182 | Hines - by Plaintiff - Cross/Mr. Fleming Page 3184 |
| :---: | :---: |
| 1 A Yes. | 1 there, but the only reason this becomes important is because |
| 2 Q David Butz, Sandra Froman, Marion Hammer, David Keene; | 2 the Attorney General is creating a -- presenting a position |
| 3 correc | 3 that these -- those approvals didn't occur until much later. |
| 4 A Correct | 4 THE COURT: Well, the jury has heard all of the |
| 5 Q And in September of 2016, you saw minutes that showed | 5 evidence about it so -- and you can argue to the jury based |
| 6 that Mr. Butz's arrangement, Ms. Froman's arrangement and Ms. | 6 on the evidence that's coming in what was reviewed at |
| 7 Hammer's arrangement were discussed in minutes by the Audit | 7 various times. So I'm not sure -- it's difficult to -- the |
| 8 Committee; right | 8 way you're questioning the witness without a specific |
| 9 MS. CONNELL: Objection, your Honor. Move | 9 document is a little vague. |
| 10 strike | 10 MR. FLEMING: I agree. It's part of the difficulty |
| 11 THE COURT: That's ove | 11 I wrote your Honor about but -- |
| 12 A I don't recall specifically what the minutes | 12 THE COURT: Well, some documents are exhibits and |
| 13 referenced, but I do recall those minutes that discussed those | 13 some are not. |
| 14 individuals, and I can't recall if it's specific to discussion | 14 Q Now, Mr. Butz's arrangement started in 2002; correct? |
| 15 about the existence of some of those arrangements or approvals | 15 A I believe that's correc |
| 16 or not. It's | 16 Q Okay; and Ms. Froman's started in 2013; is that right? |
| 17 Q Well, you asked me what I meant by "addressed. | 17 A That sounds correct; yes. |
| 18 You saw those minutes that the Audit Committee voted | 18 Q And Ms. Hammer's started in or about 2004; right? |
| 19 that those transactions were fair, reasonable and in the best | 19 A As far as I'm aware. |
| 20 interest of the NRA; did you not? | 20 Q And Mr. Frazer started in his position in 2015; is that |
| 21 MS. CONNELL: Objection, your Honor. | 21 correct? |
| 22 THE COURT: Are we referring to the document that I | 22 A I don't recall the exact date, but that sounds correct. |
| 23 didn't admit? | 23 Q Do you recall that he started in those positions after |
| 24 MS. CONNELL: Yes, your Honor. I think that's | 24 those arrangement were entered into by -- with those board |
| 25 THE COURT: Well, no. The problem with this is | 25 members? |
| Hines - by Plaintiff - Cross/Mr. Fleming Page 3183 | Hines - by Plaintiff - Cross/Mr. Fleming Page 3185 |
| there is a lot of different documents -- there is one | 1 A That sounds correct; yes. |
| 2 set of notes that you went through that I didn't admit, but | 2 Q Now, do you have any dispute with the fact the Audit |
| 3 there is also Audit Committee minutes where there are | 3 Committee putting aside the time period ratified each of those |
| 4 indications of committee review. I just don't know -- | 4 transactions? |
| 5 MS. CONNELL: We don't know the time. It's very | 5 A I believe there is -- my recollection is there is some |
| 6 unclear what timing we are specifically speaking about with | 6 ratification at some point. |
| 7 some of those questions, and we are I think getting into -- | 7 Q And you understand when the Audit Committee ratifies a |
| 8 THE COURT: No. It's hard for us to keep in our | 8 transaction they are saying that that transaction is fair, |
| 9 heads all of the -- are you referring to admitted exhibits? | 9 reasonable and in the best interest of the NRA; right? |
| 10 MR. FLEMING: There is an exhibit that has not been | 10 MS. CONNELL: Objection, your Honor. This speaks |
| 1 admitted that we have tried to several times off of their | 11 to the legal conclusion under 715 J . |
| 12 exhibit list to try to get admitted. | 12 MR. FLEMING: It's fact. |
| 13 THE COURT: Well, I can explain to you during a | 13 THE COURT: You mean, the actual document in which |
| 14 break why I haven't admitted it. | 14 they approve that says those words. |
| 15 There are actual minutes that do address board | 15 MR. FLEMING: That is what ratification and |
| 16 member compensation, I believe, so you can ask that. | 16 approval of the Audit Committee means. |
| 17 MR. FLEMING: I'm not sure I'm following. You're | 17 MS. CONNELL: Your Honor -- |
| 18 talking about from admitted exhibits? | 18 THE COURT: Well, in this specific exhibit, I think |
| 19 THE COURT: I'm distinguishing from formal board | 19 the jury has seen those words are used. |
| 20 members that have been admitted into evidence where there is | 20 MR. FLEMING: They are, and they are used for a |
| 21 discussion of related-party transactions, and there is one | 21 reason. |
| 22 that, you know, I'm not going to discuss in front of the | 22 THE COURT: That's what you're referring to. |
| 23 jury, but that I haven't admitted because it was a different | 23 MR. FLEMING: That's right. |
| 24 kind of documen | 24 Q Did you answer? |
| 25 MR. FLEMING: And your Honor, I won't say it on | 25 A I lost the question. |

1 Q Well, the question is what you understand when transactions are ratified by the Audit Committee.

The Audit Committee is determining that those transactions are fair, reasonable and in the best interest of the NRA; right?

THE COURT: You can't ask that question in abstract. These are specific- they have seen specific documents where that has happened.
Q But he's just testified he knows that the Audit Committee at some point ratified these particular transactions. And when they ratified those particular transactions, you understand that they determined that those transactions were fair, reasonable and in the best interest of the NRA; is that right?

MS. CONNELL: Your Honor, I'm going to object to this, which transactions were ratified when. It makes a difference.

THE COURT: Well, right now the question is fair because he said "ever ratified."

Go ahead.
A My understanding is that those words were used at some point. I don't recall the precise timing of each one of those.

With respect to the transactions that I discussed, in some cases without specific details about the arrangements is my recollection.
24 Directors -- these directors were disclosed in the Form 990
25 isn't; is that right?

## Page 3187

Again, I don't recall the specific timing for those after-the-fact Audit Committee ratifications. Obviously, I'm not rendering any opinion on the legal appropriateness of that, but that's my general recollection is those words were used for certain individuals.
Q Fair enough. Now, you heard -- you testified that you went through the NRA's general ledgers.

Do you recall the testimony?
A Yes.
Q And do you recall Ms. Connell saying those were voluminous documents requiring a wheel barrow if they were brought into the court.

Do you remember that?
A Vaguely, yes.
Q And that must have taken a lot of time I imagine to do.
A Yes.
Q Okay. Are you familiar with the form 990s?
A Yes.
Q And you reviewed those as part of your work?
A I certainly looked at some of those, yes. contract amounts and the amounts paid to those Board of Directors -- these directors were disclosed in the Form 990 isn't; is that right?

MS. CONNELL: Objection, your Honor. Your Honor, when was it disclosed? How was it disclosed? It's a compound question.

THE COURT: That's for -- you can ask-- I assume you're asking if they were enclosed in any Form 990 at this point.

MR. FLEMING: It's hard to -- I can bring in all the documents and show him, but right now, that's the question.
Q Do you recall seeing those amounts paid to those directors Mr. Butz, Ms. Froman, Ms. Hammer disclosed in the 990s?

MS. CONNELL: I'm going to note my objection.
THE COURT: When you say "the 990 s", you mean all of them?
Q Well, let's start with 2015. Do you remember it in the 2015 990?
A I recall seeing some of those disclosed at some point in time in some 990. I have not committed to memory which amount for which directors at which point in time.

THE COURT: Counsel, we are going to have to --
MR. FLEMING: One question, your Honor. Seriously, this time. One question.

THE COURT: I hope it's a good one.
Q Do you dispute that those amounts paid to Mr. Butz,

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paid to Ms. Froman, paid to Ms. Hammer and then ultimately starting in 2017 paid to Mr. Keene were disclosed in each 990, 2015, 2016, 2017, 2018 forward?

MS. CONNELL: Objection, your Honor.
Q Do you dispute it?
THE COURT: Overruled.
A Again, I have not committed to memory each one of those disclosures, so I don't know the answer to that question as I sit here right now.

Q Well, that wasn't the question. The question was do you dispute it. It's a yes or no.

MS. CONNELL: Objection, your Honor.
THE COURT: I think that's asked and answered.
MR. FLEMING: Well, unfortunately, I'm not finished.

THE COURT: We will pick this back up at 2:15.
Again, the same instructions. You are going to be still on the stand during the break.

I'll see you all the 2:15.
THE COURT OFFICER: All rise. Jury exiting.
(Whereupon, at this time the jury exits
the courtroom.)
(Whereupon, at this time there was a luncheon recess taken.)

| Hines - by Plaintiff - Cross/Mr. Fleming Page 3190 | Hines - by Plaintiff - Cross/Mr. Fleming Page 3192 |
| :---: | :---: |
| 1 AFTERNOON SESSION | 1 Q Okay. What is Part VII? |
| 2 | 2 A I believe it's disclosure related to compensation. |
| 3 (Witness resumed the witness stand.) | 3 Q Okay. And I'm going to ask you to draw your attention |
| 4 THE COURT: Just so we don't have to take a break | 4 to the highlighted portions and tell me if this refreshes any |
| 5 after the last witness, the State is planning to rest after | 5 recollection that payments made to Ms. Froman and Ms. Hammer |
| 6 this last witness? | 6 were disclosed in the 2016 990? |
| 7 MS. CONNELL: That's correct | 7 A It would appear so. |
| 8 THE COURT: You want to do that on the record | 8 Q If I can just do one more to Mr. Butz. |
| 9 Am I correct that there is going to be some motion | 9 THE COURT: In the same document? |
| 10 made by somebody? All right. So I'll excuse the jurors | 10 MR. FLEMING: It's Page 18 I believe of the same |
| 11 after I do that so they don't have to hear that there is a | 11 document. |
| 12 motion. If so, by who. | 12 Q Mr. Hines, do you see this as well? |
| 13 THE COURT OFFICER: All rise. Jury entering. | 13 A Yes. |
| 14 (Whereupon, at this time the jury entered the | 14 Q Okay. And you recall that this was disclosed in the |
| 15 courtroom.) | 15 2016 990? |
| 16 THE COURT: Welcome back, everyone. Please have a | 16 A It would appear so based on this. I don't recall |
| 17 se | 17 specifically just based on my memory, but yes. |
| 18 CONTINUED CROSS-EXAMINATION | 18 Q Okay. And these amounts that you just seen roughly |
| 19 BY MR. FLEMING: | 19 accord to the amounts that you determined from the general |
| 20 THE COURT: Okay. Mr. Fleming, you may continue | 20 ledger; isn't that right? |
| 21 MR. FLEMING: Thank you, your Honor. | 21 A I they seem like they are directionally correct. |
| 22 Q I'm going to mercifully get you off this witness stand | 22 Q I'm certainly not testing your memory. I'm just trying |
| 23 soon, but I do have to show a couple of documents. So I would | 23 to avoid having to go into documents. |
| 24 like to go call up JFX39 for identification. It is a 990. It | 24 So are you familiar with the NRA's secretary's reports? |
| 25 is in evidence I don't know which document is in evidence, so | 25 A Generally speaking. But are you talking about with |
| Hines - by Plaintiff - Cross/Mr. Fleming Page 3191 | Hines - by Plaintiff - Cross/Mr. Fleming Page 3193 |
| 1 that's why I'm putting up this version. | 1 respect to the Board? |
| 2 THE COURT: So this document you know is in | 2 Q Well, the report of the secretary of the NRA to the |
| 3 evidence, but you're not sure if this version is. | 3 Board of Directors. |
| 4 MR. FLEMING: Right. The 990 is in evidence. I | 4 A As part of the overall Board minutes. |
| 5 just don't know what the document exhibit number is. | 5 Q That's right. |
| 6 THE COURT: I imagine that someone in this grand | 6 A Generally speaking, yes. |
| 7 room knows. If you say the year of the 990, they will know | 7 Q Okay. And did you review secretary's reports as part |
| 8 what number it is. | 8 of your work? |
| 9 MR. FLEMING: 201 | 9 A I don't recall specifically. I may have. |
| 10 MS. CONNELL: I don't know if it's in under this | 10 Q Okay. Well, I'll ask the question anyway. Do you |
| 11 number. | 11 recall that these amounts paid to these directors were disclosed |
| 12 THE COURT: I would much prefer to not have the | 12 in the secretary's reports as well? |
| 13 multiple exhibits which cover the same thing. | 13 A I do recall some instances where there were disclosures |
| 14 MS. CONNELL: It's in under PX 3565, your Honor | 14 about some of these items |
| 15 THE COURT: I knew it. | 15 Q Okay. I will spare showing you those. |
| 16 MR. FLEMING: Thank you | 16 Now you testified last week about something called the |
| 17 THE COURT: Does that sound right? | 17 "COSO framework." |
| 18 Q So Mr. Hines, as part of your work, did you review this | 18 Do you recall that? |
| 192016 NRA 990? | 19 A Yes. |
| 20 A I believe so. | 20 Q And I believe you said it was the standard for internal |
| 21 Q Okay. If I could turn to Part VII. Thank you. And in | 21 controls principles; is that right? |
| 22 particular, the lines we talked about. | 22 A It's a framework and provides internal control |
| 23 So Mr. Hines, are you familiar with Part VII of the | 23 guidelines and principles, yes. |
| $24990 ?$ | 24 Q Now, the COSO framework though is not law; isn't that |
| 25 A Generally, yes. | 25 right? |

Hines - by Plaintiff - Cross/Mr. Fleming
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1 A As far as I know, yes, you're correct.
2 Q And to your understanding, the COSO framework is not mentioned in the New York not-for-profit corporation law; is that right?

6 Q Okay. Do you know whether it's mentioned in New York's Estate Powers and Trusts Law?
A I don't.
Q Last question. Do you know whether it's mentioned in New York's Executive Law?

A I don't.
Q Now you were also asked questions last week about the NRA's vendors.

Do you recall the questions?
A Yes.
Q All right. Can I call up the demonstrative. Page 31, I think it is. I'm going to copy Ms. Rogers if you will allow me. I've learned something.

So you recall this demonstrative?
A Yes.
Q All right. Now, this shows -- well, before I get to this, Ackerman McQueen, that was one of the vendors you were asked about; right?

A Yes.
25 Q You're aware -- are you aware of the events of
Hines - by Plaintiff - Cross/Mr. Fleming Page 3195
whistleblowers from the NRA's Financial Services Division coming forward in July of 2018?

24 A Are you talking about the percentage change amounts?

1 A They do in 2019.
2 Q Well, in 2018 which is the first 5.9 percent; right?
3 A Correct.
4

Q And then in 2022 even though you don't have the numbers, it probably goes into negative territory so that there 25 is a change for the positive in the sense of less payments to

MMP; right?
A I believe that would be the case assuming the 2022 contract was adhered to, yes.

MR. FLEMING: I have nothing further. Thank you.
THE COURT: Okay. Anything further from the State?
MS. CONNELL: Famous last words, but very, very
brief, your Honor.
REDIRECT EXAMINATION
BY MS. CONNELL:
Q Could we please bring up PX 3565. Could we please go to Page 5 of 55 .

Mr. Hines, did you see this -- I'm showing you the document that Mr. Fleming just showed you.

Would you like to see the first page to make sure?
A No. I can see it here.
Q Okay. Could I please direct your attention to question 28.

Do you see that?
A Yes.
Q And that question asks whether the organization that's filing this was a party to a business transaction with one of the following parties, and it says a current or former officer, director, trustee or key employee.

Do you see that?
A Yes.

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1 Q What did the NRA check off?
2 A "No."

Q Thank you. You can take that down.
Mr. Hines, to your knowledge, is disclosing amounts made in someplace else within this 990 the same as having the NRA's Audit Committee approve a related-party transaction in advance?

MS. ROGERS: Objection.
MR. FLEMING: Objection.
THE COURT: Overruled.
A Based on my understanding, no.
Q Okay. Mr. Hines, you were asked about the NRA's relationship with MMP; right?

A Yes, I was.
Q And you were asked whether the MMP had given any value to the NRA, and you said that you hadn't specifically looked at that; correct?

## A Correct.

THE COURT: Leading being.
MS. CONNELL: I'm setting it up for a question. THE COURT: Still leading. MS. CONNELL: I apologize, your Honor.
Q Why -- would the answer to that question affect your opinions in this case?
A Whether I looked at the fair market value.

1 Q Yes.
2 A No.
3 Q Why not?
4 A Because my analysis was whether the NRA followed its
5 own policies and procedures and internal control structure, and
6 that doesn't depend on the market value of the service.
$7 \quad$ Q What finding, if any, did you make about that?
8 A That they were -- there were internal control
violations.
Q You were asked about the relationship -- the NRA's relationship to Ackerman McQueen; correct?
A Yes.
Q How long was the NRA's relationship with Ackerman
McQueen ongoing that you know of?
A I believe it was 30 or 40 years sticks out in my head for some reason.

Q Do you know who, if anyone, signed the 1990 services agreement between the NRA and Ackerman McQueen?

A I believe it was Mr. LaPierre.
Q Okay. And do you know how long the out-of-pocket expense reimbursement process was ongoing within the NRA?

A Based on the record I read and I've seen it and my understanding of that evidence, I believe it was at least early 2000.

25 Q To your knowledge, did the NRA pay invoices during

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those years that just said "out-of-pocket expenses?"
A Yes.
Q You testified that in 2022, the NRA tried to
renegotiate a deal and you were just asked about that.
Do you recall that?
6 A Yes.
7 Q Did you form any opinions about that renegotiation?
8 A Yes.
9 Q And what were those opinions?
10 A That the renegotiated contracts reduced the three contracts to one eliminating some of that complexity, and that in my view, it called into question the reasonableness of the fees and in periods prior to that under the fee arrangements given what I saw and based on my understanding of the facts there was fee increases were not documented and authorized and concurrent with what I understand to be conflict of interest issues.

MS. CONNELL: Thank you, Mr. Hines.
THE COURT: Anything further, Ms. Rogers?
MS. ROGERS: Very -- just very briefly.

## RECROSS-EXAMINATION

## BY MS. ROGERS:

Q Mr. Hines, I questioned you earlier about a version of your flight invoice summary, and there was a little confusion because the Government's lawyers gave me a different version
than they gave you as an exhibit.
MS. CONNELL: Objection, your Honor. That's an unfair characterization.
Q The point of the question is not the characterization.
So withdrawn.
I want to ask you some questions about the other version, and they are not going to be substantive questions. It's sort of a process question.

MS. CONNELL: This is also beyond the scope, your Honor, and this is -- this characterization is still just very prejudicial and unfair.

THE COURT: Yeah. I am going to let her do this because I assume she was looking at the wrong one, but you are not going to take a long time.

MS. ROGERS: It's not going to take a long time, and I am just going to hand the witness my version for identification.

THE COURT: The incorrect version?
MS. ROGERS: Correct, the version that he said was filtered to create today's version.

MS. CONNELL: May we approach? This is a version that he indicated was sent in error by counsel that's not the final version that he prepared. It's not the version admitted, and it's wrong to have it put in front of this jury earlier.

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THE COURT: I agree.
MS. ROGERS: I don't want to put it in front of the jury. I want to put it in front of the witness.

THE COURT: Sustained.
MS. CONNELL: Thank you.
Q Mr. Hines, you recall you testified that the wrong version of this spreadsheet was provided by counsel and the corrected version was filtered by you? Do you recall that testimony?

A Yes.
(Continued on the following page.)

Q Now, the corrected version that you filtered is three pages long; right?
A I believe that's correct.
Q Do you recall how long the version of the spreadsheet
was that was provided by your counsel before you corrected it?
MS. CONNELL: Objection, your Honor. THE COURT: Overruled.
A No.
Q If I represent to you that the spreadsheet was six pages before you took out the entries that were wrong, would that sound right to you?

## MS. CONNELL: Objection, your Honor.

 THE COURT: Overruled.A That would sound right except for the characterization of the invoices that were wrong that include duplicates that I identified and removed, cancelled flights. So, the characterization I did not agree with.
Q What about characterized the spread sheet shrunk in half from six to three pages when you took out the entries that were duplicates or were cancelled?
A I would say those individual items that were duplicates were -- shouldn't have been in that spreadsheet in the first place. So, shrinking by half, I don't necessarily mathematically between those two pages that's correct; but the final version reflects the invoices that are included on the

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summary evidence sheet prepared.
Q Understood, and I agree they shouldn't have been in there.

One more thing. In the course of the documents and testimony that you've reviewed, from an internal control perspective, do you think the NRA did anything right?
A Well, I have certainly seen some instances of contracts that did have signatures and review sheets and certainly things along the way.

Q Do you have any view -- you opined earlier that it was wrong for Woody to have a parking space. Do you think it was right or wrong to get rid of Ackerman McQueen?
A I don't have an opinion.
MS. CONNELL: Objection, your Honor.
Q The Government didn't ask you if it was right or wrong to get rid of Ackerman McQueen; right?

MS. CONNELL: Objection, your Honor. THE COURT: Overruled.
Q You can answer.
A I was not asked to give an opinion on that.
Q And the Government didn't ask you to tell the jury whether it was right or wrong to get rid of the Mercury Group; right?
A No.
Q And the Government didn't ask you to tell the jury

| E. Hines - by Plaintiff - Recross/Ms. Rogers Page 3206 |  |
| :---: | :---: |
| 1 | whether it was right or wrong to use a bidding process for |
| 2 | flights instead of using Gayle Stanford; right? |
| 3 | A $\quad$ No. |
| 4 | Q And the Government didn't ask you to tell the jury |
| 5 | whether it was right or wrong to appoint a new CFO who had been |
| 6 | a whistleblower who in a Federal Court described as a champion |
| 7 | of compliance? |
| 8 | MS. CONNELL: Your Honor, outside the scope. It's |
| 9 | incorporating hearsay statements that are not before the |
| 10 | jury, and the question of whether we were supposed to have |
| 11 | an expert opine on right and wrong is -- |
| 12 | THE COURT: Overruled. |
| 13 | MS. ROGERS: Your Honor, they can't use speaking |
| 14 | objections to get more time. |
| 15 | THE COURT: Overruled. |
| 16 | A $\quad$ What was the question? |
| 17 | Q The Government didn't ask you to tell the jury whether |
| 18 | it was right or wrong to appoint a whistleblower, Sonya Rowling, |
| 19 | as CFO; right? |
| 20 | A That was not in the scope of my analysis. |
| 21 | Q The Government didn't tell you that a Federal Court |
| 22 | described her as a champion of compliance; right? |
| 23 | MS. CONNELL: Objection, your Honor. |
| 24 | THE COURT: Sustained. |
| 25 | Q So, as far as you're concerned, none of those |

MS. ROGERS: All right, pass the witness.
MR. CORRELL: Pass the witness.

## RECROSS-EXAMINATION

BY MR. FLEMING:
MR. FLEMING: Can I call up JX 52 in evidence.
Can we turn to the report of the meeting and it's dated May of 2016.

THE COURT: Does this relate to anything that just came up in the last two questions?

MR. FLEMING: It is -- well, with respect to the redirect.

THE COURT: That's what I meant.
MS. CONNELL: Objection on scope, your Honor.
THE COURT: Well, that's what I was asking, but I'll let --

MS. CONNELL: I know, I'm just --
(Displayed)
Q Mr. Hines, I direct your attention to a report of the Audit Committee dated May 23rd through 24 of 2016. Have you ever seen this document before?
A I may have. I don't recall just by reading it here for
couple seconds, but it is possible.
Q Okay, and the first sentence it says: "The Audit Committee met on March 8, 2016."

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        Do you see that?
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A Yes.
Q And I would like to draw your attention to the
"Disclosure of Financial Interests" paragraph and have you read that to yourself.
A Okay.
Q Do you recall reading either this document or any other document which indicated that the Audit Committee considered related-party transactions at its March 8, 2016, meeting and deferred consideration or further evaluation of the more substantial related-party transactions until its meeting in September?

MS. CONNELL: Objection, your Honor.
THE COURT: You asked him about a box check in 990 ,
so I think this is in the scope.
A I do recall reading. I'm not sure if it was this document exactly or one like it, but I would like to see if these are signed minutes or not because I just for my own clarification.

MR. FLEMING: Could you show the witness? (Displayed)
MR. FLEMING: Can I call up for identification only
E. Hines - by Plaintiff - Recross/Mr. Fleming

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not for the jury, PX 1674. If we could scroll to the second page, please.
Q Mr. Hines, have you ever seen the document that's in front of you right now?

MS. CONNELL: Objection, your Honor.
THE COURT: Well, he hasn't done anything with it
yet except ask the witness if he's seen it.
MS. CONNELL: I understand, your Honor. I'm
lodging an objection from earlier, preserving the objection.
THE COURT: Just getting warmed up?
MS. CONNELL: I'm getting warmed up, your Honor, just getting warmed up.
A I may have seen this document. I've seen versions of documents like this, draft versions. I can't recall if it is this exact version that I'm looking at right here.
Q And Ms. Connell asked you a question just a moment ago about how it's different -- I'm paraphrasing, so if I get it wrong you correct me -- how it's different to list the amounts that directors get on a 990, how that's different from an Audit Committee voting to approve related-party transactions. Do you recall the question?
A Yes.
Q Did I get it correctly?
A Generally speaking, yes.
Q Do you recall from any of the work that you did for the

attorney general in this case whether you saw any evidence that the Audit Committee approved related-party transactions in September $2016 ?$

A I don't recall specifically. There may have been, and I can't recall if that's a ratification after the fact which to me is much different than approval in advance.

I just don't recall the specific difference for that particular meeting.
Q Well, regardless of what your view is of the difference between approvals in advance and ratifications, you would agree, would you not, that a ratification or approval in advance is approval?
A It is an approval, but for my perspective as a forensic accountant, it has a drastically different impact on the internal controls which requires advanced approval.

MR. FLEMING: Nothing further.
THE COURT: Anything else?
All right, hearing nothing, sir, you're free to step down.

THE WITNESS: Thank you, your Honor. THE COURT: Thank you.
(Whereupon, at this time the witness was then excused.)

THE COURT: Anything further from the plaintiff? MS. CONNELL: No, your Honor. The State rests.

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THE COURT: Okay, folks, we're going to take a short break because when one side rests, there's a couple of procedural things we have to take care of before we start the other side so we're going to take our break a little early today.

COURT OFFICER: All rise, jury exiting.
THE COURT: And the break may be a little longer than usual, so.
(Whereupon, at this time the jury then left the courtroom.)

Okay, have a seat. In an orderly way, can I ask if there are any motions to be made at the conclusion of the State's case, starting with the defense?

MS. ROGERS: Your Honor, the NRA moves for a directed verdict on the whistleblower claim as to a number of the whistleblowers specified in the contention interrogatory responses, and we move for a directed verdict on EPTL count one.

THE COURT: Anybody else?
MR. CORRELL: Your Honor, Mr. LaPierre moves pursuant to CPLR 4401 for judgment as matter of law on the second cause of action asserted against him to the extent that it seeks removal pursuant to N-PCL 706(d) and 714(c), the fundamental element of a cause of action for removal of director or officer if the person is in fact a director or

1 officer. No proof has been adduced that Mr. LaPierre is 2 still a director or officer, so that cause of action or that
part of the cause of action is moot.
With regard to the rest of that cause of action, I raise an issue that's been raised before which is the question of whether the attorney general lacks authority to seek relief beyond the relief provided in Section 720. Particularly with respect to 720(a)(1), it is Mr. LaPierre's position that the attorney general lacks authority to seek monetary relief. That if the attorney general had wanted to seek monetary relief, she should have sought it under 720 (a)(2) which requires a showing of an unlawful transfer with knowledge of its unlawfulness.

In addition, Mr. LaPierre seeks judgment as a matter of law on the sixth cause of action, which is asserted under the EPTL. The attorney general has presented no proof that Mr. LaPierre ever held and administered property for charitable purposes pursuant to a will, trust, other agreement or instrument, court appointment or otherwise pursuant to law.

His having been an officer of the NRA was not a sufficient basis on which to find that he was holding property under the N-CPL. Only the corporation has the power to hold property.

So, as a matter of fact and as a matter of law,

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there's no claim against him. Even if there were, it is duplicative of the second cause of action and should be dismissed on that basis, as well.

The tenth cause of action should also be dismissed as a matter of law because there's no proof that $A$ ) that it was a related-party transaction since it related to compensation of an employee; B) that any -- there was any acquisition by him transferred to others, loss or waste of corporate assets due to his signature of that agreement; C) that he signed the agreement in an individual capacity as opposed to in his capacity as an officer; and, lastly, the evidence -- the AG has presented no evidence that the agreement is still in force and, in fact, the evidence shows conclusively that it was superseded by subsequent agreement that provides for no payment whatsoever to Mr. LaPierre except that the option of the NRA.

THE COURT: Thank you.
Anything from Mr. Phillips?
MR. CORRELL: Excuse me. One more, your Honor.
Mr. LaPierre takes the position that the three-year statute of limitations in CPLR 214 (2) applies; and he is entitled to judgment as a matter of law in dismissing all claims based on any act or omission that occurred before August 6, 2017.

MR. FARBER: The arguments that Mr. Correll made

1 with respect to the EPTL claim against Mr. LaPierre and the

2

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1 EPTL claim, to the extent Mr. Correll didn't address it, it related-party claim against Mr. LaPierre, we'd adopt those for the claims against Mr. Phillips, but I won't repeat them.

In addition, with respect to the EPTL claim, an additional ground that we move on is that essentially adopting an argument that the NRA made in its letter brief that I -- or their memorandum of law that I think they filed sometime this morning while we were in court essentially arguing that all the State has proved has been violations of internal policies or procedures, which we submit cannot form the basis for a claim of improper administration.

In addition, as to the breach of duty under the N-CPL claim against Mr. Phillips, there's been no proof whatsoever that any of the conduct alleged caused any injury or damage to the NRA; and on that basis, we think that claim fails.

And I should add we adopt the position that Mr . Correll articulated with regard to the statute of limitations and any conduct preceding that date being barred.

MR. FLEMING: Your Honor, Mr. Frazer moves for a directed verdict on the entirety of the case against him.

We adopt, of course, many of the arguments of the other defendants which apply equally. I'll just add on the has been litigated for a long time that the definition of trustee under the EPTL 8-1.4(a) is for an individual. They have to act pursuant to a will, trust, instrument and so forth, whatever the statutory language is.

There's been absolutely no proof of that. We all raised that issue before the trial. The attorney general was on notice that this was a definitional requirement and there's been no proof on that.

And just before I forget, I also adopt the statute of limitations arguments.

But, to address further the N -PCL argument against Mr. Frazer, you know there really has been no evidence of fault about against him which is a requirement. Grasso says it. They define 720 as having a fault requirement, and, of course, there's 717 where the proof has to be that Mr. Frazer -- and this is an element of the claim as I've argued in prior briefing. Mr. Frazer has to be proven -and they have the burden -- of failing to discharge his duties in good faith and with the reasonable care and due care of a person in like position.

They have not done that and the statute makes clear that where they have not done that, an officer of a not-for-profit organization shall have no liability.

In fact, I would argue that the evidence has been
entirely to the contrary about how about Mr. Frazer from the moment he started devoted the entirety of his good faith and good efforts to try to improve the organization. The testimony has been uncontradicted in that respect.

The only testimony against Mr. Frazer has come from Ms. Schneider who said conclusorily that he failed to live up to his duties. That's all she said. On this the particulars of his failures, I believe we disproved them. He met with her. He discussed with her the investigations that were being done, and she didn't want to hear it.

Lieutenant Colonel North said that Mr. Frazer was unreasonable. I think to the contrary. The evidence has been clear that Mr. Frazer addressed Lieutenant Colonel North's claim to the extent it was a whistleblower claim, obtained outside counsel's view on it, resolved the issue; and then after that the claim changed to a dispute about the level of the Brewer invoices which he was reviewing, which Craig Spray, the treasurer, was reviewing, which an outside law firm on behalf of the insurance company which had a financial incentive not to repay these expenses reviewed and each time, each review resulted in an approval of these expenses.

And, so, I view that to be reasonable as well the uncontradicted testimony is that Mr. Frazer made the invoices as to which Lieutenant Colonel North did not have a

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conflict available to him and nothing was done of that.
So, I view that testimony to be not -- does not -is not proof of liability in this case.

And the final piece of testimony and this is it -just three -- is Mr. Cox's testimony that Mr. Frazer was unqualified. Well, lack of qualifications is not a basis for liability. Performance of the job is what matters.

And, so, I would submit that there's no basis whatsoever for a 720 claim against Mr. Frazer.

And, lastly, to the Executive Law. The Executive Law requires and we put this in briefing as well; and, by the way, we have a directed verdict brief which we can file when your Honor would like it.

You have to prove falsity is an element. You have to prove responsibility for the falsity, and you have to prove materiality. Our argument has been all along there's been no falsity proven by the attorney general. We've talked about travel expenses. We've been through that sort of at length. There was a box check. The box check had been checked yes as following a written policy of the NRA for charter and first-class travel since Schedule J, which is where that box is located since it was first inaugurated in 2008.

We had testimony that the people advising on that issue were -- one word was legends. The other word was
supreme reputation is the best in the world at this.
And, further, we showed the travel policy, itself, which said in the language that this policy cannot cover all situations. You have to use business judgment and common sense in determining whether it is permitted; and our argument has been all along throughout the entirety of this case that it is commonsensical and good business judgment to make sure that the executive vice president of the organization arrived at his destination alive. And I don't mean to be flip, but there's been lots of testimony about severe security issues.

And so Mr. Frazer stepped into this role in 2015 with a seven or eight-year history of this box being checked yes, had when he looked at the travel policy no reason on its language to say, Hey, wait a second. We got to change this. And it wasn't until 2019 -- actually in late 2020 for the 2019990 that Craig Spray, three months after the attorney general had filed their complaint, spooking everyone, Craig Spray decided to change the box. Craig Spray had a cow about "Wayne said" approvals. Craig Spray refused to sign the 990.

I think that's ample evidence of a reaction to the attorney general having created the very climate that caused this change they are now seeking to explore.

So, I think in these circumstances and those are

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the falsities that I'm aware of; they said that Mr. Frazer had no personal knowledge of the excess benefits Schedule L disclosures in 2019.

I have a tough time trying to figure out what is keeping him in this case, and I know I've been a broken record and maybe I'm myopic and I don't see it, but I don't see it.

So, for those reasons and others, we move for a directed verdict of the entirety of the case.

Thank you.
MR. CORRELL: Your Honor, what he said I'll adopt and also what Seth said.

THE COURT: Okay. So, before I ask the attorney general about any responses, does the attorney general have any motions it wishes to make?

MS. CONNELL: Your Honor, we wanted to move particularly given the admissions that have been made in this case, particularly by Mr. LaPierre as drawn out particularly in a nice clean fashion by the NRA; but given the way the Court is counting the time, we're just going to reserve it and save for the end.

THE COURT: Okay.
So, traditionally, I have exercised my discretion most of the time, and I think some of the Appellate courts agree with this to defer ruling on directed verdict motions,

1 to let the trial play out to avoid -- if you make a mistake 2 on a directed verdict motion, you don't let the trial play 3 out, if it is reversed you have to do the trial again. So 4 there's all sorts of reasons not to.

However, while that is still going to be my view with respect to a lot of what I've heard from the defendants, I will say that as the evidence has un-whirled, I have been watching with some increasing wariness -- that's wary, not weary -- the claims against the individual defendants under the EPTL, and so I do want the Government to, in particular, focus on a couple of things with me.

I do at a high level see a fair amount of duplication between those claims of the individual defendants under the EPTL and the claims against those same defendants under the N-PCL.

I have difficulty identifying any damages that would be different between the two, for example.

I, also, note that given the overarching structure of the statutory framework governing not-for-profits, the EPTL and the N-CPL refer to each other a fair amount.

The N-CPL has various specific provisions aimed right at people like the individual defendants, officers, directors, key persons and goes into great detail about a bunch of specific kinds of claims that one can bring against those people. They're on all sorts of notice that that is a

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1 statutory scheme that they are governed by.
The EPTL by contrast or a little interestingly has a number of similar provisions. It has a related-party transaction provision. It has a whistleblower provision, but the focus of the EPTL is on a person called a trustee. It doesn't talk about officers and directors of not-for-profit corporations.

The NRA is very clearly a trustee under the specific language of the statute, the EPTL statute; but it doesn't say anything about officers and directors. So, it does seem to me at a high level that the distribution of responsibility between the statutes is largely that the individual responsibility for not-for-profit corporations is governed by the N-CPL and the focus of the EPTL is really on the not-for-profit corporation, itself.

Now, again, the EPTL, a lot of it focuses on things other than not-for-profit corporations; but so my first overarching point is that it seems that these claims are largely if not entirely duplicative.

But then the other point that the defendants make is where is the evidence that they are trustees under the statute? They point out that the -- the definition of trustee in addition to one subparagraph that is right between the eyes the NRA, specifically says a trustee is any nonprofit corporation organized under the laws of this state
all trustees containing such information as the attorney

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general deems appropriate."
I have not seen any evidence admitted in this case that the attorney general included in its list or if it created a register as was required, I have not seen any evidence that any notice was provided to the many officers and directors of not-for-profit corporations throughout this state that the attorney general considers them to be on this register of trustees.

So, I have real concerns as to whether people in the position of these individual defendants -- well, let me be more narrow. I only mean for this purpose care about these three individuals. What notice would they have had that they are subject to being treated as trustees under this statute?
(Continued on next page)

THE COURT: Again, if one is to assume there are any different obligations under this statute as compared to the not-for-profit corporation law. And the final thing I'll add is that as a practical matter as I work myself -my way through the instructions and to some extent keeping an eye on the verdict form, one of the strangely complicated things that I have been running into is trying to explain to the jury how the -- how they should deal with the EPTL and N -PCL claims and how that flows into the damages, and it does seem to me candidly that it will be a lot simpler for the jury if they have a single set of claims against the individual defendants under the statute that clearly applies to them rather than having to try to wrestle with what conceptual differences there might be between holding them accountable for essentially the same conduct under two different statutes that use some similar words. So when you pull all that together, I see a lot of advantages -- well, most importantly is the merits as to whether a reasonable jury could find that these individuals were trustees and that they had improperly administered charitable assets and -- but also, that there is a significant benefit in terms of making this case easier for the jury to understand by putting all of the focus on whether they violated the duties that they clearly undertook as officers, directors and key persons.

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So, all of that is a long lead-in to say that although I usually don't want to dip my toe in the water of dismissing a claim on directed verdict, I am -- I see a number of reasons to consider doing so with respect to those three claims.

I do want to add one other that I've been thinking about. I have not go through the full list that the NRA pointed to about the whistleblowers, so we may need to do that in some greater details.

One that came up during the discussion, and I think it's incorporated in what Mr. Phillips' counsel said although they didn't get into it specifically, I have looked at the definition of "relative" in the statute governing related-party transactions, and I don't understand what the rationale would be to saying that the HomeTelos transaction is a related-party transaction. So that's a narrow one because to be a relative, the closest -- the closest thing I think is a domestic partner, but that as a very technical definition, detailed definition that -- so anyway, they didn't bring that up.

As I was going through all the instructions, I couldn't figure out what the argument would be that that person with whom that transaction was undertaken, how that person is a relative, you know. Maybe they are a relative under the internal guidelines. Maybe. I don't know, but I

1 don't see how they're relative under the statute.
MR. FARBER: Your Honor, I think I can answer that.
Their cause of action for related-party transaction alleges only one related-party transaction as to Phillips, and that's his post-employment consulting agreement.

That's actually the reason why when we were talking about the verdict form, if there is going to be -- if that related-party transaction claim goes to the verdict, I think it needs to spell out precisely what the transaction is at issue; otherwise, the jury is going to have similar confusion.

THE COURT: So I don't have to dismiss it because it doesn't exist is what you're saying.

MR. FARBER: You don't have to dismiss it as to the HomeTelos contract because they haven't -- that's not their claim.

THE COURT: Okay.
MR. CORRELL: Your Honor, to answer your question, it's my understanding that the definition of "relative" is the same in the statute and in the financial disclosure questionnaire.

I would add that although there has not been a formal application that there was any related party transaction with Colleen Sterner, she is actually the daughter of the sister of LaPierre's wife which puts her

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1 outside the scope of that definition. So I would urge the

2 Court to apply that definition to her as well as to the extent that the AG is planning to argue to the jury that any contract with her was a related-party transaction.

THE COURT: Okay. So putting aside the whistleblowers and seeing whether there's any specific ones that I would take action on here, but the remaining issues, I'm inclined not to get too deeply into. You know, I -- I don't think they are ripe for directed verdict.

The one exception is the Statute of Limitations. I am working my way through. I have received lots of interesting letters. I need to resolve those for purposes of various parts of the instructions. I don't think it's -that's not a directed verdict kind of a motion because that's just -- well, it determines what will go to the jury, to what extent it will.

I should -- I'll make a couple of comments, and just to be helpful, maybe, but we are still actively considering it. The arguments that have been made -- this is a tougher question than I had envisioned. I -- so far I am persuaded that the statutory causes of action related to related-party transactions and whistleblowers are I think creatures of statute, not at common-law, and they would be by the plain language of CPLR 214 the subject to a three-year Statute of Limitation.

I'm less sure about that with respect to the N-PCL 717 and 720 claims because I think there is a much more robust argument that those are claims that were codified but which existed at common-law. And unlike the Credit Suisse case in which the Court found that the legislature's adoption of a statutory claim under the Martin Act would punish behavior that would not be punishable at common-law, here, I don't see that same argument. And so I think it is much more similar to the common-law breach of fiduciary duty. And if anything, maybe even a bit friendlier to the defense than the common-law might be.

That then leaves the question of whether the claim is predominantly for money damages as one ground for why it might be a three-year Statute of Limitations anyway even if it's considered a fiduciary duty claim. Fiduciary duty claim, and I'm still considering the impact of CPLR 213 Paragraph 7 as to whether that claim is analogous or essentially a claim by or on behalf of a corporation alleging waste and similar kinds of claims and an accounting.

There was a peculiar use of the word "account" in the N-PCL. It's not as clear to me whether that impacted, certainly not being tried that way as an accounting because an accounting is an entirely different kind of a process where the defendants have to come forward with an accounting

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and then you -- you evaluate it. This is a claim for damages which is much more similar to a traditional fiduciary duty kind of a claim.

Anyway, talking more about that going further into it than I probably want to, but I think the State should be at least prepared that there is a reasonable argument that I'm seriously considering that even if the 720 claim under the N -PCL is not a statutory claim for purposes of CPLR 214, that it is the kind of fiduciary duty claim that traditionally has been subject to a three-year Statute of Limitations in so far as it is asserted against the individual defendants. And so I do see it as a statutory oddity to all of this in that, you know, if the claims were brought by the NRA, they would arguably be able to have an argument for a six year statute under CPLR 213, so there is a bit of a tension in my mind as to, well, what sense does it make to have the Attorney General who while this is not a derivative case in form, effectively, the Attorney General is not seeking to recover for the State of New York, is seeking to recover for funds that should go to the NRA, and it is a bit of a tension to suggest that on the same facts, the Attorney General can only recover to the NRA three years where the NRA bringing the same claim or the, you know, arguably the Attorney General suing in the name of the members could arguably claim a six-year Statute of

|  | edings Page 3230 | Proceedings Page 3232 |  |
| :---: | :---: | :---: | :---: |
| 1 | Limitations. |  | THE COURT: I am seeing the Trump case and othe |
| 2 | I don't really want to argue this. I'm just |  | you know, where the -- it's a charitable foundation where he |
| 3 | telling you the various things I am mulling in trying to |  | said lead director and essentially it's an opimus |
| 4 | figure this outh |  | on. But are there cases against people like these |
| 5 | So with all that, and I'm sorry for this long | 5 | dividuals? I haven't found the |
| 6 | soliloquy, but I very much want to talk to the State about |  | MS. CONNELL: Well, your Honor, I would say |
| 7 | the EPTL | 7 somet | something like Lower Esopus River Watch, LERW case, it was a |
| 8 | MS. CONNELL: Thank you, your Honor. |  | not for profit -- person who managed the not for profit |
| 9 | First, I want to say, your Honor, that I have no | 9 corp | corporation affairs was deemed a trustee and liable under |
| 10 | doubt that you had trouble finding sort of jury charges or | 10 the E | the EPTL, and that case although that's a Supreme Court |
| 11 | model jury charges for the EPTL because it's an equitable | 11 opi | opinion, it analyzes the statute in detail. |
| 12 | statute. And pursuant to EPTL 8-1.4(n), it's supposed to be | 12 | THE COURT: Under your reading -- your reading |
| 13 | broadly interpreted to effectuate remedial purpose. |  | thousands of people in the State are trustees under the |
| 14 | I'll note that you said -- |  | EPTL; right? Every director and officers of not-for-profit |
| 15 | THE COURT: Have they | 15 cor | corporation in the State is a trustee. |
| 16 | in any register that the Attorney General's put together. | 16 | MS. CONNELL: A charitable not-for-profit |
| 17 | MS. CONNELL: No, and I'll tell you why, your | 17 corp | corporation in the State could be a trustee, your Honor. |
| 18 | Honor. | 18 Yes | Yes, they could. And that's to protect the charitable |
| 19 | I would point you to 8-1.4(b)(9), and we believe | 19 asse | assets and the charitable corporation themselves and to |
| 20 | they fall under that exception. But as you know, the NRA, |  | subject them to regulation to prevent waste and loss of the |
| 21 | it has filed under the EPTL every year for -- | 21 typ | type that we've seen here. |
| 22 | THE COURT: The NRA has. The NRA is is trustee. I | 22 | THE COURT: Then those same people are by |
| 23 | have no doubt. |  | finition subject to direct and clear scrutiny under the |
| 24 | MS. CONNELL: But your Honor, what I just pointed | 24 N-P | N-PCL; right. So why do you need both? |
|  | you to is an exception to the reporting and registration |  | MS. CONNELL: Yes, they are, but the remedies are |
|  | ngs Page 3231 | Proceedings | dings Page 3233 |
| 1 | requirement that we think is applicable here. |  | fferent. The remedies are different |
| 2 | THE COURT: Okay. |  | The EPTL allows broad, equitable, remedial relief, |
| 3 | MS. CONNELL: And that's why there is no |  | nd we think it kind of fills in the gap. |
| 4 | registration that would apply to them, your Honor. |  | THE COURT: What broad remedial relief are you |
| 5 | THE COURT: What's the cite? |  | ing against these three individuals that you can't get |
| 6 | MS. CONNELL: 8-1.4(b)(9) |  | der the $\mathrm{N}-\mathrm{PCL}$ ? |
| 7 | THE COURT: Okay. |  | MS. CONNELL: For example, Mr. LaPierre's counsel |
| 8 | MS. CONNELL: It says, your Honor, "Any person who | 8 just sta | just stood up and said he can't be removed under 706 or 714 |
| 9 | in his or her capacity as an officer, director or trustee |  | of the N -PCL. |
| 10 | any corporation or organization mentioned in this paragraph | 10 | While we disagree with that, we would say, for |
| 11 | hold property for the religious educational or charitable |  | example, we can seek a bar on working as a fiduciary in a |
| 12 | purposes of such corporation or organization so long as such |  | New York not-for-profit or a not-for-profit that does |
| 13 | corporation or organization is registered with the Attorney |  | business in New York. |
| 14 | General pursuant to the section." | 14 | HE COURT: You can seek that only under the EPTL? |
| 15 | In that case, if they qualify under that, they need | 15 | MS. CONNELL: Well, we think it's clear under the |
| 16 | not register. And I would say, your Honor, or that the EPTL | 16 EP | EPTL. |
| 17 | plays a special role in regard to supervising and the | 17 | Under the N-PCL, there are specific provisions |
| 18 | Attorney General's oversight of charitable entities. | 18 und | nder 706 and 714. |
| 19 | As you know the N-PCL applies to charitable and | 19 | We would refer you to Abrams versus Arcadipane, but |
| 20 | non-charitable entities. The EPTL broader relief applies to | 20 it's | it's in our prior briefing. |
| 21 | charitable entities, and it effectuates that purpose | 21 | MR. SHIFFMAN: It's actually a case that Mr. |
| 22 | accordingly. And your Honor, other Courts have applied the |  | illips submitted this morning. It's a case that they |
| 23 | definition of "trustee." You are not the first Court -- to; |  | submitted for the 213-7 argument, but in that, it also |
|  | individuals who oversee a charitable entity. You are not | $24 \text { asser }$ | asserted EPTL claims that were sustained. And in that case, |
|  |  | 25 Judg | Judge Mazarelli for the appellate term found that there was |


| 1 | actually a six-year applicable Statute of Limitations, but |
| ---: | :---: |
| 2 | it dealt with the issue of 8-1.4 and claims against the |
| 3 | individuals there. |
| 4 | MR. CORRELL: Your Honor, that was pre-Grasso. |
| 5 | THE COURT: I'm still with you. |
| 6 | So again 8-1.4(b)(9), it talks about officers and |
| 7 | directors. It's true of a corporation if they hold |
| 8 | property; right. So it's -- so that determines whether the |
| 9 | registration and reporting provisions apply to those people. |
| 10 | So you're just saying that's why they are not in a register. |
| 11 | MS. CONNELL: That's right, your Honor. That's why |
| 12 | they are not in the registry. And frankly, this is meant to |
| 13 | reach -- the statute is meant to reach individuals or groups |
| 14 | of individuals who control charitable organizations and |
| 15 | entities. |
| 16 | THE COURT: So why don't we see lots of cases under |
| 17 | the statute against? |
| 18 | MS. CONNELL: We have seen a number of cases. The |
| 19 | fact is as we have told you before in general, we |
| 20 | investigate cases and either the leadership when they |
| 21 | identify someone who is breaching or has breached their |
| 22 | fiduciary duty to the organization, you know, will oust |
| 23 | them. They will try and take care of them and we resolve |
| 24 | them. Those -- we don't see a lot of cases under the N-PCL |
| 25 | either. But when you have a case like this where you have |

sections or the only thing this Court can award while we disagree and believe that the Court always has equitable relief, that's an argument we are facing. So this is a tool we should still have in our tool belt because equity should be done here.

I mean, we heard Mr. LaPierre list down just a list of things that he did last week that he now knows are wrong but nothing happened to him as a result of it. You know, nothing happened to him as a result. That's the type of conduct that should not be permitted under either the N-PCL or the EPTL.

THE COURT: Well, the N-PCL has a fairly aggressive array of tools to address claims against officers and directors.

MS. CONNELL: All right, your Honor, but if Mr. LaPierre's argument -- let's just take one of the arguments.

If Mr. LaPierre's argument prevails that the Court can not under N-PCL 706 or 714 have the jury determine removal. Again, we disagree with that. Then removal -- and under that statute, if you recall, the jury determines whether there is cause for removal only. Then the Court determines the length and scope of such removal.

If the Court finds or were to hold that that remedy is no longer available, that remedy is moot, Mr. LaPierre who until five days or six days ago was the EVP of the NRA

1 such extraordinary ongoing long-running violations and you
2 know mission conduct, the EPTL is completely appropriate to protect the charity and the charitable assets. Not just against the organization.

If it didn't have the word "individual" or groups of individuals there, I think it would be a stronger point, but it's meant to get at the people who control that organization and control those charitable assets. And your Honor, we think while the EPTL may be hard to explain to a jury, again, it's meant entirely for -- primarily for a Court and for bench trials, but it's a valid statute that applies to the defendants' conduct here.

And unfortunately, even though it may lead to a, you know, complex verdict sheet, it's appropriate here, and we think it would be wrong to not allow that claim to go forward against the individual defendants.

THE COURT: So on the duplication front, so is the only relief that is different, the barring prospectively future service as a director or an officer of a charity?

MS. CONNELL: You know, your Honor, the language of the EPTL, and I can't think of it off the top of my head right now is quite a bit broader just in terms of the equity and equitable relief it allows.

We've heard arguments from the defendants that because of the statutory relief laid out in the $\mathrm{N}-\mathrm{PCL}$

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could return as EVP of the NRA in three weeks from now.
There's nothing preventing him to. He wasn't disciplined. He wasn't suspended. He wasn't -- there's no Board resolution that we don't know. We don't have discovery, but no Board resolution that we know that would prevent him from turning right back around and signing another poison pill contract and getting him right back in leadership. That is allowed under the EPTL. And your Honor, again, if the statute applies, it applies, and it should apply here.

THE COURT: Okay.
MS. ROGERS: Can I just be heard very briefly?
THE COURT: On this issue?
MS. ROGERS: Yes. So there are broad equitable remedies that the Attorney General could seek using corporate law if they went through the derivative standing gauntlet.

There are procedural constraints built into the NRA's corporate structure and that of any corporation, and a shareholder or a NRA member or a NRA director does have the power to, for example, precluding from being reappointed, to propose the corporation try to claw back his salary. So there's other latitudes or other kind of relief that does exist, and this also reconciles the Statute of Limitation issue when you think about.

| 1 | It's perfectly appropriate that the NRA or a |  |
| ---: | :---: | :---: |
| 2 | plaintiff whose actually satisfied derivative standing has |  |
| 3 | more remedies available to it and has a different statute |  |
| 4 | available to it than the Government acting in a very limited |  |
| 5 | enforcement context which Grasso discusses. |  |
| 6 | MR. CORRELL: Your Honor, another point is the |  |
| 7 | Government gets reports every year which the corporation |  |
| 8 | wouldn't necessarily get, and they have the resources, |  |
| 9 | virtually unlimited resources of the taxpayers to pursue |  |
| 10 | anyone. They've got strong subpoena power. They've got all | 1 |
| 11 | these other agencies, so it makes perfect sense to ask the | 1 |
| 12 | Government to act promptly, to provide guidance for | 12 |
| 13 | not-for-profit corporations to not to sit back for 12 years | 13 |
| 14 | and play gotcha for organizations they don't like. | 14 |
| 15 | THE COURT: Ms. Connell, let me just ask you | 1 |
| 16 | another question just to respond. This 8-1.4 (b)(9), it | 16 |
| 17 | does -- if I'm reading the words right, it -- it's not part | 17 |
| 18 | of the definition of trustee. It's sort of a separate | 18 |
| 19 | provision about who is not covered by the registration | 19 |
| 20 | requirements, but the -- if I'm reading the syntax | 20 |
| 21 | correctly, it says, Any person who -- and then has comma and | 21 |
| 22 | a bunch of clauses talking about in their capacity as an | 22 |
| 23 | officer, blah, blah, blah, but it has to be any person who | 23 |
| 24 | holds property for the religious, educational or charitable | 24 |
| 25 | purposes of such corporation or organization. | 25 |

How is that a fit for these three? In what way did they hold property?

MS. CONNELL: Your Honor, "hold" clearly in this context must mean control property, and a charitable organization is not an empty -- it's not a physical being that can itself take, hold, expend money. It has to act through the actions of its officers, directors and key persons. And so that clearly means control. And all three of these defendants clearly controlled both the organization which the EPTL applies to and the charitable assets of that organization, and we've heard a lot of evidence about that, your Honor, and I would just -- I would say that the application of the EPTL was also -- it's a very important tool in the regulation of charities. It's extremely important to our office. And concerns that it may be duplicative of N -PCL claims are not a reason to get rid of it. At a minimum, it should be done on full briefing, I would suggest to you.

The other thing --
THE COURT: Duplicativeness is a very common reason for getting rid of claims.

MS. CONNELL: But to say that an EPTL claim can not be asserted against these officers is I think, your Honor, would be an extraordinary holding given the case law that applies here.

THE COURT: Tell me about the case law. I mean, maybe this is one. I mean, the ones that I've seen are typically much more typical charitable foundation. You know the Trump Foundation. Mr. Trump was found to be a trustee. Basically it was -- you know, it's a one-person show kind of situation, but with the number of not-for-profit corporations that there are, it's just interesting to me that there aren't a lot of examples of what I would say is a vast expansion of the definition of "trustees" to say that if you are a senior member -- you know, the general counsel for gosh sake, you know, probably pretty far away from the finance side of the house, you're by definition -- anyone who gets hired as an officer of a not-for-profit corporation, you are now a trustee under this statute which is -- I mean, let's be clear -- is largely about -- you know, it does include not-for-profit corporations for charitable purposes, but it's people covered by wills, trusts, estates, that kind of normal ordinary course of things that goes back a thousand years.

I just -- I really do wonder whether somebody who signs up for a job as a general counsel at a not-for-profit is realizing that they are covered by normal fiduciary duty law but they're a trustee.

MS. CONNELL: Your Honor, I mean, I would say that a general counsel who year after year checks off the box

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saying this is a dual filing under the EPTL and doesn't familiarize themselves with the EPTL to know what that could mean, that that itself is an indication --

THE COURT: well, you would have to read the EPTL long and hard before you could conclude that "you" means every officer and every director is not only covered by fiduciary duty law but is by also a trustee. It talks about the individuals who are covered. It's holding and administering property pursuant to a will. No. Trust? No. An instrument or agreement? No. Or otherwise pursuant to law. Which of them is it?

MS. CONNELL: Your Honor, I think it's an instrument or agreement. It's the People who are -- yes. I think it's people like pursuant to the NRA Bylaws and pursuant to the operations of the NRA who can -- for example, bind the NRA in a contract, who can spend large non-nominal sums of the NRA's funds.

You're talking about people who control the corporation. We are not talking about a low level manager here. We don't have the assistant director of HR here. We have the top three officers who are appointed by the Board, and we have the top three salaried officers here in terms of having overall oversight over the NRA.
(Continued on the following page.)

| 1 | MS. CONNELL: And at some point they have to be |
| :--- | :---: |
| 2 | responsible if for years and years and years the charitable |
| 3 | assets of that corporation are being misused and the Bylaws |
| 4 | and policies set by the board are being ignored, violated |
| 5 | evaded or overridden with the help of a small group of |
| 6 | entrenched board members and like leadership; and that's |
| 7 | exactly the type of reason the statute was enacted. It was |
| 8 | enacted to give broad protections to charitable |
| 9 | organizations. |
| 10 | THE COURT: All right -- |
| 11 | MR. CORRELL: Your Honor, if I may just very |
| 12 | briefly. The core holding of Grasso was the attorney |
| 13 | general does not have the authority to rewrite a statute. |
| 14 | I think the quote was the right to enforce a |
| 15 | statute does not entail the right to amend the statute. |
| 16 | And what is happening here is the AG is trying to |
| 17 | amend the EPTL to drop the word hold and administer property |
| 18 | out and include control. And it is the same kind of |
| 19 | expansion of the exposure of people who serve often as |
| 20 | volunteers for these organizations to give the attorney |
| 21 | general more power to intrude more deeply into the private |
| 22 | affairs of private citizens, and the Court has to hold the |
| 23 | line. |
| 24 | THE COURT: All right, here's -- hang on. Here's |
| 25 | my plan for this one. |

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Look, I am skeptical. I do understand that making a -- I wouldn't consider a wrath decision, but a decision based on an hour oral argument and no papers is on an area that, you know, may have broader implications. It's maybe something that I should think through.

So, I'll let the parties brief it and defer ruling on it until I see that briefing. It is going to have to be fairly quick, but I do want you to touch each of the points that we've talked about.

I am now deferring until after trial all the remaining arguments, unless there's something on the whistleblower list that's very, very specific.

MS. ROGERS: Your Honor, so the NRA filed during lunch a directed verdict motion, and we appended a chart of all the whistleblowers they identify and explained discretely why there's no evidence on each. For a lot of them, there's literally no evidence in the record. For a couple of others there are brief references; but we don't think they satisfy the whistleblower elements.

This is a lurid and offensive claim that we retaliated against whistleblowers; and so we have short time to present our defense case, it would be nice to know which ones are totally out of the case.

THE COURT: Well, if they have not mentioned some of the people on that list, I would think that they are

1 precluded from seeking to add them to whatever goes to the 2 jury. I haven't kept track of the two lists, whatever one 3 they provided you and what they have been doing.

Ms. Connell, I don't know if you've had a chance to look at their motion. Are there any that you would just withdraw on the ground that you didn't get to them?

MS. CONNELL: Yes, your Honor. I haven't looked at whatever was filed over lunch, I don't think. I don't know what time this came in; but I agree, we had to as I disclosed to defendants and the Court just in the interest of time, we couldn't introduce evidence of every related party, every conflict of interest, every whistleblower transaction.

Just going through, Emily Cummins who's number two, we have not introduced any evidence to her. As to her, so we will not be raising that.

I think I would want to -- we're just going to -actually, your Honor, if I could just reread them and get back to them later this afternoon. I don't want to make a snap call.

THE COURT: I think that's right, I'd like to see a response maybe to that motion. I saw part of it was about vagueness.

Again, the proper approach is not to just deny things; but just to defer rulings until after trial so you

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don't have to address in your briefing the vagueness point. That's going to be a posttrial thing anyway.

And the other arguments that the defendants raise and I'm not wiping them away as being insignificant; but they're not the ones that I'm thinking of taking the more unusual step of just terminating.

So, I would focus the briefing on the EPTL claims and any whistleblower claims as to which there may be a continuing dispute between you and the NRA.

And I'll have to think about when how quickly that gets briefed because it is getting late early, and I'd be inclined to have whatever opposition by the end of the week, especially since it is very narrowly tailored pretty much to the EPTL point that we've already been talking about and whatever institutional concerns you have about a broad ruling with respect to who's a trustee or not.

Again, I wouldn't necessarily have to make a ruling that no officers or directors are trustees. I was listening very carefully to the actual evidence that came in in this actual case to see if I heard anything that sounded like it came within the definition of trustee.

So, I wouldn't be making a broad ruling that under no circumstance can an officer or director of a not-for-profit corporation be a trustee, just I didn't -- I did not hear evidence as to these three that led me to think


| B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3250 | B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3252 |
| :---: | :---: |
| 1 of the way, and then we'll talk. | 1 newspapers and others. |
| 2 COURT OFFICER: All rise, jury entering. | 2 THE COURT: Well, we'd like to consider ourselves |
| 3 (Whereupon, at this time the jury then entered the | 3 the first capital of the United States. We're not the |
| 4 courtro | 4 current capital, so we're not quite here in DC right now, |
| 5 THE COURT: Okay, please have a seat. | 5 but with that, you can go ahead. |
| 6 We're now shifting to the defense portion of the | 6 MS. EISENBERG: Thank you, your Honor. Thank you, |
| 7 | 7 Congressman. |
| 8 And so I'll ask the defendants, who is your first | 8 Q Did there come a time when you ran for president of the |
| 9 witness? | 9 United States? |
| 10 MS. ROGERS: Thank you, your Honor. The NRA calls | 10 A I did. I was the libertarian part of nominee for |
| 11 Congressman Bob Barr | 11 president in 2008, obviously, unsuccessful, counsel. |
| 12 THE COURT: Former Congressman. | 12 Q Did there come a time when you worked with the ACLU? |
| 13 MS. ROGERS: Yes | 13 A I did. After leaving the Congress in early 2003, I did |
| 14 THE COURT: Good afternoon | 14 work on privacy issues and surveillance issues for both the ACLU |
| 15 | 15 and the American Conservative Union or ACU at the same time. I |
| 16 called as a witness in behalf of the Defense, and after | 16 was not employee of the ACLU, but I was a consultant for them on |
| 17 having been first duly sworn by the Clerk of the Court, | 17 privacy issues. |
| 18 took the witness stand and testified as follows: | 18 Q Did there come a time when you became involved with the |
| 19 THE CLERK: State your name | 19 NRA? |
| 20 THE WITNESS: Bob Bar | 20 A Yes |
| 21 THE CLERK: Spell your last name | 21 Q Please tell us about that? |
| 22 THE WITNESS: B-A-R-R | 22 A I was elected to the board of the National Rifle |
| 23 THE CLERK: Thank you. You may be seated. | 23 Association of America in 1997. I served on the board ever |
| 24 THE COURT: Ms. Eisenberg, I didn't even see you | 24 since then, being elected every three years -- being reelected |
| 25 come in. | 25 every three years since then. |
| B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3251 | B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3253 |
| 1 MS. EISENBERG: Good afternoon, your Honor. | $1 \quad \mathrm{Q}$ What position do you currently hold on the board? |
| 2 MS. EISENBERG: Good afternoon, ladies and | 2 A In addition to being a board member, I currently serve |
| 3 gentlemen of the jury. Can you hear me? | 3 as the first vice president of the NRA. |
| 4 DIRECT-EXAMINATION | $4 \quad \mathrm{Q}$ How did you become the first vice president of the NRA? |
| 5 BY MS. EISENBERG: | 5 A I was nominated for that position and elected to that |
| 6 Q Good afternoon, Congressman Barr. | 6 position by the NRA board of directors in I think it was May of |
| 7 A Good afternoon, ma'am | 7 last year, 2023. |
| 8 Q Can you please tell us a little bit about your | 8 Q Who serves as the NRA's president and second vice |
| 9 background? | 9 president currently? |
| 10 A I live in Atlanta, Georgia. I have lived in Atlanta, | 10 A The current president of the NRA is Charles Cotton. |
| 11 Georgia, since the late 1970s. I moved to Atlanta after working | 11 The current second vice president is David Coy |
| 12 up here in Virginia, the District of Columbia for a number of | 12 Q I apologize, I just want to make sure we have water for |
| 13 years. Worked for the CIA, went to law school and grad school | 13 you. |
| 14 here in Washington DC, and then moved down to Georgia in the | 14 A I have some right here. |
| 15 late 1970s to practice law. I've practiced law off and on ever | 15 Q You're all set, okay. Good, thank you. |
| 16 since then, including currently | 16 Coming back to your board service, in your capacity as |
| 17 I was appointed by former President Reagan to serve as | 17 a board member or first vice president, are you compensated for |
| 18 the United States Attorney for the Northern District of Georgia | 18 your time? |
| 19 which is headquartered in Atlanta. In 1986, I was honored to | 19 A No. I've never been compensated by the NRA either as a |
| 20 serve in that capacity for approximately four years. Went back | 20 board member or as the first vice president. |
| 21 to the practice of law. Was elected to the United States | 21 Q And is it fair to say that the NRA's board has a number |
| 22 Congress, the House of Representatives from the 7th District of | 22 of standing committees? |
| 23 Georgia in 1994, served there until early 2003 after which time | 23 A It does. |
| 24 I went back to the private practice of law and have engaged in | 24 Q Have you served on a committee? |
| 25 other activities such as writing articles for various electronic | 25 A I have served on various committees. I'm a long-time |

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m in legislation, and on the international affairs subcommittee; and currently as the first vice president, I'm a member of all 4 standing committees.
5 Q Let's talk a little bit about the international affairs subcommittee of the legislative affairs committee. Can you he please tell us a little bit about its purpose?
8 A Certainly. Although, the primary focus and main activities of the National Rifle Association are domestic oriented; that is, with our 2 nd Amendment rights here in the United States, since the year 2001 the United Nations has become involved in a number of ways on firearms issues. And insofar as those policies can impact our rights here in this country, our National Rifle Association international affairs subcommittee follows those issues very importantly so that we're aware of any problems that might crop up.

Q Since becoming first vice president, have you had occasion to attend meetings of the NRA's Audit Committee?

A I have.
Q And while doing that, have you formed any impressions about the committee's work?

A I have.
Q What are they?
A As a regular board member for many years, I was not intimately aware of or familiar with the work of the Audit
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Committee; but, certainly, as first vice president now and having attended the various Audit Committee meetings since becoming first vice president, I've been very impressed with the thoroughness, the professionalism, and ethics that are displayed by the Audit Committee in carrying out its very important responsibilities.

## Q Who is Robert Mensinger?

A Robert or Bob Mensinger currently is the managing director for compliance for the National Rifle Association.

Q And were you involved in any way in bringing him on board?

A I was.
MR. THOMPSON: Objection, your Honor, relevance. THE COURT: Overruled.
Q You may answer.
A Yes, I am and I was.
Q What was the nature of your involvement?
A I had the opportunity when we were looking at Mr. Mensinger to come on as our managing director of compliance to interview him in person, to review thoroughly his background and CV and was very impressed with the talents that he brought to the possible position as compliance with the NRA.
$Q$ Is the NRA in the process of potentially amending its Bylaws to create a new officer position?

A Yes, they are.
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## MR. THOMPSON: Objection, your Honor. THE COURT: Sustained.

Q Did there come a time when the Audit Committee had a meeting with Wayne LaPierre pertaining to certain repayments that he had made to the NRA?

A Yes.
Q Did you attend that meeting?
A I did.
Q Please tell us about it?
A I don't remember the exact date of the committee.
THE COURT: Hold on.
MR. THOMPSON: Hearsay and no discovery into this issue, your Honor. Need a foundational question as to whether this meeting occurred, your Honor.

THE COURT: Are you saying that this was barred from discovery on privilege grounds?

MR. THOMPSON: This occurred in the last -- since November we think or something along those lines. THE COURT: Overruled.
Q Please tell us about that meeting between the Audit Committee and Wayne LaPierre?

A Okay. Again, as first vice president, I am a member of the Audit Committee and have attended all of the meetings since assuming that position. And there was a meeting just a few months ago at which Mr. LaPierre attended and presented to the

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Audit Committee or discussed with the Audit Committee repayment of number of expenses that had been paid to him, not intended to be paid to him by the NRA.

Q Did the NRA or anyone at the NRA conduct any type of quality control with regard to his repayments?

MR. THOMPSON: Objection, same objection. No discovery into this issue, your Honor, and hearsay. THE COURT: Overruled.
A Yes.
Q What is your understanding of that?
A At that meeting which Mr. LaPierre made his presentation, our treasurer, CFO Ms. Sonya Rowling was present and stated that she had reviewed the materials presented by Mr. LaPierre and agreed that they -- that they appeared to be what he presented them as comprehensive.

MR. THOMPSON: Your Honor, just move to strike on hearsay.

THE COURT: Let me -- have you requested -- you know about this meeting. Have you requested information and not been provided it?

MR. THOMPSON: This was the subject of our motions in limine, your Honor, in lack of discovery in 2023.

THE COURT: My question was did you ask for information and not received it?

MR. THOMPSON: In our motions in limine we asked to

| B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3258 | B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3260 |
| :---: | :---: |
| 1 preclude discussion of this or else discovery | 1 position? |
| 2 MS. ROGERS: Your Honor, the answer to your | 2 MR. THOMPSON: Objection, your Honor. |
| 3 question is they did ask for the information and the motion | 3 THE COURT: Sustained. You can talk about things |
| 4 filed in October 2022 before the Special Master, the Special | 4 that have been done maybe, but not things that might be |
| 5 Master granted the motion and we produced the information as | 5 |
| 6 it was created, including this information. | 6 Q Is it fair to say that there is a specific Bylaws |
| 7 MS. CONNELL: Your Honor, that's not accurat | 7 amendment that's up for consideration by the members at the |
| 8 THE COURT: This meeting happened in 2023? | 8 momen |
| 9 MS. ROGERS: So, they asked in 22 for ongoing | 9 A Yes, there is. |
| 10 productions after close of discovery, so newly created | 10 Q And according to that proposed amendment, to whom would |
| 11 documents. | 11 the chief compliance officer report? |
| 12 THE COURT: Let me cut to the chase. | 12 A Chief compliance officer if approved by the membership |
| 13 Before you get further into this, were there | 13 at our next meeting would report to the board of directors. |
| 14 minutes or documents or whatever created around this whole | 14 Q And would the executive vice president have the power |
| 15 process that you're getting into now? | 15 to hire, fire or suspend the chief compliance officer? |
| 16 MS. EISENBERG: I believe so. I'm not one hundred | 16 A No. |
| 17 percent sure, your Honor. | 17 Q Is that important? |
| 18 THE COURT: Were they produced to the other side | 18 A It is important to maintain the objectivity of the |
| 19 the ordinary course given what I just heard was a continuing | 19 chief compliance office |
| 20 obligation? | 20 Q Let's talk about the Special Litigation Committee. Is |
| 21 MS. EISENBERG: I'm not one hundred percent sure, | 21 that a committee on which you have served, as well? |
| 22 your Honor, that that has happened; but that was my last | 22 A It is. |
| 23 question about the topic. | 23 Q When did you join that committee? |
| 24 MS. ROGERS: And there were documents produced | 24 A I joined the Special Litigation Committee last year |
| 25 regarding Ms. Rowling's review of these expenses. Plaintiff | 25 shortly after being elected to the post of first vice president. |
| B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3259 | B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3261 |
| ved to exclude the | 1 Q What is the purpose of the Special Litigation |
| 2 THE COURT: Well, I saw that, but this is something | 2 Committee? |
| 3 else. So, if there are documents about these meetings that | 3 A The Special Litigation Committee was formed in 2020 for |
| 4 were not produced, then I'm afraid I have to exclude any | 4 the expressed purpose of handling and being the go-between |
| 5 testimony about the meeting, itself, because that's not the | 5 so-to-speak to handle litigation, including the litigation |
| 6 way this process works | 6 currently before this Court and related litigation. |
| 7 So, you can disregard anything about the meeting, | 7 The primary reason for that was so that individuals |
| 8 itself, because the other side hasn't had a chance to do - | 8 involved in the litigation, Mr. LaPierre and Mr. Frazer, who |
| 9 get any evidence about the meeting, but the other documents | 9 would normally be involved in the NRA's handling corporate |
| 10 that I heard about before, those had been produced and you | 10 handling of that litigation would not be involved. |
| 11 can get into those with the other witnesses. | 11 Q What does the Special Litigation Committee do in order |
| 12 MS. CONNELL: Your Honor, we'd note our exceptio | 12 to carry out its mission? |
| 13 to that rulin | 13 A The Special Litigation Committee has regular, that is, |
| 14 THE COURT: Which | 14 weekly telephone conferences with outside counsel to be made |
| 15 MS. CONNELL: The ruling about the other document | 15 aware of the progress and status of the litigation, any matters |
| 16 that we received in December 2023. | 16 that might need to be decided by the NRA which would be made in |
| 17 THE COURT: I'm going to make those decisions when | 17 this litigation, by the Special Litigation Committee would be |
| 18 they come up. So, I'm not ruling in advance on any | 18 handled and the Special Litigation Committee also reports as |
| 19 admissibility of documents before I have a witness in front | 19 necessary and as appropriate to the board of directors. |
| 20 of me. But as to this one, I don't think you had fair | 20 Q How many members does the SLC have? |
| 21 notice of questions about that meeting, so. | 21 A Currently, there are three members, two in addition to |
| 22 MS. EISENBERG: Thank you, your Honor | 22 myself that serve on the SLC. |
| 23 Q Congressman Barr, if the NRA's Bylaws are amended to | 23 Q Does the SLC have any responsibility with regard to the |
| 24 create the chief compliance officer position, what is your | 24 review of outside counsel's invoices? |
| 25 understanding about the reporting structure with regard to that | 25 A Yes. |

Have you served on that committee, as well?
A Yes.
Q Since when?
A I think probably since 2022, but I don't recall exactly.
Q And does it from time to time receive updates from outside litigation counsel with regard to various litigation in which the NRA is involved?
A Yes.
Q Does that include the matters within the purview of the Special Litigation Committee, as well?

A It does. Not in the same way that those matters are brought to the Special Litigation Committee, but for informational purposes, yes.

Q What is the frequency with which the Legal Affairs committee meets?

A As necessary and as appropriate.

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Q Let's talk a little bit about the NRA's defense in the various litigations in which it's involved. Is it fair to say that in your capacity as a member of the SLC you have been involved in overseeing ousside counsels work in connection with important litigation matters?
A Yes.
(Continued on next page)

Q And in connection with such oversight, have you formed an opinion as to the value of their services?

MR. THOMPSON: Objection.
THE COURT: Overruled.
Q What is your opinion?
A My opinion as an attorney myself, certainly that those services are extensive, appropriate, professional and absolutely essential to meet the challenges, the existential challenges that the NRA faces as a result of litigation within the responsibility of the SLC.
Q Congressman Barr, are you aware of the NYAG allegation that the NRA has spent too much on legal fees?
A I'm aware of such allegations, yes.
Q What is your reaction to such allegations?
A Those allegations are wrong.
Q Why is that?
A Because facing the threats that the NRA is facing in the litigation, it would be an irresponsible abrogation of our duty to our responsibility to our members not to have the most competent and highly-respected lawyers handling our cases.
Q How would you describe the threat that the NRA has faced since 2018 ?
A Those threats are substantial existential, if you will, both by the way of pronouncements by the NYAG as well as through the litigation itself.

Q You said existential. What did you mean by that?
A What I mean by that is threat to dissolve and dismantle the association itself.
Q Whose threats?
A The NYAG.
Q Is it your understanding that the NYAG tried to dissolve the NRA?

MR. THOMPSON: Objection. Leading.
THE COURT: Sustained.
Q Could you tell -- it's suggested that the NRA's Board is too big.

What is your opinion on that issue? Do you think it is too big?
A No, I do not.
Q Why is that?
A The NRA represents millions of citizens including more than 4 million dues-paying members on Second Amendment issues ranging from law enforcement to women's shooting to youth shooting to law enforcement to black powder. And having a large board as we do have with 76 members, it provides an opportunity for all of those different interests to be heard and handled by the Board of Directors.

MS. EISENBERG: I'll pass the witness. Thank you, Congressman.

THE COURT: I'm not sure which order we are doing

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this in.
MR. FLEMING: I was going to ask that.
THE COURT: I think I will start with the
Plaintiff, and then if the other Defendants want to ask
questions, we can do that.
CROSS-EXAMINATION
BY MR. THOMPSON:
Q Good afternoon, Congressman Barr.
A Good afternoon, Counsel.
Q My name is Stephen Thompson, and I represent the Plaintiff, the People of the State of New York. Just -- I promise. I mean this. A few questions.

So I believe you testified that in your capacity as the First Vice-President, you're a member of all standing committees by default; is that correct?
A That is correct.
Q Prior to becoming the First Vice-President, you were never a member of the Audit Committee; correct?

A That is correct.
Q And you were never a member of the Finance Committee; is that correct?

A That is correct also.
Q And I believe you testified that you have attended some Audit Committee meetings; is that correct?

A It is.

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Q And have you attended any Audit Committee meetings prior to becoming the First Vice-President in 2023 ?

A Yes. I occasionally sit it on them, but not formally.
Q Okay. And you never sat in on the meetings of the
Audit Committee while they sat in executive session; is that correct?

A No, not until serving as a member as the First Vice-President.

Q Okay; and then you testified about Mr. Mensinger being hired by the NRA; is that right?

A Yes, sir.
Q That occurred in 2023 ; is that correct?
A Yes.
Q And prior to Mr. Mensinger hiring, the NRA did not have
a dedicated compliance officer; is that correct?
A That is correct.
Q And so that occurred -- that hiring occurred three years after this litigation was commenced; is that correct?

A It took place last year.
Q Okay. And Congressman, you voted to ratify the NRA's filing of bankruptcy in 2021; is that correct?

MS. EISENBERG: Your Honor objection. Outside the scope.

THE COURT: Sustained.
MR. THOMPSON: No further questions.

MR. CORRELL: No cross. MR. WERBNER: No questions, your Honor. DIRECT EXAMINATION BY MR. FLEMING:

Q Good afternoon.
A Good afternoon, sir.
Q My name is William Fleming, and I represent Mr. Frazer,
so I just have a couple of questions for you.
Do you know Mr. Frazer?
A Yes.
Q How long have you known him for?
A Many years. I couldn't tell you exactly, but many years.
Q Do you have -- are you able to tell us what your general experience has been with Mr. Frazer?

A I am --
MR. THOMPSON: Scope, your Honor.
THE COURT: I'm trying to figure this out.
When you all call witnesses, are you all calling the witness?

MR. FLEMING: Your Honor, at the beginning of the case you may not remember I had talked about --

THE COURT: I'm not that old.
MR. FLEMING: Well, I too was trying to figure out how it would work. So rather than calling witnesses for a

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second or third or even fourth time, I thought would be best to start with --

THE COURT: Well, in this case I'm going to change the order I do things in because I limited the Attorney General to what was raised by the NRA.

If each you are going to want to ask direct testimony of this witness, then you all should go first and then the Attorney General should go. So in other words, this is not cross-examination. This is direct examination.

MR. FLEMING: Yes.
MR. FARBER: To answer your question, I don't agree that the notion that the Defendants -- if the NRA calls a witness, we are calling him as a group.

THE COURT: You don't have to, but you need to tell me if you are intend to offer this witness affirmatively so that you don't have to be bound by the scope of the first direct.

MR. FARBER: Understood.
MR. CORRELL: I would like to take that opportunity. Just a couple of questions on direct that aren't limited to the scope.

THE COURT: Careful what you suggest for me; right.
Okay. Well, look, more than one of you I guess can call a witness. So go ahead. But that just means the AG is going to have another shot at it.

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Q I think I asked you about your general experience with Mr. Frazer.

Were you able to describe what that is or what that has been?
A Yes. Over the many years that I have known Mr. Frazer
both before he assumed his current position with the NRA and currently, I have very high regard for him. He has always behaved professionally, responsive and ethically in my dealings with him.
Q Well, you sort of beat me to the punch with the questioning because I recall your testimony where you talked about I believe it's the ethical nature of the Audit Committee.

Based on your observations of Mr. Frazer, have you formed any view about the ethical nature of his conduct?
A Yes.
Q And what is that?
A That in all of my dealings with him, my observations, he is a highly ethical character.

MR. FLEMING: Thank you very much.
DIRECT EXAMINATION
BY MR. CORRELL:
Q Good afternoon, Congressman Barr. I'm Kent Correll. I represent Wayne LaPierre.

A Yes, sir.
Q I want to ask basically the same questions about Mr.

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## LaPierre.

Have you had an opportunity to observe him over your time on the Board?
A Yes, I have.
Q And have you formed any opinion as to his competence?
A Yes, I have.
Q What is that opinion?
A This is a man in my view who has given a lifetime to the National Rifle Association, its members and the United States of America in a highly competent and energetic, selfless way.

Q Have you had an opportunity to assess whether he's discharged the duties of his position in good faith?
A I believe he has.
Q And have you been in a position to observe whether he's discharged the duties of his position with care?

MR. THOMPSON: Leading, your Honor. THE COURT: Overruled.
A Yes; but as all of us, he's made mistakes.
Q And has he owned up to those mistakes and squared things up?
A Yes, he has.
MR. CORRELL: No further questions, your Honor.
THE COURT: Okay. Anything -- I don't know which
way to turn now.

Anything further? I think I have to go back and see if there's any further cross before I go back to the redirect.

MR. THOMPSON: No further cross, your Honor. THE COURT: Okay.
MS. EISENBERG: May I briefly, your Honor. THE COURT: Yes.

## REDIRECT EXAMINATION

## BY MS. EISENBERG:

Q Congressman Barr, who at the NRA performed the role that Mr. Mensinger will be performing going forward?
A I'm sorry.
Q Historically, who at the NRA was in charge of some of the things that Mr. Mensinger was recently hired to do?
A I would say primarily the Audit Committee.
Q And in what way?
A Well, the job of the Audit Committee is to basically oversee any of the outside audits, certainly internal controls, conflicts of interest and so forth. It's an extremely important function.
Q And what, if any, responsibilities does the treasurer have under internal policies to conduct periodic compliance reviews?

A A very important one. The treasurer Ms. Rowling works closely with both the Audit Committee and the Finance Committee

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to insure that they have all the information they need and that her input is made and accounted for and considered.

MS. EISENBERG: Thank you. I have no further questions.

MR. THOMPSON: Nothing further, your Honor.
THE COURT: All right. That was one of the more complicated set of questioning for a very short witness.

Thank you, sir. You are I think free to step down.
THE WITNESS: Thank you, your Honor.
THE COURT: Thank you.
Do we have time to begin our next witness.
MS. ROGERS: The NRA's next witness is an expert Ryan Sullivan, and Plaintiff filed a motion today regarding his testimony that if your Honor would like to hear argument on, it should probably be done outside the presence of the jury before he testifies.

THE COURT: I am -- I think we should proceed with the testimony, and I'll deal with objections as they come.

MS. ROGERS: Understood. The NRA calls Ryan --
THE COURT: Hang on.
MS. CONNELL: We had been told Tom King was going to go second and had prepared for that, and that's why we raised the issue.

MS. ROGERS: Mr. Sullivan has a travel conflict, so we would like to call him next and we provided his

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demonstratives yesterday.
MS. CONNELL: Yesterday evening.
THE COURT: So you had Tom King coming second.
MS. CONNELL: We had Tom King coming second.
Last night we got Mr. King's documents and then
later yesterday evening we got his --
THE COURT: Let me ask you this way.
Is the person who is going to be handling the questioning of this next witness here?

MS. ROGERS: Yes. Well, I am here.
THE COURT: I mean, for -- I figured you were ready.

MR. THOMPSON: Yes, your Honor, we do have the attorney handling Mr. Sullivan.

MS. CONNELL: We do, but we had asked for some voir dire on the opinions he was going to offer.

If you recall, you had ruled some of them not fair game here.

MS. ROGERS: The NRA does not intend to elicit opinions that would be inappropriate for this phase of the trial.

THE COURT: Yeah, I read the letter. I viewed the letter you sent as kind of assuming certain things were going to happen, and I think I am -- rather than taking a break and talking through all the things that could happen,

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I will just handle objections as they come up. I did -- you know, I have a -- I certainly didn't exclude this testimony, and my assumption is that we would deal with objections on a one-by-one basis so I'd say we get started.

MS. ROGERS: The NRA calls Dr. Ryan Sullivan.
THE COURT: We are probably not going to get too far into the substance anyway.

Good afternoon.
THE WITNESS: Thank you.
R Y A N S ULLIV A N, a witness called on behalf of the Defendant, after having been first duly sworn, took the witness stand and testified as follows:

THE CLERK: State your name.
THE WITNESS: Ryan Michael Sullivan,
S-U-L-L-I-V-A-N.
THE CLERK: Thank you. You may be seated.

## DIRECT EXAMINATION

BY MS. ROGERS:
Q Good afternoon, Dr. Sullivan.
Please introduce yourself to the jury.
A My name is Ryan Sullivan. I serve as a managing director of an advisory firm known as Secretariat, and I work as an economist. This means that I use data and information to evaluate business performance. And in particular, economics is the science of decision making when there are scare resources,

1 meaning resources are limited. Economics has the tools that are used to evaluate and make decisions.

Q Thank you, Dr. Sullivan.
Have you prepared some demonstratives for the jury today?

A Yes, I have. I prepared these demonstratives, and the title slide is up on the screen right now.
$Q$ All right. Let's proceed.
THE COURT: As I have said for other expert witnesses, these demonstratives are not themselves evidence but are just designed to organize and display for your benefit, but the testimony is what the witness says. Q Dr. Sullivan, can you tell the jury a bit about your professional credentials and background.

A Sure. I -- academically, I earned a bachelors degree, a master degree and I Ph.D. They are all in economics and all from the University of California in San Diego.

Subsequently, I worked with the University of California as a member of what is known as the economics leadership counsel. And in that role, I have advised the faculty at the Department of Economics on the practice of economics and in private industry.

I also -- well, I have been working as an economist for over 30 years now. I have had the good fortune of publishing my work in what is considered top-tier peer review journals. This

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means that the work that I have performed has been evaluated by other economists in the field to determine whether or not the work is credible and appropriate but also a sufficient advance in the science of economics such that it should be published in journals such as the Journal of Finance.
Q You testified I think that economics is the science of making decisions under scarcity and constraints; right?

A Yes.
Q What kind of constraints have you considered in your professional work?

A Oh, goodness. So many different kinds. I mean, at its most basic level, we are all facing constraints all the time.

Often times, those are in terms of time and money terms of constraints, in terms of ability of what can be done. So so many different constraints that are evaluated.

Q Doctor, and can you describe the extent to which you have expertise and experience relating to decision-making under regulatory constraints?

A Yes. I have, and this starts to get into some more slides that I have put together, but I have worked with a number of different organizations over the years, and some of those have been in private industry and corporations and businesses. Some have been non-profits. Some have been regulated entities such as in telecommunications and energy and certain other non-profit type laws as well.
$1 \quad$ Q Can you tell the jury a little bit about the similarities and differences that distinguish for profit from non-profit clients you have worked for and advised.

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little bit more tangible.
On the left-hand side towards the top left you will see some of the life sciences and biologics companies that I've worked for. And Memorial Sloan Kettering, for example, is a non-profit organization, and thus, their objectives is mission driven versus profit driven, so that's a unique objective. But the way to get there is based upon similar types of paths. Meaning, there are still finance roles. There are still revenue objectives. There is still an acknowledgment of cost and evaluating what those costs are. There's an issue of controls. So albeit, that the objectives are different, the means of trying to attain an objective such as a mission versus profit which may also have mission components to it, there is similarity in that.

I have found that there are so many similarities which has allowed me to do a lot of work that I do across various types of industries. That's why I have had the opportunity to work for consumer products companies such as Skechers, many high-technology companies such as Microsoft and Apple.

I have worked with universities such as Columbia, MIT and Harvard among many others. Actually, a lot of my work is -the fact of it and the actual work is maintained confidential, but these are some of the clients that I am able to disclose publically.
Q Let's go to the next slide.

Dr. Sullivan, can you tell the jury about the kinds of business analytic advice you give and talk about some samples of projects you've worked on.

A Sure. So I here too have had good fortune of working on some really interesting projects. This is just a small sampling of ones that I've thoroughly enjoyed.

I served as the lead economist negotiating the collective bargaining agreement between the NBA, the National Basketball Association and the players' association. This was at a time when there was a large influx of revenue to the NBA because in large part people who were starting to time shift the TV that they were watching as DVR and Tivos became very popular. So around 2016, 2017 there was this big shift which caused a lot of the sports-related TV to become more valuable, and that created more opportunity, but then also a lot of constraints associated with it.

A couple of others I can mention briefly. Perhaps this is not the best forum to talk about the Boston Red Sox; however --

THE COURT: I was going to say will you want a curative instruction on that.

MS. ROGERS: We hope the testimony would be more probative than prejudicial.

THE COURT: Your choice.
A I got to work with the Red Sox to help them on pricing

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of their tickets to be able to advance those, the pricing algorithms they use so that they could get more people into the seats, they could increase fan engagement. So there again, there may have been a profit objective underlying it, but there was much more of a mission based objective of trying to get greater fan engagement and the constraints associated with it in terms of the number of seats that they have and which games are being played at various times.

And then a little bit different was working with the real life Joy Mangano who sold the Miracle Mop on Home Shopping Network, and some of you may have seen the movie Joy that came out in 2015 , and we were using that movie of her which was effectively a biography to be able to explain to them how to launch into brick and mortar. So into Target and Bed, Bath and Beyond and into Macy's and making that transition from purely Home Shopping Network on-line to brick and mortar, and we handled the logistics launch strategy with it.

MS. ROGERS: I think we are coming up to a transition from background to merits, so this might be a good time to break.

THE COURT: Let's reconvene at 9:30.
THE COURT OFFICER: All rise. Jury exiting.
(Whereupon, at this time the jury exits
the courtroom.)
THE COURT: Just for the witness, during the --
while we are on break, you are effectively still on the stand, so you shouldn't discuss the substance of your testimony with anyone including counsel.

THE WITNESS: Understood.
THE COURT: See you all at 9:30.
MS. CONNELL: Can we just know who is testifying tomorrow and what order?

THE COURT: We have a few minutes. You can step down and I'd also -- if there are going to be any issues on demonstratives, I'd like to get a copy and understand before they come at me without notice.

MS. ROGERS: Of course, your Honor.
THE COURT: So what's the run of play tomorrow?
MS. ROGERS: So tomorrow we are going to finish with Mr. Sullivan and then call Tom King and then Sonya Rowling if we have time.

THE COURT: In that order?
MS. ROGERS: Yes.
THE COURT: Anything else?
MS. CONNELL: No, your Honor. I just want to raise one more time -- I'm sorry.

We just had reference when Congressman Barr was speak about Ms. Rowling kind of blessing the calculation and Mr. LaPierre coming even.

This is stuff that we do not have discovery on.

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1 It's prejudicial to the Plaintiff. It's unfair. We have moved again and again about it. It's stuff that was blocked by privilege earlier on. We will keep making this objection.

THE COURT: Well, one thing while I'm thinking about and the instructions are clear in my mind, my view is that on the repayment front, as one of I think three areas of identifiable burden of proof shifts to the defense. So to both prove -- whether it's setoff -- if the defense is going to raise repayment as a setoff, the burden is on whoever that is to put that evidence in in admissible form. And you know, if we get to that point and they are -- they either object to questions on the ground of privilege or it becomes apparent to me that they are affirmatively raising things that, you know, would require them not to adhere to prior decisions on privilege, we will have a discussion, and you know, they -- they may either lose that argument or use that defense.

MS. CONNELL: But your Honor, respectfully, this has already been done. We have been trying to calculate and --

THE COURT: They have been generally talking about repayments, and that is not going to be sufficient to satisfy any burden. It has to be concrete, specific, and it has to be done in a way that the jury can -- you know, and

1 maybe the defendants aren't planning this, but to the extent
that someone is planning to do that, it's not just one lump sum number because you can't give a credit if the jury were to find -- you know, let's say $\$ 1,000$ is what the damages are. You can't just say, well, we paid $\$ 700$ back because there is no way unless you provide the proof to know whether the 700 applies to the thousand that the jury found as opposed to the other 2,000 the jury didn't find. And so you know, I don't know exactly how the defendants are going to bring this all in, but at the moment, just general statements about repayment is meaningless.
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MS. CONNELL: Your Honor, Mr. LaPierre's counsel asked and got a positive answer from Congressman Barr as to whether he become even or broke even.

THE COURT: All square, I heard that.
MS. CONNELL: All square, and then we had reference to Ms. Rowling's memos from, like, December 4th where she blessed things that we still haven't seen.

THE COURT: I heard both of those things, and I think the defense elicited those, and I am -- look, I don't know the details of the questions that were asked and not answered; but the defense has now put squarely in front of the jury whether -- at least in Mr. LaPierre's case he was quote, all square; and if, if -- well, let me just ask the defendants.

Is it your position that positions taken with respect to privilege are irrelevant to that question?

MS. ROGERS: Yes, your Honor. We've produced -- in connection with one or six or seven motions they filed on this topic, we produced a detailed chart of every spreadsheet, every payment blessed -- in their terms -- by Ms. Rowling and showed where it was produced to them during discovery.

THE COURT: So, that gets to the -- so that tells you which payments were made and as to which, for example, expenses they relate?

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So, we actually gave them a supplemental corporate representative deposition answering what documents were looked at, what sources were used, which items were repaid and the general rationale for it.

I actually don't know. They claimed that all of this has been blocked on privileged and when we briefed this, the NRA has put in excerpts of deposition pages where these questions are answered and privilege is not asserted; but the general line that we tried to draw in discovery is they're entitled to know what the NRA did. They're entitled to know what the NRA's fiduciaries and considered; but just because the NRA received a legal advice about repayments doesn't make the repayments privileged. It just means the legal advice stays privileged and the cost of that for us is that we can't say we repaid the ones the lawyer told us had to be repaid. We're going to say we repaid the ones that were to personal destinations. For example, where we demanded repayment of those.

THE COURT: Look, it seems to me my view and this is why this has not -- I've not viewed this as a large -- a large issue, frankly, that the " Y " of it is not that important.

The jury is going to decide whether a trip -- I mean hypothetically -- trips A, B and C were some statutory violation that somebody should pay the NRA back for; and
they may decide that A and B , yes; C , no. So, in this setting knowing whether $A$ and $B$ were paid back and $C$ not or some combination, those are the facts that you're saying at least at this point that have not been blocked.

So, I don't know that the plaintiff is harmed by not knowing the rationale behind all of the decisions. I don't know that that's relevant.

MS. CONNELL: Your Honor, I'm sorry --
MR. THOMPSON: Just to try and make this a little more concrete briefly, your Honor. So, one of the charts in question that we're talking about is a chart of flights that is Mr. LaPierre and members of his family took to various places. That chart was produced to us we think by accident because it was work products during the bankruptcy, and that chart, we questioned the corporate representative about it several times over the course of discovery. He could not identify whether that was -- what the chart was, where it came from and the metadata shows it was created by an employee of the Brewer firm.

And then that chart is now attached to a memorandum that Ms. Rowling prepared in late November, early December of last year and then produced to us in mid December where she says, I looked at this and everything is square.

THE COURT: Well, what does "everything is square" mean?

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MR. THOMPSON: It means as far as she's aware, there are no other flights that are improper, that everything is A-okay.

THE COURT: Her decision or the NRA's decision about what flights should have been paid back is really not something that the -- the jury is going to make that decision.

Now, to the extent that Ms. Rowling's own determination of what square means, have you -- is it your view that you can't question her about the process that led to just her determining that it was, quote, square?

MR. THOMPSON: That's right, your Honor.
THE COURT: Did you try?
MR. THOMPSON: we didn't have the memoranda until mid December of last year.

MS. CONNELL: 2023, your Honor.
MR. THOMPSON: 2023. She was deposed in I think July of 2022.

THE COURT: So you haven't re-deposed her since all this came out?

MR. THOMPSON: That's correct. It was part of our motion that we either wanted this testimony precluded or the opportunity for additional discovery.

MS. ROGERS: We offered an opportunity for additional discovery, including a deposition of Ms. Rowling
which the New York Attorney General rejected.
MR. THOMPSON: We decided that it was not an economic use of time with the two weeks prior to trial to take another fact deposition raised on recently created evidence.

THE COURT: Just so it is clear, repayment or something like repayment which would be relevant to setoff under any circumstances is not something that would be blocked because it happened just before trial. If it's been repaid, that's a relevant fact regardless of when it happened, okay.

Her testimony that it is everything that needs to happen; again, I don't recall preventing a deposition of her, but I think can you cross-examine that.

I would be, I guess, surprised if the chief financial officer says that she can't answer a question about why she concluded something because it was based on what the lawyers told her.

MS. CONNELL: Your Honor, I'm just going to say that to conduct, essentially, discovery deposition on the stand here in tight times is simply unfair. We asked multiple, multiple NRA witnesses how this was calculated and it's not the amount. Mr. LaPierre is free to say or anyone is free to say I paid this amount to the NRA.

It's the characterization of a complete repayment.

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When you make a representation that you investigated this and these are all amounts owed, we should be able to challenge it.

THE COURT: The completeness of it is an objective -- at some level an objective fact. You know all the things that you're challenging, right, as violations of something. And you also have a list of everything that's been paid back. So, your version of whether it is complete or not is up to you.

MS. CONNELL: Well, not really, your Honor, because they're standing up saying, yes, we looked at this. We blessed it. We think this is good, but we don't know everything they looked at to consider that.

THE COURT: so, when you have Ms. Rowling, you say, well, your list doesn't include this transaction; why not?

MS. CONNELL: Your Honor, we're going to have to then do, essentially, a long deposition of her on the stand at trial and that's not fair.

And, remember, there were the documents withheld from us is related to the course correction is privileged. These are things that we've been raising for some time. So offering appointed deposition of her when they produced memos that she created late November, early December 2023 is really not curing that for us.

THE COURT: Well, I think there was time to take a
subsequent deposition, and I know you were all busy; but that ship has sailed. We need to close for the night.

I continue to view this whole sword and shield thing and opening the door to privilege thing, something that I have to evaluate based on what the defendants argue and what they block and I will continue to be alert to that issue.

Thus far, I haven't seen any examples of situations where they argue something and then block or have blocked you from finding out how to counter it. If I find that, I will act accordingly.

All right, see you tomorrow.
(Whereupon, at this time the trial was adjourned and continued on February 6, 2024.)

|  | 3279:23;3281:1,13; | ACH (10) | 3112:11;3113:10; | 3212:17;3224:20 |
| :---: | :---: | :---: | :---: | :---: |
| \$ | 3291:2 | 3071:2,4,9,10,20,24; | 3132:9;3133:10; | administering (2) |
|  | above (1) | 3072:23;3136:21,23; | 3134:9;3135:1;3137:3; | 3222:8;3241:9 |
| \$1 (1) | 3155:4 | 3137:2 | 3150:11;3218:16; | administration (4) |
| 3155:4 | Abrams (1) | Ackerman (41) | 3226:6,24;3233:21; | 3097:20;3098:1; |
| \$1,000 (1) | 3233:19 | 3073:21;3076:3; | 3234:1;3238:2; | 3214:12;3286:9 |
| 3284:4 | abrogation (1) | 3092:10;3107:8,11,11, | 3244:18;3279:21; | admissibility (1) |
| \$1,159,159 (1) | 3264:18 | 19;3108:7,13,21; | 3286:18;3287:1,5 | 3259:19 |
| 3074:23 | absence (1) | 3109:3;3115:3,7,14,22; | ACU (1) | admissible (3) |
| \$1.2 (1) | $3262: 4$ | $3116: 12 ; 3117: 25$ | $3252: 15$ | $3175: 22 ; 3179: 22$ |
| 3095:20 | absolutely (4) | 3118:16,21;3119:16, | add (6) | 3283:11 |
| \$1.7 (1) | $\begin{aligned} & 3096: 23,24 ; 3215: 6 ; \\ & 3264: 7 \end{aligned}$ | $\begin{aligned} & \text { 22;3120:1,3,6; } \\ & 3130: 25 ; 3170: 1,13 ; \end{aligned}$ | $\begin{aligned} & \text { 3214:18,25;3224:4; } \\ & 3225: 6 ; 3226: 22 ; \end{aligned}$ | $\begin{aligned} & \text { admission (7) } \\ & 3072: 2 ; 3075: 1 \end{aligned}$ |
| \$13 (1) | abstract (1) | 3171:2,4,11,22;3172:1, | 3244:1 | 3084:12;3111:22; |
| 3091:8 | 3186:7 | 4;3194:22;3195:5,8; | added (3) | 3112:22;3176:3; |
| \$14,000 (2) | abuse (3) | 3200:11,13,18; | 3124:10;3132:8; | 3278:13 |
| 3131:11;3132:5 | 3097:5,8,11 | 3205:12,16 | 3158:6 | admissions (1) |
| \$14,303 (1) | academically (1) | Ackerman's (3) | adding (4) | 3219:17 |
| 3132:2 | 3276:15 | 3110:2,11;3119:24 | 3078:18;3125:13; | admit (7) |
| \$170,000 (2) | accept (2) | acknowledge (1) | 3148:25;3149:2 | 3113:24;3114:7,9, |
| 3167:18,20 | 3068:9;3164: | 3068:4 | addition (11) | $\begin{aligned} & \text { 20;3135:22;3182:2 } \\ & 3183: 2 \end{aligned}$ |
| $\begin{gathered} \$ 171,000(1) \\ 3080: 19 \end{gathered}$ | access (1) $3139: 1$ | acknowledges (1) $3068: 4$ | $\begin{aligned} & 3075: 20 ; 3076: 16 ; \\ & 3078: 22 ; 3107: 7 ; \end{aligned}$ | $\begin{gathered} \text { 3183:2 } \\ \text { admitted (34) } \end{gathered}$ |
| \$2,000 (1) | accident (1) | acknowledgment (1) | 3212:14;3214:5,13; | 3066:19;3067:16; |
| 3170:18 | 3288:13 | 3279:9 | 3221:23;3247:3; | 3072:3,6;3075:2,4,16, |
| \$2,674,320 (1) | accompanies (1) | ACLU (3) | 3253:2;3261:21 | 18;3076:12,13,15; |
| 3077:1 | 3118:12 | 3252:12,14,16 | additional (8) | 3082:5,9,11;3084:3,5; |
| \$2,758,189 (1) | accord (1) | acquisition (1) | 3080:24;3150:19,21, | 3089:7;3090:13; |
| 3170:9 | 3192:19 | 3213:8 | 23;3177:12;3214:6; | 3130:10;3134:13; |
| \$2.5 (1) | according (2) | across (4) | 3289:23,25 | 3135:1;3146:4; |
| 3066:21 | 3162:5;3260:10 | 3088:3;3160:9; | address (14) | 3179:20;3183:9,11,12, |
| \$2.6 (1) | accordingly (2) | 3197:4;3279:16 | 3102:8,10;3113:4 | 14,18,20,23;3202:24; |
| 3088:6 | 3231:22;3292:11 | act (7) | 3127:4,6,12;3129:19, | 3223:2;3246:11; |
| \$2.7 (2) | account (4) | 3108:25;3213:23; | 21;3183:15;3215:1,12; | $3247: 4$ |
| 3170:5;3172:9 | 3069:22;3083:6; | 3215:4;3228:6; | 3236:13;3245:1; | admitting (3) |
| \$4.6 (1) | 3090:21;3228:21 | 3238:12;3239:6; | 3248:7 | 3114:5,20;3116:8 |
| 3091:11 | accountable (1) | 3292:11 | addressed (6) | adopt (6) |
| \$42,000 (1) | 3224:15 | acted (2) | 3129:8;3181:1,16, | 3175:13;3214:2,18, |
| 3131:12 | accountant (10) | 3163:22;3169:22 | 21;3182:17;3216:13 | 24;3215:10;3219:11 |
| \$42,915 (1) | 3073:18;3079:8,24 | acting (1) | addresses (1) | adopted (1) |
| 3130:20 | 3090:10;3094:1; | 3238:4 | 3110:6 | 3175:6 |
| \$50,000 (1) | 3118:23;3125:3; | action (12) | addressing (1) | adopting (1) |
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| $\mathbf{3 , 0 0 0}(\mathbf{2})$ |
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| $\mathbf{3 0}(\mathbf{2})$ |
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| $\mathbf{3 5 ( 1 )}$ |
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| 3120:22 |  |
| 686,000 (1) |  |
| 3088:11 |  |
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| 7 (1) | $\begin{aligned} & \text { 990s (9) } \\ & 3066: 25 ; 3067: 1,3 ; \\ & 3068: 4,5 ; 3187: 17,21 ; \\ & 3188: 12,14 \end{aligned}$ |
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