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NYSCEF DOC. NO. 3230

RECEIVED NYSCEF: 04/06/2024

EXHIBIT 1

FILED: NEW YORK COUNTY CLERK 04/06/2024 12:20 AM

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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:

STATE OF NEW YORK
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SARAH B. ROGERS, ESQ.
NOAH PETERS, ESQ.

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THE COURT: One question I just received. The rule against witnesses being in the audience typically doesn't apply to experts. So, my understanding is that there's an expert witness in the audience and in my view, experts are permitted to watch the testimony; in fact, often times it is a good idea.

MS. ROGERS: That's correct, your Honor. We have our expert here.

THE COURT: So, I just wanted to make it clear that that in my view does not violate the normal rule against witnesses.

MS. CONNELL: Your Honor, yes, one question. I'm going to go back to Mr. Hines's discussion of Michael Marcellin. I did pull up from the record where it had come up before.

THE COURT: Well, the documents that were cited in there, are they in evidence?

MS. CONNELL: The underlying document, his contract did not come in; but Mr. LaPierre admitted that he had -- he had known about the payments to Michael Marcellin and he knew that they were \$2.5 million or he said he wasn't aware of that number, but that he knew that there had been payments and that it had been reported to him and it was over a million and he knows now it was inappropriate. And we have the underlying 990s that report it in evidence.

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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THE COURT: I see. So, that's listed in the 990s 1 as excess benefits? 2

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.

can't be shown again. 1

> 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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NRA E. Hines - by Plaintiff - Direct/Ms. Connell Page 3070 1 2 THE COURT: We can do that at a break. I think 3 once we have that and once the State rests, you'll be able 4 to figure the math out exactly of each minute of defense 5 case, what's the ratio of government case, if they want to try to keep track. 6 7 Anyway, we'll figure that out, but I would like to hear the numbers once we have a break. 8 9 COURT OFFICER: All rise, jury entering. (Whereupon, at this time the jury then entered the 10 courtroom.) 11 11 12 THE COURT: Good morning, everyone. Please have a seat. Welcome back, everyone. 13 We're going to continue with the State's expert 14 witness. Ms. Connell, are you ready? 15 MS. CONNELL: I am. 16 THE COURT: The is witness ready and you understand 17 you're still under oath? 18

THE WITNESS: I do, your Honor. 19

20 THE COURT: Please, proceed.

MS. CONNELL: Thank you, your Honor. 21

DIRECT-EXAMINATION

BY MS. CONNELL: (Continuing)

Good morning, Mr. Hines. 24

25 Α Good morning. E. Hines - by Plaintiff - Direct/Ms. Connell

Α Yes. MS. CONNELL: Your Honor, I'd move for admission.

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THE COURT: Okay, it is admitted.

MS. CONNELL: Thank you.

(Whereupon, at this time Plaintiff's Exhibit 5120 5

was admitted and received into evidence.) 6

THE COURT: Bonnie, we're not getting the realtime. (Brief pause)

9 Mr. Hines, continuing --

> MS. CONNELL: Jonathan, I'd like to go to slide 78, if that's possible.

12 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?

15 A Yes.

16 Q And can you give the jury a brief overview of the type 17

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. 24

Q And in regard to the transactions with Ms. Stanford, 25

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did you identify a violation of the NRA's internal controls?

Α Yes.

3 And in regard to those transactions, did you identify

fraud risk indicators?

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5 Α I did.

21

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?

9 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.

15 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.

22 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

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

Yes, I did. 3

Q Can you describe for the jury what an ACH system is? 4

A It is a form of electronic wire transfer, which is a

6 bank-to-bank transfer that goes through a clearinghouse.

Okay. 7

MS. CONNELL: Your Honor, I would like to --

9 Q In looking at the ACH system, did you look at amounts that were paid out through the ACH system to various NRA

vendors? 11

12 Α Yes.

8

And, Mr. Hines, if I can direct your attention to Tab 13

13 which is PX 5120 in the binder? 14

A Yes. 15

MS. CONNELL: Your Honor, this is a piece of the 16 summary evidence that we had submitted and given notice of. 17

18 Mr. Hines, can you describe is reflected in this table? Sure. So, this table reflects by year from 2013

19 20 through 2020 the total of the ACH transfers or wire transactions

from Wells Fargo, the NRA's bank and it's presented by entity. 21

22 Did you prepare this table?

23 Α Yes.

Q Is it accurate based upon your review of the ACH 24

records?

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NYSCEF DOC $_{\mathbf{NY}}$ $_{\mathbf{NG}}$ $_{\mathbf{v}}$ 3230 **NRA February 5, 2024** E. Hines - by Plaintiff - Direct/Ms. Connell Page 3074 E. Hines - by Plaintiff - Direct/Ms. Connell Page 3076 1 and documentation with respect to those particular invoices as 1 0 And what is it? 2 This table represent fees paid to Ms. Stanford via Q As part of your work, did you quantify amounts of money Ackerman McQueen primarily through the out-of-pocket expense 3 3 4 paid to Ms. Stanford by the NRA directly or indirectly? 4 arrangement. Yes, I did. Q And did you -- is this an accurate reflection of the 5 records you reviewed? Mr. Hines, I'd like to direct your attention to Tab 15 6 O of your binder. This is PX 5127. 7 Yes. 7 8 Q Is this the type of analysis someone in your field 8 would normally pursue? 9 A Q Yes, it is. Mr. Hines, can you -- did you prepare this table? 10 10 Α Yes. MS. CONNELL: Your Honor, I move that this be 11 11 admitted into evidence, PX 5129. 12 Can you describe what it reflects? 12 It reflects a summary of the monthly fees paid to THE COURT: It is admitted. 13 13 Ms. Stanford over the course of the period from 2015 through (Whereupon, at this time Plaintiff's Exhibit 5129 14 15 2019. was admitted and received into evidence.) 15 Q Ms. Stanford had been paid by the NRA for longer Q And this was paid in addition to the two other -- the 16 16 periods than that, is that right? 17 17 retroactive fee and the monthly fee that we previously saw? Yes. That's correct. 18 18 Q But this just reflects those years? Mr. Hines, going back? 19 19 MS. CONNELL: If we can go to Tab 81, please 20 Α It does. 20 21 What did you find in regard to the total amounts paid? 21 Jonathan. A I found and quantified a total of monthly management Q Did you calculate the amounts that the NRA paid 22 22 23 fees of \$1,159,159. 23 Ms. Stanford overall from January 2015 through February 2020? Thank you. Α Yes. 24 24 25 MS. CONNELL: Your Honor, I'd ask PX 5127 be moved Q And what did you find? 25

E. Hines - by Plaintiff - Direct/Ms. Connell

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E. Hines - by Plaintiff - Direct/Ms. Connell

into evidence. 1

THE COURT: It is admitted. 2

(Whereupon, at this time Plaintiff's Exhibit 5127 3

was admitted and received into evidence.) 4

Q Mr. Hines, I'd like to draw your attention to Tab, 16 5 6 which is PX 5128.

Did you prepare this table? 7

Yes, I did. 8

9 And what does this table reflect?

This table reflects payments to Ms. Stanford for what 10

were referred to as retroactive fees, so amounts that were paid

typically early in the year following services that they were

reported to be related to. 13

MS. CONNELL: Your Honor, I would move for the 14 admission of this table. 15

THE COURT: It is admitted.

(Whereupon, at this time Plaintiff's Exhibit 5128 17

was admitted and received into evidence.) 18

19 Q So, Mr. Hines, if I understand correctly, Ms. Stanford

20 was paid in January this retroactive fee in addition to the monthly fee we just looked at; right? 21

22 That's correct, based on my understanding, yes.

23 And if we can turn to Tab 17, please. This is PX 5129.

Did you prepare this table, Mr. Hines? 24

Yes. 25 Α

16

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I calculated the total to be \$2,674,320. 1

And that's just for services? 2 Q

Α Yes. 3

7

Q That's not just for the underlying travel costs? 4

That is correct. 5 Α

Did you -- as part of your analysis, did you take a

look at Ms. Stanford's or the billing practices between the NRA

and Ms. Stanford? 8

9 Α Yes, I did.

0 And what did you find? 10

A I found there were a number of billing anomalies that

in my professional education and training would be consistent 12

13 with fraud risk indicators.

What type of anomalies are you talking about? 14

Invoices that were changed from draft to draft, 15

including removing information with respect to destinations,

passengers, and invoices that lacked supporting information

provided with that when they were actually submitted for 18

19 payment.

20 There were instances where invoices were for a larger amount related to the same vendor around the same day, were split into smaller pieces; and that process was contemplated 23 based on my understanding the fact that a larger amount would have required second approval, that sort of thing.

25 Q Could we quickly walk the jury through some of these

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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 3 4 of one of what you're talking about?
- 5 Yes.
- Can you explain to the jury what's on the screen? 6 O
- 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 --10
- Q Could I stop you there one second. "CAA invoices to 11
- 12 Ms. Stanford," can you explain what that means?
- A Sure. So, Ms. Stanford is the travel consultant for 13
- 14 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
- 17 Ms. Stanford. Ms. Stanford would then bill that through for the
- 18 underlying services to the NRA by adding a markup.
- So, the invoice on the left-hand side here is the 19
- actual invoice from that vendor that provided the air charter 20 services to Ms. Stanford. 21
- Q So, in addition to the monthly fees, she was paid --22
- 23 Ms. Stanford got a markup on the travel charges she booked?
- That's correct. 24

1 right?

25 What's the farthest right, the document on the farthest

- 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 3
- 4 broken up; is that accurate?
 - Correct. Α
- Can you explain why that's significant? 6 0
- 7 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 11
- 12 signoff for checks that were disbursed.
- Q So, just to move things along, can you describe what 13 14 the jury is seeing on the bottom half of the screen right now?
- 15 A Sure. So, I identified based on my review of the
- general ledger that there were invoices paid to Ms. Stanford in
- 17 the amounts that are corresponded on the right where it has
- invoice amount.
- As you can see, there's a total of \$171,000 19
- 20 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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- The farthest right is a version of an invoice sent by
- 3 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
- 6 the finance group at the NRA to actually process the payment.
- 7 And did this altered billing have significance to you
- as a forensic accountant? 8
- 9 Yes, it did.
- 0 Can you explain to the jury what that significance is? 10
- Well, the significance, first off, is that the 11
- information, the underlying itineraries was modified from the 12
- 13 underlying details on the Corporate America Aviation document.
- As you can see from left to right in this particular 14 slide here, the Corporate America Aviation itinerary lists
- Washington DC, Milwaukee, Wisconsin, Nebraska and the Bahamas. 16
- The middle version of the invoice was sent by 17
- Ms. Stanford, as I understand it, to the NRA; and the 18
- destination is changed from Washington to Milwaukee and it lists 19
- Florida as the destination. 20
- 21 And the final column with the invoice actually provided 22 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

- - 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 3
- as providing invoices to Ms. Stanford; correct? 4
- Correct. 5 Α
- 6 Q Did you do any analysis of CAA invoices and
- Ms. Stanford's invoices? 7
- A Yes, I did. 8
- 9 Q If you could turn, please, to Tab 19 of your binder.
- It is PX 5116. 10

THE COURT: This one needs to come with a 11 magnifying glass. 12

- MS. CONNELL: I know. I'm sorry, your Honor. It 13 is a lot of information, so it was more pages or smaller 14 15
- 0 Mr. Hines, did you prepare this table? 16
- 17 A
- 18 0 And can you describe what it is?
- 19 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.

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NRA February 5, 2024 E. Hines - by Plaintiff - Direct/Ms. Connell Page 3082 E. Hines - by Plaintiff - Direct/Ms. Connell Page 3084 1 MS. CONNELL: Your Honor, I'd ask this be moved MS. CONNELL: That's right. 1 2 into evidence. 2 THE COURT: 5117 is the one that's Tab 18. That's MS. ROGERS: The NRA reiterates its previous admitted. 3 3 4 objections to this summary, but has no others. 4 (Whereupon, at this time Plaintiff's Exhibit 5117 THE COURT: It is admitted. was admitted and received into evidence.) 5 5 If it is possible to make one with larger type even MS. CONNELL: That's right. 6 6 7 if it doubles the number of pages, it's only three pages. 7 Q So, Mr. Hines, did you prepare this table that's at I think that would be useful, but substantively it is 5117, PX 5117? 8 8 A Yes, this is the one I just described. You may have 9 admitted. 9 MS. CONNELL: We'll circulate one with larger type, been off. 10 10 your Honor, and ask that it be admitted in that fashion; but 11 MS. CONNELL: Your Honor, I move for this to be 11 moved into admission. 12 for the time being --12 THE COURT: Yes, if the only thing that you do is THE COURT: I'll move again if you want. 13 13 make it bigger, you can just remark this as PX 5116 and you MS. CONNELL: I do want that. Thank you, your 14 14 15 don't have to seek to have it readmitted. 15 Honor. MS. CONNELL: Thank you, your Honor. Q Mr. Hines, can you describe for the jury again just 16 16 briefly what this reflects? 17 Q Mr. Hines, while we have the book open, can you please 17 look at Tab 18. A Sure. So, this is a summary of the previous table that 18 A Okay. itemized the invoices with Corporate America Aviation, and it 19 Q Did you prepare this table? 20 20 includes line items that represent whether those invoices Yes. 21 Α 21 included itineraries that referenced the Bahamas, Nebraska and 0 What does this table reflect? 22 22 23 This table reflects a summary of those Corporate 23 And the columns as you go from left to right tabulate America Aviation invoices, and it categorizes various attributes the amounts with respect to those itineraries and accounts of with respect to those invoices, including grouping them by those itineraries where Mr. LaPierre was included or where E. Hines - by Plaintiff - Direct/Ms. Connell Page 3083 E. Hines - by Plaintiff - Direct/Ms. Connell Page 3085 1 flights where Mr. LaPierre was included as a passenger as Mr. LaPierre was excluded; but it identifies the Sterners as presented on those invoices. being on those itineraries. 3 The column with respect to the middle column are 3 And the third column where Mr. LaPierre was excluded itineraries where Mr. LaPierre was excluded, and it identifies for all other transactions, and then it provides totals and the Sterners as being included on those flights. itinerary counts on the right-hand side, and then certain 6 And the third column shows the account of itineraries summarizations of those in the sections in green and yellow 7 7 for Mr. LaPierre were excluded for all other itineraries. It below. shows the total counts, and then on the furthest left-hand side So, you found flights that the invoices reflected it represents the locations or itineraries that included flights that Mr. LaPierre was not even on and you totalled those? locations of the Bahamas, Nebraska, both and all other; and it 10 10 provides specific counts with respect to itineraries that have 11 attributes and the percentages of the total. And you found flights where the Sterners were on 12 12 Did you ever summarize the results of this --13 without Mr. LaPierre? 13 MS. CONNELL: Your Honor, I move this into A Yes. 14 14 And Mr. Sterners are Mr. LaPierre's niece and her 15 evidence. 15 O THE COURT: 5117? family? 16 16 MS. CONNELL: I believe this is 5116. I think I That is my understanding. 17 17 A made a mistake. I think I switched the order. And you totalled them up, and that's reflected in this 18 18 Q THE COURT: Well, Tab 18 is 5117; isn't it? Is 19 19 chart?

20 that the one you were on?

MS. CONNELL: I think it got turned around, your 21 22 Honor. I think we just moved 5116 into evidence already.

23 THE COURT: Okay.

MS. CONNELL: So, let's just move on to 5117. 24 25

THE COURT: Wait, 5116 is the small one.

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Yes. 20 A

Q And flights -- can you tell the jury how much you found 21

for flights that on which Wayne LaPierre was not even a 22

23 passenger?

A It would be the total of the columns to the right -- or 24 the middle and the second column. It is approximately, I

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NRA February 5, 2024 Page 3086 Hines - by Plaintiff - Direct/Ms. Connell Page 3088 1 believe, it is 8. -- or 870,000 so it would be the total of the And so can you describe for the jury the total amounts 2 that you found? column Wayne LaPierre excluded and Sterners included and then Wayne LaPierre excluded. So, it would be the total of those Yes, I can. So across a population of 188 invoices 3 4 dollars. from May of 2015 through September of 2019, the total was 5 (Continued on next page) approximately 6.6 million. 6 6 I identified 57 invoices for \$2.6 million approximately 7 7 with destinations that included Nebraska or the Bahamas. 8 8 I also identified 41 invoices totalling \$872,000, and 9 these amounts don't include Ms. Stanford's markup. I should mention that. But that \$872,000 did not include Mr. LaPierre as 10 11 a passenger and also identified 19 invoices for 686,000 where a 12 member of the Sterner family was listed as a passenger. 12 Mr. Hines, I'd like you to take a look at Tab 20 in 13 13 your book. This is PX 5119. 14 15 Α Okay. 15 Actually, let's first look at Tab 21 which is PX 5118. Q 16 16 Did you prepare this table? 17 17 A Yes. 18 18 Q Can you describe to the jury what's in this table? 19 19 20 20 This table represents the line item invoices that were 21 21 sent to the National Rifle Association for Ms. Stanford which covered the period from late 2011 through October of 2019 and 22 22 23 includes each invoice that I was able to identify from 24 remittance information which is essentially a form of support 25 that the invoices were paid, and I've categorized those with the Hines - by Plaintiff - Direct/Ms. Connell Page 3087 Hines - by Plaintiff - Direct/Ms. Connell Page 3089 MS. CONNELL: Jonathan, if we can go back to slide invoice number, the remittance reference number, the invoice 1 84 please. date and noted where there were air transportation amounts, not 2 Q Mr. Hines, did you find any other billing practices air transportation amounts, the total invoice amount, and the that you deemed problematic with regard to the NRA's payments to reference to the particular document number. 4 Ms. Stanford? MS. CONNELL: Your Honor I'd move PX 5118 into 5 5 6 A Yes, I did. 6 evidence. Q And what were they? 7 THE COURT: It's admitted. 7 I noted a number of instances where the charges from Mr. Hines, did you endeavor to take the information 8 8 Ms. Stanford didn't include detailed descriptions. This table 9 reflected on PX 5118 analyze it in a different form? on the slide presented, it showed some examples of that where it 10 A Yes. would just list gratuities or charges with a city destination 11 I direct your attention to Tab 20 in your book which name and lack of detailed description with respect to what is PX 5119. 12 12

- underlied those particular expenses. 13
- And Mr. Hines, did you also look at black car 14 services retained or used by -- booked by Ms. Stanford for the
- NRA executives? 16
- Α Yes. 17
- Q And did you endeavor to quantify the amount spent on 18
- 19 that?
- I believe so. 20 Α
- MS. CONNELL: Actually, before we move on to black 21
- 22 car services, if we can go to slide 86, please, Jonathan.
- 23 Q Does this total your analysis of CAA invoices regarding the flights that we talked about just before? 24
- Yes. 25 Α

- Α Okay. 13
- Q Can you describe to the jury what this reflects. 14

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Sure. So on this particular document, it reflects a 15 count of -- there is two different pie charts hereby. 16

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.

MS. CONNELL: I am trying to move rather quickly 2 through this. 3

- 4 So Mr. Hines, did you prepare those graphics?
- Yes. I think they are not on the screen if that --5
- Right. The ones that we are looking at, PX 5119 --6 O
- 7 Correct.
- -- in preparing them, did you use the type of 8
- methodology that would normally be used by a forensic
- accountant? 10
- 11 A Yes.
- 12 MS. CONNELL: I would move PX 5119 into evidence.
- THE COURT: It's admitted. Now you can put it up 13 so they can see what you were talking about. 14
- 15 Q So now Mr. Hines, can you describe to the jury what's reflected in these charts? 16
- 17 I can. So the first pie chart here shows a breakdown
- of the invoices paid by the NRA to GS2 which is Ms. Stanford --18
- 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
- 23 O And if we move to the second chart. Can you describe
- that breakdown. 24
- 25 So this takes the same population of invoices and

those were.

Sure. So there were a number of fraud risk indicators

that I identified. Specifically the complexity of the

4 transaction.

5 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. 10

11 Documents that were modified or altered including the 12 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. 17

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

20 I also noted based on my review and understanding of 21 the record that Ms. Stanford was actually instructed on how to bill from the NRA which I thought was also a fraud risk 22 23 indicator of.

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

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- 1 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
- those invoices. 4
- Q So --5
- 6 Α
- Would it be fair to say that your analysis of the 7
- invoices demonstrated that the NRA paid over \$13 million in
- 9 flight-related costs or air-related costs.
- Yes. 10 A
- Q And about \$4.6 million in non-air related costs booked 11 through Ms. Stanford? 12
- Α Yes. 13
- Q What would be included in those non-air related costs 14
- or what's your understanding of what's included in the non-air
- costs? 16
- 17 A It would be based on my review of the documents things
- like black car services, some other miscellaneous travel and
- 19 business expenses but categories that were outside of air
- 20 travel.
- Q And Mr. Hines, just to recap, you found fraud risk 21
- 22 indicators in regard to the NRA's relationship with Ms.
- 23 Stanford?
- A Yes. 24
- 25 And again, can you quickly walk the jury through what

witness is purporting to resolve credibility issues between 1 different witnesses. I would move to strike. 2

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. 10

- 11 Were you finished walking through the fraud risk indicators? 12
- Α 13 No. There's a couple more. I can continue if you'd like. 14
- 15 0 Very quickly, please.
- 16 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
- 23 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,

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- 1 education and training as a forensic accountant, you identified
- internal control failures in every vendor relationship that you
- looked at?
- 4 Α Correct.
- MR. CORRELL: Leading, your Honor. I move to 5
- 6 strike.
- 7 THE COURT: That was leading.
- 8 MS. CONNELL: It was leading, your Honor. I'm
- 9 sorry. Just trying to move things along, but I can ask.
- Q Mr. Hines, how would you describe the results of your 10
- review of the NRA's relationship with its vendors that you 11
- 12 reviewed?
- I identified internal controls and consistency in 13
- internal controls and all the arrangements that I reviewed. 14
- 15 Q How would you describe your review of every NRA vendor
- relationship that you -- that you looked at in terms of whether 16 or not there were presence of fraud risk indicators? 17
- I identified fraud risk indicators with respect to 18
- each one. 19
- 20 Q Did you form an opinion about whether for the period of
- 21 time you looked that the NRA had an effective internal control
- environment. 22
- A I did. 23
- Q What was that opinion? 24
- 25 My opinion that it did not. Was that it did not.

- Q All right. Your testified just a moment ago that in
- every vendor relationship you looked at, you saw fraud risk
- indicators. 3
- 4 You recall that; right?
- A I do. 5
- 6 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 8
- count. I know in dollar basis it was quite large.
- Q And the Government told you which vendor relationships 10
- they wanted you to look at. 11
- 12 A They were the ones that were alleged to have been
- 13 improper in the complaint, so that was the scope of my analysis,
- 14 yes.

15

- 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? 17
- A No, but I would say that dollars are more relevant than 18
- vendor count in my experience. 19
- Q We will talk about dollars later. 20
- Now, these fraud risk indicators, I'm going to call 21
- 22 them FRIs for short.
- 23 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;

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- MS. CONNELL: Thank you, Mr. Hines. I pass the 1
- 2 witness.
- THE COURT: Okay. 3
- **CROSS-EXAMINATION** 4
- BY MS. ROGERS: 5
- 6 Good morning, Mr. Hines. Can you hear me?
- 7
- MS. ROGERS: Can the jury hear me? Okay. 8
- 9 Q My name is Sarah Rogers. I represent the NRA.
- Mr. Hines, before you joined us Friday, did you observe 10
- any testimony by any other witnesses in this case? 11
- Α No. 12
- Did you review transcript of any testimony by any other 13
- witnesses in this case? 14
- 15 I did not.
- 0 You're being paid as you sit here testifying; right? 16
- 17
- When you gave a deposition earlier in this case, I 18
- think you estimated that the Government would pay between 1.1 19
- and \$1.2 million to your firm for your testimony. 20
- Do you recall that? 21
- I do. 22 Α
- 23 Have you gotten the million dollars yet?
- I believe we have been paid about a million or 24
- somewhere thereabouts.

- 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?
- It's an indicator of fraud, waste and abuse 5
- 6 An indicator for?
- Α Correct. 7
- O But not actual fraud, waste or abuse? 8
- 9 Α It's an indicator, so yes.
- 0 In fact, a transaction could have multiple risk 10
- 11 indicators and not contain any fraud, any waste or any abuse.
- That is possible 12
- You're certainly not telling the jury that anybody 13
- broke any law. 14
- I'm not reaching a legal conclusion, no. 15
- Q You're not telling them that anyone at the NRA broke 16
- 17 any law concerning related-party transactions; right?
- Again, I'm not reaching any legal conclusions. 18
- 19 Q Right. And you haven't reached the conclusion that 20 anyone broke any law regarding the administration of charitable
- dollars; right? 21
- 22 MS. CONNELL: Objection, your Honor. The witness 23 can not give legal conclusions.
- THE COURT: She can ask. 24
- You are not giving a legal conclusion that anyone at 25

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1 the NRA broke any law governing the administration of charitable

- dollars; right?
- A That's correct. 3
- 4 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. 8
- 9 A I don't know the answer to that question.
- MS. CONNELL: One second. This gets into a legal 10
- issue that we spoke about previously about the 501(c)(3) 11 12 versus (c)(4) and the charity and whether the NRA is a charity which it is under New York. 13
- MS. ROGERS: I am only asking if the witness 14 15 considered the distinction.
- THE COURT: Overruled. 16
- 17 Q Did you consider whether any of those dollars were
- important, the dollars that you were phrasing -- did you look at 18
- whether they came from tax deductible charitable donations or
- from the NRA's general funds? 20
- 21 A I did not perform analysis.
- Q Okay. And you did not perform an analysis of whether 22
- the NRA broke any law governing whether forms filed with the
- Government are true or false; right? 24
- That was not part of the scope of my analysis, no. 25

- was a pretty big fraud?
- A I would agree it's a pretty big fraud. 2
 - MS. CONNELL: Objection.
- 4 THE COURT: On what grounds?
- MS. CONNELL: She is asking for a legal conclusion about Enron. It's collateral. 6
 - 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?

- 12 Q Well, you were at Arthur Anderson at this time.
- A I was at Arthur Anderson in a completely different 13 office. Never touched Enron. 14
- 15 THE COURT: I will sustain the objection. This has 16 nothing to do with this witness.
- 17 Q But you would agree that even a good company, even a company committed to controls can end up in a transaction that 18
- bears fraud risk indicators. 19

That's possible.

- 21 O Okay. Now a risk indicator can be remediated; right.
- It could be, yes. 22
- 23 O 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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- Now, isn't it true that a transaction bearing a risk indicator can still be a great deal for the company?
- A Hypothetically, that's possibly, yes. 3
- Q Right. Like under internal controls, the contract
- should have four signatures. It has three, but it's entirely
- possible that that contract could make a ton of money for the
- company; right? 7
- Theoretically possible, yes. 8
- 9 Q And you'd also agree with me that any organization no
- matter how good the control environment, there is also some risk of fraud. 11
- 12 Α Correct.
- In fact, there was a major fraud at your former firm 13
- Arthur Anderson; right? 14
- I don't know if I -- I don't know what the legal 15
- conclusion is with respect to that, but I did work at a firm 16
- that had a issue. 17
- You worked at Arthur Anderson in 2001; right? O 18
- 19 Α 2001 to 2002.
- 20 Q And that was the year that the Enron fraud came out --
- A Yes. 21
- -- that Arthur Anderson worked on. 22 Q
- 23 Α Yes.
- So even if you can't reach a legal conclusion, as a 24 Q
- layman, do you have a conclusion as to whether that Enron action

- A I did not observe that, but that is not part of my 2 opinion.
- 3 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.
- 6 And what I have done is I've taken these vendors you
- 7 looked at and put them in buckets for ease of description.
- 8 The McKenzie companies. Can you list for the jury what
- 9 the McKenzie companies are?
- A That would be Concord Allegiance MMP and also 10
- Associated Television International. 11
- Right. Now, is it your understanding that David 12
- McKenzie controls each of those companies or is he just a
- shareholder?
- 15 A I understand he's got control of those entities and is also a shareholder. 16
- Q In the context of corporations, have you ever heard the 17
- term "alterego?" 18
- 19 I have, yes.
- Would be fair to say that an alterego is a shell 20 company different on paper from the person or entity that
- controls it but really the money is going to the same place? 22
- 23 MS. CONNELL: Objection, your Honor.
- THE COURT: Sustained. 24
- A I don't know. 25

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> Hines - by Plaintiff - Cross/Ms. Rogers Page 3102 THE COURT: When there is an objection -- I'm not 2 sure exactly where you're going. That's a complicated question even for lawyers. 3 4 MS. ROGERS: All right. Well, I'll ask this. You did not reach a conclusion that any of these 5 McKenzie companies were alteregos of David McKenzie; right? MS. CONNELL: Objection, your Honor. 7 8 THE COURT: Did you address that question?

> 9 THE WITNESS: No. Okay. You did not address or conclude whether these 10 companies were alteregos of each other; right? 11

12 MS. CONNELL: Objection, your Honor.

THE COURT: Overruled. You can answer. 13

14 Α No.

15 Q Okay. Do you think that the NRA's relationship with every McKenzie company exhibited FRIs or just MMP? 16

Well, I would believe that -- the fact there were 17 internal control failures with respect to all of the entities would be consistent with the fraud risk indicator, and 20 my observation that the arrangements were less given the

21 multiple contracts with those multiple companies I think if too

would apply to those all of those. 22

But the NRA stopped paying Associated Television International in 2018 six years ago; right? 24

I don't recall the specific date. 25

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Sure. Too much relative to the value it was receiving.

A I didn't do a fair market value analysis. This 2

calculates the difference between the contract it actually

signed, the contract that was reviewed and approved and what was

actually paid.

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 And you didn't do any analysis on whether during these years the contract helped or hurt the NRA's non-profit mission? 10

No. That's outside of the scope of my analysis. 11

12 The earlier version of the contract, the one that was

13 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. 15

Q And you performed no analysis over whether the NRA's 16 membership based, the people serviced by MMP grew more than ten percent during these years.

A I did not. 19

20 O And you performed no analysis on whether the money

brought in by MMP increased by more than ten percent during

22 those years.

A No. 23

24 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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Q In forming your expert opinion about the transaction, did you check whether the transaction was ongoing or had ended?

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?

Α No. 8

9 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? 12

13 A No. I have no way to opine on that one way or the 14 other.

Q Well, let's look back at your slide 29 which is about 15 those companies. All right. 16

17 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 19

20 allowed under an earlier version that had a ten percent cost increase limit; right? 21

22 That's certainly part of this analysis, yes.

23 Are you offering the jury any opinion about whether the -- whether the NRA paid MMP too much?

A Could you define "too much?" 25

signed; right?

A Can you say that one more time?

Q Sure. The scarlet red segment of this graph is what

the NRA actually paid under this contract, what it actually

5 signed; right.

6 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 8

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?

12 A Correct. Well, the pink is the differential between the stated contract rate and the ten percent growth rate. 13

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? 16

17 That's correct.

Q And you would also agree with me that by 2021, the 18 amount paid under the actual contract had pretty much converged

with what your version of the contract would have allowed;

right? 21

In terms of the annual amount? 22 Α

23 Q Yes.

They are approximately in the same vicinity. 24 Α

25 Okay. Let's look at your -- well, actually, I have one NYSCEF DOCNYNG: v3230

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1 more question about this graph.

In forming your expert opinions, did you do any work to

- 3 match these trend lines with trends in the NRA's membership
- 4 count or fundraising volume?
- 5 A No. It wasn't relative to my analysis given I'm
- 6 looking at the contract rates and reviewed rates and what was
- 7 actually paid.

NRA

- 8 Q Would it be fair to say when you looked at the MMP
- 9 contract, you had looked at what the NRA was paying but not what
- the NRA was getting?
- 11 A That's correct.
- 12 Q Mr. Okay. All right. Now, let's look at your slide 13 35.
- Are you telling the jury that the NRA was wrong to
- renegotiate the MMP contract at a better price in 2022?
- 16 A No.
- Q Okay. And in forming the view that this renegotiation
- 18 reflected a fraud risk indicator, did you do any assessment of
- 19 whether the services provided by MMP actually changed?
- 20 A I didn't come to a specific analysis of each service,
- 21 but based on my review of the record, my recollection and
- 22 understanding was that the NRA employees internally themselves
- 23 described that the contracts were for similar services and that
- 24 there were -- it was more market rate and that they were
- 25 favorable terms for the new contract.

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- the contract, what was required by the contract and whether
- they were breached, and that was the subject of lawsuits
 - which were settled as we know.
- THE COURT: He can give his understanding. You can answer.
- 6 A Can you ask the question again.
- 7 Q Would you agree with me that Ackerman broke the
- promises it made to the NRA in those contracts?
- 9 A I would say I have not done a legal analysis nor would
- .0 I be -- I'm not a lawyer, so I don't know the answer to that
- 11 question.
- 12 Q So in analyzing whether the contract bore a fraud risk
- 13 indicator, you didn't analyze whether Ackerman breached the
- 14 contract?
- 15 A Again, it calls for a legal conclusion. That is not
- 16 the scope of my analysis.
- Q Well, did you read the provisions of the contract dealing with travel and entertainment expenses?
- 19 A I read the contracts, yes.
- 20 Q Even as a non-lawyer, you would understand that that
- 21 contract required for Ackerman to follow NRA policy with respect
- 22 to the expenses it invoiced; right?
- 23 A That is -- I don't recall the specific language, and I
- 24 also understand the contracts specifically stated that they
- 25 couldn't operate or act without Mr. LaPierre's direction. Those

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- Q In forming the view that the NRA striking a better deal
- 2 in 2022 reflected a fraud risk indicator, did you analyze
- 3 whether MMP fundraising volume changed?
- 4 A I did not.
- 5 Q All right. Let's go back to go our demonstrative with
- 6 the four buckets on it.
- 7 In addition to the McKenzie companies, you also looked
- 8 at Ackerman McQueen and two related entities, Mercury Group and
- **9** Under Wild Skies; right?
- 10 A Correct.
- 11 Q The NRA stopped paying Ackerman and sued Ackerman in
- **12** 2019; right?
- 13 A That is my understanding.
- 14 Q Same for Mercury Group?
- 15 A I believe that's correct.
- 16 Q And the NRA also stopped paying Under Wild Skies and
- 17 sued Under Wild Skies.
- 18 A I believe that's accurate.
- **19** Q Ackerman broke the promise it made in the contract to
- 20 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

- 1 two things should be considered together.
- 2 Q Do you have a recollection as to whether the contract
- 3 stated that Ackerman was required to follow NRA's written
- 4 expense policies?
- 5 A I don't recall the explicit language in the contract.
- 6 Q Now, let's talk about direction given by Mr. LaPierre
- 7 and what the record shows and what you looked at.
- 8 Have you heard of a firm called Forensic Risk Alliance?
- 9 A Yes.
- 10 Q They are a forensic accounting firm; right?
- 11 A Yes
- 12 Q Would you say they have a good reputation in the
- 13 forensic accounting field?
- A I think it's a fine one. I don't have a specific
- 15 opinion one way or another.
- 16 Q You testified earlier fraud risk indicators can be
- 17 fixed. Do you remember that?
- 18 A They can be in certain circumstances with the
- 19 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
- 22 subject expense; right?
- A That could be part of the fact finding. I think you
- 24 need to be careful in my experience not to conflate fact finding
 - 5 with remediation.

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 1
      Q You understand the NRA did hire FRA to look at
    Ackerman's expenses?
 2
            MS. CONNELL: Objection, your Honor.
 3
 4
         Do you understand that?
            MS. CONNELL: Your Honor, may we approach. This
 5
       addresses an evidentiary issue.
 6
 7
            MS. ROGERS: It's in his report.
            THE COURT: Yeah. Overruled.
 8
 9
      A Can you repeat the question?
                                                             9
      Q Sure. You understand the NRA hired a forensic
10
                                                            10
    accounting firm FRA to look at Ackerman's out-of-pocket
                                                            11
11
12
    expenses; right?
                                                            12
      A I am aware that they hired FRA.
13
                                                            13
      Q In fact, FRA generated a voluminous spreadsheet of its
14
                                                            14
    findings.
15
                                                            15
16
          Do you remember that?
                                                            16
      A I recall they had spreadsheets. I don't recall how
17
                                                            17
    voluminous.
                                                            18
18
      Q You recall that you relied on that spreadsheet when you
19
                                                            19
20
    did your expert report?
                                                            20
      A I reviewed it and considered it, and my recollection is
21
                                                            21
   I recall findings being similar and having observations with
                                                            22
   respect to the issues with the out-of-pocket expense arrangement
                                                            23
    that were available.
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                                                            24
25
            (Continued on the following page.)
                                                            25
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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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1 MS. ROGERS: I'd like to show the witness for 2 identification Plaintiff's Exhibit 2333. This is the 3 4 spreadsheet. 5

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 11 12 Court and I've got one for the witness, if he'd like. 13

THE COURT: Thank you.

(Handed) 14

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MR. CORRELL: Is there a copy for us?

MS. ROGERS: I only have four, but let's see. It 16 is PX 2333. 17

Q Mr. Hines, do you recognize this as the Forensic Risk 18

19 Alliance report that you considered when you formed your expert opinions? 20

A Looks to be that document. 21

MS. ROGERS: I move for its admission.

23 MS. CONNELL: Your Honor, objection, and I would --

I can state the objection on the record, but I prefer to 24 25 approach the bench.

similar to the ones -- I want to ask the expert questions about how he considered and interpreted this. 2 There's also been some representations by 3

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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think so. I think the -- the only thing you can do is if he 2 has testified that his assumption is that FRA did something based on what he reviewed, you can say, well, this is what 3 4 you reviewed, doesn't say that does it? That's not admitting it for substantive evidence yet. 5

MS. ROGERS: I'm content to question the witness from the document, reserving rights to admit it later. THE COURT: Yes, and during your case if you can

admit something like this, that's fine.

MS. CONNELL: Thank you, your Honor.

(Whereupon, at this time the side bar ended and the following ensued in open court as follows:)

THE COURT: Sorry for the side bar part of it, but it is important.

I'm going to let counsel ask some questions about this document to this witness but since -- if they want to try to move a document like this into evidence, they can try it in their case in chief.

This isn't a witness who can provide a foundation for admitting it now, so I'm not going to admit the exhibit yet, but you may see it again.

MS. ROGERS: Thank you, your Honor. 22

23 BY MS. ROGERS: (Continuing)

Q Mr. Hines, I'd like to direct your attention to the key 24 observation section at the top?

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E. Hines - by Plaintiff - Cross/Ms. Rogers

A Okay. 1

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Q I questioned you before about your understanding of the provisions of the Ackerman McQueen contract you analyzed. Do

- you recall that?
- A Yes. 5
- Q And I asked you whether it was your understanding that
- Ackerman adhered to NRA policies; right?
- That was your representation, yes. 8
- 9 Q Would you agree that representation was consistent with
- what the other forensic accountants wrote in that first cell of
- that spreadsheet? 11
- 12 A I'd like to read it.
- 13 Q Of course. You would agree with me what I said about
- the contract that Ackerman had to adhere to written procedures 14
- established by the NRA vis-à-vis its expenses. That
- representation is consistent with what the other forensic 16
- accountants observed; right? 17
- A That language appears to be generally consistent; 18
- 19 although, I haven't analyzed it against the specific contract
- 20 with this document that I'm seeing here, but...
- Q Okay. Now, when I made that representation to you 21
- 22 before, you noted that Ackerman was only authorized under the
- contract to take direction from the executive vice president who
- was Wayne LaPierre. 24
- Do you recall that discussion we had? 25

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1 A Yes.

2 Q I'd like to direct your attention now to cell four of

the spread from the other accountants that you reviewed. I'm

going to read a sentence to you and you tell me if you have any

knowledge inconsistent with it.

MS. CONNELL: Objection, your Honor.

THE COURT: Sustained. That's the same thing as

admitting the document.

9 Well, I'm going to try to ask this a slightly different 10 way.

Mr. Hines are you aware of any evidence in the record to indicate that the out-of-pocket expenses billed by Ackerman were in connection with special assignments or were approved by the NRA executive vice president or his designee?

15 A Specifically, with respect to the special assignments or I guess --16

17 Q Well, did you see any written approvals in the record consistent with what we just discussed indicating that Wayne LaPierre had approved these expenses you reviewed? 19

A I don't recall.

21 0 Okay. And when you say you don't recall, do you mean you don't recall whether you saw any; or sitting here today, you

have no current specific recollection of seeing any document in

the record evidencing a written approval by Mr. LaPierre of

these expenses, which you've opined were fraud risk indicators?

E. Hines - by Plaintiff - Cross/Ms. Rogers

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A I don't recall specifically whether that exists or not.

I do recall testimony that indicated that the individuals at the

NRA were aware of the arrangement, the out-of-pocket expense

arrangement given this is what we're talking about. I don't

recall specifically if there's a signed document or not. 5

6 MR. CORRELL: Your Honor, objection to the

characterization of the testimony and move to strike.

THE COURT: Denied.

9 Q I'm going to dig into the characterization. Whose testimony? 10

11 A I recall based on my recollection and understanding of the facts Mr. Phillips --12

THE COURT: Hang on a second. Are you talking about testimony in the trial or at some other point in time?

THE WITNESS: I'm referring to testimony that I reviewed in deposition transcripts, your Honor.

THE COURT: If that's not in evidence, then I'll --I change my mind as to striking it.

MR. CORRELL: Thank you, your Honor.

MS. ROGERS: Then I'll move on. 21

Q But you don't recall seeing any written approvals in 22 23 the record consistent with the contract; right?

Not as I sit here right now. 24

25 In forming your expert opinions about the Ackerman NYSCEF DOC $_{NY}$ $_{QG}$ $_{v}$ 3230

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- relationship, one relevant fact you considered was that Tony
- Makris was friends with Wayne LaPierre; right?
- I think that is a relevant piece of information. 3
- 4 THE COURT: Is a relevant or irrelevant?
- THE WITNESS: One relevant piece of information, 5 6 yes.
- Q I wasn't clear from your earlier testimony, do you 7
- think that a friendship poses a conflict of interest for 8
- internal controls or not? 9
- A My view would be, one, you'd have to consider the 10
- policy and I think the specific receipt of gifts and 11
- 12 entertainment accompanies a friendship would be certainly
- relevant and disclosable as I understand it under the policy;
- 14 but if you can ask the question again.
- 15 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 17
- Mr. Makris were friends?
- A I don't necessarily have a specific opinion on that 19
- 20 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,

- 1 it had with the NRA. As far as you're concerned, Ackerman might
 - have expensed every single client the exact same way?
 - 3 A I have no basis to even take a guess at what Ackerman

 - did with its other clients.
 - 5 Q Did you ask the attorney general whether there were any
- other Ackerman clients that testified in the cases in which you
- 7 reviewed testimony?
- I did not specifically do that, no. 8
- And they didn't tell you? 9 Q
- Not that I recall. Α 10
- All right, let's go back to the four buckets, our 11
- 12 demonstrative.
- Third bucket, contracts with board members and with 13
- people who used to work for the NRA.
- 15 You left out the largest related-party contract in the
- NRA history when you did this analysis. You left out the Oliver 16
- 17 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 21
- contract worth about 6.9 million dollars with one of its board
- 23 members, Oliver North?

E. Hines - by Plaintiff - Cross/Ms. Rogers

- A I was generally aware there was a contract, yes. 24
- 25 Q Did you omit this from your analysis because Colonel

E. Hines - by Plaintiff - Cross/Ms. Rogers

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North agreed to testify for the Government?

- A No.
- 3 Q You omitted it from your analysis because they didn't
- ask you to include it?
- Because it was not part of the complaint, as I 5
- 7 Q So, if you reviewed the complaint and it didn't talk
- about that contract, that would be consistent with your
- 9 recollection?

15

- A I don't recall specifically, but it was not one of the 10
- arrangements that I reviewed. 11

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?
 - As a fair value issue?
- Q Did you analyze the value provided under these 16
- contracts from any perspective? 17
- 18 A That would be from what I understand your question to
- be is a fair-market value analysis, and no. 19
- 20 Q So, you didn't analyze whether the NRA was getting its money's worth for what it paid under any of these? 21
- 22 That was not part of the scope of my analysis.
- 23 All right, so as far as you know, each of those
- contracts was a fantastic deal for the NRA's members; right? 24
- Or it could have been a terrible deal. I don't know. 25

- 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
- 6 any opinions inconsistent with that?
- MS. CONNELL: Objection, mischaracterizes his 7 testimony. 8
- 9 THE COURT: Hang on. I sitting here can't remember exactly what the witness said, so why don't you just ask the 10 question of this witness. 11
- Well, I'll move on, because we'll revisit that later. 12 You would agree with me that if a personal connection 13
- between Mr. LaPierre and Mr. Makris is relevant to your 14 analysis, it would also be relevant, wouldn't it, to consider
- whether Ackerman engaged in the same expense misconduct with
- 17 respect to other clients who had nothing to do with Wayne
- LaPierre and where there was no personal friendship with the 18 19 CEO?
- 20 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
- 22 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

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- 0 You have no idea?
- I have not done that analysis, no. 2
- 3 And except for Marion Hammer who's a gun lobbyist,
- 4 every single one of the contracts you looked at ended years ago;
- right?
- 6 A I don't know -- well, what do you mean by "years ago?"
- 7 Well, let's talk about them. You looked at a contract
- with David Keene; right? 8
- 9 Α Yes.
- Q If I represent to you that that contract, that ended 10
- three years ago in 2021; would you have any knowledge 11
- 12 inconsistent with that?
- No. I believe that sounds correct. 13 Α
- 14 Q And you looked at one with Dave Butz, do you recall
- 15 that?
- A Yes. 16
- 17 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? 19
- A I believe that's correct. 20
- 21 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? 24
- 25 A No.

that the NRA stopped doing business with her; right?

- A I don't know if it is a good or bad thing -- well, what
- 3 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.

E. Hines - by Plaintiff - Cross/Ms. Rogers

- Q And the fact that the invoices were altered, that's a
- 7 bad thing; right?
- 8 A In my experience, those are consistent with fraud risk
- indicators, and I would not call them a good thing for sure.
 - O The fact there were surcharges added to the invoices
- which weren't reflected on them, the ten percent, that's a bad
- 12 thing; right?
- A There you're referring to the lack of documentation 13 with respect to the commission?
- Q Right. I'm referring to the fact that a private jet 15
- invoice would come in for 10,000 dollars and Ms. Stanford would
- 17 charge the NRA an extra ten percent on top of it. That's a bad thing; right? 18
- A I don't believe I have an opinion that the fact that 19
- 20 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. 22
- 23 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

E. Hines - by Plaintiff - Cross/Ms. Rogers

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- Q You looked at a contract with Mike Marcellin. Do you
- recall that? 2
- Yes. 3 Α
- Q If I represent to you that contract ended five years 4
- ago, you have no inconsistent knowledge; right?
- 6 I believe that is approximately correct.
- 7 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? 9
- Generally, yes. 10
- 11 Q Okay. And you looked at a contract with a board member
- 12 named Sandra Froman. If I represent to you that that contract
- ended six years ago, you'd have no inconsistent knowledge; 13
- right? 14
- 15 A I don't recall the specific timing, but, no.
- Okay. All right, now, let's talk about the travel 16
- 17 consultant. One best practice in response -- with respect to
- a business relationship like this would be to shut it down; 18
- 19 right?
- 20 Potentially, I think a better practice would be to understand how it happened in the first place. 21
- 22 Q Do you think the NRA should have continued doing
- 23 business with Gayle Stanford?
- I did not say that. 24
- You'd agree with me that it is probably a good thing 25

- 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?

E. Hines - by Plaintiff - Cross/Ms. Rogers

- MS. CONNELL: Objection, your Honor.
 - THE COURT: Overruled.
- 6 A Your question kind of lost me. Was-- was what 7 suspicious?

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- 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 10 relationship.
- 12 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. 17

Did that stand out to you at all?

- A No, not specifically. What stood out to me was the 19
- 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? 8
- 9 Yes.
- Q And you understand that the NRA stopped paying Gayle 10
- Stanford and ran a bidding process for travel consultancy about 11
- 12 four years ago?
- A I don't recall the specifics, but my understanding was 13
- 14 the NRA had a travel agent even during the period it was using
- 15 Ms. Stanford, as well.
- Q If I represent to you that the NRA stopped doing 16
- 17 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? 19
- 20 A I don't know the answer to that one way or another.
- 21 And you didn't consider whether the NRA fired or placed
- and ran a bidding process for replacement of Ms. Stanford; you 22
- didn't consider that in forming any of your expert opinions,
- 24 right?
- 25 A They would not have had any impact on my conclusions

- something a company might reasonably do in the presence of fraud
- risk indicators; right?
- 3 A I just want to make sure I understand the question. Is
- it specific fraud risk indicators or is it internal control
- 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 7
- 8 testimony; right?
- MS. CONNELL: Objection. 9
- A I believe I said --10
 - THE COURT: Hang on. I think -- overruled on that.
- 12 You can answer.
- You disapproved of the NRA internal control 13
- environment; right? 14
- A I believe my conclusion I found it was ineffective due 15
- to poor tone at the top. 16
- 17 Q A company desiring a more effective control environment
- might perform a risk assessment within the meaning of COSO; 18
- right? 19

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- 20 A That would certainly be one potential step and one that
- 21 is typical, yes.
- Q And special procedures by the auditors, those might 22
- 23 help improve the control environment; right?
- A I would not agree with that. Your auditors are not a 24
- function -- outside auditors do not serve as an internal control

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- 1 related to Ms. Stanford or the other control violations I observed.
- 3 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 6
- things a company might properly do to address risk indicators. 7 MS. CONNELL: Objection, your Honor.
- MS. ROGERS: I was interrupted by the microphone. 8
- 9 Let make the record clear.
- Q I'm going to run a few things by you, and I want you to 10 tell me whether in your expert opinion these are things a
- company might reasonably do to address fraud risk indicators. 12
- Does that make sense? 13
- Yes. 14

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- 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 --
- 19 MS. ROGERS: Object to speaking objections.
 - THE COURT: Yeah, look, I'll instruct the jury at the appropriate time the relevance or potential relevance of
- 21 22 these subsequent efforts, but I'm not going to preclude the
- 23 defense from asking.
- So, overruled. 24
- 25 Q All right, what about doing a risk assessment, that's

- 1 for the organization. So, it would be what the organization
- does, not what its auditors do as part of their standard
- procedures. 3
- 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.
- 10 Q Is it a data point you considered here?
- I believe I did consider it with respect to my reports. 11
- Which special procedures did you consider? 12
- A My recollection is the ones that were performed at some 13
- point in 2020 or '21. I don't recall the specifics. 14
- Q In forming your expert opinions, did you -- did you 15 develop a view of what -- whether the special procedures revealed any control problems? 17
- A I believe in my report, my rebuttal report I did 18 19 address some of those in response to NRA witnesses.
- 20 Q Sitting here today, can you think of any allegations made by the Government that Aronson does not address in its special procedures? 22
- 23 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

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- 1 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. All right, this -- on the left side of slide 42 is one
- of the summary charts you prepared; right? 7
- 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. 11
- 12 Correct.
- 13 O And you would agree accuracy is very important in the
- profession of forensic accounting?
- Sure. 15
- Q Precision is important; right? 16
- 17 Α Sure.
- All right, then let's start with the expense that you 18
- highlight here on your PowerPoint slide. On the screen we see
- you tell the jury that the NRA paid \$42,915 in flight tickets 20
- for Wayne LaPierre, his wife and Tony Makris. 21
- Do you see that? 22
- 23 A Yes.

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- 24 Q And you got this number from PX 03151, a collection of
- Ackerman expense reports; right?

A I believe that's accurate.

- 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
- \$14,000, that's a credit back, right?
- 6 A It looks like it might be, yes.
- Q Did you in developing your summary consider whether any
- of the expenses you added up were credited back? 8
- 9 I believe we did in looking at what was actually paid, 10 yes.
- Q All right, let's look at another summary you prepared 11
- 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 15
- schedule, which you amended some time last week. Do you recall 16 that? 17
- A Yes. 18
- Q And the reason you amended it is because we found 19
- 20 that you had double counted several flights in your analysis;
- right? 21
- 22 A I believe there were certain invoices that were unclear
 - whether they had occurred, and that was -- they were removed
- based on some review. 24
- Q Agree or disagree with the following statement:

E. Hines - by Plaintiff - Cross/Ms. Rogers

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When a careful professional sees red flags, he looks

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- Q Let's look at that exhibit, PX 03151, and I'm going to 2
- direct the witness to page 127, which I believe is where he got
- the excerpt he put in his slide. 4
- Let's zoom in. 5
- 6 (Displayed)
- 7 All right, this is the source for your PowerPoint
- slide; right? 8
- 9 It may be.
- This is a purchase of three airline tickets for 10
- Mr. LaPierre, Mrs. LaPierre and Tony Makris for \$14,000 a piece
- totalling about \$42,000; right? 12
- Α Yes. 13
- Q And that's what you show on your slide? 14
- 15 Α Yes.
- 16 But you don't show that the tickets for the LaPierres
- were cancelled and credited back to the NRA, not debited from 17
- the NRA? 18
- A I'd have to go back and look at the documents and 19
- 20 see --
- Q Well, we've got the document right in front of us, so 21
- let's look at page 284. 22
- 23 A Of this particular schedule?
- Q Of this Plaintiff's Exhibit which is the source for
- your schedule, I believe.

- 1 closer?
- A I would generally agree. 3
- 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
- 7 or been paid?
- 8 A Yes, we removed those from this particular invoice.
- 9 Q And a careful accountant would then look at the other
- invoices to make sure those were real and actually paid; right? 11
- Α That's what we did. 12
- (Continued on next page) 13

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- Q And this is the analysis that you put before the jury after you were careful and looked at all the other charges; 2 right? 3
- 4 A Yeah. I don't -- this looks to be that schedule, yes.
- Okay. I know that you're here testifying as an expert
- on accounting and not physics, but can you explain to me how
- it's possible to fly from California to Washington DC twice in
- the same day on the same plane as indicated here? 8
- 9 I'd actually like to look at the exhibit.
- This is Page 2. 10
 - MS. CONNELL: Can you tell me which exhibit?
- 12 MS. ROGERS: Exhibit A to --
- MS. CONNELL: This is the exhibit that was admitted 13 14 earlier today.
 - MS. ROGERS: I think it's Exhibit A. It's -- it's your amended Exhibit A. It's NYSCEF -- well, you put it in as 5116.
- THE COURT: 5116 that's what you're looking for, 18 Ms. Connell. 19
- 20 MS. CONNELL: Right. My 5116 comes up something 21 different.
- MS. ROGERS: It says Exhibit A. It's the same 22 23 document.
- A I believe there was an unfiltered version that was 24 inadvertently sent by counsel.

- Hines by Plaintiff Cross/Ms. Rogers
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- Q Mr. Hines, do you have an understanding as to how those
- duplicates got into your chart in the first place? 2 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.
- 8 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? 11
- 12 There were some of those; right.
- But what if a flight was canceled and never 13
- 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. 16
- 17 A Based on my analysis, we also looked for whether they were credited. It looked for credits for this duplicates, 18
- looked for other potential indicators that the flight didn't
- happen, but I'm obviously placing it on those invoice. 20
- 21 Q Sir, did you compare these to the ACH banking records
- that you looked at? 22
- 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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- THE COURT: Put up 5116 that was actually admitted. 1 Is it possible to use this one? 2
- MS. ROGERS: I was working with the version 3 Plaintiff sent us. 4
- Q Well, let me just ask Mr. Hines. When you say there
- 6 was an unfiltered version that was the inadvertently sent, what 7 do you mean?
- A My understanding was last week in preparing this 8
- 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. 11 12 Are so you are representing that 5116 has no duplicates
- in it? 13
- A That's my understanding that based -- our analysis 14 looking at those particular invoices and comparing the trip
- dates, itineraries and whether they had actual catering charges 16 and a number of other items, yes. 17
- 18 MS. CONNELL: Your Honor, I will represent that in 19 conveying the summary evidence, we did make an error and 20 sent the wrong chart and corrected it, so I want to make sure that wasn't causing the confusion. 21
- 22 MS. ROGERS: I admit I was confused. I was using 23 the chart you sent me.
- MS. CONNELL: Your Honor, we corrected it with an 24 25 explanation.

- 1 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 --5
- 6 MS. ROGERS: I have like two more things and then 7 you're done.
- Q You've seen numerous cases, right, Mr. Hines, where a 9 later reconsideration of the transaction leads to a different
- accounting result. 10
- That can happen. 11
- 12 And looking at something in hindsight can lend a better
- perspective due to the passage of time? 13
- Potentially. 14
- 15 So the fact that a company restates or changes
- something does not mean their judgment was inadequate in the first place; right? 17
- 18 Α Potentially.
- 19 Q Well, potential. That's in fact testimony that you 20 gave verbatim in another case last year; right?
- I don't recall specifically those exact words. 21
- 22 If I tell you that the case is SEC v Rosenberger,
- 22cv4736 in the Southern District of New York, would go that refresh your recollection? 24
- MS. CONNELL: Your Honor, if she's going to 25

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impeach, he should be shown the testimony, thequestion/answer content.

THE COURT: We haven't gotten there yet.

4 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?

8 A That specific matter relates to a technical financial 9 reporting issue with respect to revenue recognition, but I would

10 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?

15 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?

18 A Say that one more time.

Q Those real time business decisions, these real time business judgments, they are limited by the expertise and

21 experience of the individuals involved; right?

A It can be.

23 Q Okay. In forming your expert opinions, did you even

ask to speak to any of the people at the NRA making these

25 decisions?

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.

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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 15th and hopefully either finish instructions that same day or complete them in the morning of the 16th. The jury would have all of the 16th 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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1 A I did not have such access.

Q And you didn't speak with anyone at the NRA who madeany of these decisions; right?

4 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 21st, 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

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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THE COURT: Yeah. The way this will work is, you know, we will get through the Plaintiff's case. If there are motions by either side, the party bringing the motion will bear the time of arguing the motion. Right.

So if -- maybe you both will make motions. I don't 5 know. It will be a little more unusual for the Plaintiff to 6 7 make a directed verdict motion, but I guess you can. But if 8 there are motions by both, then we will split the time for 9 who gets charged for the time to argue that motion. But once we are done with all that and the Defense has started, 10 11 you should be able to -- I think its been a relatively 12 consistent four hours per day and just plan that out. And -- but I appreciate you keeping such careful track of 13 14 it. But I do think it's important that we really work hard 15 to get the all the evidence in by the end of the day on the 16 14th. And so that we are ready for closing arguments on the 17 15th because you'll probably want to know everything that's 18 in and not in rather than having that happen in the middle of a day. Okay. So I won't do all the math for you, but 19 20 you can -- you can figure it out.

> So the Plaintiff obviously has -- and this is not unusual, has spent -- has spent more of the time. So you'll have to just assess how much time to spend on crossing witnesses, and -- but that's the plan, and I do plan on enforcing it, being done with the evidence at the end of the

as Court Exhibit VIII

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(Whereupon, the aforementioned Jury Note was marked as Court's Exhibit VIII as of this date by the Reporter.)

THE COURT: If anyone thinks there is something I should do in response to this -- I don't. You can think about it.

All right. Anything else before we get the jury? All right. Let's get them. Let's get the witness. Let me just -- I want to make sure we have copies of the Court exhibits in one place. Ms. Hill can either keep them or the court reporters can keep them.

I think the other Court exhibits were -- I believe the Plaintiff marked transcript excerpts as Court exhibits; right. So if you want to have us keep a copy of all the Court exhibits, then just make sure Ms. Hill has a complete set.

MS. CONNELL: Okay. We will confer with the Defendants and make sure there is a complete agreed upon

(Witness resumed the witness stand.)

THE COURT: It will be good if we can get to the motions either right before or after the lunch break so we don't have to have a stop and a start. So if we can get through this witness before the lunch break, I won't object.

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14th. So that's another -- after today, it's one, two, 1 three, four, five, six days. 2

MS. ROGERS: So after today I think there is like 28 hours left of trial time basically.

THE COURT: Is it even 28 or six more days because Monday is a holiday?

MS. ROGERS: 24. Oh, because of Monday. THE COURT: Okay. Is the jury ready?

(Whereupon, at this time there was a pause in the proceedings.)

THE COURT: We received a note from one juror which we will mark as Court Exhibit VIII. It's not really a question. It's sort of a comment on evidence. I think I'm just going to give you both a copy of the note. I don't think there is anything to do with it, but you know, since I have it, you should have it. It just seems to be sort of an observation by one juror about evidence, so we will give one to each side. I couldn't entirely make all of the words out. Again, it seems to be more of a musing. So I don't want to spend really too much time scrutinizing it since there is really nothing to be done other than for me to just give it to you.

Just for the public record, it just says we haven't seen certain evidence of a certain thing or a certain type and ends with that. So I will mark this -- can we mark that

I'm sure the witness won't object either. 1

MR. CORRELL: I'll be quick.

THE COURT OFFICER: All rise. Jury entering. (Whereupon, at this time the jury entered the courtroom.)

6 THE COURT: Please have a seat.

> MR. CORRELL: May I proceed, your Honor? THE COURT: Mr. Correll.

9 **CROSS-EXAMINATION**

BY MR. CORRELL:

Q Good morning, Mr. Hines. I'm Kent Correll, and I 11 12 represent Wayne LaPierre.

13 A Good morning.

Q At the beginning of your testimony today, you indicated that you had some knowledge of Wayne LaPierre's knowledge concerning the Marcellin contract. Do you recall testifying about that? 17

MS. CONNELL: Objection, your Honor.

19 A I don't recall.

> THE COURT: Hang on. Is that the testimony I struck?

MR. CORRELL: I don't believe so, your Honor. MS. CONNELL: Your Honor, this is what we discussed before the jury came in this morning as to whether we would

revisit the Marcellin. That's what you struck the other

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Hines - by Plaintiff - Cross/Ms. Rogers Page 3146 1 day. THE COURT: Well, there was a slide that came up, 2 and it turned out that it was based on some -- the exhibits 3 4 that are referenced weren't admitted into evidence, so I 5 struck the portion of that testimony. If there was 6 subsequent testimony and there was a little bit and just in 7 the last round, you can ask about that. 8 MR. CORRELL: Yes, your Honor. 9 Q You indicated that Wayne LaPierre had some knowledge of the Marcellin contract earlier in your testimony; correct? 10 MS. CONNELL: Objection. Misrepresenting the 11

12 testimony. 13 MR. CORRELL: Well, we can read it back if you'd

14 like.

THE COURT: Overruled.

15

Q Do you recall testifying -- using the word "Marcellin" 16 earlier today in your testimony? 17

A I don't recall today or the other day. 18

Q Do you recall saying earlier today that Mr. LaPierre 19

knew about the indirect payments to Marcellin? 20

21 THE COURT: That it was your understanding of the facts that he knew. 22

23 O It was your understanding of the facts that he -- that

Mr. LaPierre knew about the indirect payments to Marcellin. 24

25 I'm a little confused. I don't specifically recall

personal knowledge of anything. The testimony is based on 2 his review of the record and so if you want to ask it that 3 way.

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MR. CORRELL: Your Honor, if I could just get a yes or no, do you have any personal knowledge. Then I can go to the next question, do you have any secondhand knowledge.

THE COURT: Okay. If you want to spend the time asking a witness who has no personal knowledge whether he has no personal knowledge, go ahead.

O Sir, can we agree that you have no personal knowledge 10 of any of the facts of this case; correct? 11

12 A Correct. If you're speaking of personal knowledge as in my participation, then correct. 13

14 Q Right. You are not a percipient witness with respect to this case; correct? 15

16 Α No, sir.

You have looked at some documents; correct? 17 O

More than some. Ouite a few. 18

Q And you have said things that are based on your looking 19

20 at documents; correct?

21 Q And based on your looking at documents, you haven't seen anything that indicates that Wayne LaPierre knew that Gayle Stanford was marking up invoices; correct?

24 A What do you mean by marking up? Are you talking about

adding a percentage on top of invoices or adjusting the

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- that exact point but --
- Q So let me make it easier for you. Do you have as you
- sit here today any knowledge that Wayne LaPierre knew about
- these indirect payments to Mr. Marcellin that you say you saw
- evidence of in the documents? 5
- Not that I recall as I sit here right at this moment.
- 7 Maybe we were referring to specific testimony that I reviewed before. 8
- 9 Q I'm getting to just your testimony as you sit here right now. 10

11 Do you have any knowledge that Mr. LaPierre knew that there were indirect payments to Marcellin? 12

A I don't recall at the moment, no. Not that I recall. 13

14 Q Do you have any knowledge -- personal knowledge as to

whether Mr. LaPierre knew that Gayle Stanford was marking up invoices? 16

- 17 A Can you ask the question one more.
- Q Do you have any personal knowledge as to whether Mr. 18
- LaPierre knew that Gayle Stanford was marking up invoices? 19
- 20 A Personal knowledge as in my own direct experience with the individuals? 21
- 22 Yes or by looking at documents.
- 23 THE COURT: Yeah. I think it would be helpful to 24 be clear about that.
- 25 Just so the jury is clear, the witness doesn't have

descriptions.

12

- Q I am talking about adding a cost, a charge to an 3 invoice.
- A I don't recall specifically anything that indicated Mr.
- LaPierre's knowledge of that as I sit here today.
- 6 And you didn't see anything that indicated that any of those invoices were sent to Wayne LaPierre; correct? 7
- 8 A I don't believe so.
- 9 Q Okay. So as you sit here today, you can't say that Mr.
- LaPierre was aware of -- that those -- that Gayle Stanford was 10
- doing anything to these invoices; correct? 11

MS. CONNELL: Objection.

- Q I'll withdraw the question and go to the next one. 13
- Q Do you know whether Wayne LaPierre has paid for any of 14 the flights that you included in your summary? 15
- A I'm generally aware that there's been some 16
- reimbursements, but I don't know specifically. 17 But you didn't include those in your summaries?
- 18 19 No. Those are summaries of the invoices that were
- 20 submitted to Ms. Stanford.
- Q Okay. And if you had knowledge that Mr. LaPierre had 21
- paid for flights, would you have adjusted your charts to reduce 22 23 the figures?
- A It would not have changed those summary of invoices

that were sent to Ms. Stanford from CAA.

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Q And so the numbers that you put in your demonstratives,

in your power point wouldn't have changed if some of those

flights had been paid for by Mr. LaPierre?

A Well, I would view the initial invoicing and billing as

separate and apart from any potential reimbursement. So my

analysis was to summarize the amount of the private charter

invoices and the GS2 invoices billed to the NRA.

8 Q But you didn't give Mr. LaPierre credit for any

payments he might have made for any of those flights; correct?

A Again, it was summary evidence. There is nothing to 10 credit for. I was actually just summarizing, but those

11 12 schedules summarized those CAA invoices and GS2 invoice.

13 Q Sir, did you see any evidence of a change in work flow

14 with respect to the MMP company during the time period you

15 looked at?

Can you define change in work flow? 16 Α

More services provided. 17

I don't have any details with respect to that, no. 18

Q Did you look to see whether any additional revenue was 19

20 coming in?

21 A I observed additional management fees over the course

of a number of years, certainly. 22

Q Did you see additional revenue coming to the NRA from

MMP? 24

25 MS. CONNELL: Objection. determination by comparing the cost versus the benefit that the

NRA was getting from this relationship with MMP?

MS. CONNELL: Objection, your Honor.

4 THE COURT: Overruled.

5 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

8 materiality analysis purely based on the ratio of that number.

9 In my experience, it's not how materiality is done, and it would consider both the quantitative and qualitative factors 10

11 with respect to the arrangement.

12 Q Let's talk about quantitative.

What would be a typical range of materiality in terms 13

of percentage in your view? 14

Materiality of what?

Q Of forensic risk analysis looking for fraud risk 16

17 indicators.

15

A Well, typically, materiality is in reference to either 18

financial statements or internal controls. 19

With respect to internal controls, materiality is 20 typically looking at the likelihood of a risk occurring and the

potential for that to have an impact on the financial 22

23 statements.

24 Where I do analyses in the forensic world, materiality

can be focused on specific subparts of a financial statement.

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What do you mean revenue? Sorry. 1

Money coming in to the NRA through MMP's efforts. 2

A My analysis was on the contract and the expenditure

portion of that, not the revenue related to the NRA or donations

and inflow.

6 Would it surprise you if the number coming in over that 7 period was \$1.7 billion?

MS. CONNELL: Objection, your Honor. No foundation 8

9 in evidence.

THE COURT: Sustained. 10

MS. CONNELL: Your Honor, we can connect that up in 11 our case in chief. 12

Q So fair to say that you really didn't care about how 13

14 much money MMP was bringing in. You only cared about how much

15 money the NRA was paying MMP when you did your analysis.

A I would say my analysis was focused on the specific 16

17 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 19

20 are separate.

Q And you are an accountant; right? 21

22 I am. Α

23 Q You know what materiality means?

24 Α

Did you make any attempt to make a materiality 25

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 4

would consider the magnitude of the dollars. You would consider

6 other factors qualitative.

7 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. 10

Well, again, there is different benchmarks for

materiality, some based on a percentage of revenue or a 12

percentage of change in assets. So obviously, it's highly

dependent on the particular facts and each particular

materiality assessment. 15

What is your hourly rate? 16

In this matter \$520 an hour.

18 O How much hours did you spend working on this case?

19 Hundreds. I don't know exact number.

20 Q Did you enter into a contract with respect to this

work? 21

17

22 A Yes. We have a contract with the State -- the Attorney

23 General's Office.

Did you sign the contract? 24

A I believe I did with our financial group that handles 25

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1	all the contracting processes.	1	risk indicator?
2	Q Did anyone else sign the contract for your firm?	2	A Not that I can recall.
3	A I honestly don't recall.	3	Q Did you ever disclose to your firm that you had develop
4	Q How many people signed the contract for the AG?	4	a friendship through someone that you developed a relationship
5	A I don't recall.	5	through your work for the firm?
6	MS. CONNELL: Objection, your Honor.	6	A I may have. I don't recall.
7	Q Who signed the contract for the AG?	7	Q But you would agree that developing a friendship
8	A I don't recall.	8	through a business relationship doesn't necessarily turn into a
9	Q Did you see any fraud risk indicators for that	9	fraud risk indicator; correct?
10	contract?	10	A I would agree with that, not necessarily. It could.
11	A No.	11	Q Do you know who Pete Ricketts is?
12	(Continued on the following page.)	12	A No.
13	(*************************************	13	Q Governor of Nebraska?
14		14	A No.
15		15	Q You tabulated a bunch of flights to Nebraska. Why did
16		16	you pick Nebraska?
17		17	A I was asked by the Attorney General's office to include
18		18	that as one of the categories.
19		19	Q And did they tell you why they asked you to include
20		20	that?
21		21	A I my understanding is that it was a destination that
22		22	they found was related to Mr. LaPierre's flights.
23		23	Q Did they tell you why they found it of interest?
24		24	A I understand it is where certain family members live.
25		25	Q And it is also where Governor Pete Ricketts lives,
E. F	Hines - by Plaintiff - Cross/Mr. Correll Page 3155	E. F	lines - by Plaintiff - Cross/Mr. Correll Page 3157
1	Q How much have you been paid so far?	1	correct?
2	A My firm?	2	A It may be.
3	Q Yes.	3	Q Did you see any indication that Mr. LaPierre traveled
4	A I believe it is just under or above \$1 million.	4	there to meet with Governor Ricketts?
5	Q How much more do you expect to be paid for your work in	5	A That's not information that's available on the
6	this case?	6	itineraries.
7	A I don't know the exact figures, but I believe our	7	Q Did you see any indication in the documentation that
8	estimate and we're somewhere around 1.2.	8	there were gun shows in Nebraska?
9	Q And you think you'll come in under 1.2 or do you think	9	A Again, that's not on the
10	you could go over 1.2?	10	Q So, Mr. LaPierre could have been traveling there for
11	A I don't know. I haven't looked at it over the last	11	gun shows; correct?
12	month.	12	A It is possible.
13	Q And that's taxpayer money that you're being paid?	13	Q Did you see any indication that there were friends
14	MS. CONNELL: Objection, your Honor.	14	dinners, friends of the NRA dinners that were held in Nebraska?
15	THE COURT: Sustained.	15	A Again, that's not on the itineraries or the Stanford
16	Q Who writes you the check?	16	invoices.
17	MS. CONNELL: Objection, your Honor.	17	Q And the attorney general didn't tell you that any
18	THE COURT: He can ask.	18	friends dinners were held in Nebraska; correct?
19	A I'm not sure if it comes from the State controller's	19	MS. CONNELL: Objection, your Honor.
20	office. I don't recall. I don't process our incoming checks	20	MR. CORRELL: Your Honor, it is fair enough. They
21	because we have segregation of duties for that.	21	picked Nebraska.
22	Q Have you ever developed a friendship through a working	22	THE COURT: There's nothing unfair about the

23

Q And when that happened, did you view that as a fraud

23 relationship?

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24

25

Yes.

question. There's just whether there's an evidentiary -- do

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

you have an evidentiary basis for that question?

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he comes on in the case in direct.

- THE COURT: Overruled. 2
- 3 Q Do you know whether pheasant hunts are held in Nebraska
- 4 for NRA members and supporters?
- A No. 5

NRA

- 6 O So, when you did what the AG told you and just added up
- 7 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 10
- the format I was asked to summarize it, yes. 11
- 12 Based on the AG's request; correct?
- Based on my discussions with counsel about the 13
- 14 schedules, yes.
- Q And were you asked to segregate out the flights that 15
- landed in Kearney, Nebraska, versus the flights that landed in 16
- 17 Kearney, Nebraska, versus the flights that landed in Omaha
- versus the flights that landed in Rapid City? 18
- A No, but that detail was all included in the summary 19
- 20 evidence prepared.
- 21 Q Assuming the itinerary is properly or do include the
- destination cities you just mentioned, did the AG also ask you 22
- just to hone in on flights to the Bahamas?
- A No. It was one of the categories; but, obviously, 24
- there's a schedule that had every single invoice included in

- E. Hines by Plaintiff Cross/Mr. Correll
 - were in the Bahamas. 1

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- 2 Q So, you could have segregated out the flights in December from the flights in the summer; correct? 3
- 4 A Again, they're all included in the same detailed
- schedules, but that same information in it so it's in there. 5
- 6 But the AG didn't ask you to filter the data in that
- 7 fashion; correct?
- 8 A No. Again, it is summary evidence, summarizing the
- information across the population of invoices, which is what I
- 10 do.
- Do you know who Larry the Cable Guy is? 11 Q
- 12 Α I heard of him, yeah.
- Do you know where he lives? 13 0
- I don't. 14
- Q Nebraska. I'll represent to you he lives in Nebraska. 15
- Do you know that he's an NRA supporter? 16
- 17
- 18 Q Do you know whether Wayne flew to Nebraska to meet with
- Larry the Cable Guy? 19
- 20 I do not.
- 21 Q Do you of any basis for suggesting that Wayne LaPierre
- knew about any flights taken by Tony Makris when he wasn't 22
- present? 23
- Can you ask the question again? 24
- 25 Yes. Do you have any basis for suggesting to the jury

E. Hines - by Plaintiff - Cross/Mr. Correll

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- that particular supporting information.
- Q Well, did you come up with the idea of focussing on the
- 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. 5
- Q Did they tell that you Mr. LaPierre went to the Bahamas
- every year for a celebrity retreat to try and develop 7
- relationships with celebrities to benefit the NRA? 8 9 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 10
- 11 recall reading that certain information.
- 12 Q But you didn't separate out the data for those trips
- from any other trips Mr. LaPierre took to the Bahamas; correct? 13
- I'm not sure how I would do that, but --14
- Q Well, how about by date? Do you know the celebrity 15
- retreat was held each year in December? 16
- That's possible. I don't know that. 17
- Q And do you know that the allegations that Mr. LaPierre 18
- traveled to the Bahamas during off season in the summer where he 19
- 20 stayed on David McKenzie's yacht?
- MS. CONNELL: Objection, your Honor. 21
- 22 THE COURT: Well, the objection is overruled. You
- 23 said, Yes, I am aware of that?
- 24 THE WITNESS: I'm generally aware based on looking
- 25 at flight information at what points Mr. LaPierre and others

- or anyone else that Wayne LaPierre knew about flights Tony
- Makris took when Wayne wasn't present?
- 3 A I'm not sure if -- are you referring to the summary
- schedules for the CAA invoices. 4
- 5 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?
- 8 A I believe so.

15

23

25

- 9 Q And do you have any idea whether Wayne LaPierre was
- aware that Tony Makris had taken those flights? 10
- 11 A I don't have any direct personal knowledge about that.
- 12 So, to the extent that your data might have suggested
- that Wayne knew, that is pure supposition; that would be pure
- 14 supposition on your part, correct?
 - MS. CONNELL: Objection, your Honor.
- THE COURT: Overruled. 16
- 17 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. 19
- 20 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? 22
 - MS. CONNELL: Objection, your Honor.
- THE COURT: The millions of dollars? 24
 - MR. CORRELL: I'll put it another way.

Min-U-Script®

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E. Hines - by Plaintiff - Cross/Mr. Werbner Page 3162 Q In the course of your work, did you see any documents showing payments for security for Wayne LaPierre? 2 A Not that I recall. There may have been. I just don't 3 4 recall as I sit here. 4 Q Did you make an attempt to sort invoices according to whether they were -- whether they were for air travel expenses 6 Α

incurred for security purposes?

A No, not specifically to that particular point. 8

9 MR. CORRELL: Pass witness, your Honor.

CROSS-EXAMINATION 10

BY MR. WERBNER: 11

12 Q You can't say what damages, if any, Woody caused the

NRA to lose; can you? 13

My analysis --14

15 Q Sir, can you tell us what damages, if any, were caused

by Woody Phillips; yes or no? 16

A I have not calculated damages. 17

And, therefore, you can't say what damages, if any, 18

Woody Phillips caused the NRA; correct? 19

Again, I haven't calculated. 20

And that's why you can't say, right? 21 Q

A I can't say because I haven't performed that analysis. 22

23 All right. And you're not offering any specific

opinion about what intent Woody Phillips had; are you? 24

No. 25

19

20

21

22

23

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E. Hines - by Plaintiff - Cross/Mr. Werbner Page 3165

Okay --1

A My experience intent is a legal conclusion, and I'm not 2

rendering a legal conclusion.

E. Hines - by Plaintiff - Cross/Mr. Werbner

Q So, you're not saying that Woody had any bad intent or

did anything wrong; are you? 5

6 MS. CONNELL: Objection, your Honor.

THE COURT: Overruled. 7

A Again, no, my understanding --8

9 Okay, I don't want your understanding.

Are you able -- have you formed an opinion, have you 10

formed an opinion about Mr. Phillips' intent? 11

12 A No.

And, therefore, you can't say whether he's done 13

anything wrong with intent; isn't that true? 14

MS. CONNELL: Objection, your Honor, whether he's 15 done anything wrong --16

THE COURT: Overruled. You can answer.

These are yes or no questions. You can answer them 18 19 yes or no; or if you don't think you can, you can explain

20 why.

17

What was the -- what was the last question? 21

22 Q That you're not saying that Woody Phillips acted with

23 intent knowing something he did was wrong; are you?

24

25 Q Okay. You haven't specifically calculated any damages

E. Hines - by Plaintiff - Cross/Mr. Werbner

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caused by Woody Phillips; have you?

No.

MS. CONNELL: Objection.

You said earlier that you didn't interview any

witnesses; is that correct?

Correct.

7 Did you ask, yes or no? Q

8 Α No.

9 I assume you've read all the trial transcripts in the

last four, five weeks that we've been here; is that right? 10

11 Not a single one.

12 With your 1.1 to 1.2 million dollars you didn't think

it was necessary to review the people who have testified based 13

on the available transcripts here?

A No, I didn't want to potentially have any impact on my 15

opinions that I've already reached given in my analysis. 16

So, you don't know that LaPierre testified in this 17 case that Woody did work under his post-retirement agreement? 18

MS. CONNELL: Objection, your Honor. There's

contradictory testimony on that point.

THE COURT: Yeah, rather than summarizing the testimony which is kind of difficult, you can ask it without asking the witness to accept your characterization.

Q So, you don't know one way or the other what Mr. Wayne 24

LaPierre said to this jury when he testified; do you?

2 And you don't know what Mr. Erstling or Ms. Rowling

testified about the MMP contract; do you?

4

5 Q You don't know if Woody was even asked to do something

6 under his agreement that he failed or refused to do; do you?

7 A Well, based on my review of the record evidence, I'm

aware of just based on my understanding of testimony outside of

the trial from deposition transcripts that individuals were not

aware of his services. But if you're asking specifically about

trial testimony, then I'm not aware of that.

Q Doesn't that leave a pretty big hole in your 12

understanding if you haven't read any of the testimony from over

four or five weeks?

15 A No. My understanding is that I shouldn't be reading

trips. 16

22

17 Q Who told you that you should not read transcripts that

the jury has heard for the last four, five weeks? 18

19 Based on my understanding.

20 Who told you?

MS. CONNELL: Objection, your Honor. 21

THE COURT: Let him answer.

23 Α My understanding in discussion with counsel.

What counsel? 24 Q

The attorney generals. 25 Α

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- 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?

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- A No, not that it wasn't necessary; but that given I'm a
- witness in the trial, I should be cautious about reviewing
- information, about things what happened.
- You think it's careful to give opinions without
- considering what people have said about the facts in the case? 8
- A I prepared my opinion based on extensive review of the
- facts in the case. 10
- Q You think that's careful work to leave out all of the 11
- 12 testimony that the jury has heard; is that a yes or no?
- A I do think it is careful work, and I do think it 13
- considers the guidance and my extensive review of the documents
- that I analyzed. 15
- 16 Q How much money from your understanding of the facts did
- the NRA pay to Woody Phillips? 17
- A Can you be specific about a period of time or --18
- Q You know for the ten years -- let's just take ten years 19
- 20 from 2011 to 2024. That's even more than ten years. Everything
- that you reviewed, some of that went back to 2010 or 2011;
- correct? 22
- A Correct. 23
- Q From all that ten-plus years, can you tell the jury how 24
- much Woody Phillips received from the NRA?

- 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?
- 4 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.
- 7 Q Well, it was signed by the president of the NRA; wasn't
- 8

16

18

- 9 I believe that's true.
- Q And it was signed by the first vice president of the 10
- NRA; right? 11
- 12 A I believe there's a signature at the bottom.
- So, isn't -- aren't those two signatures appropriate? 13
- A They're part of the population of individuals that 14
- would have to sign that contract, but not all of those. 15
 - Are you just nitpicking there?
- MS. CONNELL: Objection, your Honor. 17
 - THE COURT: Overruled.
- A Certainly not nitpicking. Those policies and 19
- 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 --24
- 25 THE COURT: Hang on. You can finish your answer.

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- A Again, are you talking about his salary, his
- compensation? 2
- 3 Q Is there some reason you're dancing around with this
- question? 4
- It is not a specific question. 5
- Q It is a specific question. The question is based on
- all the work that you've done for which you've charged over a
- million dollars, can you tell the jury -- yes or no --- how much
- money Woody Phillips received from the NRA? Can you do that or
- can you not do that? 10
- MS. CONNELL: Objection, your Honor. 11
- THE COURT: Well, it's a fair question, whether the 12
- 13 witness has that number.
- 14 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 16
- employment. 17
- 0 And that was \$170,000; right? 18
- 19
- 20 Q So, Woody Phillips received \$170,000 and you've gotten
- over a million pursuant to your contract; correct? 21
- 22 That would be factually accurate.
- All right. Now, you know Woody Phillips retired five 23
- years ago; don't you?
- Yes. A 25

- crucial controls with respect to the expenditures of the

A I do not view that as nitpicking. I view those as

- organization. 3
- 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?
- 9 Is it possible that it was --
- Q In your mind --10
- I'm not sure what the question is. 11
 - You're not sure of the question? Q
- Α No. 13

12

23

- Q What don't you understand about the question? Let me 14 15 repeat it.
- 16 Do you make room for the possibility that when Woody
- 17 Phillips got the president and the first vice president to sign his post-retirement consulting agreement, that he did that in 18
- 19 good faith?
- 20 A That's a possibility. I'm not offering any opinions on good faith or intent. 21
- Q So, you don't know if he acted in good faith or not? 22
- MS. CONNELL: Objection, your Honor. THE COURT: Sustained. 24
- 25 Q You had a chart that showed the out-of-pocket expenses

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from Ackerman McQueen.

- Do you remember that? 2 Yes. 3
- 4 Q Let's put that up. I think that's slide 42. You see
- this slide that has the \$2.7 million broken out that came from
- the out-of-pocket expenses.
- Do you remember that? 7
- Yes. 8 A
- Q Out of that \$2,758,189, that 2.7 million, how much of
- that money from the out-of-pocket expenses went into Woody 10
- Phillips' pocket? 11
- 12 A I believe it was a small amount related to parking.
- Tell the jury out of the 2.7 million from the Ackerman 13
- McQueen out-of-pocket expenses, out of that 2.7 million, how
- 15 much went into the pocket of Woody Phillips?
- A I don't recall the precise number. I believe it was a 16
- few thousand dollars that I could identify. 17
- Q Was it about \$2,000 for parking? 18
- A I don't recall the exact number, but --19
- 20 Q Well, I'm not asking you for an exact number. You said
- it was a small number, and I want the jury having the benefit of
- your million dollar work. How much went in the out-of-pocket to 22
- Woody Phillips?
- A Through this particular arrangement, I believe from 24
- what I could identify it was 2 or 3,000 dollars is my

- E. Hines by Plaintiff Cross/Mr. Werbner
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- parking paid for when he went to Ackerman McQueen; yes or no?
- A Yes, I think it is wrong given it was not through the
- 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 6
- 7 consistent with its own internal controls.
- 8 Q Right, but not to repeat the point you itemize that
- 9 based on your work at \$2.7 million; correct?
- Yes. 10
- And there's this tiny, tiny fraction of the benefit 11
- 12 that Woody Phillips got; isn't that true?
- It is. 13
- You said that you've been paid at the time of your 14
- 15 deposition between 1.1 million and 1.2 million; correct?
- I don't believe I said that. 16
- What did you say? 17
- At my deposition? 18
- Q As of the time of your deposition, how much had you 19
- 20 been paid?
- 21 A I believe it was much less than that, and the question
- I was asked about my estimate for this case. 22
- 23 Q Oh, so have you put that much more work into it since your deposition? 24
- MS. CONNELL: Objection. 25

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2

7

E. Hines - by Plaintiff - Cross/Mr. Werbner

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- recollection.
- O For parking at Ackerman McQueen? Do you find anything
- wrong with Woody Phillip getting parking when he went to
- Ackerman McQueen offices?
- Other than the fact that --5 Α
- 6 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. 8
- THE COURT: Agreed. 9
- Q Do you find anything wrong with him getting parking at 10
- 11 Ackerman McOueen?
- A I find given its part of the out-of-pocket expense 12
- billing scheme which I do find, I do have a problem with and I 13
- do think is an internal control example of internal control 14
- failure. 15

7

- Right --16
- THE COURT: Let him finish, please. Hang on. Are 17 vou done with your answer? 18
- 19 THE WITNESS: I kind of lost my train of thought.
- Let me repeat the question for you. 20
- We know that you don't like the out-of-pocket 21
- 22 arrangement at Ackerman McQueen. We know that. 23 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

- THE COURT: Overruled. 1
 - Certainly worked in prepping for trial over the last
- month and a half. 3
- Hundreds of thousands of dollars?
- I don't know the precise amount. 5 Α
- 6 Meeting with the attorney general staff?
 - Yes, we've met. A
- How much have you met? 8 Q
- 9 A If I had to guess, several days, maybe 24, 28. I don't
- know the exact number. 10
- Did they help you do your slides? 11
- We prepared slides --12
- Did they help you do your slides? 13
- THE COURT: Let him answer. 14
- Did they help you do your slides? 15
- We did have assistance with the slides through trial 16 graphics folks that they engaged. 17
- So, the slides aren't all your work; are they? O 18
- 19 It's certainly --
- Excuse me, your Honor --20
- THE COURT: No, I think I know what he's -- I'd 21
- 22 like to let him answer.
- 23 A It is my work, summary of my work and my findings and
- my opinions based on my professional education, experience and
- training. 25

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E. Hines - by Plaintiff - Cross/Mr. Fleming Page 3174 But you had a little help?

- With assistance in terms of the preparation in the 2
- visual presentation. 3

NRA

- 4 And that was given to you by the AG's lawyers?
- Trial graphics individuals and the attorney general's
- office had insight as how to make it accurate and
- understandable. 7
- 8 Q You needed help from them on how to make it accurate?
- 9 A Help ensure that it was easily digestible by the fine
- folks of the jury here. 10
- Presented in a certain way? 11
- 12 Α Just --
- Presented in a certain way? 13 O
- Sure. 14
- 15 MR. WERBNER: Pass the witness.
- **CROSS-EXAMINATION**
- BY MR. FLEMING: 17
- O Hello, Mr. Hines. 18
- A Hi. 19
- 20 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? 22
- 23 A Yes, as part of my engagement.
- Q Part of your work you familiarized yourself with the 24
- policies of the National Rifle Association?

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THE COURT: You can reference things in the 1 complaint. It is a statement by the plaintiff. 2

MR. FLEMING: It is a judicial admission. 3

4 THE COURT: I just don't have it all in front of me 5 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.

9 Q Are you aware that your client has characterized that policy as comprehensive? 10

11 A I believe I was aware of this from my deposition.

12 Q Are you also aware that they have characterized that the policy defines conflict of interest more broadly than 13

required by New York law?

A I don't recall that specifically. 15

Q Now, did you learn in part of your work that Mr. Frazer 16 expanded the NRA's financial disclosure questionnaire? 17

A I don't -- I believe I have a recollection that that is 18

the case, but I don't recall the specific document as I sit 19 20 here.

21 Q Okay, and you would view expanding a questionnaire to obtain more potential conflicts a good thing; right? 22

23

6

7

8

Q It is not a negative internal control; correct? 24

25 I would agree.

E. Hines - by Plaintiff - Cross/Mr. Fleming

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- The NRA's conflicts of interest and related-parties
- transaction policy is, of course, a policy of the NRA; is that
- 4 right?

1

- Yes. 5 Α
- 6 Q Were you aware that it was adopted by the board in 7 January 2016?
- Α The current version of the policy you're referring to? 8
- 9 Q Yes.
- A I don't have the exact date, but that sounds consistent 10 11 with my memory.
- 12 Q Okay. And you know that Mr. Frazer led the effort to
- have the organization adopt that policy in January 2016; right? 13
- I don't know that detail. 14
- 15 Q Okay. Well, do you know that your client, the attorney general, has characterized that policy as comprehensive? 16

MS. CONNELL: Objection, your Honor. 17

THE COURT: I think you have to be more specific, 18 19 if you're referring to --

20 MR. FLEMING: Your Honor, it is in the three-time verified complaints. 21

22 MS. CONNELL: Your Honor, this is not admissible 23 evidence to put in front of the jury. He can ask about his 24 view of the policy I guess. He's not a government expert,

but --25

- Q Now, you reviewed a lot of e-mails as part of your 2 work?
- Α Yes. 3
- Q Now, did you know that Mr. Frazer from these e-mails
- worked with the NRA's Financial Services Division accountants to
- crosscheck to determine whether any payments were made to board
- 7 members?
- 8 A I don't recall that specifically from e-mails.
- 9 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? 13

14 A I would agree so as long as the crosscheck was thorough and looked in the various ways and places that payments might be 15 made. 16

17 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?

20 A That would be one step. I just also observed in my analyses that some payments to directors were not always in the 21 general ledger or identifiable as such.

23 Q But that step, if it was taken, would not be a negative; is that right? 24

No. A 25

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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

Q Mr. Hines, you testified, did you not -- correct me if

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

I don't recall specifically addressing the timing or

Q But you reviewed minutes, right, by the Audit

I'm wrong, that related-party transactions were not approved by

the NRA until late 2018, 2019. Isn't that what your testimony

he was basing his opinion on, that's fine.

MS. CONNELL: Objection.

I think it sort of mischaracterizes.

THE COURT: Overruled.

How? Tell me how it does.

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was?

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? 6

7 MS. CONNELL: It's outside the scope, your Honor, and it's also not based on evidence. 8

THE COURT: Sustained, because none of his 9 testimony went to that issue. 10

Q Well, Mr. Hines, you testified that as part of your 11 12 work you reviewed Audit Committee minutes; isn't that right?

A Some, yes. 13

(Continued on next page) 14

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authorized contracts.

Committee?

minutes that you just referred to.

Q And in fact, in your report, you specified that you looked at March 16 Audit Committee minutes; right? 2 THE COURT: That's not in evidence. 3 MR. FLEMING: But he reviewed it. I'm asking him if 4

he reviewed it? 5

6 THE COURT: The cross is about what his testimony 7 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

And you saw that those minutes at least reflected that 25

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

I have reviewed certain minutes, yes.

3 A My recollection is that the minutes in some instances reflected a discussion about related parties. 4

In some instances, it was unclear exactly what was 5 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 10 timing.

11 My recollection is the documentation around that was very inconsistent and unclear. 12

Q Okay. If it was unclear, that's fine, but I'm asking 13 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. 16

> MS. CONNELL: Objection, your Honor. THE COURT: Overruled.

19 A I don't -- my recollection is that there is a reference 20 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. 24

You talked about four board members; right? O

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NRA February 5, 2024 Hines - by Plaintiff - Cross/Mr. Fleming Page 3182 Hines - by Plaintiff - Cross/Mr. Fleming Page 3184 1 Yes. 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 correct? 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 Q And in September of 2016, you saw minutes that showed 5 evidence about it so -- and you can argue to the jury based on the evidence that's coming in what was reviewed at that Mr. Butz's arrangement, Ms. Froman's arrangement and Ms. 6 7 various times. So I'm not sure -- it's difficult to -- the Hammer's arrangement were discussed in minutes by the Audit 8 Committee; right? 8 way you're questioning the witness without a specific 9 MS. CONNELL: Objection, your Honor. Move to 9 document is a little vague. MR. FLEMING: I agree. It's part of the difficulty strike. 10 10 11 THE COURT: That's overruled. 11 I wrote your Honor about but --THE COURT: Well, some documents are exhibits and 12 A I don't recall specifically what the minutes 12 referenced, but I do recall those minutes that discussed those some are not. 13 individuals, and I can't recall if it's specific to discussion O Now, Mr. Butz's arrangement started in 2002; correct? 14 15 about the existence of some of those arrangements or approvals 15 I believe that's correct, yes. or not. It's --Q Okay; and Ms. Froman's started in 2013; is that right? 16 16 Well, you asked me what I meant by "addressed." That sounds correct; yes. 17 17 18 You saw those minutes that the Audit Committee voted 18 And Ms. Hammer's started in or about 2004; right? that those transactions were fair, reasonable and in the best As far as I'm aware. 19 19 interest of the NRA; did you not? 20 20 Q And Mr. Frazer started in his position in 2015; is that MS. CONNELL: Objection, your Honor. correct? 21 21 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 Do you recall that he started in those positions after MS. CONNELL: Yes, your Honor. I think that's -those arrangement were entered into by -- with those board 24 25 THE COURT: Well, no. The problem with this is members? Hines - by Plaintiff - Cross/Mr. Fleming Hines - by Plaintiff - Cross/Mr. Fleming Page 3183 Page 3185 that there is a lot of different documents -- there is one That sounds correct; yes. 1 set of notes that you went through that I didn't admit, but O Now, do you have any dispute with the fact the Audit 2 there is also Audit Committee minutes where there are Committee putting aside the time period ratified each of those 3 4 indications of committee review. I just don't know -transactions? MS. CONNELL: We don't know the time. It's very 5 A I believe there is -- my recollection is there is some 5 6 unclear what timing we are specifically speaking about with ratification at some point. 7 some of those questions, and we are I think getting into --Q And you understand when the Audit Committee ratifies a THE COURT: No. It's hard for us to keep in our transaction they are saying that that transaction is fair, 8 9

heads all of the -- are you referring to admitted exhibits?

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MR. FLEMING: There is an exhibit that has not been admitted that we have tried to several times off of their exhibit list to try to get admitted.

THE COURT: Well, I can explain to you during a break why I haven't admitted it.

There are actual minutes that do address board member compensation, I believe, so you can ask that.

MR. FLEMING: I'm not sure I'm following. You're talking about from admitted exhibits?

THE COURT: I'm distinguishing from formal board members that have been admitted into evidence where there is discussion of related-party transactions, and there is one that, you know, I'm not going to discuss in front of the jury, but that I haven't admitted because it was a different kind of document.

MR. FLEMING: And your Honor, I won't say it on

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- 9 reasonable and in the best interest of the NRA; right?
- 10

MS. CONNELL: Objection, your Honor. This speaks to the legal conclusion under 715J.

MR. FLEMING: It's fact.

THE COURT: You mean, the actual document in which they approve that says those words.

MR. FLEMING: That is what ratification and approval of the Audit Committee means.

MS. CONNELL: Your Honor --

THE COURT: Well, in this specific exhibit, I think the jury has seen those words are used.

MR. FLEMING: They are, and they are used for a reason.

THE COURT: That's what you're referring to. MR. FLEMING: That's right.

- Did you answer? 24 Q
 - I lost the question.

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Hines - by Plaintiff - Cross/Mr. Fleming Page 3186 Q Well, the question is what you understand when transactions are ratified by the Audit Committee. 2 The Audit Committee is determining that those 3 transactions are fair, reasonable and in the best interest of the NRA; right?

THE COURT: You can't ask that question in 6 abstract. These are specific-they have seen specific documents where that has happened.

9 Q But he's just testified he knows that the Audit Committee at some point ratified these particular transactions. 10 And when they ratified those particular transactions, you 12 understand that they determined that those transactions were fair, reasonable and in the best interest of the NRA; is that 13

14 right? 15 MS. CONNELL: Your Honor, I'm going to object to this, which transactions were ratified when. It makes a 16

THE COURT: Well, right now the question is fair 18 because he said "ever ratified." 19

Go ahead.

difference.

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21 A My understanding is that those words were used at some point. I don't recall the precise timing of each one of those. 22 23 With respect to the transactions that I discussed, in some cases without specific details about the arrangements is my recollection.

Hines - by Plaintiff - Cross/Mr. Fleming 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. 5

6 Q Fair enough. Now, you heard -- you testified that you 7 went through the NRA's general ledgers.

Do you recall the testimony? 8

9

And do you recall Ms. Connell saying those were 10 voluminous documents requiring a wheel barrow if they were brought into the court. 12

Do you remember that? 13

Vaguely, yes. 14 Α

15 O And that must have taken a lot of time I imagine to do.

Yes. 16 Α

Q Okay. Are you familiar with the form 990s? 17

Α Yes. 18

0 19 And you reviewed those as part of your work?

I certainly looked at some of those, yes. 20

Q So when you looked in those 990s, you saw, did you not, 21

22 that each one of those related-party transactions and the

contract amounts and the amounts paid to those Board of

Directors -- these directors were disclosed in the Form 990

isn't; is that right?

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1 MS. CONNELL: Objection, your Honor. Your Honor, 2 when was it disclosed? How was it disclosed? It's a compound question. 3

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

O Do you recall seeing those amounts paid to those 10 directors Mr. Butz, Ms. Froman, Ms. Hammer disclosed in the 12 990s?

MS. CONNELL: I'm going to note my objection. THE COURT: When you say "the 990s", you mean all of them?

16 Q Well, let's start with 2015. Do you remember it in the 2015 990? 17

A I recall seeing some of those disclosed at some point 18 in time in some 990. I have not committed to memory which amount for which directors at which point in time. 20

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, 25

Hines - by Plaintiff - Cross/Mr. Fleming

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1 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? 3

MS. CONNELL: Objection, your Honor. 4

Do you dispute it? 5 6

THE COURT: Overruled.

7 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

9 sit here right now.

Q Well, that wasn't the question. The question was do 10 you dispute it. It's a yes or no. 11

MS. CONNELL: Objection, your Honor.

THE COURT: I think that's asked and answered.

MR. FLEMING: Well, unfortunately, I'm not 14 finished. 15

THE COURT: We will pick this back up at 2:15. 16 Again, the same instructions. You are going to be 17

still on the stand during the break.

I'll see you all the 2:15. 19

THE COURT OFFICER: All rise. Jury exiting. 20 (Whereupon, at this time the jury exits 21

22 the courtroom.)

> (Whereupon, at this time there was a luncheon recess taken.)

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NRA February 5, 2024 Hines - by Plaintiff - Cross/Mr. Fleming Page 3190 Hines - by Plaintiff - Cross/Mr. Fleming Page 3192 AFTERNOON SESSION Okay. What is Part VII? 2 I believe it's disclosure related to compensation. 2 (Witness resumed the witness stand.) 3 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 to the highlighted portions and tell me if this refreshes any 5 after the last witness, the State is planning to rest after recollection that payments made to Ms. Froman and Ms. Hammer this last witness? were disclosed in the 2016 990? 6 7 MS. CONNELL: That's correct. 7 It would appear so. If I can just do one more to Mr. Butz. 8 THE COURT: You want to do that on the record. 8 THE COURT: In the same document? 9 Am I correct that there is going to be some motion 9 made by somebody? All right. So I'll excuse the jurors MR. FLEMING: It's Page 18 I believe of the same 10 10 after I do that so they don't have to hear that there is a document. 11 11 12 motion. If so, by who. 12 Q Mr. Hines, do you see this as well? THE COURT OFFICER: All rise. Jury entering. 13 13 Α (Whereupon, at this time the jury entered the 14 14 Okay. And you recall that this was disclosed in the 15 courtroom.) 2016 990? 15 THE COURT: Welcome back, everyone. Please have a A It would appear so based on this. I don't recall 16 16 specifically just based on my memory, but yes. 17 seat. 17 CONTINUED CROSS-EXAMINATION Q Okay. And these amounts that you just seen roughly 18 18 BY MR. FLEMING: accord to the amounts that you determined from the general 19 ledger; isn't that right? 20 THE COURT: Okay. Mr. Fleming, you may continue. 20 A I they seem like they are directionally correct. 21 MR. FLEMING: Thank you, your Honor. 21 Q I'm going to mercifully get you off this witness stand Q I'm certainly not testing your memory. I'm just trying 22 22 soon, but I do have to show a couple of documents. So I would 23 to avoid having to go into documents. like to go call up JFX39 for identification. It is a 990. It So are you familiar with the NRA's secretary's reports? 24 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 that's why I'm putting up this version. respect to the Board? THE COURT: So this document you know is in Q Well, the report of the secretary of the NRA to the 2 evidence, but you're not sure if this version is. Board of Directors. 3 3 MR. FLEMING: Right. The 990 is in evidence. I As part of the overall Board minutes. 4 4 just don't know what the document exhibit number is. That's right. 5 5 0 6 THE COURT: I imagine that someone in this grand 6 Generally speaking, yes. Q Okay. And did you review secretary's reports as part 7 room knows. If you say the year of the 990, they will know 7 of your work? 8 what number it is. 8 9 MR. FLEMING: 2016. 9 I don't recall specifically. I may have. MS. CONNELL: I don't know if it's in under this Okay. Well, I'll ask the question anyway. Do you 10 10 11 number. recall that these amounts paid to these directors were disclosed THE COURT: I would much prefer to not have the in the secretary's reports as well? 12 multiple exhibits which cover the same thing. 13 A I do recall some instances where there were disclosures 13 MS. CONNELL: It's in under PX 3565, your Honor. about some of these items. 14 14 THE COURT: I knew it. Q Okay. I will spare showing you those. 15 15 MR. FLEMING: Thank you. Now you testified last week about something called the 16 16 THE COURT: Does that sound right? "COSO framework." 17 17 Do you recall that? Q So Mr. Hines, as part of your work, did you review this 18 18 Yes. 2016 NRA 990? 19 19 20 A I believe so. 20 Q And I believe you said it was the standard for internal controls principles; is that right? Q Okay. If I could turn to Part VII. Thank you. And in 21 21 A It's a framework and provides internal control particular, the lines we talked about. 22 23 So Mr. Hines, are you familiar with Part VII of the 23 guidelines and principles, yes. 990? Q Now, the COSO framework though is not law; isn't that 24

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Generally, yes.

right?

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- As far as I know, yes, you're correct.
- Q And to your understanding, the COSO framework is not 2
- mentioned in the New York not-for-profit corporation law; is
- that right?
- A I don't know the answer to that.
- 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? 10
- A I don't. 11
- Q Now you were also asked questions last week about the 12
- NRA's vendors. 13
- Do you recall the questions? 14
- 15 Yes.
- Q All right. Can I call up the demonstrative. Page 31, 16
- I think it is. I'm going to copy Ms. Rogers if you will allow 17
- me. I've learned something.
- So you recall this demonstrative? 19
- 20 Yes.
- Q All right. Now, this shows -- well, before I get to 21
- this, Ackerman McQueen, that was one of the vendors you were 22
- asked about; right?
- Α Yes. 24
- 25 Q You're aware -- are you aware of the events of

- Hines by Plaintiff Cross/Mr. Fleming
 - They do in 2019.

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- Well, in 2018 which is the first 5.9 percent; right? 2
- Correct. 3
- 4 That's a reduction obviously from the 14 and a half
- percent change that had occurred the prior year.
- That was a reduction in the increase. 6
- 7 Reduction in the increase?
- It's not a reduction in the fee. That is the amount 8
- 9 grew but by a smaller amount.
- Q I didn't mean to imply otherwise, but it's a reduction
- 11 in the increase?
- 12 Α Correct.
- After that you see a change upwards. An increase, 13
- nevertheless, of 0.2 percent; right?
- Yes. 15
- And then this flat lines after that, so there is no Q 16
- 17 increases.
- A Yes. 18
- And your chart ends in 2021; right? Q 19
- 20 It does.
- 21 And in 2022, you testified there was a renegotiation of
- the MMP contract; right? 22
- 23 Α Yes.
- Q And a substantial reduction in the overall cost; is 24
- that fair? 25

Hines - by Plaintiff - Cross/Mr. Fleming

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Hines - by Plaintiff - Cross/Mr. Fleming

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- 1 whistleblowers from the NRA's Financial Services Division coming
- forward in July of 2018?
- A Yes. 3
- Q And do you recall that soon thereafter began a sequence 4
- of events which resulted in the termination of Ackerman McQueen
- as a vendor relationship?
- A Generally speaking, yes. I don't know the exact
- characterization, but I'm aware that Ackerman was no longer a
- 9
- Q Okay. And you understand or maybe you don't that that 10
- sort of flowed from the whistleblowers' expression of Top
- Concerns; right? 12
- A My understanding is there is some relation there. I 13
- don't know if that's the only driver. 14
- Q And this chart talks about MMP; is that right? 15
- A Correct. 16
- Q Okay. Now in 2018, I'll just direct your attention to 17
- the last column here where you talk about total change in
- percentage; right? 19
- Yes. 20 Α
- Q And there is some numbers here that, you know, however 21
- 22 you want to characterize them, but in 2018, the numbers go
- 23 downward; isn't that right?
- 24 A Are you talking about the percentage change amounts?
- Q 25 Right.

- Q And so in 2022, would you expect this percentage change
- would go into negative territory?
- Across all three, yes.
- All right. And so starting in 2018, there is a 5
- 6 definite trajectory of getting MMP under control. Isn't that
- 7 fair?
- MS. CONNELL: Objection. 8
- 9 THE COURT: Overruled.
- A I don't know about your characterization of getting it 10 11 under control.
- 12 My understanding is during that entire time period,
- there was still contracts that had not -- contracts that had not
- been properly authorized and no documentation for the fee
- increases. Maybe you could clarify what you mean by "under
- control."
- 17 Q Well, certainly the total change goes from -- reduces;
- 18 correct?
- 19 The change in fee from year to year reduces.
- 20 Right. And then it goes down to zero, so there is no increase; right? 21
- A Correct. 22
- 23 And then in 2022 even though you don't have the
- numbers, it probably goes into negative territory so that there
- is a change for the positive in the sense of less payments to

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NRA February 5, 2024 Hines - by Plaintiff - Redirect/Ms. Connell Hines - by Plaintiff - Redirect/Ms. Connell Page 3198 Page 3200 MMP; right? Q Yes. A I believe that would be the case assuming the 2022 No. 2 Α 2 Why not? 3 contract was adhered to, yes. 3 Q 4 MR. FLEMING: I have nothing further. Thank you. 4 A Because my analysis was whether the NRA followed its THE COURT: Okay. Anything further from the State? own policies and procedures and internal control structure, and 5 6 MS. CONNELL: Famous last words, but very, very that doesn't depend on the market value of the service. What finding, if any, did you make about that? 7 brief, your Honor. 7 REDIRECT EXAMINATION 8 8 That they were -- there were internal control 9 BY MS. CONNELL: 9 violations. 10 O Could we please bring up PX 3565. Could we please go Q You were asked about the relationship -- the NRA's 10 relationship to Ackerman McQueen; correct? to Page 5 of 55. 11 11 12 Mr. Hines, did you see this -- I'm showing you the 12 Yes. document that Mr. Fleming just showed you. 13 O How long was the NRA's relationship with Ackerman 13 Would you like to see the first page to make sure? McQueen ongoing that you know of? 14 15 Α No. I can see it here. A I believe it was 30 or 40 years sticks out in my head 15 Q Okay. Could I please direct your attention to question 16 for some reason. 16 17 28. 17 Q Do you know who, if anyone, signed the 1990 services Do you see that? agreement between the NRA and Ackerman McQueen? 18 18 Α Yes. A I believe it was Mr. LaPierre. 19 19 20 Q And that question asks whether the organization that's 20 Okay. And do you know how long the out-of-pocket 21 filing this was a party to a business transaction with one of 21 expense reimbursement process was ongoing within the NRA? 22 the following parties, and it says a current or former officer, 22 A Based on the record I read and I've seen it and my director, trustee or key employee. understanding of that evidence, I believe it was at least early 23 23 Do you see that? 2000. 24 24 Yes. 25 Α 25 Q To your knowledge, did the NRA pay invoices during Hines - by Plaintiff - Redirect/Ms. Connell Page 3199 Hines - by Plaintiff - Recross/Ms. Rogers Page 3201 What did the NRA check off? those years that just said "out-of-pocket expenses?" 0 1 "No." 2 Α 2 Yes. You testified that in 2022, the NRA tried to 3 Thank you. You can take that down. 3 renegotiate a deal and you were just asked about that. Mr. Hines, to your knowledge, is disclosing amounts 4 4 Do you recall that? made in someplace else within this 990 the same as having the 5 6 NRA's Audit Committee approve a related-party transaction in 6 7 advance? 7 Did you form any opinions about that renegotiation? Q MS. ROGERS: Objection. Α Yes. 8 8 9 MR. FLEMING: Objection. 9 Q And what were those opinions? THE COURT: Overruled. That the renegotiated contracts reduced the three 10 10 11 Based on my understanding, no. contracts to one eliminating some of that complexity, and that Q Okay. Mr. Hines, you were asked about the NRA's 12 in my view, it called into question the reasonableness of the relationship with MMP; right? 13 fees and in periods prior to that under the fee arrangements Yes, I was. 14 given what I saw and based on my understanding of the facts And you were asked whether the MMP had given any value there was fee increases were not documented and authorized and 15 to the NRA, and you said that you hadn't specifically looked at concurrent with what I understand to be conflict of interest that; correct? 17 17 issues. Α Correct. MS. CONNELL: Thank you, Mr. Hines. 18 18 19 THE COURT: Leading being. 19 THE COURT: Anything further, Ms. Rogers? MS. ROGERS: Very -- just very briefly. 20 MS. CONNELL: I'm setting it up for a question. 20 **RECROSS-EXAMINATION** THE COURT: Still leading. 21 21 22 MS. CONNELL: I apologize, your Honor. BY MS. ROGERS: 22 Q Why -- would the answer to that question affect your 23 Mr. Hines, I questioned you earlier about a version of 23

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your flight invoice summary, and there was a little confusion

because the Government's lawyers gave me a different version

opinions in this case?

Whether I looked at the fair market value.

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Hines - by Plaintiff - Recross/Ms. Rogers Page 3202 than they gave you as an exhibit. MS. CONNELL: Objection, your Honor. That's an pages long; right? 2 2 unfair characterization. A I believe that's correct. 3 3

4 Q The point of the question is not the characterization. So withdrawn. 5

6 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. 8

9 MS. CONNELL: This is also beyond the scope, your Honor, and this is -- this characterization is still just 10 very prejudicial and unfair. 11

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.

E. Hines - by Plaintiff - Recross/Ms. Rogers

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Q Now, the corrected version that you filtered is three

4 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. 6

7 THE COURT: Overruled.

8 Α No.

9 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? 11

12 MS. CONNELL: Objection, your Honor. THE COURT: Overruled. 13

14 A That would sound right except for the characterization of the invoices that were wrong that include duplicates that I 15 identified and removed, cancelled flights. So, the characterization I did not agree with. 17

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?

21 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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E. Hines - by Plaintiff - Recross/Ms. Rogers

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THE COURT: I agree. 1

MS. ROGERS: I don't want to put it in front of the 2 jury. I want to put it in front of the witness. 3

THE COURT: Sustained. 4

5 MS. CONNELL: Thank you.

6 Q Mr. Hines, you recall you testified that the wrong 7 version of this spreadsheet was provided by counsel and the corrected version was filtered by you? Do you recall that 8 9 testimony?

Yes. A 10

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11 (Continued on the following page.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25

summary evidence sheet prepared.

2 Q Understood, and I agree they shouldn't have been in 3 there.

One more thing. In the course of the documents and 4 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

9 along the way.

Q Do you have any view -- you opined earlier that it was 10 wrong for Woody to have a parking space. Do you think it was right or wrong to get rid of Ackerman McQueen? 12

A I don't have an opinion. 13

MS. CONNELL: Objection, your Honor.

Q The Government didn't ask you if it was right or wrong 15 to get rid of Ackerman McQueen; right? 16

MS. CONNELL: Objection, your Honor.

THE COURT: Overruled. 18

You can answer. 19

I was not asked to give an opinion on that.

Q And the Government didn't ask you to tell the jury 21

whether it was right or wrong to get rid of the Mercury Group;

23 right?

14

17

20

22

A 24

25 Q And the Government didn't ask you to tell the jury

(Displayed)

Q Mr. Hines, I direct your attention to a report of the

Have you ever seen this document before?

I may have. I don't recall just by reading it here for

Audit Committee dated May 23rd through 24 of 2016.

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    whether it was right or wrong to use a bidding process for
                                                                   a couple seconds, but it is possible.
    flights instead of using Gayle Stanford; right?
                                                                      Q Okay, and the first sentence it says: "The Audit
 2
       A No.
                                                                   Committee met on March 8, 2016."
 3
                                                                3
 4
       Q And the Government didn't ask you to tell the jury
                                                                4
                                                                          Do you see that?
                                                                          Yes.
    whether it was right or wrong to appoint a new CFO who had been
                                                                5
                                                                     A
                                                                          And I would like to draw your attention to the
    a whistleblower who in a Federal Court described as a champion
                                                                6
    of compliance?
                                                                   "Disclosure of Financial Interests" paragraph and have you read
 7
                                                                   that to yourself.
 8
             MS. CONNELL: Your Honor, outside the scope. It's
 9
       incorporating hearsay statements that are not before the
                                                                9
                                                                     Α
                                                                          Okay.
      jury, and the question of whether we were supposed to have
10
                                                               10
                                                                      O Do you recall reading either this document or any other
       an expert opine on right and wrong is --
                                                                   document which indicated that the Audit Committee considered
11
             THE COURT: Overruled.
12
                                                                   related-party transactions at its March 8, 2016, meeting and
             MS. ROGERS: Your Honor, they can't use speaking
                                                                   deferred consideration or further evaluation of the more
13
        objections to get more time.
14
                                                                   substantial related-party transactions until its meeting in
15
             THE COURT: Overruled.
                                                                   September?
                                                               15
           What was the question?
                                                                            MS. CONNELL: Objection, your Honor.
16
                                                               16
                                                                            THE COURT: You asked him about a box check in 990,
17
       Q The Government didn't ask you to tell the jury whether
                                                               17
    it was right or wrong to appoint a whistleblower, Sonya Rowling,
                                                                      so I think this is in the scope.
18
                                                               18
    as CFO; right?
                                                                      A I do recall reading. I'm not sure if it was this
19
                                                               19
       A That was not in the scope of my analysis.
                                                                   document exactly or one like it, but I would like to see if
20
                                                               20
          The Government didn't tell you that a Federal Court
                                                                   these are signed minutes or not because I just for my own
21
                                                               21
    described her as a champion of compliance; right?
                                                               22
                                                                   clarification.
22
             MS. CONNELL: Objection, your Honor.
23
                                                               23
                                                                            MR. FLEMING: Could you show the witness?
             THE COURT: Sustained.
                                                                            (Displayed)
24
                                                               24
25
          So, as far as you're concerned, none of those
                                                                            MR. FLEMING: Can I call up for identification only
                                                               25
E. Hines - by Plaintiff - Recross/Mr. Fleming
                                                    Page 3207
                                                               E. Hines - by Plaintiff - Recross/Mr. Fleming
                                                                                                                  Page 3209
    constitute the NRA doing anything right; right?
                                                                     not for the jury, PX 1674. If we could scroll to the second
                                                                1
       A I didn't say that one way or another. I just said --
                                                                      page, please.
                                                                2
    your question was was I asked specifically to opine on that as
                                                                      Q Mr. Hines, have you ever seen the document that's in
                                                                3
    your question was right and wrong, no.
                                                                    front of you right now?
                                                                4
             MS. ROGERS: All right, pass the witness.
                                                                            MS. CONNELL: Objection, your Honor.
 5
                                                                5
 6
             MR. CORRELL: Pass the witness.
                                                                6
                                                                            THE COURT: Well, he hasn't done anything with it
    RECROSS-EXAMINATION
                                                                7
                                                                      yet except ask the witness if he's seen it.
 7
    BY MR. FLEMING:
                                                                            MS. CONNELL: I understand, your Honor. I'm
                                                                8
 8
 9
             MR. FLEMING: Can I call up JX 52 in evidence.
                                                                9
                                                                     lodging an objection from earlier, preserving the objection.
            Can we turn to the report of the meeting and it's
                                                                            THE COURT: Just getting warmed up?
10
                                                               10
                                                                            MS. CONNELL: I'm getting warmed up, your Honor,
        dated May of 2016.
11
                                                               11
             THE COURT: Does this relate to anything that just
                                                                      just getting warmed up.
12
                                                               12
        came up in the last two questions?
                                                                      A I may have seen this document. I've seen versions of
13
                                                               13
             MR. FLEMING: It is -- well, with respect to the
                                                                   documents like this, draft versions. I can't recall if it is
14
                                                               14
                                                                   this exact version that I'm looking at right here.
15
       redirect.
                                                               15
             THE COURT: That's what I meant.
                                                                      Q And Ms. Connell asked you a question just a moment ago
16
                                                               16
             MS. CONNELL: Objection on scope, your Honor.
                                                                   about how it's different -- I'm paraphrasing, so if I get it
17
                                                               17
             THE COURT: Well, that's what I was asking, but
                                                                   wrong you correct me -- how it's different to list the amounts
18
19
       I'll let --
                                                                   that directors get on a 990, how that's different from an Audit
20
             MS. CONNELL: I know, I'm just --
                                                                   Committee voting to approve related-party transactions. Do you
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recall the question?

Did I get it correctly?

Generally speaking, yes.

Do you recall from any of the work that you did for the

Yes.

Α

Q

A

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1 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. 8

Q Well, regardless of what your view is of the difference between approvals in advance and ratifications, you would agree, 10 would you not, that a ratification or approval in advance is 12 approval?

A It is an approval, but for my perspective as a forensic accountant, it has a drastically different impact on the 14 internal controls which requires advanced approval. 15

MR. FLEMING: Nothing further.

THE COURT: Anything else? 17

18 All right, hearing nothing, sir, you're free to step down. 19

THE WITNESS: Thank you, your Honor.

THE COURT: Thank you.

(Whereupon, at this time the witness was then 22 23 excused.)

THE COURT: Anything further from the plaintiff? 24 25 MS. CONNELL: No, your Honor. The State rests. officer. No proof has been adduced that Mr. LaPierre is 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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THE COURT: Okay, folks, we're going to take a 1 short break because when one side rests, there's a couple of 2 procedural things we have to take care of before we start 3 4 the other side so we're going to take our break a little early today. 5

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

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

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

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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EPTL claim, to the extent Mr. Correll didn't address it, it 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

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

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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 2019 990 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

to let the trial play out to avoid -- if you make a mistake on a directed verdict motion, you don't let the trial play out, if it is reversed you have to do the trial again. So 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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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, 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

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1 for charitable purposes. I think we've talked about the

fact that charitable purposes is described fairly broadly including educational and other beneficial purposes in terms of charitable property and trusts.

But when it talks about an individual, the definition is "Any individual, group of individuals, executor, trustee, corporation or other legal entity holding and administering property for charitable purposes whether pursuant to any will, trust, other instrument or agreement, court appointment or otherwise pursuant to law over which the attorney general has enforcement or supervisory powers."

Now, out of that list certainly wills, trusts, and other instruments don't seem to apply. Agreement, only I suppose if you say that an employment agreement could apply; but, again, when officers and directors, the employment agreements I've seen in this case don't make any reference to control any charitable assets.

And I, also, want to refer to one more thing and I'm sorry for the long buildup here. I also noticed that EPTL 8-1.4, which is the portion of the statute under which this claim is brought has a couple of other things to say about trustees and in particular Section C says "The attorney general shall establish and maintain a register of all trustees containing such information as the attorney

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

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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)

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.

understand by putting all of the focus on whether they

violated the duties that they clearly undertook as officers,

directors and key persons.

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

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don't see how they're relative under the statute.

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

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

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accordingly. And your Honor, other Courts have applied the

definition of "trustee." You are not the first Court -- to;

individuals who oversee a charitable entity. You are not

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the first Court --

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

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Phillips submitted this morning. It's a case that they

submitted for the 213-7 argument, but in that, it also

asserted EPTL claims that were sustained. And in that case,

Judge Mazarelli for the appellate term found that there was

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actually a six-year applicable Statute of Limitations, but it dealt with the issue of 8-1.4 and claims against the individuals there.

> MR. CORRELL: Your Honor, that was pre-Grasso. THE COURT: I'm still with you.

So again 8-1.4(b)(9), it talks about officers and directors. It's true of a corporation if they hold property; right. So it's -- so that determines whether the registration and reporting provisions apply to those people. So you're just saying that's why they are not in a register.

MS. CONNELL: That's right, your Honor. That's why they are not in the registry. And frankly, this is meant to reach -- the statute is meant to reach individuals or groups of individuals who control charitable organizations and entities.

THE COURT: So why don't we see lots of cases under the statute against?

MS. CONNELL: We have seen a number of cases. The fact is as we have told you before in general, we investigate cases and either the leadership when they identify someone who is breaching or has breached their fiduciary duty to the organization, you know, will oust them. They will try and take care of them and we resolve them. Those -- we don't see a lot of cases under the N-PCL 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

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such extraordinary ongoing long-running violations and you 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 N-PCL

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.

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1 It's perfectly appropriate that the NRA or a

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It's perfectly appropriate that the NRA or a plaintiff whose actually satisfied derivative standing has more remedies available to it and has a different statute available to it than the Government acting in a very limited enforcement context which Grasso discusses.

MR. CORRELL: Your Honor, another point is the Government gets reports every year which the corporation wouldn't necessarily get, and they have the resources, virtually unlimited resources of the taxpayers to pursue anyone. They've got strong subpoena power. They've got all these other agencies, so it makes perfect sense to ask the Government to act promptly, to provide guidance for not-for-profit corporations to not to sit back for 12 years and play gotcha for organizations they don't like.

THE COURT: Ms. Connell, let me just ask you another question just to respond. This 8-1.4 (b)(9), it does -- if I'm reading the words right, it -- it's not part of the definition of trustee. It's sort of a separate provision about who is not covered by the registration requirements, but the -- if I'm reading the syntax correctly, it says, Any person who -- and then has comma and a bunch of clauses talking about in their capacity as an officer, blah, blah, blah, but it has to be any person who holds property for the religious, educational or charitable purposes of such corporation or organization.

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.

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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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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.

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.

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MS. CONNELL: And at some point they have to be responsible if for years and years and years the charitable assets of that corporation are being misused and the Bylaws and policies set by the board are being ignored, violated evaded or overridden with the help of a small group of entrenched board members and like leadership; and that's exactly the type of reason the statute was enacted. It was enacted to give broad protections to charitable organizations.

THE COURT: All right --

MR. CORRELL: Your Honor, if I may just very briefly. The core holding of Grasso was the attorney general does not have the authority to rewrite a statute.

I think the quote was the right to enforce a statute does not entail the right to amend the statute.

And what is happening here is the AG is trying to amend the EPTL to drop the word hold and administer property out and include control. And it is the same kind of expansion of the exposure of people who serve often as volunteers for these organizations to give the attorney general more power to intrude more deeply into the private affairs of private citizens, and the Court has to hold the line.

THE COURT: All right, here's -- hang on. Here's my plan for this one.

precluded from seeking to add them to whatever goes to the jury. I haven't kept track of the two lists, whatever one 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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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

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

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NRA Proceedings Page 3246 1 that a reasonable jury could conclude that they held 2 charitable assets in the way that the statute requires. So, 3 I would focus it very narrowly on that. You can make 4 whatever broad points you want, but I'm not suggesting a 5 broad ruling. MS. CONNELL: I just wanted to ask for one 6 7 clarification. So, you want us to focus on the EPTL claims as to the individual defendants or as to the NRA as well? 8 9 THE COURT: Just the individual defendants. I think -- obviously, the NRA is a trustee by definition under 10 the statute; and I think it has admitted by making these 11 12 filings every year that it is covered by the statute. And

> point. So, all right, it took a little longer than I thought, but I did want to make sure you knew I was seriously thinking about those three claims.

the fact questions about liability are the kinds of things

that I would not grant a directed verdict motion on at this

MR. FARBER: Could I raise one sort of procedural question, your Honor?

THE COURT: Yes.

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MR. FARBER: So, this morning you indicated that any time spent on these directed verdict motions should be chargeable to the party who made them. I submit I don't think that's appropriate in the context where we've made a

THE COURT: Let's reconvene here. Two quick things. The juror we talked about this morning is going to have to be excused because she cannot be here Wednesday, and then there were ten.

Second, on this briefing, I do want the defendants to address one point. Since part of what their argument is on duplicativeness, I would like to know whether they believe that any of the relief that is sought against them under the EPTL claim is beyond my equitable power in fashioning relief if there is liability under the N-PCL.

So, if you're going to make the argument later that some relief that is specifically called for or by case law permissible under the EPTL cannot be also granted under the N-PCL that undermines the duplicativeness portion of your argument, which is not the whole thing, but I would like to know your position on that so it is not just up in the air.

Finally, you have a demonstratives objection? MS. CONNELL: Yes, your Honor. Last night we -within the 24-hour rule I think -- we got demonstratives for the proposed expert witness and you've gotten our letter

regarding Mr. Sullivan.

But, also, we got demonstratives for a fact witness, and I gather there will be more for fact witnesses coming up and we're -- we object to demonstratives. First,

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motion that is -- you may not ultimately rule in our favor; but, plainly, there's a strong basis for it. And in, addition, with respect to the NRA's motion, the State has already admitted that they failed to adduce evidence on at least some of it which necessitated the NRA raising it.

So, I think the fair way of doing this would be to allocate the time to neither party.

THE COURT: Good try, but no.

Each side makes arguments the way I would normally do it. It is just an hour, but I think it is part of the defense case and a good part of the defense case; so the fact that it was well spent doesn't mean it is not spent.

stage. Let's go get them.

break before we do that?

THE COURT: All right, why don't we get them in two minutes.

(Whereupon, at this time a short recess was then taken.)

(Continued on next page)

12 So, we're going hear from the jury for the second 13 14 Wait, I haven't asked if any of you need a short 15 16 MR. FARBER: Can we have two minutes, your Honor? 17 18 19 20 21 22 we object to getting the documents and demonstratives late. But, moreover, these demonstratives we don't think are the type of traditional type of demonstratives that allow the fact witnesses. We think they're sort of intended to do what defendants objected, and we had to modify Mr. Hines who's an expert slides to do which is kind of put down facts, just offload facts this witness may not be able to testify to with the foundation in front of the jury.

THE COURT: Yeah, my -- well, I don't want to assume since I haven't seen them all, but demonstratives of a fact witness are a different kettle of fish and much more concern about prompting as to substantive testimony than I would worry about with an expert who was writing their own chart.

So, anything in particular -- who's the first witness?

MS. ROGERS: Our first witness will be Congressman Bob Barr.

THE COURT: Is there any demonstratives that relate to that witness? Because we're probably not going to get past one witness.

MS. ROGERS: I don't believe so, no.

MR. THOMPSON: These are the second witness. Mr. King, your Honor.

THE COURT: Why don't we get the first witness out

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NRA February 5, 2024 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. newspapers and others. COURT OFFICER: All rise, jury entering. THE COURT: Well, we'd like to consider ourselves 2 2 (Whereupon, at this time the jury then entered the the first capital of the United States. We're not the 3 3 4 courtroom.) 4 current capital, so we're not quite here in DC right now, THE COURT: Okay, please have a seat. but with that, you can go ahead. 5 5 We're now shifting to the defense portion of the MS. EISENBERG: Thank you, your Honor. Thank you, 6 6 7 7 Congressman. case. 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 **United States?** 9 witness? 9 MS. ROGERS: Thank you, your Honor. The NRA calls A I did. I was the libertarian part of nominee for 10 10 11 Congressman Bob Barr. president in 2008, obviously, unsuccessful, counsel. 11 THE COURT: Former Congressman. 12 12 Q Did there come a time when you worked with the ACLU? MS. ROGERS: Yes. 13 13 A I did. After leaving the Congress in early 2003, I did THE COURT: Good afternoon. 14 work on privacy issues and surveillance issues for both the ACLU 15 BOBBARR and the American Conservative Union or ACU at the same time. I 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. took the witness stand and testified as follows: Q Did there come a time when you became involved with the 18 18 NRA? THE CLERK: State your name. 19 19 THE WITNESS: Bob Barr. Α Yes. 20 20 THE CLERK: Spell your last name. 0 Please tell us about that? 21 21 THE WITNESS: B-A-R-R. I was elected to the board of the National Rifle 22 22 23 THE CLERK: Thank you. You may be seated. Association of America in 1997. I served on the board ever THE COURT: Ms. Eisenberg, I didn't even see you since then, being elected every three years -- being reelected 24 25 every three years since then. come in. B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3251 B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3253 MS. EISENBERG: Good afternoon, your Honor. Q What position do you currently hold on the board? 1 MS. EISENBERG: Good afternoon, ladies and A In addition to being a board member, I currently serve 2 2 gentlemen of the jury. Can you hear me? as the first vice president of the NRA. 3 3 **DIRECT-EXAMINATION** 4 Q How did you become the first vice president of the NRA? BY MS. EISENBERG: 5 5 A I was nominated for that position and elected to that 6 Good afternoon, Congressman Barr. position by the NRA board of directors in I think it was May of Good afternoon, ma'am. 7 7 last year, 2023.

- Can you please tell us a little bit about your 8
- background? 9
- A I live in Atlanta, Georgia. I have lived in Atlanta, 10
- Georgia, since the late 1970s. I moved to Atlanta after working
- up here in Virginia, the District of Columbia for a number of
- years. Worked for the CIA, went to law school and grad school 13
- 14 here in Washington DC, and then moved down to Georgia in the
- late 1970s to practice law. I've practiced law off and on ever
- since then, including currently. 16

17 I was appointed by former President Reagan to serve as the United States Attorney for the Northern District of Georgia

- which is headquartered in Atlanta. In 1986, I was honored to 19
- 20 serve in that capacity for approximately four years. Went back
- to the practice of law. Was elected to the United States 21
- 22 Congress, the House of Representatives from the 7th District of
- Georgia in 1994, served there until early 2003 after which time
- 24 I went back to the private practice of law and have engaged in
- other activities such as writing articles for various electronic

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- Q Who serves as the NRA's president and second vice 8
- president currently?
- A The current president of the NRA is Charles Cotton. 10
- The current second vice president is David Cov. 11
- I apologize, I just want to make sure we have water for 12
- you. 13
- A I have some right here. 14
- 15 You're all set, okay. Good, thank you.
- Coming back to your board service, in your capacity as 16 17 a board member or first vice president, are you compensated for
- 18 vour time?
- 19 A No. I've never been compensated by the NRA either as a
- 20 board member or as the first vice president.
- Q And is it fair to say that the NRA's board has a number 21 of standing committees? 22
- 23
 - Α It does.
- Have you served on a committee? 24 Q
- 25 I have served on various committees. I'm a long-time

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- 1 member of the legislative affairs committee given my background
- 2 in legislation, and on the international affairs subcommittee;
- and currently as the first vice president, I'm a member of all
- 4 standing committees.

NRA

- 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?
- A Certainly. Although, the primary focus and main 8
- activities of the National Rifle Association are domestic
- oriented; that is, with our 2nd Amendment rights here in the
- 11 United States, since the year 2001 the United Nations has become
- 12 involved in a number of ways on firearms issues. And insofar as
- those policies can impact our rights here in this country, our
- 14 National Rifle Association international affairs subcommittee
- 15 follows those issues very importantly so that we're aware of any
- problems that might crop up. 16
- Q Since becoming first vice president, have you had 17
- occasion to attend meetings of the NRA's Audit Committee? 18
- A I have. 19
- 20 Q And while doing that, have you formed any impressions
- about the committee's work? 21
- I have. 22
- 23 O What are they?
- A As a regular board member for many years, I was not 24
- intimately aware of or familiar with the work of the Audit

- 1 MR. THOMPSON: Objection, your Honor. THE COURT: Sustained. 2
- 3 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. 6
- 7 0 Did you attend that meeting?
- 8 Α

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- Please tell us about it? 9 Q
 - 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. 19

20 Q Please tell us about that meeting between the Audit

Committee and Wayne LaPierre? 21

A Okay. Again, as first vice president, I am a member of 22 23 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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- 1 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
- 6 responsibilities.
- 7 Q Who is Robert Mensinger?
- A Robert or Bob Mensinger currently is the managing 8
- 9 director for compliance for the National Rifle Association.
- Q And were you involved in any way in bringing him on 10 board? 11
- 12 A I was.
- MR. THOMPSON: Objection, your Honor, relevance. 13 THE COURT: Overruled. 14
- 0 You may answer. 15
- A Yes, I am and I was. 16
- What was the nature of your involvement? 17
- I had the opportunity when we were looking at 18
- 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 21
- 22 to the possible position as compliance with the NRA.
- 23 Q Is the NRA in the process of potentially amending its
- Bylaws to create a new officer position? 24
- 25 A Yes, they are.

- 1 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. 3
- Q Did the NRA or anyone at the NRA conduct any type of 4
- quality control with regard to his repayments? 5 6
- MR. THOMPSON: Objection, same objection. No 7 discovery into this issue, your Honor, and hearsay.
- THE COURT: Overruled. 8
- 9 Α Yes.

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- What is your understanding of that? 10
- At that meeting which Mr. LaPierre made his 11
- 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. 15

MR. THOMPSON: Your Honor, just move to strike on 16 17 hearsay.

18 THE COURT: Let me -- have you requested -- you 19 know about this meeting. Have you requested information and not been provided it? 20

> 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

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NRA B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3258 1 preclude discussion of this or else discovery -position? MS. ROGERS: Your Honor, the answer to your 2 2 3 question is they did ask for the information and the motion 3 4 filed in October 2022 before the Special Master, the Special 4 5 Master granted the motion and we produced the information as 5 6 it was created, including this information. 6 7 MS. CONNELL: Your Honor, that's not accurate. 7 8 THE COURT: This meeting happened in 2023? 8 moment? 9 MS. ROGERS: So, they asked in 22 for ongoing 9 Yes, there is. productions after close of discovery, so newly created 10

THE COURT: Let me cut to the chase.

Before you get further into this, were there minutes or documents or whatever created around this whole process that you're getting into now?

MS. EISENBERG: I believe so. I'm not one hundred percent sure, your Honor.

THE COURT: Were they produced to the other side in the ordinary course given what I just heard was a continuing obligation?

MS. EISENBERG: I'm not one hundred percent sure, your Honor, that that has happened; but that was my last question about the topic.

MS. ROGERS: And there were documents produced regarding Ms. Rowling's review of these expenses. Plaintiff

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MR. THOMPSON: Objection, your Honor.

THE COURT: Sustained. You can talk about things that have been done maybe, but not things that might be

Is it fair to say that there is a specific Bylaws amendment that's up for consideration by the members at the

Q And according to that proposed amendment, to whom would 10

the chief compliance officer report? 11

12 A Chief compliance officer if approved by the membership at our next meeting would report to the board of directors. 13

O And would the executive vice president have the power to hire, fire or suspend the chief compliance officer? 15

A No. 16

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Is that important? 17 0

It is important to maintain the objectivity of the

chief compliance officer. 19

20 Let's talk about the Special Litigation Committee. Is that a committee on which you have served, as well? 21

22

0 When did you join that committee?

A I joined the Special Litigation Committee last year 24

shortly after being elected to the post of first vice president.

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moved to exclude them. 1

documents.

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THE COURT: Well, I saw that, but this is something else. So, if there are documents about these meetings that were not produced, then I'm afraid I have to exclude any testimony about the meeting, itself, because that's not the way this process works.

So, you can disregard anything about the meeting, itself, because the other side hasn't had a chance to do -get any evidence about the meeting, but the other documents that I heard about before, those had been produced and you can get into those with the other witnesses.

MS. CONNELL: Your Honor, we'd note our exception to that ruling.

THE COURT: Which one?

MS. CONNELL: The ruling about the other documents that we received in December 2023.

THE COURT: I'm going to make those decisions when they come up. So, I'm not ruling in advance on any admissibility of documents before I have a witness in front of me. But as to this one, I don't think you had fair notice of questions about that meeting, so.

22 MS. EISENBERG: Thank you, your Honor. 23 O Congressman Barr, if the NRA's Bylaws are amended to create the chief compliance officer position, what is your

understanding about the reporting structure with regard to that

Q What is the purpose of the Special Litigation Committee?

A The Special Litigation Committee was formed in 2020 for the expressed purpose of handling and being the go-between

so-to-speak to handle litigation, including the litigation

currently before this Court and related litigation.

7 The primary reason for that was so that individuals involved in the litigation, Mr. LaPierre and Mr. Frazer, who would normally be involved in the NRA's handling corporate handling of that litigation would not be involved. 10

11 O What does the Special Litigation Committee do in order to carry out its mission? 12

A The Special Litigation Committee has regular, that is, 13 weekly telephone conferences with outside counsel to be made aware of the progress and status of the litigation, any matters that might need to be decided by the NRA which would be made in

this litigation, by the Special Litigation Committee would be handled and the Special Litigation Committee also reports as

19 necessary and as appropriate to the board of directors.

20 How many members does the SLC have?

A Currently, there are three members, two in addition to 21 22 myself that serve on the SLC.

23 Q Does the SLC have any responsibility with regard to the review of outside counsel's invoices? 24

Yes. 25 A

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B. Barr - by Defendants - Direct/Ms. Eisenberg Page 3262 What is that responsibility? 1

2 The members of the SLC which currently are myself,

- Mr. Cotton and Mr. Coy -- the other member is on medical leave
- of absence from the Special Litigation Committee -- we are
- tasked with reviewing and approving monthly invoices from outside counsel involved in these litigation matters.
- Q Let's talk a little bit about the Legal Affairs
- Committee. 8
- 9 Have you served on that committee, as well?
- Yes. 10 Α
- Q Since when? 11
- 12 Α I think probably since 2022, but I don't recall 13 exactly.
- 14 Q And does it from time to time receive updates from outside litigation counsel with regard to various litigation in 15
- which the NRA is involved? 16
- Yes. 17

20

- Does that include the matters within the purview of the 18
- Special Litigation Committee, as well? 19
- brought to the Special Litigation Committee, but for 21

A It does. Not in the same way that those matters are

- informational purposes, yes. 22
- 23 What is the frequency with which the Legal Affairs
- committee meets? 24
- 25 As necessary and as appropriate.

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- Q And in connection with such oversight, have you formed
- an opinion as to the value of their services? 2
 - MR. THOMPSON: Objection.
- 3 4 THE COURT: Overruled.
- 5 Q What is your opinion?
- 6 A My opinion as an attorney myself, certainly that those
- 7 services are extensive, appropriate, professional and absolutely
- essential to meet the challenges, the existential challenges
- 9 that the NRA faces as a result of litigation within the
- responsibility of the SLC. 10
- Q Congressman Barr, are you aware of the NYAG allegation 11
- 12 that the NRA has spent too much on legal fees?
 - I'm aware of such allegations, yes.
- What is your reaction to such allegations? 14 Q
 - Α Those allegations are wrong.
- 16 Q Why is that?
- 17 Because facing the threats that the NRA is facing in
- the litigation, it would be an irresponsible abrogation of our 18
- duty to our responsibility to our members not to have the most
- 20 competent and highly-respected lawyers handling our cases.
- 21 Q How would you describe the threat that the NRA has
- faced since 2018? 22
- 23 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.

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- Q Let's talk a little bit about the NRA's defense in the 1 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 outside counsel's work in connection with
- important litigation matters? 5
- 6 Yes.
- 7 (Continued on next page)

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- - You said existential. What did you mean by that?
- 2 What I mean by that is threat to dissolve and dismantle
- the association itself. 3
- Q Whose threats? 4
- The NYAG. 5 Α
- 6 Q Is it your understanding that the NYAG tried to
- 7 dissolve the NRA?
- MR. THOMPSON: Objection. Leading. 8
- 9 THE COURT: Sustained.
- Q Could you tell -- it's suggested that the NRA's Board 10 11
- What is your opinion on that issue? Do you think it is 12 too big? 13
- No, I do not. 14 Α
- 0 Why is that? 15
- A The NRA represents millions of citizens including more 16
- than 4 million dues-paying members on Second Amendment issues 17
- 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 21 the Board of Directors. 22
- 23 MS. EISENBERG: I'll pass the witness. Thank you,
- 24
- THE COURT: I'm not sure which order we are doing 25

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NRA February 5, 2024 Barr - by Defendant - Direct/Mr. Fleming Barr - by Defendant - Cross/Mr. Thompson Page 3266 Page 3268 1 this in. 1 MR. CORRELL: No cross. MR. WERBNER: No questions, your Honor. 2 MR. FLEMING: I was going to ask that. 2 THE COURT: I think I will start with the DIRECT EXAMINATION 3 3 4 Plaintiff, and then if the other Defendants want to ask 4 BY MR. FLEMING: questions, we can do that. Q Good afternoon. 5 **CROSS-EXAMINATION** Good afternoon, sir. 6 A BY MR. THOMPSON: 7 Q My name is William Fleming, and I represent Mr. Frazer, 7 Q Good afternoon, Congressman Barr. so I just have a couple of questions for you. 8 8 Good afternoon, Counsel. Do you know Mr. Frazer? 9 9 Q My name is Stephen Thompson, and I represent the Yes. Α 10 10 Plaintiff, the People of the State of New York. Just -- I How long have you known him for? 11 11 promise. I mean this. A few questions. Many years. I couldn't tell you exactly, but many 12 12 Α So I believe you testified that in your capacity as the 13 13 years. First Vice-President, you're a member of all standing committees O Do you have -- are you able to tell us what your 14 general experience has been with Mr. Frazer? 15 by default; is that correct? 15 A I am --16 A That is correct. 16 MR. THOMPSON: Scope, your Honor. 17 Q Prior to becoming the First Vice-President, you were 17 never a member of the Audit Committee; correct? THE COURT: I'm trying to figure this out. 18 That is correct. When you all call witnesses, are you all calling 19 19 Q And you were never a member of the Finance Committee; 20 20 the witness? MR. FLEMING: Your Honor, at the beginning of the is that correct? 21 21 That is correct also. case you may not remember I had talked about --22 22 23 O And I believe you testified that you have attended some 23 THE COURT: I'm not that old. Audit Committee meetings; is that correct? MR. FLEMING: Well, I too was trying to figure out 24 24 25 It is. how it would work. So rather than calling witnesses for a 25 Barr - by Defendant - Cross/Mr. Thompson Page 3267 Barr - by Defendant - Direct/Mr. Fleming Page 3269 Q And have you attended any Audit Committee meetings second or third or even fourth time, I thought would be best 1 prior to becoming the First Vice-President in 2023? to start with --2 A Yes. I occasionally sit it on them, but not formally. THE COURT: Well, in this case I'm going to change 3 3 Q Okay. And you never sat in on the meetings of the the order I do things in because I limited the Attorney 4 4 Audit Committee while they sat in executive session; is that General to what was raised by the NRA. 5 correct? 6 6 If each you are going to want to ask direct A No, not until serving as a member as the First 7 testimony of this witness, then you all should go first and 7 Vice-President. then the Attorney General should go. So in other words, 8 8 this is not cross-examination. This is direct examination. 9 Q Okay; and then you testified about Mr. Mensinger being 9 hired by the NRA; is that right? 10 MR. FLEMING: Yes. 10 Yes, sir. MR. FARBER: To answer your question, I don't agree 11 11 Q That occurred in 2023; is that correct? that the notion that the Defendants -- if the NRA calls a 12 12 Α Yes. witness, we are calling him as a group. 13 13 Q And prior to Mr. Mensinger hiring, the NRA did not have THE COURT: You don't have to, but you need to tell 14 14 a dedicated compliance officer; is that correct? me if you are intend to offer this witness affirmatively so 15 A That is correct. that you don't have to be bound by the scope of the first 16 16 And so that occurred -- that hiring occurred three direct. 17 17 years after this litigation was commenced; is that correct? MR. FARBER: Understood. 18 18 It took place last year. MR. CORRELL: I would like to take that 19 19 Q Okay. And Congressman, you voted to ratify the NRA's opportunity. Just a couple of questions on direct that 20 20 filing of bankruptcy in 2021; is that correct? aren't limited to the scope. 21 21 22 MS. EISENBERG: Your Honor objection. Outside the THE COURT: Careful what you suggest for me; right.

THE COURT: Sustained. call a witness. So go ahead. But that just means the AG is 24 MR. THOMPSON: No further questions. going to have another shot at it. 25

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scope.

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Okay. Well, look, more than one of you I guess can

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Q I think I asked you about your general experience with 2 Mr. Frazer.

3 Were you able to describe what that is or what that has 4 been?

A Yes. Over the many years that I have known Mr. Frazer 5

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

9 with him.

Q Well, you sort of beat me to the punch with the 10 questioning because I recall your testimony where you talked 11 12 about I believe it's the ethical nature of the Audit Committee.

Based on your observations of Mr. Frazer, have you 13 14 formed any view about the ethical nature of his conduct?

15 Yes.

Q And what is that? 16

17 That in all of my dealings with him, my observations,

he is a highly ethical character. 18

MR. FLEMING: Thank you very much. 19

DIRECT EXAMINATION 20

BY MR. CORRELL: 21

22 Q Good afternoon, Congressman Barr. I'm Kent Correll. I

23 represent Wayne LaPierre.

Yes, sir. 24

25 Q I want to ask basically the same questions about Mr.

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Anything further? I think I have to go back and 1 see if there's any further cross before I go back to the 2 redirect. 3

4 MR. THOMPSON: No further cross, your Honor. 5 THE COURT: Okay.

MS. EISENBERG: May I briefly, your Honor. 6 THE COURT: Yes. 7

REDIRECT EXAMINATION 8

BY MS. EISENBERG:

O Congressman Barr, who at the NRA performed the role 10 that Mr. Mensinger will be performing going forward? 11

12 I'm sorry.

Q Historically, who at the NRA was in charge of some of 13 the things that Mr. Mensinger was recently hired to do?

I would say primarily the Audit Committee. 15

Q And in what way? 16

17 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 19 20

21 Q And what, if any, responsibilities does the treasurer have under internal policies to conduct periodic compliance 22 reviews?

24 A very important one. The treasurer Ms. Rowling works

closely with both the Audit Committee and the Finance Committee

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LaPierre. 1

2 Have you had an opportunity to observe him over your time on the Board? 3

Yes, I have. 4

5 Q And have you formed any opinion as to his competence?

6 A Yes, I have.

7 Q What is that opinion?

A This is a man in my view who has given a lifetime to 8

9 the National Rifle Association, its members and the United

States of America in a highly competent and energetic, selfless 10

11

Q Have you had an opportunity to assess whether he's 12 discharged the duties of his position in good faith? 13

I believe he has. 14

And have you been in a position to observe whether he's 15 discharged the duties of his position with care? 16

MR. THOMPSON: Leading, your Honor. 17

THE COURT: Overruled. 18 Yes; but as all of us, he's made mistakes. 19

Q And has he owned up to those mistakes and squared 20 things up?

21 22 Yes, he has.

MR. CORRELL: No further questions, your Honor. 23

24 THE COURT: Okay. Anything -- I don't know which

25 way to turn now.

to insure that they have all the information they need and that her input is made and accounted for and considered. 2

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. 10

11

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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NYSCEF DOC $_{\mathbf{NY}}$ A $_{\mathbf{G}}$ $_{\mathbf{v}}$ 3230 **NRA** Barr - by Defendant - Redirect/Ms. Eisenberg Page 3274 1 demonstratives yesterday. 2 MS. CONNELL: Yesterday evening. THE COURT: So you had Tom King coming second. 3 MS. CONNELL: We had Tom King coming second. 4 5 Last night we got Mr. King's documents and then later yesterday evening we got his --6 7 THE COURT: Let me ask you this way. Is the person who is going to be handling the 8 9 questioning of this next witness here? MS. ROGERS: Yes. Well, I am here. 10 11 THE COURT: I mean, for -- I figured you were 12 ready. MR. THOMPSON: Yes, your Honor, we do have the 13 14 attorney handling Mr. Sullivan. 15 MS. CONNELL: We do, but we had asked for some voir 16 dire on the opinions he was going to offer. If you recall, you had ruled some of them not fair 17 18 game here. MS. ROGERS: The NRA does not intend to elicit 19 20 opinions that would be inappropriate for this phase of the trial. 21 THE COURT: Yeah, I read the letter. I viewed the 22 23 letter you sent as kind of assuming certain things were going to happen, and I think I am -- rather than taking a 24 25 break and talking through all the things that could happen, Sullivan - by Defendant - Direct/Ms. Rogers Page 3275 I will just handle objections as they come up. I did -- you 1 2 know, I have a -- I certainly didn't exclude this testimony, 3 and my assumption is that we would deal with objections on a 4 one-by-one basis so I'd say we get started. MS. ROGERS: The NRA calls Dr. Ryan Sullivan. 5

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- meaning resources are limited. Economics has the tools that are
- used to evaluate and make decisions.
 - Q Thank you, Dr. Sullivan.
- 4 Have you prepared some demonstratives for the jury 5 today?
- 6 A Yes, I have. I prepared these demonstratives, and the 7 title slide is up on the screen right now.
 - 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.

- Dr. Sullivan, can you tell the jury a bit about your 13 14 professional credentials and background.
- A Sure. I -- academically, I earned a bachelors degree, 15 a master degree and I Ph.D. They are all in economics and all from the University of California in San Diego. 17

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 21 faculty at the Department of Economics on the practice of economics and in private industry.

23 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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- 6 THE COURT: We are probably not going to get too 7 far into the substance anyway.
- 8 Good afternoon.
- 9 THE WITNESS: Thank you.
- 10 RYANSULLIVAN, a witness called on behalf of the
- Defendant, after having been first duly sworn, took the witness
- stand and testified as follows: 12
- THE CLERK: State your name. 13
- THE WITNESS: Ryan Michael Sullivan, 14
- S-U-L-L-I-V-A-N. 15
- THE CLERK: Thank you. You may be seated. 16
- **DIRECT EXAMINATION** 17
- BY MS. ROGERS: 18
- O Good afternoon, Dr. Sullivan. 19
- 20 Please introduce yourself to the jury.
- A My name is Ryan Sullivan. I serve as a managing 21
- 22 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 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.
- You testified I think that economics is the science of 7 making decisions under scarcity and constraints; right?
- 8 Α Yes.
- 9 Q What kind of constraints have you considered in your professional work? 10

A Oh, goodness. So many different kinds. I mean, at its 12 most basic level, we are all facing constraints all the time.

13 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 16 17 have expertise and experience relating to decision-making under 18 regulatory constraints?

19 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.

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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. 4 A Sure. There are many, many similarities.

THE COURT: I'm sorry. Do you want to have the witness qualified before you start?

MS. ROGERS: I was doing this as part of that. THE COURT: I thought you were moving out of background into the substance.

MS. ROGERS: I offer Dr. Sullivan as an expert in economics, finance and accounting.

MR. CONLEY: Your Honor, we object to Dr. Sullivan's admission as an expert for the reasons set forth in our motion papers, and we do not believe that he is qualified to testify on not-profit governance and accounting.

THE COURT: Overruled subject to specific objections as to specific questions.

Thank you, your Honor. 19

20 Dr. Sullivan, can you explain to the jury some similarities and differences that would apply to for profit and 21 non-profits clients? 22

23 A Sure. There are far more similarities than there are differences, and you can see that because -- well, on the screen are entities that I've work for. So let me try to make this a

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.

4 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.

7 I served as the lead economist negotiating the collective bargaining agreement between the NBA, the National 8 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. 16

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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.

22 MS. ROGERS: We hope the testimony would be more probative than prejudicial. 23

THE COURT: Your choice.

A I got to work with the Red Sox to help them on pricing

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little bit more tangible.

On the left-hand side towards the top left you will see 2 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 12 trying to attain an objective such as a mission versus profit which may also have mission components to it, there is

similarity in that. 14 15 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 17 work for consumer products companies such as Skechers, many 18 high-technology companies such as Microsoft and Apple.

19 20 I have worked with universities such as Columbia, MIT and Harvard among many others. Actually, a lot of my work is --22 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. 24

Q Let's go to the next slide.

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.

9 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. 17

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. 21 THE COURT OFFICER: All rise. Jury exiting. 22 23 (Whereupon, at this time the jury exits the courtroom.) 24 25

THE COURT: Just for the witness, during the --

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      while we are on break, you are effectively still on the
                                                                1
                                                                     maybe the defendants aren't planning this, but to the extent
 2
      stand, so you shouldn't discuss the substance of your
                                                                2
                                                                     that someone is planning to do that, it's not just one lump
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       testimony with anyone including counsel.
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                                                                     sum number because you can't give a credit if the jury were
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             THE WITNESS: Understood.
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                                                                     to find -- you know, let's say $1,000 is what the damages
             THE COURT: See you all at 9:30.
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                                                                5
                                                                     are. You can't just say, well, we paid $700 back because
             MS. CONNELL: Can we just know who is testifying
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                                                                6
                                                                     there is no way unless you provide the proof to know whether
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       tomorrow and what order?
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                                                                     the 700 applies to the thousand that the jury found as
             THE COURT: We have a few minutes. You can step
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                                                                     opposed to the other 2,000 the jury didn't find. And so you
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      down and I'd also -- if there are going to be any issues on
                                                                9
                                                                     know, I don't know exactly how the defendants are going to
                                                                      bring this all in, but at the moment, just general
      demonstratives, I'd like to get a copy and understand before
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       they come at me without notice.
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                                                                      statements about repayment is meaningless.
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             MS. ROGERS: Of course, your Honor.
                                                               12
                                                                            (Continued on the following page.)
             THE COURT: So what's the run of play tomorrow?
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                                                               13
             MS. ROGERS: So tomorrow we are going to finish
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      with Mr. Sullivan and then call Tom King and then Sonya
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       Rowling if we have time.
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             THE COURT: In that order?
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             MS. ROGERS: Yes.
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             THE COURT: Anything else?
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             MS. CONNELL: No, your Honor. I just want to raise
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       one more time -- I'm sorry.
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            We just had reference when Congressman Barr was
                                                               22
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23
      speak about Ms. Rowling kind of blessing the calculation and
                                                               23
       Mr. LaPierre coming even.
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                                                               24
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            This is stuff that we do not have discovery on.
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It's prejudicial to the Plaintiff. It's unfair. We have 1 moved again and again about it. It's stuff that was blocked 2 by privilege earlier on. We will keep making this 3 4 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

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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MS. ROGERS: Correct, your Honor. So, for example, there will be spreadsheets listing every flight that was repaid and the destinations and so on. The defense is not asserting -- the NRA is not making the argument that a lawyer told us which ones had to be repaid and we demanded repayment of those, and that's why we met our obligations. But they're making what has been until awaiting your Honor's charge has been an amorphous argument about failure to discipline or improper administration. You hear them say today and Mr. LaPierre faced no consequences, nothing happened.

And so we think even though the NRA is not claiming a damages setoff, that it's relevant to have directors testify that there is a squaring off in our review.

THE COURT: The question was what was -- what was blocked on privileged grounds?

MS. ROGERS: So, what was -- there were exchanges in depositions, and they actually got a supplemental deposition to give them more; but during early depositions there were things like, you know, what -- and I can't recite the Q and A from memory; but it was things basically like don't testify about legal advice you got about taxes or payments. And it was difficult for some fact witnesses to negotiate that line between did I repay the flight that happened on April 1st and did I talk to a lawyer about it.

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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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

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

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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.

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.)

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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

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