

EXHIBIT 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 3

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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 6, 2024

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

APPEARANCES:

STATE OF NEW YORK
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NOAH PETERS, ESQ.

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1 THE COURT: Good morning, everyone. Couple of
 2 things. We -- we have looked at the Spray excerpts, and I'm
 3 pretty sure my law clerk will be able to get those back to
 4 you this morning. It wasn't really that much.
 5 On the bankruptcy transcript, I can't recall
 6 whether I have asked the State what their -- what their
 7 position is with respect to Mr. Phillips's objection. You
 8 may have been sending me letters.
 9 I have to tell you the flow of letters is getting
 10 to the point where it's beyond our bandwidth to field them,
 11 especially on the timeframe that you all are suggesting. So
 12 there may be times when I ask you to repeat things in court.
 13 So Mr. Phillips' position. My assumption is that
 14 he wasn't at the bankruptcy represented to be able to
 15 cross-examine, and so I -- that argument does resonate with
 16 me to some extent.
 17 So what's the State's position on that?
 18 MS. CONNELL: Your Honor, this came up with the
 19 State's designation. We resolved it because the only
 20 portions of the bankruptcy deposition for Mr. Spray that we
 21 designated had to do with his qualifications, and Mr.
 22 Phillips ultimately said that's fine.
 23 I think, and I don't want to have this wrong, that
 24 our objection to the bankruptcy designation of Mr. Spray now
 25 by the NRA is there are new designations that was not

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1 previously given to the parties in December and otherwise,
 2 you know --
 3 THE COURT: No. But Mr. Phillips has objected
 4 to -- I think he objects to the designations by the NRA and
 5 the People, right, from that transcript?
 6 MR. FARBER: That's correct, your Honor.
 7 THE COURT: So does the State have any reaction to
 8 that, whether it should be admissible as against Mr.
 9 Phillips?
 10 MS. CONNELL: Ours are just counter-designations to
 11 the new designations.
 12 THE COURT: Well, okay.
 13 MS. CONNELL: I would have to look at that. I'm
 14 sorry, your Honor. I didn't look at that.
 15 THE COURT: It's a legal question; right. I mean,
 16 he doesn't have -- I could see how the other defendants who
 17 are current officers and obviously were part of the defense
 18 team. They may disagree with me, but I think Mr. Phillips
 19 was clearly an outsider at that time. So I mean, if I
 20 didn't hear any compelling argument to the contrary, I'm
 21 going to agree with them that they weren't there to
 22 cross-examine; therefore, that's one of the basic indicia of
 23 permitting prior sworn testimony.
 24 MS. CONNELL: I agree, your Honor. You are not
 25 going to hear a compelling argument otherwise from the

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1 State.
 2 THE COURT: And from the NRA?
 3 MS. ROGERS: We have no objection to a limiting
 4 instruction that these -- most of what we have designated is
 5 Mr. Spray saying the leadership supported the course
 6 correction which doesn't really go for or against Mr.
 7 Phillips.
 8 THE COURT: Look, I read it, and there is some
 9 -- there is not a lot of specific darts thrown, but there
 10 are things like -- things needed to be cleaned up and along
 11 those lines, but I think just in principle, since he wasn't
 12 a party and certainly was not part of the team representing
 13 the NRA at that time -- I see Mr. Correll standing up who is
 14 going to maybe have a different position on that.
 15 MR. CORRELL: Your Honor, cross-examination was one
 16 thing Mr. LaPierre did not have, and he was also not a
 17 party. So both of those two indicia of unfairness exist as
 18 to him.
 19 I would argue we are taking the same position that
 20 nothing should be admissible against him.
 21 THE COURT: Yeah. I'm not persuaded by that. I
 22 think -- well, first of all, I don't -- from what I
 23 received, the only objections to hearsay were from the
 24 Phillips side, and they seem well-taken to me.
 25 You know, we can get into evidentiary question of

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1 whether, you know, as a practical matter Mr. LaPierre's
 2 interests were being represented. You know, he is guiding
 3 the company at that point. I think that's a tougher sell to
 4 me, to be honest with you.
 5 MR. CORRELL: Mr. LaPierre made a blanket objection
 6 early on to any use of any testimony from the bankruptcy, so
 7 we didn't feel the need to repeat that.
 8 THE COURT: I understand. I just think you're
 9 differently situated as frankly is Mr. Frazer, but go ahead.
 10 MR. FLEMING: Just same thing. We had objected,
 11 your Honor, may recall at the beginning of the trial when
 12 Mr. Spray's designations by the Plaintiff were put forth.
 13 And so the fact being that I didn't object specifically to
 14 the NRA's designations, I felt the objection was continuing.
 15 THE COURT: Well, given how quickly things are
 16 moving, and I am getting transcripts that say objection by X
 17 or Y, I would not take that for granted.
 18 Do -- does the AG take a position as to whether
 19 this should be admissible as against the current officers?
 20 MS. CONNELL: Your Honor, we don't take a position
 21 on that, but we do -- I just want to reiterate this is a new
 22 designation, so this is a designation made after the start
 23 of trial, and you have recognized in the past that where a
 24 live witness is not here to cross-examine, it can prejudice
 25 a party. That's why we do these designations in advance and

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1 we object.

2 I just want to be clear we do object on the basis

3 of these Spray designations being wholly new, and that's the

4 basis for our objection. We don't take issue with the

5 individual defendant position.

6 THE COURT: I think there is a danger as we get

7 further into the trial and everybody is a little bit tired

8 and things are moving quickly that we've lost a little

9 internal control, and I do have my eye on that, and I do

10 need to insist that -- you know, because part of this does

11 come back to me because I end up getting, you know, lots of

12 things sent to me with, oh, this is coming up tomorrow.

13 That's just not going to work. It wasn't the way

14 it worked the first few weeks of the trial, but I do, having

15 been there, understand that this is -- nobody's working

16 under ideal conditions. So I'm not being too petulant about

17 the whole thing, but I do need you to respect each other's

18 time as well. And so I do need to insist that there's

19 enough advance notice so that I'm not getting jammed at the

20 end because, I mean, at the end of the day, I will just

21 delay your testimony coming in if I feel like I don't have

22 enough time to review. And so, that's not good for you

23 either.

24 Anything else?

25 MS. ROGERS: We understand, your Honor.

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1 MR. CORRELL: I have one small item to avoid a

2 motion.

3 Just in reviewing documents, we noticed that Mr.

4 LaPierre's personal information, driver's license number and

5 bank account number were in documents. We'd like to redact

6 it rather than filing a formal motion to seal.

7 THE COURT: That's granted. I think that's

8 statutory with respect to bank accounts. But you mean, it's

9 in an exhibit that's already been admitted?

10 MR. CORRELL: I'm not sure if it has been admitted

11 or not yet, but it's in documents that I think maybe --

12 THE COURT: That's kind of information that is in a

13 very rare category that would be sealed even in -- and there

14 is no reason for it even being shown in open court because

15 it's not relevant I assume as an evidentiary matter.

16 MR. CORRELL: It's not. So we'd like --

17 THE COURT: That's granted. You can represent

18 -- but it doesn't need to be sealed. You can just redact it

19 as an exhibit.

20 MR. CORRELL: That's what we are asking for, your

21 Honor.

22 THE COURT: So if it's not used in open court with

23 the confidential information in it, then you don't need to

24 seal it.

25 MR. CORRELL: Perfect. Thank you, your Honor.

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1 MR. FLEMING: Just one last point. On Mr. Frazer's

2 case, we intend to show again also some portions of the

3 Spray deposition. And just to kind of advertise where we

4 are going, obviously, since December we have had weeks of

5 testimony, so some changing of those designations will

6 occur. I will get it to the Government as soon as I can,

7 and they are minor, but I just wanted to flag that because I

8 do think it's necessary. Some of it is rebuttal.

9 THE COURT: This raises another sort of curious

10 question to me.

11 My assumption has been -- I don't want to be

12 reviewing the Spray transcripts five times.

13 I mean, are you not able to send me one defense

14 group of -- from what you just said, it sounds like there is

15 going to be another round of designations and

16 counter-designations for each defendants.

17 Is that what you're planning? Because if that's

18 what you're planning, I don't like it.

19 MR. FLEMING: Well, your Honor, the history of it

20 is in December all the parties made designations and

21 counter-designations, and we went through that round back

22 and forth.

23 So the intention always in -- on our witness was

24 Craig Spray obviously done by video. And you know, although

25 the defendants have tried to coordinate, it's not as though

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1 we are acting as a perfect team. So obviously, there is

2 some sort of dislocation in that respect. But yeah, the

3 intention was always to have a small portion of Craig

4 Spray's deposition played. We were happy to have it done on

5 Plaintiff's case, but your Honor said that needs to be

6 reserved for ours -- our designations, and that's what we

7 are intending to do.

8 THE COURT: I am only reviewing these once, let me

9 make it clear. And you know, I can not describe to you what

10 it does to our schedule when we start getting transcripts

11 that have to be rereviewed. I'm not sure how to deal with

12 that exactly. My assumption was that we were getting the

13 defense sides' Spray designations.

14 MR. CORRELL: Your Honor, may I make a suggestion

15 that we -- the defendants work together to do one

16 designation, and the NRA can play it for all of us.

17 THE COURT: Well, look, this is the defense case;

18 right. I haven't certainly in my mind designated this as

19 this is the NRA's case and then there will be a separate

20 case for each of you.

21 So I'm -- I have an issue with the way that whole

22 thing is phrased. I mean, we could do it that way, I

23 suppose, but obviously, we are going to have -- you're going

24 to question -- the witnesses aren't going to come back

25 multiple times; right. So I think that the combined

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1 designations should be played once.
 2 I mean, the jury is going to not be very happy with
 3 you all if they sort of get the sense that they are hearing
 4 different parts of Spray's deposition at different times.
 5 So that whole thing doesn't work. So you're going to have
 6 to work together, to put it mildly, I think.
 7 I understand that there are different positions and
 8 you're going to make those during your arguments, but the
 9 evidence has to come in in an organized way.
 10 MS. ROGERS: Your Honor --
 11 MR. FARBER: I completely agree with the logistics
 12 of it coming in in an organized way. And just as sometimes
 13 the Plaintiff's case, if there may be a nonparty witness who
 14 is here, they will do everything together. I agree about
 15 the efficiency of not having repeated, you know, series of
 16 defense witnesses, but I object to this being presented as a
 17 defense case.
 18 THE COURT: I'm not presenting it to the jury that
 19 way. I'm saying from my perspective, the defense case is --
 20 is a block of time that you all have to figure out how to
 21 allocate.
 22 MR. FARBER: I understand that, your Honor, and
 23 don't have a quarrel with that point.
 24 MS. ROGERS: From the NRA's perspective, we
 25 certainly don't intend, for example, Ms. Rowling to show up

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1 three times and be crossed by each defendant. So -- and
 2 with respect to Mr. Spray, I don't imagine that there will
 3 be divergent interests in which testimony are designated.
 4 So why don't we coordinate, and if there is any loose ends,
 5 we can apprise the Court, but I suspect we can get a unified
 6 submission.
 7 THE COURT: You have already thrown us off because
 8 my law clerk and I have spent time reviewing a set of
 9 designations, and now it sounds like we are going to get at
 10 least one other one. So we will deal with that one, but
 11 that's not happening again.
 12 Okay. I guess as to each witness, you need to tell
 13 me I suppose in some way all the direct should happen and
 14 then all the crosses should happen. Right. And I'll need
 15 to figure out to at least -- I guess if you're calling
 16 them -- if the NRA is calling them, then the lawyers who
 17 should get up in series are the ones who are taking direct
 18 from that witness. You know, I don't know whether it's a
 19 hybrid or not. But before the State has to get up, all the
 20 direct should be out so that the scope of the cross is
 21 clear.
 22 MR. FARBER: On that point, your Honor. So if, for
 23 example, I want to cross a witness that the NRA has
 24 presented, does that mean I should wait until after the
 25 State goes? I mean, I'll do it either way. I just want to

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1 know the Court's preference.
 2 THE COURT: I -- well, I think you should wait till
 3 all the directs go so you know what the scope of the cross
 4 is. Right.
 5 Whether you go before the State, I think it might
 6 make sense for the -- I don't have an answer to that really
 7 that I care about. You know, you can -- you can go as part
 8 of the defense group. It may not be as obvious to the jury
 9 what you're doing if you go along the line of the directs.
 10 So what would you prefer?
 11 You didn't like that question coming back to you;
 12 did you?
 13 MR. FARBER: I think I'd prefer to go after the
 14 direct if that's what we are doing.
 15 THE COURT: Okay. And then the State after that.
 16 Is that what you meant?
 17 MR. FARBER: I'm fine with that.
 18 I mean, if they bring up something new, I get to go
 19 back to it, so it doesn't really affect me one way or the
 20 other.
 21 THE COURT: Okay. All right. So we should get
 22 started. Can we get our witness back.
 23 Get the jury, please.
 24 MS. CONNELL: Your Honor, just to flag it for you,
 25 the witness after that as we've been told is Mr. King who

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1 has the demonstratives. He is a fact witness.
 2 THE COURT: Okay. I did see something. I mean,
 3 just so you're aware, my law clerk is also out the last few
 4 days, so I haven't really looked at stuff that came in. I'm
 5 going to have to take a short look at it.
 6 Do you have a hard copy of the demonstratives?
 7 MS. ROGERS: We will get one, your Honor. Use of
 8 demonstratives with fact witnesses where we think are
 9 supported, these are designed to be illustrative.
 10 THE COURT: Well, demonstratives, there is no
 11 separate test for it. In my experience, they are very
 12 rarely used to get at, you know, some summary of a lot of
 13 data but not as a like a Power Point presentation where it
 14 becomes a cue for memory.
 15 It's designed to -- if the witness is testifying
 16 first about a very complicated series of things, then you
 17 can say, well, did you make a chart to make this clearer for
 18 the jury. That's okay. But -- and again, I haven't looked
 19 at it, but if it's the normal kind of Power Point you see
 20 with an expert, that I think is -- raises some different
 21 issues.
 22 MS. ROGERS: So we will bring hard copies. These
 23 aren't expert style Power Points that outline testimony.
 24 But for example, we have a witness we want to prove up the
 25 portion of our opening that deals with here are the

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1 charitable things the NRA does, and so we will have a
 2 picture of a map with here's all the NRA chapters, something
 3 of that nature.
 4 THE COURT: If the witness can't remember that,
 5 that's a problem.
 6 MS. ROGERS: Right. I mean, they are illustrative
 7 in their design to make clearer what the witness --
 8 THE COURT: I'm inclined against something like
 9 that. You know, again, the demonstrative in the fact
 10 witness setting really should be a picture that helps to
 11 illustrate a point that the witness is independently making.
 12 That's the way I've seen it used, and I think that way
 13 avoids the risk -- frankly, it's not very good for
 14 credibility anyway to have it look like the witness is
 15 reading from a script, but it also is a little dangerous, I
 16 think. So I don't want to prejudge it because I don't know
 17 what it looks like, but if it's -- in principle, a fact
 18 witness should not need memory cues. If they do, then do it
 19 the normal way where you refresh their recollection with
 20 admissible evidence.
 21 MS. ROGERS: We understand. We will print them.
 22 They were intended as illustrative aids, not memory cues,
 23 but we will print them, and we will discuss them.
 24 THE COURT: The point is for them to be helpful to
 25 the jury. Not to the witness.

Sullivan - by Defendant - Direct/Ms. Rogers Page 3308

1 I think we are ready to move ahead here.
 2 In addition to your professional experience advising
 3 for profit and non-profit companies, do you have any personal
 4 experience on non-profit Boards or Councils?
 5 A I do. As I mentioned yesterday, I served on the
 6 Economic Leadership Council at University of California, San
 7 Diego, and I also had an opportunity to work with San Diego's
 8 Zoo Global which is now known as the San Diego Zoo Wildlife
 9 Alliance. That was over the course of a five-year period from
 10 2016 through 2020.
 11 I served on two different Boards at the organization.
 12 First was what was known as the Foundation Board, and that was a
 13 fundraising and friend-raising Board. I did not have
 14 operational or fiduciary duties or anything like that.
 15 After a couple of years on that Board, I transitioned
 16 to Board of Trustees wherein I did have fiduciary duties. And
 17 for the last two years, I served as an officer, and I was the
 18 treasurer for the San Diego Zoo Global Organization. In which
 19 case I had responsibility for all of the financials and
 20 financial performance regarding the organization.
 21 Q And what have you been asked to do in this case?
 22 A In effect, it is applying my expertise in economics and
 23 finance and accounting and using those tools to evaluate the
 24 control efforts that were undertaken by the NRA.
 25 Q Are you being compensated for your work?

Sullivan - by Defendant - Direct/Ms. Rogers Page 3307

1 MS. ROGERS: Yes. Exactly.
 2 (Witness resumed the witness stand.)
 3 THE COURT OFFICER: All rise. Jury entering.
 4 (Whereupon, at this time the jury entered the
 5 courtroom.)
 6 THE COURT: Good morning, folks. Welcome back.
 7 Please have a seat.
 8 Counsel, you may proceed.
 9 MS. ROGERS: Thank you, your Honor.
 10 CONTINUED DIRECT EXAMINATION
 11 BY MS. ROGERS:
 12 Q Good morning. Can everyone hear me? Great.
 13 Dr. Sullivan, yesterday you testified about some of the
 14 business analytics projects you've done.
 15 You also work as an expert; right?
 16 A Yes. That's right.
 17 Q Can you describe the breakdown of your work? Do you
 18 testify usually for plaintiffs or for defendants?
 19 A My work -- my litigation and dispute-related work is
 20 split roughly 50/50 between working on behalf of plaintiffs and
 21 working on behalf of defendants. And roughly speaking, my work
 22 is split about 50/50 between pure business advisory type work
 23 and decision making versus litigation and disputes such as this
 24 one.
 25 Q All right. And I think -- is the Power Point working?

Sullivan - by Defendant - Direct/Ms. Rogers Page 3309

1 A My employer Secretariat is compensated at the rate of
 2 \$2,000 per hour for the work that I perform in this case.
 3 Q How much has your employer been paid so far for your
 4 work?
 5 A I do not know.
 6 Q And does your compensation depend in any way on what
 7 you say?
 8 A No, not at all.
 9 Q Does it depends in any way on whether the NRA wins or
 10 loses?
 11 A No.
 12 Q What kind of materials did you consider in forming your
 13 expert opinions?
 14 A A great deal of information. Really comes into two
 15 categories or buckets. One is the set of information that I
 16 received as part of this litigation that I either asked for or
 17 received from counsel for the NRA. That's including Board
 18 minutes and financial statements and Audit Committee meeting
 19 minutes and things of that nature.
 20 There is also a set of information that I obtained
 21 independently through my research in the marketplace, and I'm
 22 going to talk a little bit more about the framework that I
 23 utilized in terms of how I evaluated the NRA's control efforts,
 24 and that was obtained independently through my own work that I
 25 did.

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Sullivan - by Defendant - Direct/Ms. Rogers Page 3310

1 Q Now, before testifying today, what kind of work have
2 you already done?

3 A So I performed my research, performed my analysis. I
4 set that forth in two different reports. There was an initial
5 report, and then I had an opportunity to submit a rebuttal
6 report in response to work that was done by the experts for the
7 AG.

8 Subsequently, I sat for deposition and provided
9 testimony at deposition, and the purpose of this is to provide
10 as much transparency and clarity to the work that I have done
11 and to be able to communicate that both to the AG and in the
12 court.

13 Q And what are the key topics you are going to be
14 testifying about today?

15 A I'd like to start off talking about just an overview or
16 a summary of what I did and what I found.

17 Second, I'd like to discuss the framework that I
18 utilized for performing my analysis.

19 And then third, applying that framework to some of the
20 information in this case. And in particular, with regards to
21 the corrective actions that were undertaken by the NRA.

22 Q All right. Well let's start with your summary.

23 A All right. For context, I am in part responding to the
24 work that was performed by Mr. Hines that he presented to you on
25 Friday and Monday.

Sullivan - by Defendant - Direct/Ms. Rogers Page 3311

1 At a high level, Mr. Hines was explaining that the
2 control environment at the NRA was not effective and that there
3 were a number of what he found to be fraud risk indicators
4 associated with the work done at the NRA.

5 Q Now, you are not a forensic accountant like Mr. Hines;
6 right?

7 A That's right. So I am an economist. I use accounting
8 throughout my work as an economist, but I'm not a forensic
9 accountant. And thus, Mr. Hines and I approach our work
10 differently as a result of that, and that is part of why I want
11 to set forth the framework that I have utilized so you can
12 understand how it is I had went about my work and why.

13 Q And in the course of your work, can you describe
14 whether you help interpret the findings of forensic accountants?

15 A Yes. Part of the work as an economist and the work
16 that I do not surprisingly is based upon financial information
17 and financial reporting utilizing financial reports, looking at
18 auditing, the work that auditors have performed, looking at the
19 influence and affects of various control activities, and I think
20 this probably makes sense when we go back to think about what is
21 economics. You know, often considered the decision science, and
22 it is the study and the science of evaluating decision making
23 and actions that are taken by individuals and organizations and
24 companies and countries when there are scarce resources and
25 constraints, and that all is utilizing financial information.

Sullivan - by Defendant - Direct/Ms. Rogers Page 3312

1 So in the course of my work, I am frequently utilizing
2 accounting work.

3 Q All right. And what opinions have you reached in this
4 case?

5 A As I'll explain, there are basic principles of
6 economics and accounting. These include things like cost
7 benefit analysis and materiality and prudent business person
8 judgment, and these principles are reflected in what we see in
9 industry practices.

10 Now, when I say "industry" here, I'm not referring to a
11 particular industry like the shoe industry or the hospital
12 industry or the automobile industry.

13 What I'm referring to is -- are the practices that are
14 utilized by organizations within industry meaning this is both
15 for private and public entities, and it is both profit and
16 non-profit entities.

17 Q And can you summarize the opinion you've reached?

18 A Based upon my research, my analysis which I'll
19 summarize here today, in my view the NRA's course correction has
20 been effective. And what that means is that they have taken
21 action. They have made decisions and certain activities that
22 have effectively changed their course in a way that I view as
23 positive.

24 Q And do we have an overview of your basis for that
25 opinion?

Sullivan - by Defendant - Direct/Ms. Rogers Page 3313

1 A Yes, and I will describe this in more detail, but what
2 I am depicting here is effectively a timeline.

3 So scrutiny was initially being placed on the NRA in
4 2017. In 2018 there were changes that were occurring within the
5 organization. Mr. Spray came in as CFO in March of 2018.
6 Subsequent to that, there was a Top Concerns memo in the middle
7 of 2018 that expressed a number of different issues. It was
8 really at that point in time with the catalyst for the course
9 correction that took place. Around the same time compliance
10 seminars were implemented. There were a number of actions that
11 were taken with regards to restitution or repayment by
12 employees.

13 A number of employees, their employment with the NRA
14 was terminated. And in addition, those are some of the internal
15 side of things.

16 On the external side with the vendors, you know, as you
17 may know, there were several of those that were either
18 terminated, renegotiated or in other ways corrected throughout
19 the process.

20 (Continued on the following page.)

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R. Sullivan - by Defendants - Direct/Ms. Rogers Page 3314

1 Q Can you talk about the economics finance accounting
 2 framework you used to conduct your analysis?
 3 A Yes. A framework is important because it provides a
 4 principled way of performing an evaluation, of being able to
 5 analyze and make a decision and inferences based upon
 6 information and that's why it is important.
 7 The first three principles I have listed here, cost
 8 benefit analysis, materiality and prudent business person
 9 judgment, these are basic principles of economics, finance and
 10 accounting; and those principles are reflected in what are
 11 referred to as industry standards or sometimes referred to as
 12 industry practices.
 13 And, I think it would be helpful to go through each
 14 one.
 15 Q Absolutely. So, what do you mean when you say "cost
 16 benefit analysis?"
 17 A At its most basic level, it is very simple. Although
 18 there's been just a ton of economic research on different types
 19 of analyses for cost benefits, it is also something that we all
 20 do on a daily basis. You know, when we decide to take a subway
 21 versus an Uber versus a taxi, and we're evaluating the costs
 22 relative to the benefits that we get. And the more material,
 23 the more important the issue is, the more effort that we tend to
 24 put into it.
 25 I might not put too much effort into determining

R. Sullivan - by Defendants - Direct/Ms. Rogers Page 3315

1 whether it is Uber or lift; but if I'm going to rent an
 2 apartment, if I'm thinking about purchasing a vehicle, then I'm
 3 going to put a lot of time and effort into that analysis to
 4 figure out am I going to get the benefits that outweigh the
 5 costs associated with that.
 6 Q Can you talk a little more about this business concept
 7 of materiality?
 8 A Sure. I was trying to think of the best way to explain
 9 this, and I was in a market the other day and it occurred to me
 10 that perhaps potato chips and diamonds. So, if we're at the
 11 corner market and one is looking at controls in that market,
 12 there's not going to be too much concern over the potato chips
 13 if a bag or two of potato chips goes missing or perhaps not all
 14 of them were received, that the package -- the box of potato
 15 chips is short a bag.
 16 But if you're up in the diamond district and there's
 17 diamonds being brought in, sold, transferred, there's going to
 18 be far more scrutiny paid to how those are handled, looking at
 19 both employees and at customers to make sure that the diamonds
 20 don't go into somebody's pocket and just walk out and, thus,
 21 that becomes very important.
 22 Now, more formally speaking, materiality is when a
 23 particular financial information is such a magnitude that when
 24 it is reported differently, it causes different decisions to be
 25 made as a result; and, thus, that level of materiality is

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1 contextual. It varies based upon the situation; but, of course,
 2 it affects how one thinks about the proper course of action to
 3 take.
 4 Q Can you talk a little bit about the concept of prudent
 5 prudent business judgment?
 6 A There's really two things to be thinking about here:
 7 Prudent and person.
 8 When judgments or decisions are being made, it is being
 9 made by humans, by people. And we are -- and much to my chagrin
 10 -- inherently imperfect; and as a result, we're not always
 11 making perfect decisions, but we're doing so in a prudent way.
 12 That means we're gathering a reasonable amount of information in
 13 order to make the decision that we're making.
 14 Again, if I'm choosing between Uber and Lift, I'm
 15 probably not going to be putting too much thought into that.
 16 But if I am making a decision on renting an apartment, then,
 17 again, I'm going to be putting much more thought. I'm going to
 18 be doing research. I'm going to be doing analysis to bring that
 19 in.
 20 But, what that ultimately reflects is what I am viewing
 21 to be a good decision at that moment. We have to ensure that
 22 there's not the so-called paralysis by analysis where we do so
 23 much analysis that we delay a decision, and we don't take any
 24 action; but, yet, we also want to make sure we have enough
 25 information.

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1 It is trying to find that reasonable balance for being
 2 able to make decisions.
 3 Q You heard Mr. Hines testify that sometimes decisions
 4 are revisited or changed in hindsight.
 5 Can you describe how time interacts with prudent person
 6 business judgment?
 7 A Absolutely. In economics, we refer to this as X-ante
 8 versus X-post. I suppose folks somewhere along the way enjoyed
 9 the Latin side of things. And clearly once we have hindsight
 10 and we're looking back on decisions, that gives us an
 11 opportunity to better understand what has transpired and whether
 12 a decision is accurate with that hindsight.
 13 When we're only looking with foresight going forward,
 14 we can make the best decision that we can. Sometimes that --
 15 even a good decision might lead to a bad outcome and vice versa.
 16 That just is inherent in life and with uncertainty.
 17 Q You also heard Mr. Hines testify about a COSO framework
 18 for internal controls.
 19 Can you describe how your work and analysis touches on
 20 COSO?
 21 A Yeah, so the three principals I just described, cost
 22 benefit analysis, materiality and prudent business judgment;
 23 those are reflected in industry practices and standards.
 24 COSO, which is the committee on sponsoring
 25 organizations of the tread way commission is a framework that

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1 is in part focused on internal controls; and that framework,
 2 which is used across many different organizations within
 3 for-profits, within non-profits, it is very widely utilized and
 4 it is a framework implemented by NRA throughout the course
 5 correction, in particular, in order to improve the controls.
 6 Q And do you improve controls once or repeatedly or can
 7 you describe how that works over time?
 8 A Absolutely. It is a continuous process.
 9 It is not a one in done. It is not a singular event.
 10 The notion of continuous improvement is observed across
 11 different types of organizations in the areas. There's Lean
 12 Manufacturing, for example; or you may have heard of Six Sigma
 13 which is an approach towards trying to make continuously improve
 14 operations in a way that makes them more efficient.
 15 COSO is this continuous improvement framework that
 16 applies to internal controls, and it is a collection of looking
 17 at the control environment, performing risk assessments, control
 18 activities, improving information and communication in
 19 monitoring. What that means is that there's always a continuous
 20 process of seeking to detect issues that are arising, seeking to
 21 correct those, taking that information, learning from it to
 22 improve policies so that there's less likelihood of something to
 23 occur in the future; and if so, to be able to detect it.
 24 There's not a perfect set of internal controls. They
 25 are only one set simply continued to improve over time.

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1 Q We've heard a lot of references over the course of this
 2 trial about audits and auditors. Can you talk about how your
 3 analysis touches on that?
 4 A Yes. Here, again, the principles I was referring to
 5 earlier are reflected in the auditing process that is undertaken
 6 for organizations and, specifically, here with regards to the
 7 NRA.
 8 So, in the 2000s up to about 2019 through 2018, the
 9 NRA used a company known as RSM, which is a reputable accounting
 10 firm; and then in 2019, switched over to Aronson, another
 11 reputable accounting firm to perform an audit.
 12 What the auditors have done and do is multifold. One
 13 is to review the underlying information for the financial
 14 statements to determine whether or not those are reasonably
 15 accurate.
 16 The interesting part about that is it is not simply
 17 looking at the numbers, themselves, but it is digging in to
 18 understand the internal controls. It is not an audit of the
 19 controls, themselves; but in order to be able to render an
 20 opinion on whether the audit process and, thus, the financial
 21 statements are accurate, it is necessary for the auditors to
 22 dig into and understand and work with the internal controls to
 23 be able to know whether or not their process of auditing results
 24 in something that's accurate.
 25 When they release their results, they do provide

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1 letters to management, and those letters typically have
 2 improvements that can be suggested for how to make things even
 3 better. And, just like --
 4 MR. CONLEY: Objection, your Honor, Factual
 5 narration.
 6 THE COURT: That wasn't the one I was expecting,
 7 but that one I'll overrule.
 8 Q You can continue.
 9 A An organization is much like an organism, evolves,
 10 grows, develops, matures over time, and those management letters
 11 help with that.
 12 In 2019 when Aronson was beginning their work as
 13 auditors, clearly --
 14 THE COURT: I will interrupt just for a second
 15 because I've done this with the other experts to make the
 16 point maybe that Mr. Conley was making.
 17 As with the other experts, this expert is not a
 18 fact witness. So when he's relaying his understanding based
 19 on his review of whatever he's reviewed, you can take that
 20 as part of the basis for his opinion he's giving you; but
 21 he's not a fact witness on all these things having happened.
 22 Although sometimes people -- and I don't think it
 23 is a problem -- don't always include "It is my understanding
 24 that" before everything they say; that's -- that's how you
 25 should take this. This is him not narrating facts as a

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1 witness who saw them; but as showing you what the basis for
 2 his opinion is. Okay.
 3 MR. CONLEY: Your Honor, I'd also like to object
 4 that this is outside the scope of Dr. Sullivan's expertise
 5 getting into audits and accounting standards.
 6 THE COURT: That's what I thought you were going to
 7 say last time.
 8 To some extent, this witness is an economist and so
 9 his testimony about what auditors do or don't do about
 10 internal controls does strike to be outside his area.
 11 MS. ROGERS: Well, I think he's testified -- and we
 12 can voir dire him on this if the Court would like -- that
 13 when he's giving business analytic advice, he has to
 14 interpret these findings and know what they mean.
 15 THE COURT: I think that's different than -- I
 16 think the testimony that I was hearing was what auditors
 17 actually do, and maybe there's a basis for that, but
 18 that's -- he was approved as an expert on economics and in
 19 analyzing this, so I think that references to what auditors
 20 do may be part of his background understanding of the world,
 21 but it is not a basis of an opinion.
 22 MS. ROGERS: And we did also offer Dr. Sullivan as
 23 an expert on finance and accounting. We offered him as an
 24 expert on economics, finance and accounting.
 25 MR. CONLEY: No, your Honor, my understanding is he

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1 was offered as an expert in economics and he coauthored this
 2 expert report with Bruce Blacker, who is a CPA and
 3 accountant.
 4 THE COURT: Yeah, I did not -- just listening to
 5 the witness, I'd be surprised if he suggested he's an expert
 6 witness in the field of accounting. I did not admit him for
 7 that purpose.
 8 So, anyway, I don't think anything dramatic has
 9 happened; but I viewed it more as background, but it did
 10 sort of sound like he was giving a view as to what in the
 11 ordinary course auditors are supposed to do with respect to
 12 internal controls and maybe you can ask him questions to see
 13 whether he has an expert basis to make those kind of
 14 statements. But, otherwise, I would keep to his area of
 15 expertise.
 16 Q Dr. Sullivan, do you have expertise or experience
 17 relating to accounting and auditing?
 18 A I do. I am a user of the information that is produced
 19 by accountants and auditors; and as a user of that because I am
 20 an economist performing analysis in many different types of
 21 engagements from my clients, I am required in those instances to
 22 have an understanding as to what is being performed by
 23 accountants and auditors, what those documents mean and how to
 24 use them.
 25 I -- I am not offering up any expertise in being an

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1 auditor or being an accountant; but rather it is the user, how
 2 to interpret them and what they mean and how one can rely upon
 3 them, which is what I do day in and day out.
 4 THE COURT: Well, I think in that context, if you
 5 go back and read some of the answers, I was listening for
 6 that distinction. Some of them did sound like this is what
 7 auditors have to do in reviewing internal controls is
 8 different than a user's take on what in the real world he's
 9 observed them doing.
 10 I can -- I'm okay with the latter as part of his
 11 general background, but let's just be careful. As he said,
 12 we're all users of doctors, that doesn't make us doctors;
 13 but we do understand what doctors tell us and so we can give
 14 you background as to how that process works.
 15 So, that's the distinction I'm going to hold to.
 16 Okay.
 17 MS. ROGERS: Thank you, your Honor.
 18 Q So, Dr. Sullivan, from your perspective as someone who
 19 uses and interprets the findings of auditors, can you talk about
 20 management letters and special procedures and how they're used?
 21 A Yes, indeed.
 22 MR. CONLEY: Objection, your Honor, I'm sorry, this
 23 is outside the scope of his expertise.
 24 THE COURT: Overruled.
 25 A As a user, information from auditors, including the

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1 information that I have on this slide, what I did in this case
 2 is based upon my review of the facts and the information and it
 3 is just that, it is just my review of that; but what I observed
 4 is that there were management letters that were supplied by the
 5 auditors to the NRA. Those management letters provided
 6 suggestions or comments in terms of how to improve their
 7 internal control processes.
 8 When Aronson was determining whether to engage with the
 9 NRA as an auditor which at the time the NRA was undergoing
 10 considerable and substantial scrutiny, of course Aronson --
 11 MR. CONLEY: Objection, your Honor, this is factual
 12 narrative.
 13 THE COURT: Overruled. Again, he's not saying it,
 14 but this should all be interpreted as his understanding from
 15 things he's read, which should all be in evidence anyway;
 16 but, periodically, you might phrase it that way so that the
 17 jury doesn't get confused. But, this jury seems like they
 18 get what I'm -- how I'm advising them.
 19 MR. CONLEY: I'm sorry, but we object. We don't
 20 think this is in evidence, your Honor.
 21 MS. ROGERS: So, we have a witness from Aronson.
 22 He just hasn't testified yet. That will be part of our
 23 direct case.
 24 THE COURT: Right, and as I said before, at
 25 instruction time I will tell you that if you find that any

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1 of the factual basis for any expert that you don't agree
 2 with based on the evidence, then you can disregard what the
 3 expert says.
 4 That's the way this works.
 5 MS. ROGERS: Understood, your Honor.
 6 Q Thank you, Dr. Sullivan. Can you continue telling the
 7 jury what you observed from the documents that you looked at
 8 that helped you form an understanding about what the auditors
 9 did?
 10 A Absolutely, and just to be clear, this is all based
 11 upon my review, it is my understanding, my interpretation. I am
 12 not rendering an opinion on what the facts are.
 13 However, when Aronson -- and this is based upon the
 14 documents I reviewed. This is set forth in my expert reports.
 15 When Aronson was making a decision to undertake the
 16 engagement with the NRA as I noted there was substantial
 17 scrutiny that the organization was facing; thus, Aronson put in
 18 a special procedures to evaluate and make a determination on how
 19 to proceed with the engagement. And those special procedures
 20 went through and evaluated many different control items; and, in
 21 particular, part of what they did was address the issues that
 22 were --
 23 MR. CONLEY: Objection, your Honor, I'm sorry. The
 24 witness is evaluating evidence that isn't -- is evaluating
 25 evidence that isn't in the record.

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1 THE COURT: That is true. Not yet, anyway.
 2 MS. ROGERS: Not yet, your Honor. Just as they led
 3 off their case with an expert and then put in factual
 4 evidence.
 5 Our goal here is to have Dr. Sullivan frame this
 6 analysis; and then, obviously, we have a witness on our list
 7 from Aronson. We have these documents on our exhibit list.
 8 They're discussed in his expert report. They'll come in.
 9 THE COURT: I'll take that representation; and if
 10 it doesn't match up, the jury will make its evaluation.
 11 MR. CONLEY: Your Honor, we think it is
 12 inappropriate that the expert is describing what Aronson's
 13 state of mind was, what their motivations were.
 14 THE COURT: Overruled.
 15 Q You can continue, Dr. Sullivan.
 16 A Thank you. I think that comes close to rapping up what
 17 I intended to convey with Aronson.
 18 Q Okay, great.
 19 Let's talk about the industry standards you're familiar
 20 with concerning regulatory filings.
 21 A When non-profits provide their financial information,
 22 they file it in what is known as a Form 990. This provides the
 23 public with an opportunity to review and view the financial
 24 performance of the organization.
 25 I did a review and analysis of other organizations,

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1 other tax exempt organizations in terms of their Form 990sI did
 2 die this for a two-year period of 2019 to 2020 to determine
 3 whether or not there were excess benefit disclosures in other
 4 organizations, and I found that there were 206 organizations
 5 that also had excess benefit disclosures.
 6 One of the things that I find interesting, again, as a
 7 user of accounting information as an economist performing the
 8 work that I do is that in the Form 990, there's a section that
 9 is specifically intended to identify whether or not there are
 10 excess benefits to be disclosed, and this is indicative of being
 11 able --
 12 MR. CONLEY: Objection, your Honor, outside the
 13 scope of his expertise.
 14 MR. FLEMING: Your Honor, could we maybe let the
 15 answer come in before the objection?
 16 THE COURT: No, that's the opposite of what it is
 17 supposed to be.
 18 But, was this in the expert disclosures?
 19 MS. ROGERS: This was in one of the reports. That
 20 was a portion of his report --
 21 THE COURT: Was it rebutting --
 22 MS. ROGERS: It was rebutting something, so I don't
 23 want to spend too much time on.
 24 THE COURT: Rebutting something that I've excluded;
 25 right?

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1 MS. ROGERS: Yes.
 2 Q So, let's move on to your next slide.
 3 THE COURT: Yes, you can disregard this section.
 4 Q So, you heard Mr. Hines testify that he hadn't formed
 5 an opinion on whether any of the fraud risk indicators were
 6 corrected by the NRA. Do you recall that?
 7 A I do.
 8 Q Have you looked at any of that?
 9 A I have looked at a great deal of information to
 10 determine whether or not the course correction undertaken by the
 11 NRA has been effective; and the bases that were presented by
 12 Mr. Hines for his opinions are set forth on this slide in terms
 13 of these different elements.
 14 So, what I've done here is go through each of those
 15 with the economic tools that I have used to evaluate it.
 16 Q All right --
 17 MS. CONNELL: Objection, your Honor. I'm sorry, a
 18 lot of what is going to be covered is outside the scope of
 19 Dr. Sullivan's reports.
 20 MS. ROGERS: It is not outside the scope of his
 21 reports.
 22 MR. CONLEY: It is, your Honor.
 23 MS. ROGERS: It's pages 35 and 36 of his rebuttal
 24 report addressing Hines.
 25 MR. CONLEY: But, your Honor, Dr. Sullivan does not

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1 discuss the consulting arrangements and the board member
 2 arrangements that are set forth in the slide deck.
 3 MS. ROGERS: That's nowhere on the slide, nowhere
 4 on the next slide and the continued objections are -- we
 5 didn't do this during their trial time.
 6 THE COURT: We're going to take a short break
 7 because I'd like to evaluate all these things wholistically
 8 and not waste the jury's time with all these objections,
 9 which may be well-founded or may not.
 10 So, let's take a break and we'll try to get things
 11 moving a little more smoothly after.
 12 COURT OFFICER: All rise, jury exiting.
 13 (Whereupon, at this time the jury then left the
 14 courtroom.)
 15 MS. ROGERS: Should we keep the witness or get rid
 16 of the witness? Not get rid of him, but --
 17 THE COURT: He doesn't need to leave the room.
 18 MS. ROGERS: Okay.
 19 (Whereupon, at this time the witness stepped down.)
 20 THE COURT: Well, this hasn't gone very smoothly.
 21 Why don't I start with, I guess, Ms. Rogers, first
 22 of all, the part about the 990s --
 23 MS. ROGERS: That was a mistake, your Honor.
 24 THE COURT: Yeah. So, help me understand the scope
 25 of the report because, obviously, a part of what his report

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1 did ended up being rebutting things that didn't come in.
 2 So, there's no reason for that.
 3 Help me understand why they're wrong about their
 4 scope objections?
 5 MS. ROGERS: Sure. So on page -- so, Dr. Sullivan
 6 offered rebuttal testimony to several experts, including
 7 both Harris which we're cutting out and Hines, which is
 8 right on point.
 9 So, on pages 35 and 36 of Dr. Sullivan's rebuttal
 10 report delivered with Bruce Blacker and I'm sorry --
 11 THE COURT: You're going to have to go a little
 12 more slowly.
 13 MS. ROGERS: Sorry. 35 -- it is actually page 37
 14 of Dr. Sullivan's rebuttal report dated October 7, 2022,
 15 which he delivered with Bruce Blacker.
 16 THE COURT: I don't have all of this stuff at hand,
 17 but...
 18 MS. STERN: Your Honor, I have a copy for the
 19 Court.
 20 (Handed up to the Court)
 21 THE COURT: Go ahead.
 22 MS. ROGERS: So, if we look at pages -- it starts
 23 -- actually I keep saying the page numbers wrong.
 24 So, we'll start on page 34 where it says
 25 "Evaluation of Hines Report," and he goes through the same

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1 buckets that Hines testified about which are discussed on
 2 some of these slides.
 3 There's also McKenna, which Hines didn't testify
 4 about which is not -- we do not have a slide in here on
 5 McKenna.
 6 So, he summarizes Hines' testimony and then says
 7 that Hines fails to consider corrective actions with respect
 8 to each of these; and there's a chart attachment, E-1 to
 9 this report, which is a detailed list of corrective actions
 10 and evidence for it.
 11 THE COURT: The corrective actions part I
 12 understood; but, Mr. Conley, what was your out-of-scope
 13 objection?
 14 MR. CONLEY: Your Honor, the out-of-scope objection
 15 was with respect to slides 31 and 32, which were part of the
 16 summary on slide 27.
 17 The rebuttal report does not discuss as a basis for
 18 the opinions anything regarding Sandra Froman, David Keene,
 19 David Butz, Marion Hammer --
 20 THE COURT: Well, look, if the topic -- you know,
 21 if the principles discussed in the report just weren't
 22 applied to those individual situations -- you know, it is a
 23 trial. He's allowed to comment on what actually happens at
 24 the trial, too.
 25 If he was bringing a different kind of analysis

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1 into play saying, well There's, you know, X-study which
 2 shows that this is what happened with Marion Hammer that,
 3 you know, X, Y, Z, then I can see your point.
 4 If your only point is that he's applying the same
 5 analysis to address things that Hines said on the stand, I'm
 6 not as convinced by that.
 7 MS. ROGERS: And, your Honor --
 8 THE COURT: Wait, let me finish with him.
 9 MR. CONLEY: Your Honor, there's really no expert
 10 analysis here. It is factual recitation; but the -- the
 11 facts that it appears that Dr. Sullivan is going to be
 12 testifying about just are not discussed or --
 13 THE COURT: Well, look his take on this, the expert
 14 portion of this which, again, is going to be very prominent
 15 in the instructions which, hopefully, you will get today.
 16 You know, it is going to be up to the jury to
 17 decide whether things that happened in 2018, '19 or whenever
 18 are relevant to the -- to whether a violation occurred in
 19 prior years. That's a very large issue of relevance that
 20 the jury is going to have to grapple with.
 21 This witness, obviously, the focus is on talking
 22 about the corrective measures.
 23 So, I've agreed to let them bring that into the
 24 case subject to the jury making a decision about whether any
 25 of it impacts whether it is state of mind or good faith or

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1 whatever you want to call it at the time of the events,
 2 which is actually what they're going to be rendering a
 3 verdict on.
 4 But, I don't know that I see the need to object to
 5 each little time that the corrective measures is applied to
 6 something that Mr. Hines said on the stand.
 7 (Continued on next page)

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1 MS. STERN: Your Honor, can I just address one
2 point which is a macro point which is this expert issued two
3 reports. The purpose of which was to challenge the
4 propriety remedies, and we now have the expert having
5 retailored his opinion not only to not really offer the
6 opinion that he disclosed, but besides that now to provide
7 particular information.
8 And if you really -- and the time is not now to do
9 this. But if you were to read the report, you will see that
10 it really is just a person who has a title talking about
11 facts.
12 There's no application of any kind of analytical
13 methods that are accepted anywhere outside of what is
14 written in this report by two different people, only one of
15 which is here, and one of which that person didn't even have
16 the expertise that he -- we already saw him trying to talk
17 about.
18 So we have him doing something that is -- we had no
19 disclosure of, we are having to respond to in real time, and
20 it's --
21 THE COURT: Well, can you isolate that for me? I'm
22 not sure I understand what's the "new" that you're
23 responding to that you haven't had disclosure of.
24 MS. STERN: As you have seen, primarily this expert
25 is here to describe the facts as he sees them to the jury.

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1 THE COURT: Your expert did the same thing as part
2 of the background. We haven't really gotten to his opinions
3 yet.
4 MS. STERN: Well, that's exactly my point, your
5 Honor.
6 The opinion he offered -- and if you look through
7 his report, he offers opinions that based on this cost
8 benefit analysis, very mushy framework, that it's okay that
9 the NRA sort of got to correcting itself late in the game.
10 That's okay in a cost benefit analysis. It doesn't warrant
11 a independent monitorship. That's what he says in his
12 reports, both of them. And now he is trying to sort of say
13 something that's shy of that because obviously, that's not
14 before the jury.
15 But in the process, he's had to provide a little
16 bit -- something more tangible. And so now he applies it to
17 the things that he never even talked about in his report
18 which means that we did not have an opportunity to
19 cross-examine him in depositions about his application of
20 this framework to particular types of financial
21 transactions.
22 THE COURT: Let me ask the NRA what -- maybe to
23 help me understand exactly how, you know, given that the
24 portion of the report talks about monitorship is not going
25 to come in here which was an important part of it, but I do

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1 understand that the -- the standard that the jury is going
2 to be asked is -- it's something like reasonable care and
3 good faith under the circumstances, and I'm not getting all
4 the language right, but -- and is -- ultimately, this come
5 down to also applying the cost benefit analysis to what was
6 being done at the relevant time before the course
7 correction.
8 MS. ROGERS: Correct, your Honor. You see the
9 timeline begins in his slides in 2018, and we talk about the
10 contemporaneous events at the time of their allegations and
11 remedies that unfolded, you know, in real time over these
12 relevant years, the same years during which their evidence
13 is coming in.
14 So they are challenging items that happened in
15 2018, 2019, 2021. He is talking about remedial processes
16 unfolding over the same years and a little bit afterwards.
17 There is a stark mischaracterization we have heard
18 which is that there is new content being populated that was
19 not in the report previously. That's not true.
20 They may not have chosen to focus their cost
21 examination there, but what we essentially did after the
22 motion in limine stage when it was clear that remedies
23 weren't going to be before the jury is we took his verbatim
24 opinions from his report and we lopped off the part about
25 the compliance monitor.

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1 So in his expert report he says he is evaluating
2 the reasonableness of the NRA's control efforts. That is
3 exactly what he's told the jury that he's done, and he says
4 that.
5 THE COURT: The control efforts as they changed
6 over time.
7 MS. ROGERS: Yes.
8 THE COURT: Is he also going to offer an opinion as
9 to the controls that were in place in 20 -- you know '17,
10 '16, '15 and the like?
11 MS. ROGERS: So some of what was in place in 2018
12 were from them. So for example, this related-party
13 disclosure policy as we have heard it from Mr. Frazer a bit
14 was kind of rolled out in '15, '16, '17. He's considered
15 that, and he is considering actions the NRA took in response
16 to this information.
17 THE COURT: So he's -- right now we are still in
18 the -- I think the background phase. So he's, you know,
19 populating things that are in his report as you say about
20 the facts of the corrective measures; right?
21 MS. ROGERS: Right.
22 THE COURT: So what is the next part where he says
23 here's my expert opinion about why that should matter?
24 MS. ROGERS: So his -- so he's delivered two expert
25 opinions. One is that you have to evaluate the

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1 reasonableness of these control efforts using this
 2 framework. You have to consider cost and benefits and
 3 materiality. And his second opinion that using that
 4 framework, the NRA's corrective efforts have been
 5 reasonable, have been effective and --
 6 THE COURT: The corrective measures have.
 7 MS. ROGERS: The corrective measures.
 8 THE COURT: But not, you know, analyzing historical
 9 ones.
 10 MS. ROGERS: Well, he is saying control efforts and
 11 corrective measures, so it is a bit of a blend because the
 12 NRA had a whistleblower policy which it updated. The NRA
 13 had a related-party transaction policy.
 14 THE COURT: This is the slice of it that I thought,
 15 you know, was legitimate expert testimony. It's a little
 16 out there from what normally you see, but you know, in the
 17 -- in a case like this where you're evaluating the
 18 reasonableness and good faith of corporate officers and a
 19 corporation over time, you know, I think you can -- that
 20 this analysis that I think is admissible to make the points
 21 you're making about what is reasonable to take into account
 22 at a given point in time.
 23 So to that extent, I'm sticking with my view that,
 24 you know, I did not grant the motion to strike this
 25 testimony. It is again unusual in that the report was

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1 written by two people, and so we have already seen a little
 2 bit of that where that doesn't mean that either of them can
 3 testify as to the expertise of the other which I think
 4 happened a bit.
 5 You know, I'm not sure exactly why you did it that
 6 way, but I'm limiting it to whatever portion of that report
 7 he can independently verify based on his own expertise.
 8 But so, look, I don't know how long more this is
 9 going to go on, but the background going through the facts
 10 as long as, you know, the points about the course correction
 11 are certainly disclosed in the reports to the point where
 12 you can clearly cross or depose him on this, I really don't
 13 want to have a running series of objections to the
 14 background and to his statement about what he thinks
 15 happened in the course correction. I think it is fair to
 16 say they didn't really do that to your experts.
 17 So you know, are there any other opinions -- I have
 18 not sort of fly specked this demonstrative because I haven't
 19 had time. But are there any opinions coming that you think
 20 are just completely not in the report?
 21 MS. STERN: Well, I think one issue that I just
 22 want to flag is the notion of the economist offering his
 23 opinion on the adequacy of internal controls and that being
 24 outside the scope. The other --
 25 THE COURT: Now, look, I will tell you this. I

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1 don't think that internal controls and what is reasonable in
 2 the circumstance is entirely the province of any particular
 3 sphere of expertise. You know, the whole idea of di minimus
 4 tests is at some level is cost benefit. We are not going to
 5 say that somebody has violated a duty because of something
 6 that really wasn't material. This is a more nuanced and
 7 sophisticated take on that as to what is a reasonable set of
 8 controls to solve for the important problems but not
 9 over-regulate and the like.
 10 You know, I don't think that is inadmissible.
 11 Whether the jury accepts it or not is up to them, but you
 12 know, that's what they disclosed, and that's what I
 13 thought -- you know, I'd like to give the parties leeway to
 14 make the argument they want to make. And if one of their
 15 arguments which it sounds like it is is that, you know, in
 16 assessing the reasonableness of how closely you regulate
 17 things, you think about cost and benefits. And you know, at
 18 some level you could have controls that are too rigid, I
 19 suppose, but I haven't heard anything -- look, I think as
 20 long as he continues to be careful about when he is talking
 21 about facts just making the point that he is not testifying
 22 about the facts, I don't see the need for a continuing
 23 string of objections on this principle. You can
 24 cross-examine him including as to what time period he was
 25 looking at, what time period he is not looking at and all

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1 the things you want to do, but I'd like to have the
 2 testimony come in cleaner than it is right now. I get your
 3 point that it's -- things evolved from the reports when
 4 there were some plaintiffs' experts that are in that are no
 5 longer in. It was also at a point when the trial was going
 6 to be bifurcated and so things change, and -- but I'm
 7 confident that, you know, I made the decision that I was not
 8 excluding this kind of analysis, and I'm sticking to that.
 9 MS. STERN: I understand, your Honor. I just
 10 -- and we have to make our record, and I think that we did
 11 see there was a lot of straying beyond various areas.
 12 THE COURT: There was some.
 13 MS. STERN: I would trust that opposing counsel now
 14 heed the judge's directions and stay within the scope of the
 15 report and the area of expertise.
 16 THE COURT: Yeah. And given that this was a joint
 17 report, it does require some discipline to bear in mind that
 18 that doesn't mean that each of them can testify about
 19 expertise of the other. It's a little strange, but I will
 20 uphold that.
 21 MS. ROGERS: We understand, your Honor, and the
 22 remaining slides are not -- not accounting heavy. They
 23 don't really have accounting informing on them at all. They
 24 are bases for his assessment of the reasonableness of the
 25 control efforts.

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1 THE COURT: Okay.
 2 MS. STERN: Thank you, your Honor.
 3 THE COURT: All right. So let's try to keep it on
 4 both sides as smooth as we can. It's -- let's get through
 5 it. There is a point to be made, and then there is a point
 6 to be made on cross. It doesn't have to be lawyers talking.
 7 Let's -- I don't whether they are going to be ready
 8 yet. All right. Let's go -- hang on one more second. I'm
 9 not sure there is going to be another break so.
 10 MS. ROGERS: Well, this could be mid-morning break.
 11 THE COURT: I'm saying if any of you need to take a
 12 break, now is the time to do it.
 13 (Whereupon at this time there was a recess taken.)
 14 (Witness resumed the witness stand.)
 15 THE COURT OFFICER: All rise. Jury entering.
 16 (Whereupon, at this time the jury entered the
 17 courtroom.)
 18 THE COURT: Thank you. Please have a seat. So we
 19 worked out a few kinks. So things hopefully will move a
 20 little more smoothly.
 21 Counsel, you may continue.
 22 CONTINUED DIRECT EXAMINATION
 23 BY MS. ROGERS:
 24 MS. ROGERS: Thank you, your Honor.
 25 Q Dr. Sullivan, can you walk the jury through the bases

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1 Q Well, let's talk about the McKenzie companies first.
 2 A So with the vendors including McKenzie, there was
 3 activity taken very shortly after the Top Concerns memo was
 4 provided by the finance group Ms. Rowling and Mr. Erstling.
 5 They provided that Top Concerns memo to the Audit Committee and
 6 about ten days later or so, give or take, there were a series of
 7 letters that were sent out by the NRA to its vendors to be able
 8 to seek more information and to clarify the policies and
 9 procedures that the NRA was seeking to implement. And the
 10 verbal agreements as I understood them were -- those were
 11 conveyed in this Top Concerns memo. There was in 20 -- and all
 12 of that was 2018 as I viewed it and my understanding.
 13 In 2019, there was a documentation provided by MMP
 14 relating to the services that they were providing and the
 15 management fees that were being charged. Over time there was
 16 some things that occurred in the economy that we are all
 17 familiar with of Covid occurring in 2020. I am directly
 18 familiar with that in terms of work that I have performed with
 19 other entities and with the San Diego Zoo and just the impact
 20 that had on organizations.
 21 Around that same time there was also the affects that
 22 were being felt by NRA as a result of the activities being
 23 undertaken by the State and others against the NRA.
 24 The -- as I view it based upon my understanding of the
 25 facts in this 2022 the agreement with MMP was renegotiated and

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1 of your opinion that the NRA's corrective efforts were
 2 reasonable and effective?
 3 A Absolutely. So what I have set forth thus far is the
 4 framework that I utilized. I performed my research and my
 5 analysis, and what I will describe to you is my opinions based
 6 upon my understanding of the facts and based upon my research,
 7 my analysis.
 8 In effect, I categorized different corrective actions
 9 into these different categories; policies and procedures,
 10 individuals, and vendors.
 11 Just to recap, I showed you this slide earlier in
 12 summary form, and the notion here is that there are these
 13 different types of corrective actions that were taken over time.
 14 I evaluated those actions based upon the principles of economics
 15 in order to evaluate the reasonable and the effectiveness of
 16 those actions again based upon my opinion.
 17 Q All right. And we looked at different categories of
 18 risk indicators that Mr. Hines testified about; right?
 19 A I did. And in my view, as I go through each one of
 20 these, and I have a slide for each one of those to be able to
 21 break it down in terms of my analysis of them, but there were
 22 corrective actions taken across all of these items including the
 23 McKenzie companies, Ackerman McQueen and so forth that in total
 24 in my view relate or results in my opinion that those corrective
 25 actions have been effective.

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1 as a result, the fees and the services at that point in time
 2 were reduced. It was at a time where during that process Mr.
 3 LaPierre recused himself from the decision process. The new
 4 agreement was reviewed by the Audit Committee; and thus, in my
 5 view, this was effectively addressed.
 6 Q All right. Why don't you talk about the basis for your
 7 opinion that the NRA took effective corrective action on
 8 Ackerman McQueen.
 9 A Here similar to MMP, there was a letter sent to
 10 Ackerman McQueen in 2018 and a second letter as well seeking
 11 specific information. And thereafter, in trying to better
 12 understand the issues with Ackerman McQueen, in 2019, again
 13 based upon my understanding of the facts is that there was a
 14 forensic accountant that was hired by the NRA. Ultimately, the
 15 NRA opted to file a lawsuit against Ackerman McQueen, and in
 16 2019, the contract with Ackerman McQueen was terminated and as
 17 such, the corrective actions were eminently effective with
 18 regards to Ackerman McQueen.
 19 Q Now, there is a related company called Under Wild
 20 Skies; right?
 21 A There is, and many of the issues that I just described
 22 with Ackerman McQueen applies to Under Wild Skies.
 23 There was ultimately a lawsuit that was filed against
 24 Under Wild Skies and payments to Under Wild Skies based upon my
 25 understanding of the facts were stopped in 2019.

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1 So here again, based upon my review and analysis, the
 2 Under Wild Skies issue was effectively addressed.
 3 Q You also heard Mr. Hines testify about payments to
 4 former employees and Board members.
 5 Do you recall that?
 6 A I do.
 7 Q And did you form a view on whether he adequately took
 8 into account corrective measures in these areas?
 9 A In my view, he did not. In fact, with the three former
 10 employees that were addressed by Mr. Hines, I recognized based
 11 upon my review and understanding of the facts that the contract
 12 with Wilson Phillips was terminated in 2019, that the payments
 13 to Marcellin and Weaver, those were completed in 2019. And then
 14 there was a dispute with Marcellin and a settlement agreement
 15 that was entered into in 2020. And thus, in my view, these
 16 issues had been effectively addressed.
 17 Q And what about Board member contracts?
 18 A Here too my view is that these issues have been
 19 effectively addressed. There were new contracts negotiated with
 20 Marion Hammer and Dave Butz in the 2018 and 2019 period. There
 21 was a separate review by the Audit Committee of the
 22 relationships with Dave Butz, Marion Hammer and Sandy Froman.
 23 Further, in 2019 the relationship with Ackerman McQueen
 24 including payments that were being allocated for Oliver North
 25 was addressed and those -- that allocation of payments was

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1 rescinded and as noted a few moments ago, the arrangement and
 2 vendor relationship with Ackerman McQueen was terminated.
 3 The payments to Mr. Butz and Ms. Froman, those ended by
 4 the end of 2019. The payments to David Keene ended in 2021, and
 5 I also just have listed here some of the minutes from the Audit
 6 Committee describing the importance of the work being performed
 7 by Marion Hammer, and thus, payments continuing there.
 8 This is -- you know, going back to the framework that I
 9 utilized to evaluate my understanding of the facts and thinking
 10 about the cost to benefit analysis, this is a perfect example of
 11 of that occurring in practice because there are costs that are
 12 being incurred by the organization for the activities and
 13 services being undertaken by Ms. Hammer wherein they -- the
 14 organization determined that the benefits associated with those
 15 costs with that service outweighed the cost. And thus, it was
 16 beneficial in their view to the organization.
 17 Q You also heard me ask Mr. Hines whether it was good or
 18 bad that the NRA ended a relationship with a travel consultant
 19 named Gayle Stanford.
 20 Do you remember that?
 21 A Yes.
 22 Q He had no opinion on it.
 23 A That's right.
 24 Q Do you have an opinion on it?
 25 A I do.

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1 In my opinion it was a good thing to have that occur.
 2 There were challenges and issues that were discovered with Gayle
 3 Stanford and her companies in terms of the fees that were being
 4 charged and some of the markups that were being placed.
 5 As this was discovered, the organization as I
 6 understand it based upon my understanding of the facts issued an
 7 RFP process. That's a Request For Proposal. It's a typical
 8 process that organizations use when they are seeking vendors.
 9 They will put out RFPs to different type of vendors, different
 10 ones seeking, requesting a proposal for those services. And
 11 then shortly after in 2020, the agreement and the services with
 12 Ms. Stanford were terminated.
 13 Q So can you sum up your opinion for the jury?
 14 A Absolutely.
 15 I think we have established that I am an economist and
 16 that I utilized the framework of economics and as a user of
 17 accounting information and the user of accountants and
 18 organizations that I have managed that the principles of cost
 19 benefit analysis, materiality, prudent business person judgment,
 20 those basic principles not only are reflected in how
 21 organizations operate; hence, the industry practices that we
 22 observe in this industry, but those principles are informative
 23 to my evaluation of the -- the factual information. This is my
 24 analysis.
 25 So I do not perform my analysis in a vacuum. I look at

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1 to the -- specifically with my review of factual information and
 2 the evidence, and again, my understanding of it. And based upon
 3 my analysis, utilize that framework.
 4 In my view, the corrective actions that were undertaken
 5 by the NRA were effective, and the items, the fraud risk
 6 indicators that were identified by Mr. Hines have all been
 7 addressed effectively.
 8 MS. ROGERS: Thank you, Dr. Sullivan. Pass the
 9 witness.
 10 THE COURT: Okay. Are there any other counsel want
 11 to elicit direct testimony from this witness? So just
 12 cross?
 13 MR. CORRELL: Just a little bit of direct.
 14 THE COURT: Okay. Is that a little bit of direct
 15 and just a little bit of cross?
 16 MR. CORRELL: I think a little bit of direct and
 17 then you can call it direct or cross. It's within the
 18 scope.
 19 THE COURT: So it's clear, the scope defined by the
 20 direct.
 21 MR. CORRELL: We will call it direct.
 22 THE COURT: Okay.
 23 DIRECT EXAMINATION
 24 BY MR. CORRELL:
 25 Q Good morning, Dr. Sullivan. I'm Kent Correll, and I

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1 represent Wayne LaPierre?
 2 A Nice to meet you.
 3 Q Nice to meet you. During your time at the San Diego
 4 Zoo, did the corporation provide any charter travel to
 5 executives?
 6 A Not to my recollection.
 7 Q Did the corporation pay for charter travel for animals
 8 from time to time?
 9 A Yes.
 10 Q And why was that?
 11 A Well, some of the animals are incredibly valuable and
 12 important. There is one distinct memory I have where there was
 13 a collection of white rhinos, rhinoceros that were being
 14 transported from Africa to San Diego. And as you can imagine,
 15 not only are these highly precious because they are endangered.
 16 And part of what we were doing at the zoo is to facilitate and
 17 hopefully improve the viability of the species, but they are
 18 also very big and they require special type of transport.
 19 Q When you were treasurer at San Diego Zoo, did you form
 20 any conclusion as to your duties as treasurer to that
 21 corporation?
 22 A Yes. I at the time had a lot of clarity over my roles,
 23 responsibilities and obligations. The implementation of that
 24 sometimes can be mirky.
 25 Q As part of your duties as treasurer, did you understand

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1 Q You talked about cost benefit analysis on your direct.
 2 Do you recall that?
 3 A I do.
 4 Q And is there a cost benefit analysis that might apply
 5 to a corporation providing charter travel to executives?
 6 A Generally, yes. As I noted, cost benefit analysis is
 7 something that we all engage in on a relatively frequent basis,
 8 and it can be very informal or very formal or anywhere in
 9 between.
 10 Q And if an executive were to have a very heavy travel
 11 schedule in which the executive was producing benefits to the
 12 corporation, is that a factor that would be taken into account
 13 on a cost benefit analysis for charter travel?
 14 A It could be. I have not analyzed that issue
 15 specifically.
 16 Q And what about if they -- if the corporation had a
 17 serious security concern involving a particular executive
 18 because of his visibility on a controversial issue; would that
 19 be a factor that any economist might consider in analyzing the
 20 wisdom of a business decision on the part of a corporation to
 21 provide travel, charter travel or not?
 22 MR. CONLEY: Objection, leading.
 23 MR. CORRELL: It is hypothetical, your Honor.
 24 THE COURT: I don't think this is a disclosed
 25 opinion of this witness, and you can't elicit new opinions.

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1 it was your responsibility to provide the information to the
 2 executives that they needed to make good decisions about
 3 financial and accounting matters?
 4 MR. CONLEY: Objection. Leading.
 5 MS. ROGERS: And outside scope.
 6 THE COURT: Sustained and sustained.
 7 Q At the time that you were treasurer, did you have any
 8 sense of what the proper role of a treasurer might be with
 9 respect to providing information to executives?
 10 MS. ROGERS: Outside scope. He is not here to
 11 provide that kind of expert testimony.
 12 (Continued on the following page.)
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1 MS. ROGERS: And it is not within the scope.
 2 THE COURT: Sustained.
 3 MR. CORRELL: Thank you very much, Dr. Sullivan.
 4 THE WITNESS: Thank you.
 5 THE COURT: Any other direct?
 6 MR. FLEMING: None from me, your Honor.
 7 THE COURT: Okay, so why don't we start with the
 8 cross.
 9 CROSS-EXAMINATION
 10 BY MR. CONLEY:
 11 Q Good morning, Dr. Sullivan. Can you hear me?
 12 JUROR: A little more.
 13 THE COURT: The higher the better.
 14 Q Dr. Sullivan, you were retained by the Brewer firm in
 15 this lawsuit; correct?
 16 A My employer was engaged by the Brewer firm in behalf of
 17 the NRA.
 18 Q And the Brewer firm also retained you on behalf of the
 19 NRA and another enforcement action pending in the District of
 20 Columbia; correct?
 21 A There, again, technically my employer was engaged by
 22 the Brewer firm on behalf of the NRA in the DC action.
 23 Q Understood. And the action was brought by the DC
 24 Attorney General; correct?
 25 A That is my understanding.

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1 Q And the action concerns the NRA and NRA allegations --

2 MS. ROGERS: Scope.

3 MR. CONLEY: I'm sorry?

4 MS. ROGERS: Objection, scope.

5 THE COURT: He can probe any relationship.

6 So, I assume you're not going to get into details

7 of the other case; right?

8 MR. CONLEY: No, your Honor, no. This just goes

9 to --

10 THE COURT: Overruled.

11 MR. CONLEY: Okay.

12 Q The action concerns the NRA and the NRA Foundation

13 compliance with Charities laws; correct?

14 A I do not recall the specifics, but it did involve both

15 the NRA Foundation and the NRA.

16 Q And the court in that action excluded you from

17 testifying at trial; correct?

18 A That's right. As I understand it, the issues I was to

19 address were no longer at issue.

20 Q The court held that you were not qualified to testify

21 about nonprofit governance, correct?

22 A That's right.

23 Q And besides the DC Attorney General action where you

24 were found unqualified to testify, you have not worked on any

25 matters involving charitable organizations facing a regulatory

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1 investigation or action; correct?

2 A I think that's right.

3 Q Ms. Rogers and Mr. Correll asked you some questions

4 about your experience on the San Diego Zoo Global, which is now

5 the San Diego Zoo Wild Life Alliance; correct?

6 A Yes, that's right.

7 Q And you recall being asked about that?

8 A At a high level, yes.

9 THE COURT: You're not going to challenge the rhino

10 transport --

11 MR. CONLEY: No, your Honor.

12 THE COURT: Good. I just wanted to make sure.

13 Q During your time on the board of trustees, you learned

14 that an employee at the San Diego Zoo, Matthew John Anderson,

15 that embezzled money from the zoo; correct?

16 A That's right. It occurred before my time.

17 Q But you learned of it while you were on the board of

18 trustees; correct?

19 A Right. So, I think it occurred in the 2008 to 2016

20 timeframe, and I joined the board of trustees in 2018; and it

21 was somewhere during the time that I was on the board of

22 trustees that I learned about it.

23 Q And he was convicted in 2020 for embezzling

24 approximately a quarter of a million dollars from the San Diego

25 Zoo; right?

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1 A I don't recall when he was convicted. I do recall he

2 was terminated prior to my joining the board of trustees. My

3 recollection is somewhere on the order of \$200,000 that he

4 embezzled. I don't recall the exact amount.

5 Q And isn't it true that you were unwilling to say in

6 your deposition in this action that Mr. Anderson's embezzlement

7 caused harm to the San Diego Zoo?

8 A That's right. As an economist who operates with

9 prudence, I seek to be thoughtful in the analyses that I

10 undertake. I am also -- often engaged to determine whether

11 there's been harm or damage to entities; and, thus, I do so

12 thoughtfully, not off the cuff.

13 Q Dr. Sullivan, you don't have an accounting degree;

14 correct?

15 A That's right.

16 Q You're not a CPA?

17 A Correct.

18 Q You never conducted a financial statement audit; have

19 you?

20 A Not personally, no.

21 Q And you've never conducted an internal control audit;

22 correct?

23 A Not personally, no, I have not.

24 Q And I believe you testified earlier that you are being

25 paid to provide expert testimony in this matter; right?

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1 A That is incorrect.

2 Q Your employer is being paid or being paid for you to

3 provide expert testimony in this matter; correct?

4 A My employer is paid for the research and analysis I do,

5 the work that I do, as well as the time that I spend providing

6 testimony.

7 Q Including testifying right now, right?

8 A I would imagine my firm will bill for my time.

9 Q And the NRA paid your employer for you to prepare two

10 expert reports in this matter; correct?

11 A Yes.

12 Q You authored those reports with Bruce Blacker who works

13 with you; correct?

14 A That's right, he is my colleague.

15 Q And he bills his time, also?

16 A I presume so, yes.

17 Q And the NRA paid your employer for your time being

18 deposed in this matter, right?

19 A Well, just for clarity, I am inferring that my firm is

20 invoiced for my time and all of the time I spent working on this

21 matter, including the work I did for the reports, sitting for

22 deposition testimony, the time I spent preparing to provide

23 testimony here today I would imagine also will be invoiced to

24 the NRA.

25 Q But you don't have personal knowledge of that?

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1 A No, I do not. I am not involved in that part of our
2 company. I was years ago; and, fortunately, I've been able to
3 dispose of most operational obligations and responsibilities so
4 I can focus on doing economics.
5 Q Right. When you were initially engaged in this matter,
6 you were then working as the president of a company called
7 Intensity; correct?
8 A That's right.
9 Q You were the founder of Intensity?
10 A Correct.
11 Q And Intensity was charging the NRA \$2,000 an hour for
12 your time; right?
13 A Correct.
14 Q And Intensity was charging the NRA \$795 per hour for
15 Mr. Blacker's time; is that right?
16 A That sounds about right.
17 Q And a company called Secretariat purchased Intensity
18 last year; right?
19 A There was an acquisition, roughly one year ago.
20 Q And you're currently a managing director there, right?
21 A Correct, I'm a managing director of Secretariat.
22 Q What hourly rate is Secretariat charging for your time?
23 A I believe it is either 2000 or it might have been
24 increased to a higher amount.
25 Q And could you provide an estimate on what Intensity and

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1 Secretariat has billed to date for this engagement?
2 A I do not know. That is outside my scope, outside my
3 work.
4 Q Couldn't provide any estimate?
5 A Well, I could make a guess or a speculation. I've been
6 told previously to not do that on a witness stand, so I'm
7 hesitant to do so.
8 THE COURT: And I'll tell you again.
9 Q And you recall being deposed in this litigation,
10 correct?
11 A Yes.
12 Q At that time, you gave an estimate that you spent on
13 the order of a couple hundred hours on the engagement; do you
14 recall that testimony?
15 A That sounds about right.
16 Q And it would be fair to say that Mr. Blacker also spent
17 a lot of time on this engagement, correct?
18 A I would imagine that he has.
19 Q If he had testified at his deposition that he estimated
20 spending hundreds of hours on the matter, then you'd have no
21 reason to question the veracity of that testimony; would you?
22 A No, I would not.
23 Q And it would be safe to say that you've spent more time
24 on this engagement since your deposition in 2020; correct?
25 A Yes, mostly very recently.

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1 Q And you've also had a large team assisting you and
2 Mr. Blacker in this engagement; right?
3 A There were others working with us. I don't know that I
4 would think of it as a large team.
5 Q Mr. Blacker identified eight different people that were
6 working on the engagement with you and him.
7 Does that seem inaccurate to you sitting here?
8 A At various points in time different people were
9 performing different work based upon the work that we needed to
10 be done at any given point in time.
11 Q And, presumably, the NRA paid for their services as
12 well; right?
13 A I think that's a logical inference, yet I do not have
14 personal knowledge of it.
15 MR. CONLEY: I'll pass the witness.
16 THE COURT: Anything?
17 MS. ROGERS: I have very brief, your Honor.
18 MR. FARBER: Why don't we do the rest of the cross,
19 your Honor? May I proceed, your Honor?
20 THE COURT: Yes.
21 CROSS-EXAMINATION
22 BY MR. FARBER:
23 Q Good morning, Dr. Sullivan.
24 A Good morning.
25 Q My name is Seth Farber, and I represent Mr. Phillips in

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1 this action.
2 I just want to clarify a couple points which you
3 addressed during your direct.
4 MR. FARBER: And to start with, if we could bring
5 up slide 13 from the presentation, the slide.
6 (Displayed)
7 Q So, this is the timeline that you gave of corrective
8 actions; is that right?
9 A It is a timeline I prepared on that, yes.
10 Q Right. And I think if we look over here, you list the
11 course correction 360 review as starting at some point 2018; is
12 that what you indicate there?
13 A In effect. So, what I was describing --
14 Q I just asked whether that's what you indicate there.
15 Is that right?
16 A There's more to it than that.
17 Q I know, but is that what you indicate there?
18 A I would not put that it plainly and simply.
19 Q Well --
20 MR. FARBER: If I can have one moment.
21 (Brief pause)
22 Q So, Dr. Sullivan, I think you testified on direct
23 that you observed some of the testimony in this case; is that
24 right?
25 A I have observed some testimony. I've also had access

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1 to the transcripts and have gone through those, as well.
2 Q Okay. So, did that include Mr. LaPierre's testimony?
3 A I have taken a look through most all of the testimony.
4 I will admit I have not read all of it, but I've done my best to
5 get through it. There's a lot of it.
6 Q Okay. Do you recall when you reviewed the testimony
7 that Mr. LaPierre testified that the 360 review, quote, "started
8 in 2017 and continued forward for many years?"
9 A That sounds right. As I was describing --
10 Q Thank you.
11 A During my direct --
12 THE COURT: On cross, they can ask close-ended yes
13 or no. If you want to elaborate more you can when the NRA
14 questions you.
15 Q In 2016, that was before Mr. Spray was hired; is that
16 correct?
17 A Yes.
18 Q And Mr. Phillips was the treasurer and CFO at the time;
19 isn't that right?
20 A In 2017?
21 Q Yes.
22 A That is my understanding.
23 Q Okay.
24 MR. FARBER: We can take that slide down for a
25 moment. Thank you. So could we pull up slide 28, please.

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1 Q And the slide we're going to pull up in a moment is the
2 slide that you made referring to the McKenzie Companies.
3 And I believe during some of your testimony -- I think
4 it was on direct -- you made some reference to economic factors
5 in I don't recall was it '21, 2022 regarding COVID and impact on
6 the NRA.
7 Do you recall that testimony?
8 A In a high level, yes.
9 Q What was the point you were attempting to make in
10 referencing those economic developments during that period of
11 time?
12 A The general point is that the economy in the
13 marketplace underwent changes. Those changes impacted many
14 organizations, including the NRA. As a result, it is sensible
15 in my view based upon my understanding of the facts to then
16 subsequently adjust the services and the fees that were agreed
17 to with MMP thereafter as noted in the slide in 2022.
18 Q So, is the point that the negotiations and MMP's
19 agreement to fee reductions in part reflected those changed
20 circumstances?
21 A Well, of course.
22 Q You've also got a reference in this slide under 2018 to
23 "Vendor Letters sent to McKenzie Companies."
24 Do you see that, Dr. Sullivan?
25 A Yes, I do.

R. Sullivan - by Defendants - Redirect/Ms. Rogers Page 3364

1 Q And you mentioned some vendor letters that were sent to
2 other NRA vendors around that time. Do you recall that
3 testimony?
4 A Yes. There were many, many letters that were sent out.
5 Q And those were sent by Mr. Phillips; isn't that right?
6 A He was the signatory to those letters.
7 MR. FARBER: Nothing further.
8 THE COURT: Anything, Mr. Fleming?
9 MR. FLEMING: No.
10 THE COURT: Anything further from the NRA?
11 MS. ROGERS: Just a little.
12 REDIRECT-EXAMINATION
13 BY MS. ROGERS:
14 Q Dr. Sullivan, you mentioned with the attorney general
15 that you were not allowed to testify in the DC case against the
16 NRA's charitable foundation affiliate, the NRA Foundation. Do
17 you recall that?
18 A I do.
19 Q I know you're not a lawyer and you didn't work on that
20 case, but are there any differences between that case and this
21 case that you think are relevant?
22 A The issues there as I recall them were distinct and
23 very different than here. It had to do with the relationship --
24 MR. CONLEY: Objection, legal conclusion.
25 THE COURT: You asked the question. I think he can

R. Sullivan - by Defendants - Redirect/Ms. Rogers Page 3365

1 respond.
2 Overruled.
3 A As I recall it, it involved issues between the
4 relationship between a 501(c)(3) and a 501(c)(4) and, thus, the
5 governance between those two in that relationship.
6 I -- I am an economist as, again, I think we've
7 discussed and mentioned many times; and, thus, as that case
8 evolved based upon my understanding of the facts there, certain
9 claims were dropped from that case which meant that my testimony
10 and my role was no longer relevant.
11 Q Mr. Conley also mentioned that during your deposition
12 you refused to provide expert testimony on damages caused by
13 embezzlement to the San Diego Zoo.
14 Do you recall that?
15 A I do.
16 Q And you said wouldn't testify about harm that was
17 inflicted; right?
18 A That's right.
19 Q Do you think differently about questions like that when
20 you're testifying as an expert than a corporate decisionmaker
21 might think about embezzlement in realtime?
22 MR. CONLEY: Objection, leading.
23 THE COURT: Overruled.
24 A Absolutely. Ex-post versus Ex-ante, so when I am
25 performing analysis of damages or harm as an expert, it is

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R. Sullivan - by Defendants - Redirect/Ms. Rogers Page 3366

1 ex-post. That means it is after the fact, have the benefit of
 2 the hindsight, perform the analysis based upon the data and
 3 information that actually occurred.
 4 When making business decisions in realtime, those are
 5 done ex-ante, before hand, when we have the information set only
 6 at that point in time and folks make the best decisions that
 7 they can. That's the prudent business person judgments based
 8 upon what they expect to happen based upon the inherently
 9 limited information that they have at any given point in time.
 10 Q Acting as a prudent business person rather than an
 11 expert witness, did you form a view about whether it was harmful
 12 that someone embezzled from the zoo?
 13 A Well, certainly -- and I testified to this at my
 14 deposition -- it is not a good thing that happens at the zoo or
 15 otherwise, we seek to prevent embezzlement. That is a bad
 16 thing.
 17 But in terms of the harm that was caused when I am
 18 engaged as an expert, that becomes an issue of much more
 19 precision that I am required to implement in my analysis.
 20 Q Finally, you testified with Mr. Conley that the NRA has
 21 paid a couple of different firms, Intensity and Secretariat, for
 22 your time.
 23 Do you recall that?
 24 A Generally, yes.
 25 Q I just want to make clear for the jury, there was a

R. Sullivan - by Defendants - Recross/Mr. Conley Page 3368

1 agreement with the MMP, the renegotiated agreement was a
 2 three-year term?
 3 A That sounds right. I could not validate that for you
 4 sitting here right now.
 5 Q And it is your understanding that it is for the same
 6 services, right?
 7 A It is a different scope, but, yet, similar services.
 8 That's the point I was seeking to make earlier; hence, the
 9 servicing level impacts.
 10 MR. CONLEY: Thank you, Dr. Sullivan.
 11 THE COURT: Anything else?
 12 MR. FARBER: Nothing from me, your Honor.
 13 THE COURT: You have to answer one of my favorite
 14 questions and somebody asked you if you were the founder of
 15 the entity and you were able to answer honestly yes. So
 16 that's impressive.
 17 THE WITNESS: Well, thank you.
 18 THE COURT: All right. Well, anyway, so you're
 19 free to go. Thank you.
 20 THE WITNESS: Thank you.
 21 (Whereupon, at this time the witness was then
 22 excused.)
 23 THE COURT: Before we get to the next witness
 24 because you've now seen a couple times the different
 25 defendants' lawyers sort of ask questions in somewhat of a

R. Sullivan - by Defendants - Recross/Mr. Conley Page 3367

1 merger and these firms changed names. To your knowledge, the
 2 NRA has not paid multiple people for your time at the same time;
 3 right?
 4 A Absolutely. So, I was employed by Intensity.
 5 Approximately one year ago Intensity was acquired by
 6 Secretariat; and, thus, our engagement and services simply
 7 transitioned at a point in time.
 8 MS. ROGERS: Nothing further.
 9 THE COURT: Any other questions?
 10 MR. CONLEY: Very brief.
 11 RE CROSS-EXAMINATION
 12 BY MR. CONLEY:
 13 Q Dr. Sullivan, you were asked about the MMP renegotiated
 14 contract.
 15 Do you recall that?
 16 MS. ROGERS: Scope.
 17 THE COURT: Was it just asked about it just now?
 18 MR. CONLEY: Yes, by Mr. Farber.
 19 THE COURT: Okay.
 20 Q Is it your understanding that the NRA renegotiated the
 21 fee arrangement with MMP because of COVID?
 22 A No. COVID and other factors, including the AG's action
 23 against the NRA, are factors that affected that renegotiation in
 24 my view.
 25 Q And you're aware that the agreement -- the new

R. Sullivan - by Defendants - Recross/Mr. Conley Page 3369

1 different context.
 2 So, there's an instruction you'll hear again from
 3 me later. I think I've given a similar instruction before;
 4 but you know and just to remind you the plaintiff has
 5 asserted claims against four defendants here. There's the
 6 NRA, the entity, and the three individuals, Mr. LaPierre,
 7 Mr. Phillips and Mr. Frazer. So, we're effectively
 8 conducting four trials at the same time.
 9 It will, ultimately, be your obligation to evaluate
 10 the evidence as it applies or fails to apply as to each
 11 defendant separately. So, my instructions will tell you
 12 that you must consider each defendant separately. So, you
 13 have to in the end return a separate verdict concerning each
 14 of the causes of action against each defendant, and the
 15 verdicts need not be the same, though they may be.
 16 So, they each have their own interests; and so
 17 while they're all sitting over there together, they have to
 18 be evaluated independently. And we'll make that clearer and
 19 clear in the instructions, but I just didn't want you to be
 20 confused by the fact that sometimes they're cross-examining
 21 one of each other's witnesses. There are different claims
 22 against different of them.
 23 All right, next witness.
 24 MR. PETERS: The NRA calls Tom King.
 25

T. King - by Defendants - Direct/Mr. Peters Page 3370

1
2 THOMAS H. KING
3 called as a witness in behalf of the Defense, having been
4 first duly sworn by the Clerk of the Court, took the
5 witness stand and testified as follows:)
6 THE CLERK: State your name.
7 THE WITNESS: Thomas H. King.
8 THE CLERK: Spell your last name.
9 THE WITNESS: K-I-N-G.
10 THE CLERK: Thank you. You may be seated.
11 DIRECT-EXAMINATION
12 BY MR. PETERS:
13 Q Good morning.
14 A Good morning.
15 Q Noah Peters for the National Rifle Association.
16 Mr. King, can you state your name for the record?
17 A My name is Thomas H. King.
18 Q You lived in New York all your life?
19 A My entire life.
20 Q Can you tell me about your family background?
21 A Yeah, I've been married for 55 years to the same woman;
22 and I have two children, a boy and a girl and four
23 grandchildren, three boys and a girl.
24 Q Can you tell me a little bit about your education
25 background?

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1 operated, and the president of the New York State Rifle
2 and Pistol Association asked me if I would be willing to
3 take a position as the legislative director of the Rifle and
4 Pistol Association and two, three years later, I wound up as
5 president.
6 Q Now, what is your current position with the -- we'll
7 call it the State Association?
8 A I'm executive director/president of the State
9 Association.
10 Q All right can you tell us before you go further, can
11 you tell us a little bit about the relationship between the
12 State Association and the NRA?
13 A We're a state affiliate of the NRA. We're totally
14 separate corporations, separate board of directors, separate
15 officers; and we do almost everything on our own. What we use
16 the NRA for is for the literature that they can provide and the
17 programs that they developed over their 171 years.
18 (Continued on next page)
19
20
21
22
23
24
25

T. King - by Defendants - Direct/Mr. Peters Page 3371

1 A I went to school on a basketball scholarship
2 originally, decided to become a student. My father got sick.
3 That was at Plattsburgh State University, and I wound up
4 transferring to St. John's Fisher college in Rochester, New
5 York.
6 THE COURT: You have to speak just a tad slower.
7 THE WITNESS: I'll calm down in a minute.
8 THE COURT: It is a big room.
9 Q Can you tell the jury a little bit about your
10 employment history?
11 A Yeah, it's been varied. I started out as a marketing
12 manager for a transportation-related company. I wound up being
13 recruited to go to work for an equity company where I had
14 various duties. I wound up being the vice president and general
15 manager of a division of which I had full profit and loss
16 control.
17 Q And then did you ever come to be involved -- first off,
18 did you ever work in the insurance industry?
19 A Yes, I did. I actually forgot about that. I owned an
20 insurance agency for about twenty years.
21 Q And then how did you come to be involved -- did you
22 come to be involved with the New York State Rifle and Pistol
23 Association?
24 A Yeah, I did, kind of inadvertently. I was familiar
25 with the legislature because of the business that my wife

King - by Defendant - Direct/Mr. Peters Page 3373

1 Q Now, are you compensated by the State Association?
2 A For the first 13 years, I was not compensated, but
3 after 13 years, the Board of Directors came to me and asked me
4 if I would take the position of executive director.
5 Q Okay. Why are you compensated?
6 A I started out at \$90,000 a year, and I'm now making
7 \$110,000 a year.
8 Q My question is why.
9 A Oh, why. I'm sorry. Because it's a 28/7 job. I get
10 calls all days and nights, people asking what's going on in the
11 state legislature; what's going on with the Second Amendment
12 rights; what are you doing about it? Can you help me do this?
13 I am being persecuted because I can't get a pistol permit. My
14 Second Amendment rights are being violated.
15 And these rank and file people have -- it's a burning
16 fire that they have and a belief in the Constitution, and they
17 don't know any time. I have taken calls at 12:30 a.m., you
18 know, from members.
19 Q So how many hours a day do you think you spent speaking
20 with Grassroots NRA members?
21 A Oh, I have never thought about it that way, but
22 probably -- probably 60 percent of my time.
23 Q Now, do you consider your tenure as president of the
24 State Association you have to have been successful?
25 A You know, I don't like to brag, but yeah, I do.

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1 When I started, the State Association had about
 2 2,000 -- had about 6,000 members, and they had about \$2,000 in
 3 the bank and about \$6,000 in debt.
 4 Q How about now?
 5 A How about now? Now, we own a building that's valued at
 6 about \$350,000. We have a fairly large sum of money in savings
 7 and bonds and usually cash balance of around \$40,000 in our
 8 operating account, and the last that I saw, our net worth is
 9 calculated about 1.2.
 10 Q Okay. About how many members do you have?
 11 A We have -- in New York State right now, we have about
 12 22,000 direct members, and we have 250 sport associations
 13 throughout the State that each have, oh, approximately minimum
 14 of 100 per organization, you know, bringing it up to a vast
 15 number. And you know, somewhere up around 200,000. And I say
 16 that to people. And they say, yeah, sure. But it's the truth.
 17 We have -- that's how many people we touch on a weekly or daily
 18 basis.
 19 Q And what kind of programs does the State Association
 20 put on?
 21 A Well, you know, I -- people ask me that all time, and I
 22 said, well, you know, if you -- if you are an NRA member and
 23 you're a Rifle and Pistol Association member, the programs are
 24 essentially one and the same.
 25 We train women in shooting sports. We train -- we have

King - by Defendant - Direct/Mr. Peters Page 3375

1 a program called Don't Be a Victim, and we tell people the
 2 processes to follow so that they are not victimized while they
 3 are out on the street or walking.
 4 We have shooting programs that compete nationally and
 5 state-wide. We -- and the one that I am particularly proud of
 6 is we have a program calmed Eddie Eagle that the NRA has that we
 7 fully support that -- teaching kids to, if they come upon a gun,
 8 to leave the room, tell their parents and/or leave -- leave --
 9 tell your parents, don't touch it, and leave the room. Okay.
 10 It's a program that teaches avoidance for young kids so that
 11 there is not something happening to them.
 12 Q And does the State Association ever engage in
 13 litigation?
 14 A Oh, yes, we do.
 15 Q Okay. Does the NRA ever support those efforts?
 16 A For the most part, they -- they stand behind us all of
 17 the time.
 18 Q Okay. Was there -- is there a particular case in 2022
 19 with the decision in 2022 that the State Association brought?
 20 MS. CONNELL: Objection, your Honor. Your Honor,
 21 irrelevant. Not probative of the claims in this case
 22 THE COURT: I'm not sure where this is going, but
 23 it sounds pretty far afield.
 24 MR. PETERS: I am just asking him about the work
 25 that the State Association does with the NRA on --

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1 THE COURT: I know. I just don't know how is that
 2 relevant to the case.
 3 MS. ROGERS: Your Honor, sorry. The State
 4 indicated that it was challenging the NRA's support for its
 5 New York affiliate as a related party or conflict
 6 transaction.
 7 The NRA drives immense value from this including a
 8 winning Supreme Court case that we are about to discuss. So
 9 if they are going to challenge that transaction, we get to
 10 put in evidence about it.
 11 MS. CONNELL: We are not challenging the NRA's
 12 support activity. So payment for Second Amendment challenge
 13 which we have endeavored a great effort to keep out of this
 14 case, that's not an issue in this case, and I believe Mr.
 15 King just testified the NRA supported that.
 16 THE COURT: Well, is there a related-party
 17 transaction --
 18 MS. CONNELL: We are talking --
 19 THE COURT: -- that's come up?
 20 MS. CONNELL: The use of any NRA funds to pay Mr.
 21 King's 90,000 a year salary, and I'll question him about
 22 that.
 23 THE COURT: Okay. So I guess I don't recall
 24 hearing that during the State's case. Is that one of the
 25 related-party transactions?

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1 MS. CONNELL: It's not something we haven't put in
 2 evidence yet.
 3 As you know, due to time constraints, we have been
 4 trying to pick which related-party transaction we are going
 5 to focus on. That wasn't one we put in our case in chief.
 6 THE COURT: So it's not in the case.
 7 MR. PETERS: She just said they are going to cross
 8 him on it.
 9 MS. CONNELL: Well, on his receipt of \$90,000.
 10 THE COURT: If it's not a claim, it's not a claim;
 11 right?
 12 MS. CONNELL: Right. That's right, your Honor.
 13 MS. ROGERS: So the confusion, your Honor, is that
 14 it was in their discovery responses, their list of
 15 transaction actions they were trying to put in. They failed
 16 to put in any evidence about it.
 17 If they're not going to try to shoe horn it into
 18 cross, then maybe we don't need direct on it.
 19 THE COURT: There is no shoe horning into anything
 20 because the State's evidence is in. So if there is no
 21 claim -- if this witness is here to testify about a claim
 22 that there is no evidence of --
 23 MR. PETERS: With all due respect --
 24 THE COURT: We have enough to get through.
 25 MR. PETERS: I understand. This will be quick. I

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1 also -- it goes into his role in terms of his board
 2 oversight roles, the fact that he does have experience
 3 overseeing legal cases, and we are about to get into that
 4 directly.
 5 THE COURT: He's -- that sounds like you're talking
 6 about an expert witness which this would not be.
 7 MR. PETERS: We are just talking about a Board
 8 member and what his -- what his basis is for the oversight
 9 that he exercises over the NRA.
 10 THE COURT: That he exercises over the NRA?
 11 MR. PETERS: As a Board member.
 12 THE COURT: He is a Board member of the NRA?
 13 MR. PETERS: Yes.
 14 THE COURT: But you hadn't already elicited that.
 15 MR. PETERS: No.
 16 THE COURT: We -- you can ask him questions about
 17 his membership on the NRA Board, but if the transaction that
 18 you're about to tie this all into -- I mean, if the jury
 19 hasn't heard about it from the State, it's not in the case.
 20 So unless you want to bring it into the case, you can skip
 21 over it.
 22 MR. PETERS: Yeah, I'm not going to bring in the
 23 thing about the salary. I was not going to -- that's a
 24 first time hearing about that particular thing. I was just
 25 going to ask him -- so maybe I'll do it this way.

King - by Defendant - Direct/Mr. Peters Page 3379

1 THE COURT: But -- all this other stuff that you're
 2 about to talk about, I don't think it's -- it's not what
 3 this case is about.
 4 MR. PETERS: I understand.
 5 Q So does the State Association engage in advocacy at the
 6 State Capitol in Albany?
 7 A Yes. We spend approximately 15 percent of our time at
 8 advocacy for the Second Amendment at the State Capitol.
 9 Q At some point did you become a member of the NRA's
 10 Board?
 11 A Yes, I did.
 12 Q Okay. Now do you have experience overseeing and
 13 working with lawyers and law firms?
 14 MS. CONNELL: Objection, your Honor. Leading.
 15 THE COURT: What's that?
 16 MS. CONNELL: Leading.
 17 THE COURT: He just asked.
 18 No. Overruled.
 19 A Yes. You know, all through my career, I've -- as
 20 president -- executive -- I mean, as vice-president and general
 21 manager of the corporation I was running, I dealt with lawyers
 22 on a weekly basis.
 23 Yeah, I have a lot of experience dealing with lawyers.
 24 Q What about in your role as executive director of the
 25 State Association?

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1 A Yeah. We have a -- we have a lawyer on our staff and
 2 who evaluates legislation and looks at avenues that we should
 3 take to see what our goals are and how we are going to reach
 4 them.
 5 Q Okay. So have you ever been involved in cases that
 6 have come before the Supreme Court, for example?
 7 A Yes, we have.
 8 MS. CONNELL: Objection, your Honor.
 9 THE COURT: You can answer. We are not going to
 10 get into the details of all of this.
 11 MR. PETERS: Okay.
 12 A Yes. We have NYSRPA versus Bruen. It was a landmark
 13 decision in June of 2022.
 14 Q And the State Association was a plaintiff in this case?
 15 A We were a plaintiff in that.
 16 Q And you worked with the NRA on that?
 17 A We worked with the NRA entirely on that.
 18 Q What about your experience with financial oversight.
 19 Can you describe that a little bit.
 20 A Well, yeah, as a vice-president and general manager of
 21 a corporation -- New York State corporation, you know, that I
 22 had profit and loss experience with. I had to deal
 23 with financial dealings, you know, every day I was working.
 24 Plus, as the New York State Rifle and Pistol
 25 Association executive director and president, we have a yearly

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1 budget, and we -- you know, we have fundraising goals, and
 2 that's all finance. And of course, I dealt with it most of my
 3 life.
 4 Q So have you used the skills and experience you just
 5 discussed in your role as a NRA Board member?
 6 A Of course. It's hard not to use your life experience
 7 in any issues that you're dealing with.
 8 Q So how did you come to be involved with the NRA Board?
 9 A It's kind of a funny story. There is a fellow who was
 10 really prominently known in the -- in the Second Amendment
 11 fight, and I met him at a large event, and this fellow who is a
 12 friend of mine said I want to you meet someone and he went up
 13 and introduced me to him. And the guy's name was John Sigler.
 14 And this friend of mine walked away. And John Sigler happened
 15 to be the First Vice-President in the NRA at the time, and he
 16 looked at me and he shook my hand. He said, it's good to meet
 17 you. And I said, It's fine to meet you. But who are you?
 18 There was a few people standing around, and that
 19 brought a lot of chuckles. Honestly, I thought it was going to
 20 end my career right then, but obviously, it didn't.
 21 Q So how did you -- did you initially after that run for
 22 election on the Board or did you do something else?
 23 A No. I -- Mr. Sigler came to me and he said because
 24 you're involved with the New York State Rifle and Pistol
 25 Association, our State Association, I'd like you to serve on our

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1 Clubs and Associations Committee, and I did that for three
2 years.
3 Q Okay. And then was there a time where you stood for
4 election to the Board of Directors?
5 A Yes, I did. And that was in 2007 I think it was, and
6 yeah. Yes, I did.
7 Q Okay. Have you ever been paid for your service on the
8 Board, by the way?
9 A No, I have not.
10 Q Okay. Now, can you describe how the Board of -- NRA
11 Board of Directors is elected?
12 A Yes. One third -- there is 76 members on the Board.
13 One third of them are elected every year, and there is a 76th
14 director who serves one-year term, and he is selected from the
15 -- one of the people who have not been successful in the
16 election.
17 Okay. The -- the -- the members at large nominate
18 people for the NRA Board, and in our monthly periodical, there
19 is a page that says "Nominate Your Director," and it's a short
20 form that people fill out, and they send it in to the
21 secretary's office who then turns it over to the nominating
22 committee. So we are actually nominated by the rank and file
23 members of the NRA.
24 Q So do you know who recommended you for nomination to
25 the Board?

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1 A I have no idea.
2 Q Okay. You -- were you selected by anyone or were you
3 elected some other way?
4 A I'm not sure I understand.
5 Q Were you at any point elected by the NRA's members?
6 A Oh, yeah. After the nominating committee made their
7 choices and recommended the slate to the NRA Board of Directors,
8 it's published, and there is a national election, and the
9 ballots are published in our monthly periodicals to all Life
10 Members of the Association. And like I said, it's a national
11 election, and you run on what people can know about you, what
12 you've accomplished and --
13 Q So do people campaign for seats on the Board, so to
14 speak?
15 A Yes, they do. You know, it's -- and it gets more and
16 more competitive every year.
17 There is -- if you go to Facebook, you go to Twitter,
18 you go to LinkedIn, you go to any of the websites, you will see
19 advertisements. My name is Jack Smith. I am running for the
20 NRA Board of Directors. Please support me. And there is
21 usually a short bio. It's very competitive.
22 Q If someone isn't selected or placed on to the ballot by
23 the nominating committee, does that mean they can't be on the
24 Board of Directors?
25 A No. There is another process where you can go out and

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1 get a number of petitions signed, and you submit it to the
2 secretary's office. And if you reach that number of signatures
3 on the petition, and they are all legal voters in the NRA, that
4 in turn is turned over to the nominating committee. And then
5 the full -- a full list or a full slate of candidates will come
6 out including the recommended members from the nominating
7 committee as well as the prospective Board members who came on
8 by a petition.
9 Q So have you known of Board of Directors who have
10 been -- gotten on the ballot by petition who are elected?
11 A Yes. There is four or five on the Board right now.
12 And over the course of my career at the NRA, I would say there
13 had to be 12 or 15, and I actually -- I don't know the exact
14 number, but it's more than ten. I know that.
15 Q Now, have you ever -- now, when the votes -- when
16 people cast their ballots, is there anyway to verify the votes
17 and tabulate them independently of the NRA?
18 A Oh, the NRA doesn't count them. It goes to an
19 accounting firm, and they receive the ballots by a direct mail.
20 They count them, and they are the ones that bring the results to
21 the NRA at our annual meeting where the successful candidates
22 are announced.
23 Q So you've spoken a little bit about the nominating
24 committee.
25 Can you -- have you served on the nominating committee?

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1 A Yes, I have. I have served on the committee, and I
2 have been Chairman of the Committee.
3 Q Okay. How does the nominating committee select or how
4 does the nominating committee kind of vet people for the ballot?
5 A Well, they -- they submit their application with a bio,
6 and there is usually I think about nine members on the
7 nominating committee, and the applications are spread evenly
8 amongst the members, and we all vet the number of people that we
9 have had, and we come back at another meeting and report on
10 those members and discuss them, and you know, vet whatever
11 problems there may be or whatever successes they may have, and
12 that's what we -- that's what's used to pick the members who are
13 running for the Board.
14 Q At any point did an officer tell you who to put on the
15 ballot of the NRA?
16 MS. CONNELL: Objection, your Honor. Leading.
17 THE COURT: Overruled.
18 Q Go ahead.
19 A You know, I don't want to sound -- no, no one has ever
20 told me anything, okay, and I would be very offended if someone
21 told me who I had to vote for.
22 Q And so are all people on the nominating committee
23 members of the Board or are some not members of the Board?
24 A No. Approximately half of the nominating committee are
25 Non-Board members.

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1 Q Okay. Now at high level, could you tell me about the
2 credentials of your fellow Board members?
3 A Yeah. If -- I'll never forget the first Board meeting
4 that I went to, and I walked in and I said, wow, there is
5 Congressman Bob Barr, there is Senator so and so, Governor --
6 the Governor of Maryland, the Governor of Missouri, you know,
7 and lawyers, bankers. You know, all level -- high-level people
8 as well as rank and file members. Okay. And it's an amazing
9 Board. Okay. And one of the things that I can really say that
10 out of the 76 board members, there is 76 Type A personalities.
11 Q Now, do you think it's appropriate for a member -- for
12 a director of a State Association to also be a Board member of
13 the NRA?
14 A Yeah. I don't see any reason why we shouldn't be
15 because we are the grassroots association and the grassroots
16 connection to -- at the State level to the NRA.
17 You know, this is a big nation; okay. And if you had
18 to put somebody on the ground everywhere to try to support your
19 cause, it wouldn't work. That's what the -- that's what the --
20 the State associations are for.
21 And as an aside, in 1871 when the NRA was formed, they
22 were formed by the New York State Rifle and Pistol Association
23 because we predated them.
24 Q About how many State associations are there?
25 A There is about -- there is usually 50. I think there

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1 is 48 or 49 right now.
2 Q How many local affiliates are there of the NRA?
3 A Oh, thousands. I have no idea. I mean, like I said
4 earlier, we have 250 in New York, and there are some that are
5 not affiliated with us that are affiliated with the NRA. I
6 honestly don't have no idea, but there's somewhere around 5
7 million gun owners in New York State.
8 Q Do the members of the Board of the NRA Board always
9 agree?
10 A Well, I think I just said that there were Type A
11 personality, and no -- that -- that doesn't happen. No is the
12 answer.
13 Q Is there ever a debate between the Board members about
14 decisions that they come to?
15 A Oh, sure, there is always a debate. You know, the --
16 we all have opinions. We all have ideas how things should be.
17 Debates.
18 If you come out during any of the breaks and in any of
19 the action of the committee meetings or even the Board meeting
20 and you sit at a table where three or four Board members are
21 drinking coffee, you're always going to hear them talking about
22 issues.
23 Q So in what ways do you -- does the Board exercise
24 oversight over the NRA?
25 A Well, just to that we -- the Bylaws state that we have

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1 procedural -- operational procedures that we set in place that
2 guide the NRA. We hire Wayne LaPierre. We hire the secretary,
3 and we hire the treasurer on a yearly basis at our annual
4 meeting.
5 Q Do you understand the Board as having governing
6 responsibility for the NRA?
7 A Oh absolutely.
8 Q Okay. Now you talked about the NRA hiring Wayne
9 LaPierre.
10 So how are officers of the NRA chosen?
11 A They are chosen from the Board of Directors, and they
12 have to go before the nominating committee again and convince
13 the nominating committee again that they are the best for the
14 office, and they -- you know, I've -- on the committee that I
15 have sat on, I had talked to a prospective secretary
16 vice-president for probably 45 minutes, you know, and it's not
17 something that we take lightly.
18 Q So how often does the Board vote on who should serve as
19 executive vice-president?
20 A Every year.
21 Q Okay. What about -- same for secretary?
22 A Same for secretary.
23 Q All right. What about for treasurer?
24 A Same for treasurer.
25 Q Okay. Now, is there ever a debate among the Board

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1 members as to whether someone should continue in those roles?
2 A Oh, of course. All the time.
3 Q Okay. What about the president? How is the president
4 chosen?
5 A Through the nominating committee recommended to the
6 Board of Directors. And then in an election at the annual
7 meeting, he is elected.
8 Q Okay. And what about the vice-president?
9 A Same way.
10 Q Okay. Now, how are committee assignments determined at
11 the NRA?
12 A That's the prerogative of the president. You know, he
13 knows -- you know, the presidents are usually longer serving
14 Board members who been there, and they know the people. They
15 know their strengths, and they -- he selects the chairman and
16 the committee members based on their strengths and where he
17 feels they could best serve the members and serve the NRA.
18 Q About how many committees does the NRA have?
19 A Oh, I think 32, 33.
20 Q Do they exercise oversight of the NRA?
21 A They recommend to the Board of Directors who has the
22 oversight.
23 Q Okay. Now, have you ever been -- how many -- do you
24 regularly attend different committee meetings?
25 A Yeah. I serve on five or six committees, okay, and any

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1 committee meeting -- and I attend a lot more as long as it
 2 doesn't -- it doesn't conflict with the committees that I serve
 3 on.
 4 Q Have you ever been denied information that you felt you
 5 needed to do your job as a Board member?
 6 A Never.
 7 Q Okay. Have you ever -- always felt well-informed in
 8 your role on the Board of Directors?
 9 A Yes. You know, if you pay attention at the Board
 10 meetings, the information is always always given to the Board,
 11 and if there is anything you miss, we get a compendium of the
 12 minutes that's probably 150 pages long that's mailed to us
 13 shortly after the Board meeting by the secretary's office. And
 14 any of the questions you may have or what went on, the answers
 15 are in the minutes.
 16 Q Has anyone ever told you how to vote for an NRA officer
 17 position when the Board is exercising that responsibility?
 18 A No.
 19 Q Do you oversee the NRA's legal spends?
 20 A No. The Board --
 21 Q Let me strike that. Does the Board of Directors
 22 oversee the NRA's legal spends?
 23 A Only in that we have, you know, the oversight approval,
 24 and if there is bills that are coming up, we will discuss them
 25 and vote on them and whether or not we are going to continue to

1 Q Now, in your role as a Board member, did you ever have
 2 discussions with government officials?
 3 A Oh, absolutely all the time and as a State Association
 4 executive director as well.
 5 Q Did you ever have any discussions in 2017 with
 6 government officials that gave you concern?
 7 A Oh, yes, I did. I had a call from the then Attorney
 8 General who called me and who I have had a kind of a working
 9 relationship with, and he said, you know, you got to be careful,
 10 Tom. There's a storm coming. There's some people aligning
 11 against you and the NRA, and I would suggest that you take this
 12 very seriously and that you hire a good attorney -- good New
 13 York City attorney who knows his way around the courts and can
 14 do a good job for you.
 15 Q When -- when did that conversation take place?
 16 A Late Spring of -- I mean, late Fall of 2017.
 17 Q What was your reaction upon hearing this information?
 18 A Well, I -- immediately I called -- I called the NRA and
 19 talked to Wayne and explained to him what I had been told and
 20 what was going on.
 21 (Continued on the following page.)
 22
 23
 24
 25

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1 spend the money and how we are going to do it.
 2 Q Without getting into privilege information, are you
 3 ever briefed by the NRA's lawyers as a Board member?
 4 A Every since this action started, they brief us at every
 5 Board meeting, and they also -- there are occasional, you know,
 6 privileged communications that are sent out to us.
 7 Q Okay. Now, in your role as a Board member, do you ever
 8 talk to -- how often do you communicate with the officers of the
 9 NRA?
 10 A You know, frequently. I mean, you know, there are
 11 times that I'll talk with them three or four times a week.
 12 There are times I'll talk to them twice a month. Okay. It just
 13 depends on what's going on. And Wayne has always been
 14 available. I had Wayne's cell phone number. I do call him, and
 15 if he was busy, he would call me back.
 16 Q Do you ever talk with other directors about matters
 17 pertaining to NRA's governance?
 18 A Oh, yeah. It's not a matter of having to speak about
 19 it because everybody is concerned about that.
 20 Now, you got to remember, the people that are on this
 21 Board, the people have great reputations; okay. Ex-senators,
 22 congressmen, you know, governors, lawyers; okay. They don't
 23 want to do anything, and they will not -- they would not -- you
 24 know, neglect their fiduciary responsibility and take the risk
 25 of ruining their reputation.

1
 2 Q And what did you tell Wayne?
 3 A I told him about the conversation, and I told him that
 4 we were advised that we should probably hire a good New York
 5 city attorney to represent us in the case.
 6 Q Now, was it general idea that the government agencies
 7 would be exercising oversight, was that different in some way to
 8 you?
 9 A Well --
 10 MS. CONNELL: Objection, your Honor.
 11 THE COURT: Overruled.
 12 A No, I've been involved in -- tangentially in the
 13 political system for twenty years, and I've watched the
 14 regulations increase and I've watched the ideological divide
 15 between people. I've watched the animus for the 2nd Amendment
 16 grow and grow and grow.
 17 And so, no, I wasn't surprised at this at all. I
 18 watched it on an everyday basis.
 19 Q So, after you had that conversation with Mr. LaPierre,
 20 what did the NRA do after that?
 21 A Well, I'm sure there was some discussion that I wasn't
 22 privy to; but a couple weeks, maybe two, three weeks later
 23 I got a call from Mr. LaPierre; and he asked me if I could
 24 recommend an attorney from New York.
 25 And the reason he did that, he was aware that I had

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1 just previously six months had hired a very good New York city
 2 law firm.
 3 MS. CONNELL: Objection, your Honor. Move to
 4 strike to the extent he's talking about what Mr. LaPierre
 5 said out of court and Mr. LaPierre's state of mind.
 6 THE COURT: Overruled.
 7 A He asked -- you know he asked me -- he knew that I had
 8 just hired a New York city law firm to rewrite the Bylaws of the
 9 State Association because I was concerned before I got any
 10 warning at all that there was a storm coming, I knew that it was
 11 going to happen.
 12 I had a daily -- daily basis I dealt with the
 13 politicians in New York, and I knew that it was coming. So, we
 14 had this very, very high priced law firm rewrite all of our
 15 Bylaws to make sure that we were in line with what the New York
 16 State laws not-for-profit laws call for.
 17 Q When you say the storm is coming, what do you mean by
 18 that?
 19 A Well --
 20 MS. CONNELL: Objection, your Honor.
 21 THE COURT: Overruled.
 22 A The -- what was happening was that the -- the voice was
 23 getting louder. There were more people legislatively and
 24 media-wise that were promoting this anti-gun clause and ignoring
 25 -- ignoring the facts, and I knew that it was going to come down

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1 to, you know, associations were going to be looked at. They
 2 were going to be investigated.
 3 And so that's -- that's what I meant by the storm,
 4 okay. There was an offensive coming against the 2nd Amendment.
 5 Q Do you know whether the NRA ended up retaining counsel
 6 in response to these conversations you described?
 7 A Well, yeah, I recommended the law firm I was with, but
 8 they couldn't take the job because it was conflict of interest.
 9 But the lawyer that I dealt with recommended two law firms,
 10 okay; and one of them was the Brewer firm and the other I just
 11 don't remember the name now because it was -- I just don't
 12 remember it.
 13 Q Without getting into privileged information, did you
 14 hear -- were you part of presentations from multiple law firms?
 15 A Yes, at a -- at a -- I think it was an executive
 16 counsel board. It may have been a special board meeting that a
 17 number of -- a number of attorneys came in and for lack of a
 18 better term made a pitch to the NRA to represent us in all the
 19 troubles that were coming.
 20 Q And so you made a recommendation to leadership as to
 21 who it should hire?
 22 A I recommended that I think we should go with the Brewer
 23 firm.
 24 Q Do you -- without discussing privileged communications,
 25 do you still think that hiring the Brewer firm was a good

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1 idea?
 2 MS. CONNELL: Objection, your Honor.
 3 THE COURT: Overruled.
 4 A Yes, I do.
 5 Q Okay. All right, so when -- were there any other
 6 events in late 2017 or early 2018 that increased your concern
 7 about the -- about the regulatory situation in New York?
 8 MS. CONNELL: Objection, your Honor.
 9 THE COURT: This is in connection with legal spend
 10 still?
 11 MR. PETERS: Yes.
 12 THE COURT: Overruled.
 13 A There was a press release that then Governor Cuomo
 14 released that was in all of the newspapers that was touting what
 15 the Department of Financial Services -- what he instructed the
 16 Department of Financial Services to do; the financial companies
 17 and the insurance companies to take a look at their relationship
 18 with the NRA because the State was going to take a look at their
 19 relationship with the companies if they didn't.
 20 Q At any point did the State Association lose its
 21 insurance policies?
 22 A We lost all of them. Within a very short period of
 23 time we received cancellation notices from our insurance
 24 companies. At the end of your term, we're sorry to say that
 25 you're no longer going to be covered, okay.

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1
 2 Q Was that in relation to guns specific insurance or --
 3 A No, no, this had to do with my directors and officers
 4 insurance, errors and omissions insurance. The insurance on the
 5 building that we owned, okay and the -- we go to gun shows where
 6 we put on exhibits, okay, showing, you know, the programs that
 7 we have; and they cancelled our liability insurance so that we
 8 wouldn't be able to do that.
 9 And besides that, I had hundreds, I mean hundreds of
 10 members calling and telling me that their --
 11 MS. CONNELL: Objection, your Honor.
 12 THE COURT: Counsel, the only relevance of this is
 13 that there's been a challenge to the legal spend, and we
 14 don't need to get into the details of satellite litigation.
 15 THE WITNESS: I'm sorry, your Honor.
 16 THE COURT: No, it is not -- you were answering the
 17 question.
 18 Q So, did the NRA file a lawsuit in response to the
 19 things that you're describing?
 20 A Yes they did.
 21 MR. PETERS: I'd like to move PX 352 into evidence,
 22 or at least have our -- it is tab 3.
 23 MS. CONNELL: Objection, your Honor.
 24 MR. FARBER: Tab 3 of what?
 25 MR. PETERS: Well, it should come up on the screen.

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1 There it is.

2 THE COURT: Look, I'm going to sustain the

3 objection. The details of any other litigation is really

4 not what this case is about. You've made the point about

5 there being other litigation. I think that's really as

6 far as we need to go. The rest of it is I don't think

7 relevant.

8 MR. CORRELL: Your Honor, Mr. LaPierre has been

9 accused of failing to perform the duties of his position

10 appropriately, and one of the issues the AG has raised is

11 the amount of legal spend. It is hard for them to argue the

12 legal spend is excessive without allowing us to put before

13 the jury what the legal spend was for.

14 THE COURT: I've permitted him to answer questions

15 about the other litigations. It is just I think there's got

16 to be some boundary around it; otherwise, we're going to

17 have at some level all the court papers for all of these

18 cases would come flowing in here which is not something I

19 think makes any sense.

20 MS. ROGERS: Your Honor, if I may make a related

21 point. We agree that we don't want many trials on all the

22 other court cases or all the dockets come in. When other

23 separate lawsuits have been discussed, a pleading or two or

24 a filing has been introduced, we got that with the action

25 involving Colonel North.

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1 And so if this were to come in, we would not spend

2 the time delving into and reading off into the record the

3 details of it. It would just be an evidentiary benchmark of

4 what was filed.

5 MS. CONNELL: Your Honor, the issues raised by the

6 attorney general on legal spend were issues raised by

7 multiple NRA board members about the amount of legal

8 spending; and the fact that the Brewer firm wasn't retained

9 correctly which was found to be true and that they asked for

10 an independent audit. That's what we raised, and that's

11 what's been raised here.

12 Letting the North complaint in is relevant because

13 it goes to the whistleblower retaliation that he was sued to

14 be ousted as a member. Letting this in when Mr. King has

15 said that he commenced an action and that the NRA has

16 supported the legal action was a backdoor method to get in

17 information that you, your Honor, has already precluded.

18 It is not relevant. It is not necessary. It is

19 prejudicial.

20 MS. ROGERS: Object to the characterization that

21 Colonel North was sued to be ousted as a member. That's a

22 mischaracterization of the court proceeding.

23 THE COURT: Insofar as it is relevant here, there

24 are claims that have been made about the amount of legal

25 spending. I've permitted some discussion about rationale

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1 for it and the various litigations that have gone on.

2 I'm just thinking for a second. Now, is it your

3 intention, by the way, to bring in the court papers of

4 everything that the lawyers had worked on in the however

5 many year period of this case?

6 MR. PETERS: No.

7 THE COURT: Well, I am trying to get a sense for --

8 look, I think there is tangential relevance if there's a

9 dispute about legal fees. This is an example of a court

10 paper that the lawyers worked on.

11 So as long as we're not going down a hole of

12 getting into what each of these cases is about and getting

13 into the details of it, I'll permit this as an exemplar of

14 work that was done; but I'm really -- we all really have to

15 keep our eye on the ball here to get through this in time.

16 Without further adieu, I'll admit this PX 352 as an

17 example of the work that was done.

18 MS. CONNELL: Your Honor, please note it is over

19 plaintiff's objection as prejudicial and calling for

20 collateral matters.

21 THE COURT: Well, to be clear, we are not going to

22 walk through all these allegations and none of the things

23 that are alleged in the suit are evidence.

24 So, it is simply to show that this is work that was

25 done. Okay?

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1 MR. PETERS: Okay. Thank you, your Honor.

2 Q So PX 352, you've reviewed --

3 THE COURT: So, it is admitted.

4 MR. PETERS: Okay.

5 (Whereupon, at this time Exhibit PX 352 was

6 admitted and received into evidence.)

7 Q So, PX 352, is that the loss that the NRA filed in

8 response to what you described with the insurance and DFS?

9 A Yes, it is.

10 Q Did you receive regular briefings as a board member

11 about the status of this case?

12 A At every board meeting.

13 Q Do you know the status of the case right now?

14 A Yeah, it is before the US Supreme Court.

15 Q Okay. Now, you testified before about attorney --

16 getting a call from former Attorney General Schneiderman. Was

17 there anything else that occurred in 2018 that increased your

18 concern about the regulatory situation before the NRA?

19 MS. CONNELL: Objection, your Honor.

20 THE COURT: Overruled.

21 A Yeah. You know the media -- the media was covering

22 the merit of statements that Governor Cuomo that were coming out

23 of the attorney general's office that were come out of the

24 legislature about what was -- what was going on and how it was

25

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1 limited and -- and just about every gun magazine and gun paper
2 and gun log was covering it.
3 So, it became a major concern because at that time we
4 had no -- we had no alternatives and, we were scrambling to find
5 insurance for our members.
6 Q Okay, what about was there anything else that happened
7 in 2018 that gave you cause for concern?
8 A Well --
9 MS. CONNELL: Objection, your Honor.
10 THE COURT: Overruled.
11 A There were, there were -- I mean there was, you know, a
12 couple press releases that the Governor made and there was the
13 filing of this; and I'm sure there were others, but I don't
14 recall right now.
15 Q Okay. Now, when you discussed before the lawsuit that
16 the attorney general filed, did you ever -- was there ever a
17 time when Mr. LaPierre addressed the board regarding the need to
18 undertake a course correction?
19 A Oh, of course. It was early on. I think it was in
20 2017 or 2018 he made that statement at a board meeting that
21 there were mistakes made -- and they were going to be rectified.
22 There was a new policy, essentially, a new sheriff in town, and
23 there were new procedures that were going to be followed and we
24 went on from there.
25 Q Did you ever ask Mr. LaPierre questions about the

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1 allegations being made by the NYAG in her complaint?
2 A You know, not directly, but Mr. LaPierre addressed
3 those, okay; and he said there were mistakes made and
4 restitution was going to be made.
5 Q Did -- could this -- so, when this statement was made,
6 was it possible that it was made in April of 2019?
7 MS. CONNELL: Objection, your Honor.
8 THE COURT: On leading grounds?
9 MS. CONNELL: Yes, your Honor.
10 THE COURT: Overruled.
11 A That's -- that's when it happened. You know, the --
12 and the date sometimes it becomes foggy; but, yes, they were,
13 you know. The NRA board became very, very interested in what
14 was going on and very involved in what was going on; and, you
15 know, we were all looking to see what changes were going to be
16 made, how it was going to happen, how we were going to proceed
17 from there.
18 And, you know, frankly, you know did Wayne LaPierre
19 make mistakes? Yes, he did. Did Wayne LaPierre stand up and
20 say "I made these mistakes?" Yes, he did and he made
21 restitution. And, you know, and I love him for that because
22 there's -- there's not many people that will stand up and say
23 "I made a mistake and I'm taking the blame for it."
24 Q After Mr. LaPierre made these statements in April 2019,
25 did you perceive that the NRA was making progress in coming into

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1 compliance with its policies?
2 MS. CONNELL: Objection, your Honor.
3 THE COURT: Sustained.
4 Q Did Mr. LaPierre's actions after April 2019 convince
5 you that he supported the course correction efforts?
6 MS. CONNELL: Objection, your Honor.
7 THE COURT: Less leading, I'll give you that so
8 I'll let it go.
9 A Yeah, yes, he did. Every board meeting it was
10 discussed at, there was a new financial team that came in.
11 There were some new chairmen. The Audit Committee was just
12 extremely active in looking at everything, and it was -- it was,
13 it was a new NRA.
14 Q Do you think that the board would have continued to
15 reelect LaPierre to his position if he had not supported the
16 course correction efforts?
17 A No.
18 MS. CONNELL: Objection -- sorry, slow on the draw.
19 Q Okay, so in your role as a board member you said
20 before, did you not, that you received regular briefings about
21 the progress of the course correction?
22 A Of course. At every board meeting and, you know, it
23 was in the minutes. Anybody who wanted to know anything could
24 get it out of the minutes or if they paid attention at the board
25 meetings, could understand what was going on.

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1 Q Do you have any doubts about the NRA's ability to
2 fulfill its mission going forward?
3 A No, none at all.
4 Q And were you aware of as a board member, were you aware
5 of Mr. LaPierre's private plane travel prior to 2019?
6 A No, I was not.
7 Q Was anyone on the board aware of it?
8 A I don't know, I can't answer that question.
9 MR. FARBER: Objection, your Honor. Calls for
10 things that are firsthand knowledge, your Honor, of anybody
11 on the board would have.
12 THE COURT: Well, I guess he answered "I don't
13 know," so you were right.
14 Q Okay, so now are you currently -- did you come to have
15 any position with the NRA Foundation?
16 A Yes, I'm president of the NRA Foundation.
17 Q Can you explain the difference between the NRA
18 Foundation and the NRA?
19 A Yeah, we're two separate --
20 MS. CONNELL: Objection, your Honor.
21 THE COURT: Grounds?
22 MS. CONNELL: Your Honor, to the extent we're going
23 to get into that (c)(3) (c)(4) issue, it is a legal
24 distinction.
25 THE COURT: Overruled.

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1 A 501(c)(3) is the NRA Foundation. 501(c)(4) is the NRA.
 2 We have separate board of directors, although there are -- there
 3 are NRA directors that serve on the trustee committee; but
 4 there's also four or five nonmembers that are on the committee.
 5 We make our own decisions. We have our own meetings, and we're
 6 totally separate corporation.
 7 Q And can you -- can you describe what programs the
 8 (c)(3) supports?
 9 A Yeah, we support all of the 501(c)(3) products that the
 10 NRA has, like, a Woman on Target, Supporting the Shooting, the
 11 shooting events, okay. Eddie Eagle, like I mentioned earlier,
 12 Don't be a Victim, okay, and the National Shooting Champions,
 13 Championships.
 14 I think which is the jewel in our crown is is that we
 15 have just entered into an agreement with the USA Shooting
 16 Foundation which runs the shooting sports in the Olympics, and
 17 we are a prime supporter of USA Shooting for the US team in the
 18 Olympics.
 19 Q So, are the Foundation's assets kept separate from the
 20 (c)(4)'s assets?
 21 A Totally separate.
 22 Q Now, we were talking before very briefly about -- one
 23 of the objections talked about Oliver North.
 24 To your knowledge, did the NRA ever file lawsuits
 25 seeking to expel Mr. North?

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1 A I don't know. I don't think there was a lawsuit.
 2 Q Okay, did you at any point file an ethics complaint
 3 against --
 4 A I filed an ethics complaint, yes.
 5 Q Do you know what the status of that complaint is?
 6 A I think it is on hold.
 7 Q Have you been made aware of any hearings or any actions
 8 taken on it?
 9 A Not to date, no.
 10 Q Were you as a board member, were you aware of the
 11 bankruptcy action before it was filed?
 12 A Yes, I was.
 13 Q Did you support the bankruptcy filing?
 14 A Yes, I did.
 15 Q Why is that?
 16 A Because I -- like I said earlier, I knew the dangers
 17 were coming down the road and I was hoping that -- and this is
 18 something that I thought of that I wasn't instructed by anyone,
 19 but I thought that it might give us an opportunity to get out of
 20 the state.
 21 Q And is that because you don't like New York or because
 22 you're concerned about the regulatory environment?
 23 A I love New York. Okay, I've lived here all my life. I
 24 love New York, but the regulatory system in New York State has
 25 just gotten totally out of control.

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1 MR. PETERS: Nothing further, your Honor.
 2 THE COURT: Okay, is there any other direct
 3 testimony?
 4 MR. CORRELL: Yes, your Honor.
 5 THE COURT: We have a few minutes. Do you want to
 6 get started?
 7 MR. CORRELL: That's fine.
 8 DIRECT-EXAMINATION
 9 BY MR. CORRELL:
 10 Q Mr. King, I'm Kent Correll. I represent Wayne
 11 LaPierre.
 12 A How are you?
 13 Q Good. Good afternoon.
 14 A Good afternoon.
 15 Q Do you know what a Form 990 is?
 16 A Yes.
 17 Q Were Form 990s presented to the board at board
 18 meetings?
 19 A Yes.
 20 Q Did you -- how were they provided? Were they provided
 21 one per person or in some other way?
 22 A No, they were not -- they were -- some other way, okay.
 23 I don't recall exactly. I think there was a -- a number of
 24 financial binders that were passed out that they were in and
 25 they were spoke about.

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1 And I'm very familiar with them because as a
 2 not-for-profit in New York State, we file 990s.
 3 Q And those 990s are available, they're open to public
 4 for inspection as well; correct?
 5 A Absolutely.
 6 Q You can go on the internet and Google the NRA and the
 7 990 will pop up?
 8 A Yeah, Google NRA 990s and you'll get about three
 9 different sites you can find them on, four maybe.
 10 THE COURT: Nobody here is going to be Googling
 11 anything, right?
 12 THE WITNESS: Okay, I'm sorry about that.
 13 Q And there's a section of the 990 that lays out the
 14 compensation of officers, correct?
 15 A Correct.
 16 Q And there's also a section of the 990 that lays out --
 17 that asks the question in the last year has the corporation
 18 provided any of the following, and one box is first class for
 19 charter travel; right?
 20 A Yes.
 21 THE COURT: Is this direct or cross?
 22 MR. CORRELL: Well, it can be either.
 23 THE COURT: Well, no. To get into areas that were
 24 not addressed on direct by the NRA, I would just ask you to
 25 ask questions in the normal way.

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1 MR. CORRELL: I would call Mr. King as a witness in
2 my case if we want to do it that way, your Honor.
3 THE COURT: I think that what we discussed is
4 having all the directs happen at around the same time to
5 avoid bringing witnesses back.
6 So, you can ask -- I'm not objecting to your
7 questions if they're direct testimony, but just go ahead.
8 MR. CORRELL: I intend to keep this very short and
9 because I don't want to be limited to the scope of the
10 direct, I'm going to treat this as my direct.
11 THE COURT: Right. So, just don't ask leading
12 questions.
13 MS. CONNELL: Right, sorry. Trying to move it
14 along.
15 Q So, are you familiar with Schedule J of the 990?
16 A Yes, I am.
17 Q And could you tell the jury what kinds of things are --
18 what kinds of questions are asked in Schedule J?
19 A Yeah, it's, you know -- I always look at it as
20 extraordinary expenses outside of possibly the realm of the --
21 the moneys that the Association might be, might be responsible
22 for, like, like, plane trips, you know, and parties and things
23 like that and they have to be explained.
24 Q And in the 990s that you looked at board meetings, was
25 the box for first class for charter travel checked?

T. King - by Defendants - Direct/Mr. Fleming Page 3412

1 A All of the time.
2 Q And based on your observations, do you have any
3 thoughts about his professionalism and competence?
4 A Yes, I always found John to be extremely professional
5 and competent.
6 Q And the board has elected him every year since 2015?
7 A Every year since then.
8 Q Even though there's, as you say, type As, you don't
9 always agree on everything?
10 MS. CONNELL: Objection to leading, your Honor.
11 A Yes.
12 THE COURT: Getting one free leading question per
13 round.
14 Anything further from the defendants on direct?
15 MR. FARBER: Not on direct.
16 MR. CORRELL: A little cross for me, your Honor.
17 THE COURT: Well, let's pick back up after lunch.
18 We'll figure out the order when we get back.
19 During the break, sir, you're still on the stand so
20 you shouldn't discuss the substance of your testimony with
21 anyone, including counsel.
22 THE WITNESS: Okay.
23 THE COURT: Thank you.
24 COURT OFFICER: All rise, jury exiting.
25 THE COURT: 2:15 we'll resume.

T. King - by Defendants - Direct/Mr. Fleming Page 3411

1 MS. CONNELL: Objection, leading, your Honor.
2 THE COURT: Overruled.
3 A Honestly, I don't know. I don't remember.
4 Q So that's just something you didn't focus on, is that
5 fair?
6 A Not at the time, I probably didn't.
7 MR. CORRELL: No further questions.
8 THE COURT: Anything else before we break?
9 MR. FLEMING: I could probably finish before lunch.
10 THE COURT: Sold. Is this still direct?
11 MR. FLEMING: This is still direct, yes.
12 DIRECT-EXAMINATION
13 BY MR. FLEMING:
14 Q Mr. King, hi.
15 A Hi.
16 Q William Fleming, I represent Mr. Frazer.
17 How long have you been a board member?
18 A Twenty years or so, just short of twenty years.
19 Q Were you a board member in 2015?
20 A Yes, I was.
21 Q Do you recall Mr. Frazer joining as secretary and
22 general counsel in that year?
23 A Yes, I was actually chairman of the nominating
24 committee that year.
25 Q Have you had occasion to work with Mr. Frazer?

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1 (Whereupon, at this time the jury then left the
2 courtroom.)
3 (Whereupon, at this time a luncheon recess was then
4 taken.)
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6 (Continued on next page)
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1 AFTERNOON SESSION
 2 * * * * *
 3 THE COURT: My law clerk will be sending you at
 4 long last the jury instructions.
 5 MR. FARBER: He did.
 6 THE COURT: Okay. That was faster than I thought.
 7 Was it a PDF? We are trying to work on getting you a Word
 8 version so it's easier to edit, but we are not really quite
 9 sure how to do that, so we are working on it and it also
 10 indicated -- hopefully, you're free to meet on Friday at
 11 three to discuss them.
 12 MR. CORRELL: Your Honor, did you contemplate a
 13 simultaneous briefing on that or were we going to respond to
 14 the AG's?
 15 THE COURT: Which are we talking about; the
 16 directed verdict?
 17 MR. CORRELL: I'm sorry.
 18 MS. CONNELL: I think there are two issues, your
 19 Honor.
 20 MR. CORRELL: Pardon me.
 21 MS. CONNELL: I thought there were two issues. We
 22 were tasked with briefing the EPTL as against the individual
 23 defendants and then I thought there was something you had
 24 asked.
 25 THE COURT: Yeah. These can be letters or however

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1 you want, but on the defense front, one of the issues was
 2 whether the two claims are duplicative, the EPTL claims and
 3 the N-PCL claims. And on that front, the Government is at
 4 least concerned that the position the defendants will take
 5 is some of the relief you're seeking you can't get under the
 6 N-PCL but only the EPTL. That might not be outcome
 7 determinative on whether the claims have any merit, but I
 8 would at least be interested to know the Defendant's
 9 position because to the extent that I'm going to rely on
 10 duplicativeness, it typically means that the facts and --
 11 are roughly the same and the relief is the same.
 12 So if you disagree that the relief is the same,
 13 that's worth me knowing.
 14 MR. CORRELL: Thank you.
 15 THE COURT: All right. Let's get to it. Hang on a
 16 second.
 17 MR. THOMPSON: Because I think we are going to be
 18 getting to Ms. Rowling relatively quickly. There is an
 19 issue with the demonstrative that the NRA intends to use,
 20 and we also have some evidentiary objection that might be
 21 more efficient to deal with before the jury comes in or we
 22 get Ms. Rowling on the stand.
 23 THE COURT: Okay. Well, what do I need in front of
 24 me to decide any of this?
 25 MR. THOMPSON: I can hand up a copy of the

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1 demonstratives, your Honor.
 2 THE COURT: Okay.
 3 MR. THOMPSON: In terms of the exhibits, we can
 4 bring them up on the screen with respect to the ones that we
 5 have particular objections to.
 6 THE COURT: Okay.
 7 MR. THOMPSON: So first, with respect to the
 8 demonstratives, Ms. Rowling is a fact witness and these
 9 slides seem to be aimed at guiding her testimony, reminding
 10 her or treating her as an expert witness, and we don't think
 11 that that's appropriate.
 12 THE COURT: I mean, candidly, I agree. This is the
 13 kind of slick presentation you put on with an expert, not a
 14 fact witness. I don't -- I'm not used to seeing this kind
 15 of thing with fact witnesses.
 16 MS. ROGERS: Your Honor, the only one that I think
 17 or one of these that I think aligns with your guidance
 18 earlier is this COSO framework which Ms. Rowling gave
 19 deposition testimony about and two experts have talked
 20 about. It's all the experts who implemented describe it
 21 using the three dimensional cube, and they talk about how
 22 the different parts of the cube intersect.
 23 THE COURT: I am okay with the cube.
 24 MS. ROGERS: Okay. So we can keep the cube. And
 25 then we have pictures of the people which is really more --

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1 THE COURT: Just so it's clear, is this something
 2 that she created or who? Where is this from?
 3 MS. ROGERS: So I don't have personal knowledge, so
 4 I don't know. I think it was a collaborative effort of Ms.
 5 Rowling and counsel. This is pictures of the people we are
 6 talking about.
 7 If your Honor --
 8 THE COURT: The reason why this doesn't trouble me
 9 is, you know, this is a graphic depiction that I think can
 10 be helpful to the jury to see it, and it doesn't suggest any
 11 testimony, and it doesn't guide any testimony. So this is
 12 more like what I have seen which is a graphical depiction of
 13 something that is easier to see than to describe. So I'm
 14 fine with that one page.
 15 MS. ROGERS: Okay.
 16 MR. THOMPSON: Just for the record, your Honor,
 17 this cube is actually part of the COSO framework. Like,
 18 it's generated by COSO, and it wasn't created by Ms.
 19 Rowling, and you may -- if your Honor says that this is just
 20 a Cross issue, then that's fine, but during her deposition,
 21 Ms. Rowling had taken one continuing education class on
 22 COSO. She's not an expert.
 23 THE COURT: I'm not assuming that this is going to
 24 be her expounding on COSO as much as this is -- maybe I
 25 thought this through the wrong way. But is this going to

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1 just be her way of -- her personal way of describing the way
 2 things work at the NRA, not COSO?
 3 MS. ROGERS: Correct, your Honor. She's not an
 4 expert witness on COSO, but the cube which Ms. Rowling may
 5 have helped create the deck, but she did not invent the
 6 cube. It's sort of an industry standard cube.
 7 MS. ROGERS: Mr. Thompson is right. She will
 8 testify about she follows and implements the policy
 9 interaction sections that the cube prescribes.
 10 THE COURT: Yeah. I don't have a problem with
 11 that.
 12 MS. ROGERS: And then the other slide's different.
 13 Your Honor's guidance this morning, if your Honor doesn't
 14 want to put them up, we won't. I think one of them which is
 15 just photographs of people we are talking about is not
 16 really -- the witness knows what these people look like. It
 17 would really be a reminder for the jury who they are. And
 18 if your Honor would like us to omit that, we can.
 19 THE COURT: I'd stick with the cube.
 20 MS. ROGERS: Okay. Just the cube.
 21 THE COURT: All right. Thank you. Is there
 22 anything else?
 23 MR. THOMPSON: There are a number of evidentiary
 24 issues with documents that we expect to come up with Ms.
 25 Rowling. It may be more efficient to deal with it now, your

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1 Honor.
 2 THE COURT: Okay.
 3 MR. THOMPSON: So I'm going to put aside the
 4 objections to the lateness of the documents that we have
 5 preserved otherwise. But there are a few independent
 6 grounds.
 7 THE COURT: Oh, you mean the ones that were
 8 produced in 2023.
 9 MR. THOMPSON: Correct, your Honor.
 10 THE COURT: Okay.
 11 MR. THOMPSON: But with respect to some memoranda
 12 that Ms. Rowling prepared -- let me pull up the exact DX
 13 number. DX 1-837. If we can pull that up please, Jesse.
 14 This document is not a business record. It is
 15 hearsay, and it contains hearsay within hearsay in the form
 16 of conversations that Ms. Rowling had with Mr. LaPierre and
 17 Mr. Correll.
 18 It also refers to the Audit Committee meeting that
 19 your Honor had precluded testimony about with Congressman
 20 Barr that we did not get any discovery into, and the
 21 attachments to this are work product created by counsel that
 22 were also not business records that Ms. Rowling is then
 23 performing some sort of independent or purporting to perform
 24 some independent review of.
 25 THE COURT: This version doesn't seem to have

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1 attachments.
 2 MR. THOMPSON: The attachments are separate
 3 exhibits. So we can just take a look at DX 1-835 which is
 4 Attachment A to the memorandum.
 5 MS. ROGERS: Your Honor, this memorandum is a
 6 business record to the same extent as other internal
 7 memoranda that were admitted as part of Plaintiff's case.
 8 For example, memoranda from Colonel North, there
 9 were similar issues that attached copies of documents
 10 analyzing.
 11 The purpose of this exhibit would not be to admit
 12 layers of hearsay and use the document to get in front of
 13 the jury what Ms. Rowling thought someone else said for its
 14 truth, but the NRA has essentially been brought before the
 15 Court on charges of failing to oversee and consider, analyze
 16 documents and issues like this. This is a memorandum that
 17 the CFO put together reflecting and encapsulating her
 18 analysis of issues and documents like this, and she should
 19 be allowed to testify about it.
 20 THE COURT: Do you have a hard copy of this?
 21 MR. THOMPSON: I apologize. I do not, your Honor.
 22 MR. CORRELL: For Mr. LaPierre's point of view,
 23 it's a party admission.
 24 I know that the -- Mr. LaPierre and the NRA are
 25 separate parties, so to the extent that this is Sonya

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1 Rowling writing about matters, it's an admission.
 2 MR. THOMPSON: Party opponent admission. I don't
 3 think Mr. LaPierre is a party opponent to the NRA.
 4 THE COURT: He is not.
 5 MR. CORRELL: Well, that will derisive and sneering
 6 comment is actually quite untrue, and I think there is
 7 adversity.
 8 THE COURT: It's not literally a party opponent. A
 9 party opponent is when somebody is suing another party.
 10 It's not different than an adverse party.
 11 MR. CORRELL: I understand that, your Honor, but --
 12 well, I'll leave it there for the moment.
 13 THE COURT: Can I just read this first. It
 14 wouldn't be a terrible idea to send these to me the day
 15 before so I wouldn't be reading this while the jury is
 16 waiting. Just a head's up. Maybe you already did, and I
 17 didn't see it. I mean, this is exactly -- the first page is
 18 her detailing a conversation with Mr. LaPierre setting forth
 19 a bunch of facts that I assume you want them to believe are
 20 true.
 21 MS. ROGERS: Well, it wouldn't be admissible for
 22 the truth of what Mr. LaPierre told her, but they protested
 23 that we blocked examination on what were you considering,
 24 which flights did you check were repaid. And so the fact
 25 that -- the fact she conducted the diligence, the statements

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1 were made to her, and they informed her analysis is what's
 2 relevant here. They can separately cross-examine, you know,
 3 was that flight really \$10,000. Did he really repay it?
 4 Was it really business or personal?
 5 MR. CORRELL: Both Mr. LaPierre and Sonya Rowling
 6 are witnesses, and Mr. LaPierre is a party.
 7 I'm not sure -- I think that informs the analysis.
 8 If we have to, Mr. LaPierre can testify as to what he said
 9 he said, and she can testify as to what --
 10 THE COURT: Well, that's what hearsay is. They are
 11 here. They can testify live about this stuff.
 12 Why would you use somebody else's recorded
 13 recollection out of court instead of that?
 14 MR. CORRELL: Well we could use it to refresh their
 15 recollection if we have to, but we are under time
 16 constraints, and we are hoping to move this along.
 17 MS. ROGERS: We have seen other documents including
 18 very old documents.
 19 THE COURT: This is a way for the jury not to be
 20 able to test his credibility because it's written by
 21 somebody else. So, look, it seems to me, and you know,
 22 given the timing of this, this is kind of difficult to
 23 believe this wasn't partly prepared for trial.
 24 I mean, it's a month before trial started. This
 25 does not sort of out of the blue --

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1 So this is the treasurer who was one of the
 2 whistleblowers sitting down and scrutinizing these expenses.
 3 THE COURT: Did she -- I can't remember. Did she
 4 testify about some of this analysis when she was here
 5 before?
 6 MS. ROGERS: I don't -- not that I can recall. I
 7 don't believe so.
 8 THE COURT: Well, look. I think that the NRA
 9 treasurer's analysis of all of this stuff is independently
 10 relevant. You know, late though it may be. In other words,
 11 the -- or it would be independently relevant. I guess let
 12 me put it that way.
 13 I'm -- this is a close one because it does awfully
 14 sound like vouching in a way for another witness'
 15 credibility, but it's -- it's, you know -- ultimately, the
 16 burden of proving the repayment, proving it will have to be
 17 done by actual evidence. Not this. So I'm not sure I
 18 understand what this adds other than you want to be able to
 19 point out that this examination occurred. That's all this
 20 is for.
 21 MS. ROGERS: Correct, your Honor.
 22 The NRA, we are not really concerned with taking on
 23 the burden of proving a setoff against damages that are
 24 being paid to us. We have coming at this from a proper
 25 administration perspective, a properly administered

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1 MS. ROGERS: It's not out of the blue. But when
 2 you have the progression toward trial overlapping with the
 3 NRA making these efforts internally, obviously, there is
 4 going to be overlap.
 5 I think the fact that Ms. Rowling prepared the
 6 document and conducted the analysis is relevant. The fact
 7 that she interviewed and was briefed by particular people on
 8 these issues is relevant.
 9 We had been happy -- we'd be obviously content with
 10 an instruction to the jury that things people told Ms.
 11 Rowling aren't being admitted for their truth, but she is
 12 essentially being called negligent and incompetent, and this
 13 is a record she generated at part of her job, and she should
 14 be able to explain to the jury what kind of analysis she
 15 did.
 16 THE COURT: I'm not sure anybody has called her
 17 incompetent, but what is -- so she makes findings at the end
 18 here.
 19 MS. ROGERS: So she's doing testing essentially.
 20 So there were payments made in earlier years, but some of
 21 them were made as a result of a process where Mr. LaPierre
 22 and his lawyer went through expenses and said I want to
 23 repay these. These were personal. There was an effort to
 24 make sure that was tested. It wasn't on the honor system;
 25 right.

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1 non-profit checks and test issues like this and as a CFO
 2 would do this kind of analysis.
 3 THE COURT: In December of 2023, one month before
 4 trial.
 5 MS. ROGERS: Our case isn't that the -- this is the
 6 first or only time something like this was done, but a theme
 7 of our case as you saw with Sullivan, this is a continuing
 8 process.
 9 THE COURT: Frankly, I suspect the plaintiff can
 10 make as much use of this as you can in some ways. But how
 11 do we get over the hearsay? I mean, first of all, whoever
 12 the witness is on the stand -- oh, Ms. Rowling is going to
 13 be the witness.
 14 MS. ROGERS: Ms. Rowling will be the witness.
 15 THE COURT: So she is going to lay a foundation
 16 that this is the ordinary course of her business to write
 17 things like this.
 18 MS. ROGERS: Right. As the ordinary course of her
 19 business as treasurer, she, financial compliance officer
 20 side or part of her job, and this is one of the issues she
 21 analyzed. And we could even frame the question as --
 22 THE COURT: Will she say she wrote this entirely on
 23 her own or with counsel?
 24 MS. ROGERS: She wrote this on her own. There are
 25 document attached to it and plaintiff hasn't made much of

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1 this.

2 If you look at the metadata of some of the

3 spreadsheet, you will find that counsels paralegal prepared

4 it.

5 THE COURT: If you can establish that she wrote it

6 on her own, and it's, you know, in the ordinary course of

7 her business to send notes to file when summarizing things

8 that she does, and that this is an example of that, I'll

9 permit it with an instruction that none of the -- it's to

10 prove the fact that the analysis was undertaken but not for

11 the truth of any of the underlying facts including the

12 conversations with Mr. LaPierre. But I think as a process

13 matter, it is part of the story that, you know, however late

14 it was done. I don't know that it adds a lot honestly, but

15 I can't say that it's inadmissible or unduly prejudicial in

16 this regard because they either come up with the evidence or

17 they don't.

18 MR. THOMPSON: Your Honor, if I may just note a few

19 objections for the record. So we don't think that there is

20 any plausible explanation that this was created in the

21 ordinary course of business a month before trial when they

22 have had these documents. I mean, these payments go back to

23 2019 and all of a sudden she is doing this review and.

24 THE COURT: Sounds like a heck of a

25 cross-examination, Mr. Thompson.

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1 MR. THOMPSON: I know, and it will be, but ideally

2 not to have to deal with it.

3 THE COURT: It will be fun.

4 MR. THOMPSON: It will be fun.

5 And then with respect to the attachments, these are

6 lawyer work product that she's trying to turn --

7 THE COURT: What are the attachments?

8 MR. THOMPSON: We can bring up DX 1-835, please,

9 Jesse.

10 I would scroll down a few pages to get to the

11 actual chart. Yeah. So this chart was produced to us in

12 the bankruptcy. It was created by an employee.

13 THE COURT: I have no idea what this is.

14 MS. ROGERS: I will explain what this is because

15 its been mischaracterized repeatedly.

16 So what the record about this chart shows, and this

17 charity has been the subject of voluminous cross-examination

18 is that in 2020 when Mr. LaPierre repaid certain flights, a

19 non-lawyer employee of my firm sat with him and transcribed

20 into a spreadsheet clerically his explanation of where he

21 was flying and what he was doing on each of these dates.

22 That's not legal advice. It's not. If we had put this in

23 our in-camera sample, it would probably have to be deemed

24 non-privileged, and it was produced three years ago.

25 THE COURT: Where does the foundation in terms of

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1 something happening in court in front of the jury that these

2 need to put in? Everything you have just said may be true,

3 but this witness is not going to be able to tell me that.

4 MS. ROGERS: Well, what this witness will tell you,

5 this was provided to her. It was a part of a court record

6 at that point, and it informed her analysis of the

7 repayments. So this is what Wayne said he repaid. I'm

8 testing.

9 THE COURT: So this document is in fact something

10 that was submitted to the bankruptcy court.

11 MS. ROGERS: Oh, yes. Well, it was produced in the

12 bankruptcy. I can't remember if it's an exhibit in the

13 bankruptcy. I suspect it was, but I can't represent that

14 with 100 percent confidence.

15 MR. CORRELL: Mr. LaPierre is going to testify as

16 to the process he followed in going back through records and

17 identifying invoices that he examined to determine whether

18 he wanted to make payments to resolve issue that had been

19 raised by the Attorney General.

20 THE COURT: I'm just trying to get over this thing.

21 So this witness who is going to be -- it's going to be

22 introduced in front of -- is going to just testify she was

23 given this by the law firm?

24 MS. ROGERS: Correct, your Honor. And I think -- I

25 expect -- I'm not putting the witness on, but that's my

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1 understanding of the testimony is this is what I tested.

2 This is what was written to me, and this is the work I did.

3 THE COURT: Okay. I think that falls within the

4 same. And was any inquiry into this document blocked by

5 privilege?

6 MS. ROGERS: No, your Honor. We produced this

7 document and no lawyer -- no lawyer participated in creating

8 this document, so we couldn't have asserted privilege.

9 THE COURT: In depositions if people were asked

10 about it, were questions blocked?

11 MS. ROGERS: I can't recall if the initial

12 depositions, there were objections. Fact witnesses will

13 freeze up sometimes. I don't know. I know that there was a

14 supplemental 30(b)(6) corporate rep deposition.

15 THE COURT: They freeze up when they are instructed

16 not to answer maybe.

17 MS. ROGERS: Sometimes they don't know. Sometimes

18 they recall they had a bunch of of conversations about it,

19 and they have been sitting there for seven hours hearing

20 that they are not supposed to talk about lawyers. But for

21 that reason, we gave yet another corporate rep deposition

22 where there were pages of testimony about this.

23 MR. THOMPSON: At which the corporate

24 representative was not able to identify this document

25 because he didn't know what it was.

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1 MS. ROGERS: The document -- we have been arguing
2 about this document for years. We have not -- we have not
3 asserted privilege over it or anything about it.
4 MR. PETERS: We offered another deposition in
5 December as well.
6 MS. CONNELL: Your Honor, in December, you held
7 that the Plaintiff need not prove the current state of
8 what's going on in the NRA as part of our claims. You noted
9 that it was impractical for us because we didn't have
10 discovery going up to that point and also noted that trial
11 by ambush would not be permitted.
12 In November and December, the NRA produced over
13 11,000 pages of documents including these belated memos.
14 This is trial by ambush textbook. That's hearsay within
15 hearsay and things we tried to get out earlier --
16 MS. ROGERS: False.
17 THE COURT: I think -- this is largely about
18 something that's already been testified a lot about. It's
19 about were repayments made and what were they for.
20 I think that's something that the defendants are
21 going to have to prove one way or the other, and I do think
22 that the process is relevant. You know, whether it's
23 persuasive or not is a different question. Whether it's too
24 late or not is a different question. And so I'm going to
25 permit it.

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1 concerns the draft of the jury instructions. It was just
2 sent to us, and there is a reference to "verdict sheet."
3 Has the Court prepared a draft verdict sheet?
4 THE COURT: No.
5 MR. FARBER: Are we supposed to just propose one?
6 THE COURT: I want you to take the first shot at
7 it. The ones I saw I think it's at a time before a lot of
8 claims have changed and things have changed. I want you to
9 take a better run at it because -- and frankly, I don't have
10 the time or the manpower at the moment. I have had to do
11 the instructions nights and weekends, so I didn't want to do
12 the verdict sheet at the same time. The verdict sheet is
13 extremely important, and you'll see that at least I do show
14 the verdict sheet during the instructions so they know what
15 they are going to get. So I do want very smart people
16 taking a good hard look at how to get what needs to be on
17 this verdict form and not make it 1,000 pages long.
18 MR. FARBER: Understood.
19 THE COURT: I did envision that the related-party
20 transactions would be listed out separately. I didn't
21 envision every like plane flight would be out separately.
22 So I'm going to leave it to you guys in the first instance
23 to come up with something brilliant, and I'm going to keep
24 my fingers crossed.
25 MR. FARBER: Thank you, your Honor.

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1 MR. THOMPSON: Your Honor --
2 THE COURT: And if I get a feel that, you know,
3 your cross-examination is hindered by some document that
4 they have not produced, I may require that it be produced.
5 MR. THOMPSON: A similar issue just in terms of any
6 limiting instruction to the jury would be for DX 1-855.
7 It's a separate memo. We won't get into it, but just in
8 terms of any instructions that your Honor provides with
9 respect to this memorandum.
10 THE COURT: Is it a similar?
11 MR. THOMPSON: Related to Tyler Schropp.
12 THE COURT: It's her process and going through the
13 same thing. Okay; and this is an attachment to the 837?
14 MR. THOMPSON: Separate memorandum, your Honor.
15 THE COURT: These are separate exhibits. All right.
16 So I'm going to be careful with it, but I'll let them --
17 I'll let them -- this is part of jury narrative which you
18 have every ability to cross-examine and argue against.
19 All right. Let's go get them.
20 MR. FARBER: Judge, while we are waiting for the
21 witness --
22 THE COURT: Well, we are not getting the witness
23 yet. I'm sorry. Why didn't we finish this witness before
24 we did that.
25 MR. FARBER: I don't know. But my question

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1 THE COURT: All right. Let's get the jury.
2 (Witness resumed the witness stand.)
3 THE COURT OFFICER: All rise. Jury entering.
4 (Whereupon, at this time the jury entered the
5 courtroom.)
6 THE COURT: All right. Please have a seat. Sorry
7 to keep you waiting. We are trying to do as many of these
8 objections and arguments off -- when you are not here to
9 avoid wasting your time. So we have gotten through a bunch
10 of that.
11 Who is up next?
12 MR. FARBER: I think it's cross, your Honor so --
13 THE COURT: Let's start with the State.
14 MS. CONNELL: We are done with direct.
15 THE COURT: Direct is over.
16 MS. CONNELL: As far as we know.
17 CROSS-EXAMINATION
18 BY MS. CONNELL:
19 Q Good afternoon, Mr. King. How are you?
20 A Pretty good. How are you?
21 Q Good. Thank you.
22 Mr. King, you're a big fan of Wayne LaPierre; correct?
23 A Yes.
24 Q And you have been a supporter of his over the years;
25 right?

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1 A Yes.

2 Q And you voted for him every year that he ran for EVP

3 even until 2023; right?

4 A That is correct.

5 Q Okay. Mr. King, you believe that no one is exempt from

6 breaking the NRA's rules or violating the NRA's bylaws; right?

7 A I certainly do.

8 Q Okay; and that includes Mr. LaPierre?

9 A That includes everybody.

10 Q Okay. Are you aware that Mr. LaPierre has admitted on

11 questioning from NRA's counsel that he violated the Board's

12 authorizations by sending a private plane, for example, to pick

13 up his niece's husband in Las Vegas because his niece's child

14 needed a babysitter?

15 MR. PETERS: Objection to characterization of

16 testimony. Also, he is not supposed to hear the testimony

17 from other witnesses. He is a fact witness, but we object

18 to the characterization.

19 MS. CONNELL: Your Honor, I can point to the page

20 in the transcript, but this is the general tenor. The jury

21 can decide if I am reflecting the testimony correctly or

22 accurately.

23 MR. CORRELL: Misstates the testimony, your Honor.

24 THE COURT: I know it's more tedious, but I think

25 when we are talking about testimony from at least a number

Page 3436

1 that had happened. I had no idea what the reasons were and

2 because he apologized and made restitution --

3 Q Well, let's talk about that.

4 You said Mr. LaPierre made restitution; right?

5 A Yes.

6 (Continued on the following page.)

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King - by Defendant - Cross/Ms. Connell Page 3435

1 of days ago, it would be better to use the actual words.

2 MS. CONNELL: Okay. I don't know -- okay. Can we

3 please bring up the 4:21 p.m. I'm sorry. 1/29/24 transcript

4 at Page 2397, Lines 22 to 2398, Line 5.

5 Q Mr. King, are you aware that Mr. LaPierre admitted that

6 he sent a plane to pick up his niece's husband in Las Vegas

7 because the kid needed a babysitter?

8 A I had no idea what the reason was, but I was aware of

9 that after Mr. LaPierre had stated that, yes.

10 Q And you're aware that he acknowledges now that that's

11 -- that was a violation of Board authorization; right?

12 A Yes, I do, and as I stated earlier, that's --

13 Q Mr. King, I'm sure that the NRA counsel and that full

14 table of defense counsel can ask you questions. I'm going to

15 ask you answer my question.

16 A Apologize.

17 Q Thank you. And you're aware if we turn to Page 2924 at

18 2398, Lines 10 to 19 that he admitted that --

19 THE COURT: Let's get it up there.

20 Q 2398, Lines 10 to 19.

21 And you're aware that he also acknowledged that it was

22 wrong for the NRA to pay for his niece and her baby to fly on a

23 private jet because she was "stuck at an airport and their

24 flight had been delayed;" right?

25 A As I stated in the last question you asked, I knew that

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1

2 Q You don't have personal knowledge of how much money

3 Mr. LaPierre owed the NRA; is that correct?

4 A Well, personal knowledge, no.

5 Q So, Mr. King, you don't have personal knowledge of

6 whether any amount Mrs. LaPierre repaid to the NRA were full

7 restitution for amounts he admits he wrongfully spent; right?

8 A Yes.

9 Q That's correct, right? Just to clear.

10 A Yes.

11 Q Thank you. And you're aware that Mr. LaPierre has

12 admitted this wrongdoing that he -- that he said occurred in the

13 past; right?

14 A Yes.

15 Q And Mr. LaPierre's retirement went into effect a few

16 days ago, correct?

17 A Correct.

18 Q And he was -- he left the NRA under his own steam;

19 right?

20 A Yes.

21 Q He wasn't fired; right?

22 A No.

23 Q Not suspended?

24 A No.

25 Q Nothing prevents him from coming back to the NRA should

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1 he choose to do so in terms of a rule or determination within
2 the NRA; right?
3 A As far as I know, no.
4 Q Okay. You mentioned before that you would be offended
5 if someone told you how to vote; right?
6 A Yes.
7 Q But you know that Millie Hallow distributed crib sheets
8 of nominees and told board members who they should vote for;
9 right?
10 A I never received one, but I understand that that
11 happened and from what I understand they were suggestions.
12 Q You understand that Ms. Hallow distributed the crib
13 sheets to board members with suggestions on how to vote?
14 A Yes.
15 Q And that they came from Wayne LaPierre; right?
16 A That I don't know.
17 Q Did you ever ask who gave Ms. Hallow those crib sheets?
18 A I never got one, so I never asked.
19 Q You just heard about the crib sheets and didn't ask?
20 A Yeah, there was a board member who used to make a joke
21 about it all the time.
22 Q And you considered that a good joke?
23 A At the time it was funny, yes, the way it was done.
24 Q So, Mr. King, you said that the NRA welcomes spirited
25 debate among board members?

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1 A Yes.
2 Q And that there's to your knowledge no retaliation for
3 dissenting voices in the NRA board?
4 A That's true.
5 Q You sometimes discuss NRA's business via text, right?
6 A Via text did you say?
7 Q Yes, like text message on your phone?
8 A Rarely.
9 Q You've exchanged texts with Ms. Hallow, correct?
10 A You know, I assume so, I don't know.
11 Q Let's take a look at PX 16 -- well, actually before we
12 get into that --
13 MR. PETERS: I'm going to object that this is
14 outside the scope of the direct. He never spoke about
15 Ms. Hallow or texts he received from her during his direct.
16 THE COURT: Overruled.
17 MS. CONNELL: Thank you, your Honor.
18 Q You have said before, Mr. King, that NRA members who
19 support accountability should be neutralized; right?
20 A I never said that.
21 Q Okay, so let's pull up PX 1620.
22 MS. CONNELL: This has not been admitted into
23 evidence, your Honor. I'm using it for impeachment.
24 I have a hardcopy if you'd like, but I'm going to
25 show it to...

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1 (Handed up to the Court)
2 MS. CONNELL: I think we can bring it up and show
3 it to the witness since it is for impeachment, your Honor.
4 THE COURT: All right, so you're not seeking to
5 admit this and just to take it off the screen.
6 So, you're not publishing it?
7 MS. CONNELL: Why don't we not publish it right now
8 and I'll use it for the impeachment, but I will move to
9 admit it as well. So why don't we not publish it yet and
10 I'll ask him about it.
11 THE COURT: Okay.
12 Q Mr. King, this is a text stream between you, Joel
13 Friedman, Millie Hallow, Sandra Froman, Charles Cotton and
14 others; right?
15 A That's what it says, but I don't recall ever writing
16 this at all.
17 Q So, you exchanged texts with those people at times,
18 right?
19 A Certainly.
20 Q And I'll represent to you that this was a document
21 produced by the NRA in discovery. So you have no reason to
22 doubt that this is a text stream that you shared with these
23 people; right?
24 A I have no doubt that my name is on it, but I do not
25 remember doing that and I have no idea who Muhammad Ahmed is or

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1 Alex Arnau. I never heard those names before until today.
2 Q You know who Willes Lee is; right?
3 A I absolutely know who Willes Lee is.
4 Q And you know who Charles Cotton is?
5 A I certainly do.
6 Q Marion Hammer?
7 A Yes.
8 Q Jay Prince?
9 A And I very rarely ever exchange e-mails with Marion
10 Hammer.
11 Q Jay Prince?
12 A Jay Prince, I very rarely exchange e-mails with Jay
13 Prince.
14 Q But you have texted with them, right?
15 A Or I text -- I very rarely. I can't even remember one
16 time texting Jay Prince.
17 Q But you have texted with him; right?
18 A I don't know. I just said I can't remember doing it.
19 Q So, let's take a look at this and let's see.
20 Okay, well, actually, Mr. King, you have the version
21 that will be brought up on the screen, has the phone numbers
22 redacted. But if you could look at the number that's there for
23 you, it's at the very bottom of the page if you looked at that
24 as well.
25 Is that a phone number that you've had?

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T. King - by Defendants - Cross/Ms. Connell Page 3442

1 A Yeah, that's my current cellphone number.
 2 Q So, that's your current cellphone number that you use
 3 now; right?
 4 A Yes.
 5 Q And it was your cellphone number in May of 2019; right?
 6 A Yes.
 7 Q And if we look at the first bubble on this text stream
 8 from Mr. Lee, do you see that at the top of the page?
 9 A Yes, I do.
 10 Q And Mr. Lee says --
 11 MS. ROGERS: Your Honor, objection.
 12 THE COURT: If you want to use it, you want to
 13 admit it as something, then can you start reading from it;
 14 but if you want to use it to refresh his recollection, you
 15 can have him read it --
 16 MS. CONNELL: I was going to impeach him, but,
 17 actually, your Honor, I'd move for its admission.
 18 MR. PETERS: We object. There's been on the
 19 writing, no foundation.
 20 MR. CORRELL: Lots of different names and texts.
 21 MS. ROGERS: And, your Honor, with respect to a
 22 text message like this produced from a personal cellphone,
 23 the admission is more straightforward attributable to the
 24 person whose phone it was. But he doesn't remember the
 25 provenance of these messages attributed to him and it is not

T. King - by Defendants - Cross/Ms. Connell Page 3444

1 collect documents from its employees, directors and
 2 officers. They didn't go around making these things up.
 3 MS. ROGERS: Not routinely. I mean, as part of the
 4 discovery obviously.
 5 THE COURT: In response to a discovery request you
 6 collected documents for people in your custody and control.
 7 That's the only reason why it would be produced. It is
 8 admitted.
 9 (Whereupon, at this time Exhibit PX 1620 was
 10 admitted and received into evidence.)
 11 MS. CONNELL: Thank you, your Honor. If we can
 12 please show this.
 13 (Displayed)
 14 Q Mr. King, you see at the top of the page a text from
 15 Willes Lee and he's referring to Facebook page "NRA members for
 16 Accountability;" correct? Do you see where I'm looking? It is
 17 on your screen as well.
 18 A Yes.
 19 Q He says "Just now got 1,052 page likes. And noticed
 20 several more board members Schneider, Brown, Maloney and then he
 21 goes on to say Johnny Nugent, Liptak have liked the page."
 22 Do you see that?
 23 A Yes, I do.
 24 Q If you look down, Mr. Cotton responds to this and
 25 says: "We need to reconsider Nugent's committee assignments."

T. King - by Defendants - Cross/Ms. Connell Page 3443

1 from his phone.
 2 MS. ROGERS: Your Honor, there are messages from
 3 his phone.
 4 THE COURT: Well, why don't you tell me how you got
 5 this?
 6 MS. CONNELL: We got this through the production by
 7 the NRA.
 8 THE COURT: By the NRA, itself?
 9 MS. CONNELL: Yes, by the NRA itself; and we asked
 10 for production of certain text messages from certain board
 11 members. We received this, and you'll see that these are
 12 NRA board members who are on this text stream. Mr. King has
 13 admitted this is his number, and he said he had occasionally
 14 texted.
 15 MS. ROGERS: And this was a document collected by
 16 the NRA from someone's cellphone, but it is not from an NRA
 17 server. We don't have chain of custody of it or know how
 18 contacts are stored on people's phones.
 19 MR. CORRELL: And Mr. LaPierre knows nothing about
 20 it.
 21 MS. CONNELL: Your Honor, the NRA gathered -- I'm
 22 sorry.
 23 THE COURT: Whether Mr. LaPierre knows anything
 24 about it is not really the relevant question.
 25 So, look, my assumption is is that the NRA doesn't

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1 Right?
 2 A Yes, it does.
 3 Q And Ms. Hammer responds -- that's Marion Hammer; right?
 4 A Yes.
 5 Q You know his Ms. Hammer well; right?
 6 A No, I know her. I don't know her well.
 7 Q She's been on the board for years?
 8 A Yeah, and I've her maybe three times.
 9 Q Ms. Hammer responds "Please keep a list. There's more
 10 than one kind of accountability."
 11 Right?
 12 A Yes.
 13 Q And there's an emoji of what appears to be a Hammer and
 14 a clock; right?
 15 A Yes.
 16 Q Does that mean Hammer-time to you?
 17 A I don't know how to interpret that, I'm sorry.
 18 Q Okay, fair enough. Not an expert in Marion Hammer as
 19 some of us are becoming.
 20 If we continue down, you'll see that Jay Prince said "I
 21 would be cautious. I think Johnny Nugent an ok Wayne
 22 supporter;" right?
 23 A Yes.
 24 Q If we keep going down to the bottom you respond and
 25 say, "They are waving a war," and you say, "Actions will be

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1 taken very soon to neutralize some of these people;" correct?
 2 A I'm reading through that. (Brief pause) Yes.
 3 Q Okay, thank you.
 4 A But I dispute that I said that.
 5 Q Mr. King, the number that you can see on the paper,
 6 that's your cellphone number; correct?
 7 A Yes, it is.
 8 Q And that's the cellphone number you used in May of
 9 2019; correct?
 10 A Yes, it is.
 11 Q Thank you. We can put that aside.
 12 Mr. King, you testified that any NRA board member who
 13 wants to know what's going on can just read the reports in that
 14 like 150-page board book that you get after a board meeting;
 15 right?
 16 A That's true.
 17 Q And you're saying that's how a board member can educate
 18 himself for what's really happening in the NRA; right?
 19 A For any board member that missed the board meeting,
 20 yes.
 21 Q But you supported a suggestion to hold most board
 22 meetings, most board meetings in executive session; didn't you?
 23 A No, not most. I've done it three or four times in my
 24 entire career at the NRA.
 25 Q But supported a suggestion that more meetings be held

T. King - by Defendants - Cross/Ms. Connell Page 3447

1 in executive session so that the discussions wouldn't appear in
 2 the reports that are in those board books; right?
 3 A Not that I'm aware of. I don't remember doing that at
 4 all.
 5 MS. CONNELL: Your Honor, I'd like to bring up for
 6 identification PX 1553. I have a paper version that does
 7 not have the numbers redacted. Thank you.
 8 MR. CORRELL: Your Honor, it is very hard to decide
 9 whether to object or not if we're not given a copy of what
 10 the witness is being shown. If we could just in the future.
 11 THE COURT: Yeah, for cross-examination you don't
 12 always have them in advance, but we can put them up on the
 13 screen without it being in front of the jurors.
 14 MR. CORRELL: Thank you, your Honor.
 15 Q Mr. King, I placed in front of you a document that was
 16 also produced by the NRA in this action, and it is a text stream
 17 between you and other NRA board members and employees including
 18 Ms. Hallow, Ms. Froman, Mr. Friedman; and it has been marked for
 19 identification as PX 1553.
 20 Do you see that?
 21 A Yes, I do.
 22 Q And do you see the second text bubble down there seems
 23 to be a response from you?
 24 A Yeah, it says "Agree."
 25 Q And that's number -- is that number that's there the

T. King - by Defendants - Cross/Ms. Connell Page 3448

1 phone number you had in June of 2019?
 2 A Yes, it is.
 3 MS. CONNELL: Your Honor, I move for the admission
 4 of this document.
 5 THE COURT: On the same grounds, admitted.
 6 (Whereupon, at this time Plaintiff's Exhibit PX
 7 1553 was admitted and received into evidence.)
 8 MS. CONNELL: I'd ask it be published to the jury.
 9 THE COURT: Yes.
 10 (Displayed)
 11 Q Do you see the first text from Joel Friedman?
 12 A Yes.
 13 Q Who's Mr. Friedman?
 14 A Mr. Friedman is just a board member.
 15 Q And Mr. Friedman says, "Believe serious consideration
 16 be made to hold most meetings in executive session so only the
 17 results are put in the minutes. Quote, Resolved that -- blank
 18 -- was passed."
 19 Do you see that?
 20 A Yes, I do.
 21 Q And your response was "Agree;" correct?
 22 A Yes.
 23 Q Mr. King, would you agree that money spent on, for
 24 example, a \$1600 tip to a landscaper is money not spent on
 25 mission activities of the NRA?

T. King - by Defendants - Redirect/Mr. Peters Page 3449

1 MR. CORRELL: Objection, your Honor. Assumes facts
 2 not in evidence.
 3 THE COURT: Overruled.
 4 MR. PETERS: And this, also, is outside the scope
 5 of direct.
 6 THE COURT: Overruled.
 7 A Could you repeat the question, please?
 8 Q Sure. Would you agree with me that money spent on, for
 9 example, a \$1600 tip to a landscaper is money not spent on
 10 mission activities of the NRA?
 11 A Yes.
 12 Q And, in fact, money -- the NRA spending on mission
 13 programming has declined between 2014 and 2022; correct?
 14 A Yes.
 15 MS. CONNELL: Thank you, Mr. King.
 16 THE COURT: Any further questioning?
 17 MR. PETERS: Yes.
 18 REDIRECT-EXAMINATION
 19 BY MR. PETERS:
 20 Q Good afternoon, Mr. King.
 21 A Good afternoon.
 22 Q Sir, you testified -- I think I asked you during direct
 23 whether you were -- whether you were aware of the extent of
 24 Mr. LaPierre's use of a private plane prior to 2019. Do you
 25 remember me asking you that?

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T. King - by Defendants - Redirect/Mr. Peters Page 3450

1 A Yes, I do.

2 MS. CONNELL: Objection.

3 THE COURT: Overruled.

4 Q And did there come a time when you learned more about

5 Mr. LaPierre's use of private plane travel?

6 A Yes, there did.

7 Q Did you describe when that was?

8 A It was sometime mid 2018 if I'm not mistaken. You

9 know, it is hard to put dates with that.

10 Q Okay. And, so, at that point you discovered that the

11 extent of -- or did you or did you not discover the extent of

12 Mr. LaPierre's private plane usage was greater than you had

13 previously realized, is it fair to say?

14 MS. CONNELL: Objection, your Honor.

15 THE COURT: It's a little bit leading, but I'll let

16 it.

17 A Yes, I did. You know, and, and as far as I was

18 concerned, it didn't matter what it was spent on. It was

19 misspent monies, okay; and that was -- that was infringement on

20 the NRA laws, okay.

21 I don't care if he -- if it was spent on his nephew. I

22 don't care if it was spent on anything, okay. It shouldn't have

23 been spent, and that's what I decided on and plus he was making

24 restitution.

25 Q Okay. So, you said before, didn't you, that a -- well,

T. King - by Defendants - Redirect/Mr. Peters Page 3451

1 strike that.

2 Is it fair to say that from 2019 going forward, a key

3 part of your support, continued support for Mr. LaPierre was

4 that he was supporting efforts at compliance; is that fair to

5 say?

6 MS. CONNELL: Objection, your Honor.

7 THE COURT: You used your one phrase leading.

8 Q So, you said before on cross that you continued to

9 support Mr. LaPierre; is that right?

10 A Yes.

11 Q Why did you continue to support Mr. LaPierre after

12 2019?

13 A I think I may have stated this earlier.

14 Everybody makes mistakes. Mr. LaPierre stood up in

15 front of this entire board and said he made a mistake and that

16 he was making restitution. And, in my eyes, someone who stands

17 up, admits their mistakes and has the hutzpah, okay, to do that,

18 is a man who has some honor, okay. And he told us that he was

19 going to reimburse the money to the NRA, and he has in fact done

20 that.

21 Q Now, if Mr. LaPierre were to run -- say put his name in

22 that ring once again for EVP, do you think that you would

23 support him?

24 A I stated that earlier. No. You know, Mr. LaPierre's

25 time -- he did great work for the NRA. Even in consideration of

T. King - by Defendants - Redirect/Mr. Peters Page 3452

1 the problems that he had and the mistakes that he made, he

2 raised hundreds of millions of dollars and he increased the

3 membership and made the NRA what it is today. But could I

4 support him again? No, the time has passed. It is time for a

5 new NRA.

6 Q Now, you said before we were talking about, you know,

7 who is elected in board of directors' elections.

8 Did anyone ever ask you for your advice on how they

9 should vote, any NRA members?

10 MS. CONNELL: Objection, your Honor.

11 Q Let me get there a different way. You said before that

12 it was --

13 THE COURT: What was the objection based on?

14 MS. CONNELL: I thought it was leading, your Honor,

15 but --

16 THE COURT: It's not.

17 MR. PETERS: It's is not?

18 THE COURT: You're allowed to ask did something

19 happen. It doesn't suggest the answer.

20 Q So has anyone -- did anyone ever ask you for how you

21 think people should vote on board of directors elections?

22 A You know, I stated earlier that there's discussions

23 going on between the board of directors. All of the time while

24 we're there, okay, and does that topic come up? Of course it

25 does.

T. King - by Defendants - Redirect/Mr. Peters Page 3453

1 You know, we're people that are interested in who's

2 going and somebody might I'm supporting so and so, I'm

3 supporting so and so. Who do you think or what do you think?

4 It was never a case of asking me for any type of coercion to

5 make me vote in any one particular way.

6 So, yeah, of course, we discussed that.

7 Q Okay, you said before that you found it funny or that

8 it was a joke when, you know, some people would submit their own

9 lists of who to vote for for the board of directors.

10 Can you explain why you thought that was funny?

11 A Because, he -- he just mocked it, okay. And, you know,

12 and, frankly, I don't know who they came from and I don't know

13 if he did or not; but he just thought it was funny. Oh, it was

14 because he didn't give one, okay, and that's what he was making

15 fun of.

16 Q Now, when we saw these text messages before that seemed

17 to involve a lot of different directors and you -- you expressed

18 a concern here in one of these about Facebook names that you

19 don't know or appear fake.

20 Do you remember writing that part of the text message?

21 A Which one was that?

22 Q This is PX 1620.

23 A You know, you know that had been discussed numerous

24 times. The thing that I see here, okay, is I don't abbreviate

25 "FB" for Facebook. I write it out. I come from the old school

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T. King - by Defendants - Redirect/Mr. Peters Page 3454

1 where I don't like using abbreviations. Okay, it took me three
 2 years to figure out O-M-G, what it meant, okay, and so I just
 3 don't do that.
 4 Q Okay, fair enough.
 5 Do you remember discussions around May of 2019
 6 regarding, you know, the Oliver North and the attempt with, you
 7 know, and the stuff around the annual meeting that year?
 8 A Yeah, that was -- there was a lot of discussion going
 9 on about that.
 10 Q And you even filed an ethics complaint against
 11 Mr. North?
 12 A Yes, I did.
 13 Q Can you explain why you filed that complaint?
 14 MS. CONNELL: Objection, your Honor, beyond the
 15 scope.
 16 THE COURT: Sustained.
 17 MR. PETERS: Well, I asked about it in direct, but
 18 it is fair --
 19 THE COURT: You asked about it.
 20 MR. PETERS: Okay.
 21 THE COURT: If you want to cross yourself, I'm not
 22 sure you can.
 23 Q Do you remember discussions in May 2019 around Oliver
 24 North and the leadership challenges at the NRA?
 25 MS. CONNELL: Objection, your Honor.

T. King - by Defendants - Redirect/Mr. Peters Page 3455

1 A Yeah, there was a lot of discussion going on, okay, and
 2 a lot of it centered around the fact that we had found out that
 3 Mr. North was getting a -- was getting paid, and he would become
 4 actually the first paid NRA president and many people on the
 5 board took exception to that, and that's what started this whole
 6 thing.
 7 Q And so you didn't -- so around that time is it fair to
 8 say that you had concerns about Mr. North's attempt to continue
 9 in leadership at the NRA with his conflict of interest; is that
 10 fair to say?
 11 MS. CONNELL: Objection, your Honor.
 12 THE COURT: Hang on. I missed the last objection,
 13 but this really wasn't covered by anybody on cross.
 14 Q Okay, understood.
 15 So, were there discussions -- what was the tenor of
 16 discussions among board members in May 2019, if you can recall?
 17 MS. CONNELL: Objection, your Honor.
 18 THE COURT: This is the same topic I just said.
 19 MR. PETERS: Well, these are discussions among
 20 board of directors May 2019.
 21 THE COURT: You're back to that, so discussions
 22 about what?
 23 Q I'm asking, were there discussions -- what were the
 24 tenor of discussions among board members in May 2019 if you
 25 recall?

T. King - by Defendants - Redirect/Mr. Peters Page 3456

1 A Well, yes, I do. There was a lot of discussion that
 2 was going on, and one of the things that was happening is that
 3 all of our discussions were being leaked to the press. Okay,
 4 and in one instance I was sitting -- I was sitting at my table
 5 and we had just discussed something and I read it on the
 6 internet. Okay, and that was the reason -- and I don't --
 7 honestly, I don't remember this particular text; but if somebody
 8 had sent this to me asking me that if I agree that we should do
 9 most of the sensitive things in executive session, I would have
 10 said I agree.
 11 So, I'll take credit for this even though I don't
 12 remember it.
 13 Q So, but, generally speaking, when you talk about people
 14 being directors having access to information at board meetings,
 15 are you talking about the board minutes only or talking about
 16 other things such as financial statements?
 17 A I'm talking about everything, financial statements,
 18 legal discussions, you know, and that -- that are supposed to
 19 be -- that are supposed to be privileged and held to the board.
 20 Q And your understanding is that -- and your experience
 21 has been or has it that board members are given ample amount of
 22 information to guide their governance of the NRA?
 23 MS. CONNELL: Objection, your Honor.
 24 A I totally agree with that is if they are interested
 25 enough and want to find out, the information is there and you

T. King - by Defendants - Redirect/Mr. Peters Page 3457

1 know, we're seeing these text messages and all that. You can
 2 text anyone of the officers, particularly the president. You
 3 can e-mail them or even, you know, most people don't do it
 4 anymore, is pick up the phone and call him and you would get an
 5 answer to your questions.
 6 Q And would you not only -- is it fair to say that you
 7 would not only speak to officers, you might also speak to the
 8 NRA's own employees to be able to get information; is that
 9 fair?
 10 MS. CONNELL: Objection, your Honor.
 11 THE COURT: Sustained again.
 12 Q What other sources of information do you have as an NRA
 13 board member?
 14 A I -- the employees, okay. The fellow who was running
 15 general operations at the time -- he's since retired -- was a
 16 fellow from New York State who served on my board of directors,
 17 the New York State Rifle and Pistol Association, and we
 18 regularly talked.
 19 Q And I think you said before that there was vigorous
 20 discussion and debate amongst the board members. Is that fair
 21 to say?
 22 A Oh, yeah. There's always vigorous discussion no matter
 23 what the topic is.
 24 Q And there's sometimes board members will even criticize
 25 other board members; is that fair to say?

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T. King - by Defendants - Redirect/Mr. Peters Page 3458

1 A Oh, yes.

2 Q Do you -- have you found -- but in the, in the end is

3 it fair to say the members of the NRA decide who's on the board?

4 A Yeah, they're the ones that vote. It's a national

5 election like I stated. The ballots go out in the magazines and

6 hundreds of thousands of them come back in.

7 Q So, people can and directors can start their own

8 Facebook group, for example; is that fair to say?

9 A Sure.

10 Q And you can start your own Facebook; right?

11 A Yes.

12 Q And you can make statements on your Facebook in support

13 of certain directors?

14 A Yes --

15 MS. CONNELL: Objection, your Honor.

16 THE COURT: Hang on a second.

17 THE COURT: Ground?

18 MS. CONNELL: Leading, and going beyond the scope.

19 THE COURT: Sustained.

20 Q Fair to say there's lots of ways for directors to

21 communicate their views to the public?

22 A Absolutely.

23 MS. CONNELL: Objection, your Honor.

24 THE COURT: You can borrow one leading question

25 from your next witness, if you want.

T. King - by Defendants - Redirect/Mr. Correll Page 3460

1 a landscaper?

2 A First time I heard about is right now.

3 Q Has the NRA had any security problems during the time

4 you served on the board?

5 A In what way do you mean that?

6 Q Does the NRA have a security department?

7 A Yes, we do have a security department.

8 Q Is security important to the NRA?

9 A Extremely important.

10 Q And why is that?

11 A Because we -- we talk about many sensitive things. You

12 know, we are an advocacy group, okay; and we put plans together

13 about what we're going to do politically over the years, what

14 were going to do on elections. And we can't have people

15 listening into what we're doing and being able to counteract

16 everything that we're putting together.

17 I mean, it is like during the Gulf War, Governor

18 Schwarzkopf (sic.) didn't tell the Iraqis where he was going to

19 attack and it is exactly the same thing.

20 Q Any security incidents at headquarters?

21 MS. CONNELL: I said beyond the scope, your Honor.

22 MR. CORRELL: Your Honor, the landscaping was a

23 security charge to protect Mr. LaPierre at his home from a

24 sniper or house invasion.

25 MS. CONNELL: Your Honor, that's counsel

T. King - by Defendants - Redirect/Mr. Correll Page 3459

1 Q Go ahead.

2 A Absolutely. Any of us that are running for -- for the

3 board, I mean, if you want to go to Facebook -- and I know you

4 can't do it right now -- but see Tom King, NRA Board, Reelect

5 Tom King NRA Board 2021. I don't remember the exact year, but,

6 sure, we all do that.

7 Q Fair to say that you -- that you -- have you ever

8 threatened anyone to try to get them to vote for you?

9 MS. CONNELL: Objection, your Honor.

10 THE COURT: That's not leading.

11 A You know, I'm sorry to say this, but that's absurd, no.

12 That would never ever, ever, ever happen; and if someone did it

13 to me, I would be really offended and that would not be the end

14 of it.

15 MR. PETERS: Okay, no further questions. Thank

16 you.

17 REDIRECT-EXAMINATION

18 BY MR. CORRELL:

19 Q Good afternoon, again.

20 A Good afternoon again.

21 Q You were asked a question about a \$1600 tip to a

22 landscaper by Ms. Connell.

23 Do you remember that?

24 A Yes, I do.

25 Q Do you have any knowledge of a \$1600 tip being paid to

Page 3461

1 testifying. He's going to have Mr. LaPierre testify.

2 THE COURT: Sustained.

3 (Continued on next page)

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King -by Defendant - Cross/Mr. Correll Page 3462

1 Q You were asked a question about a \$1,600 tip to a
 2 landscaper.
 3 A Yes.
 4 Q Did you have any knowledge that that landscaper might
 5 have been doing any work for security purposes?
 6 MS. CONNELL: Objection, your Honor.
 7 MR. CORRELL: I'm just asking him for his
 8 knowledge, your Honor.
 9 A No, I did not.
 10 Q An if that \$1,600 expense had been incurred by the NRA
 11 legitimately for payment to landscaping for security purposes,
 12 would your answer be the same?
 13 A No, it would not.
 14 MS. CONNELL: Objection, your Honor.
 15 THE COURT: You already got the answer.
 16 THE WITNESS: Sorry.
 17 MR. CORRELL: That's all I have for you right now.
 18 Thank you, sir.
 19 THE COURT: Anything else?
 20 MR. FARBER: No questions, your Honor.
 21 THE COURT: Anything further from the State?
 22 MS. CONNELL: No, your Honor.
 23 THE COURT: All right. Sir, you're free to go.
 24 MR. FARBER: Judge, there is something on the
 25 screen that shouldn't be on the screen.

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1 me to have her sworn again.
 2 MS. ROGERS: We think that might be wise, your
 3 Honor, because it's separate testimony.
 4 THE COURT: Sure.
 5 (Witness resumes the witness stand.)
 6 THE COURT: Welcome back.
 7 S O N Y A R O W L I N G, a witness called on
 8 behalf of the Defendant, after having been first duly sworn,
 9 took the witness stand and testified as follows.
 10 THE COURT: Welcome back.
 11 DIRECT EXAMINATION
 12 BY MS. EISENBERG:
 13 Q Good afternoon. Can the members of the jury hear me?
 14 Ms. Rowling, welcome back.
 15 A Thank you.
 16 Q Please tell us a little bit about your background.
 17 A I'm a graduate of James Madison University. I am also
 18 a CPA. I have a degree in accounting. I spent my beginning
 19 professional career at the Department of Defense, Office of the
 20 Inspector General auditing intelligence programs and moved from
 21 there to public accounting auditing non-profits and then came to
 22 the NRA in '99 where I started as a assistant manager within the
 23 Financial Services Division and eventually became a director and
 24 then became treasurer and CFO in 2021.
 25 Q Thank you. There should be a binder with documents in

King -by Defendant - Cross/Mr. Correll Page 3463

1 THE COURT: Do you want to turn the screen off.
 2 (Witness excused.)
 3 THE COURT: So members of the jury, we started the
 4 second -- this session late. We would normally have a break
 5 if we started at 2:15.
 6 Are you okay pushing through? If anybody is
 7 uncomfortable -- so we can either take a break now or we are
 8 going to go all the way to the end. So if you need a break,
 9 then I'll let you have that. Do you want a short break?
 10 Okay. Restroom break. And then we will get the
 11 next witness.
 12 THE COURT OFFICER: All rise. Jury exiting.
 13 THE COURT: Once whoever needs to do that is done,
 14 just let the court officer know and we can restart. Not to
 15 rush anyone.
 16 (Whereupon, at this time the jury exits
 17 the courtroom.)
 18 (Whereupon at this time there was a recess taken.)
 19 THE COURT OFFICER: All rise. Jury entering.
 20 (Whereupon, at this time the jury entered the
 21 courtroom.)
 22 THE COURT: Thank you. Please have a seat. Okay.
 23 Next witness for the defense.
 24 MS. ROGERS: The NRA calls Sonya Rowling.
 25 THE COURT: She was previously sworn. Do you want

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1 front of you.
 2 A Yes.
 3 Q If you can please turn to Tab 37, and Mr. Stein, if we
 4 can please display for the Court and counsel Tab 37 which is
 5 DX1-0547.
 6 Ms. Rowling, what is DX1-0547?
 7 A This is the compliance seminar that is provided Board
 8 of Directors by Mr. Frazer. It's the slides associated with
 9 that.
 10 Q When was it provided?
 11 A September of 2023.
 12 Q Did you attend the presentation?
 13 A Yes.
 14 MS. EISENBERG: Your Honor, at this time the NRA
 15 moves to admit DX 1-0547 in evidence.
 16 MR. THOMPSON: No.
 17 THE COURT: It's admitted.
 18 Q If we can please scroll down to Page 6 of the exhibit
 19 and publish it to the jury.
 20 What is the COSO Framework?
 21 A COSO Framework is a guideline for internal controls for
 22 an organization. It creates a -- provides for a 360-degree
 23 review of compliance. It gives the organization a means to
 24 identify risk areas and understand risks so that the
 25 organization can then prioritize risk along and group and link

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1 risk with strategy and operational performance of the
2 organization.
3 Q It looks a little like a Rubik's cube; right.
4 Can you walk through the various sides of the cube and
5 what they refer to?
6 A Sure. The top layer where it discusses operations
7 reporting and compliance, those areas represent your internal
8 control structure.
9 You want your internal control structure to enhance
10 your operations to insure that you have efficiencies and
11 effectiveness in working through and fulfilling the mission of
12 the organization.
13 The reporting side is to -- you want your internal
14 controls to report that your external reporting is accurate.
15 And you want your internal controls to also insure compliance
16 with laws and regulations.
17 Q Let's look at the panel on the right, the one that
18 refers to entity level division, etc.
19 What are those references to?
20 A So that references basically all of your compliance,
21 and your internal controls impacts every level of the
22 organization from the entity level all the way down to say a
23 staff position, an entry-level staff position, and everyone is
24 actively involved. And then across the front, it starts with
25 control environment.

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1 Control environment is your culture of your
2 organization, your tone at the top.
3 And moving down, risk assessment is prioritizing risk,
4 setting and understanding what your risks are as an
5 organization.
6 The control activities takes the risks and makes sure
7 that you have policies and procedures in place to mitigate where
8 those risks are.
9 Your information and communication then makes sure you
10 disseminate this information across the Board.
11 So our compliance seminars are a prime example of that.
12 And then monitoring activities, you really think of that as kind
13 of an independent review. So external auditors, internal
14 auditors. And then even internal kind of reviews can be done in
15 the treasurer's office or the Office of General Counsel.
16 Q The most important question. What does "COSO" stand
17 for?
18 A COSO is the Committee of Sponsoring Organizations. It
19 was a commission of the Treadway Commission, and this was just a
20 product of that commission.
21 Q And to what extent, if any, do you as treasurer and CFO
22 of the NRA use the COSO Framework in assisting the NRA comply
23 with the various legal regulatory and policy requirements?
24 A Well, it's a daily operation.
25 Compliance is a part of everything that we do, and it's

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1 pretty much part of everyday life.
2 Q What is "Tone at the top?"
3 A Tone at the top refers to as I said culture. It's do
4 you have the support from the very top of the organization to --
5 and to basically set that tone for the rest of the employees.
6 So all the employees understand the importance of compliance.
7 Q Who is the interim executive vice president of the NRA?
8 A Andrew Arulanandam.
9 Q Has he worked at the NRA for a while?
10 A Yes.
11 Q And during your time with the organization, have you
12 formed an opinion as to his respect in regard for the NRA's
13 internal policies?
14 MR. THOMPSON: Objection. Leading.
15 THE COURT: It's not leading. Overruled.
16 A In the 20 years that I have a worked with Mr.
17 Arulanandam, he has been nothing but forthright and has never
18 shown any sort of noncompliance-type behavior.
19 Q As far as you know, never sought reimbursement for
20 expenses without providing backup? Would that be fair?
21 A Yes, as far as I know.
22 Q And in terms of tone at the top and sort of the CFO
23 treasurer level, how, if at all, did the tone at the top of the
24 NRA change when Mr. Spray replaced Mr. Phillips in 2018?
25 A Mr. Spray, when he came on board, his -- you know, his

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1 first goal was obviously to try to understand the organization.
2 We were holding meetings. That's with myself, my colleagues,
3 Mr. Spray.
4 We didn't have those under Mr. Phillips. We were
5 sharing information, and he -- his behavior was one of we want
6 to get this right. We want to look at expenses. We want to see
7 if everything is for lack of better words "aboveboard," and he
8 really focussed in those areas and provided this kind of a
9 catalyst for the sharing of information amongst each other that
10 identified some areas of concern.
11 Q And in terms of potential override of internal
12 controls, how did the atmosphere change with Mr. Spray's arrival
13 and Mr. Phillips' departure?
14 A Mr. Spray was -- was not supportive of overrides. I do
15 believe there was one he participated in, but for the most part,
16 not very supportive of our internal control policies and
17 procedures.
18 Q And Ms. Rowling, do you see yourself as a vital
19 contributor to tone at the top?
20 A Absolutely.
21 Q What's your policy with respect to internal overrides
22 or internal policies?
23 A There are no internal overrides.
24 Q Let's talk a little bit about Mr. Frazer.
25 He is the secretary an general counsel of the NRA;

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1 right?

2 A That's correct.

3 Q Again, how, if at all, would you say he contributes to

4 tone at the top and the NRA's efforts to comply with laws,

5 regulations and policies?

6 A Mr. Frazer is an integral part of that process. We

7 collaborate all the time regarding controls and compliance, and

8 he faces any issue head on and always wants to do the right

9 thing.

10 Q When Mr. Powell left the organization or was asked to

11 leave the organization, how, if at all, did the control

12 environment and tone at the top change?

13 A It improved the tone at the top.

14 Mr. Powell had some control violations himself. So him

15 leaving really emphasized that desire for the proper tone at the

16 top.

17 Q How did Mr. Mensinger's arrival as director of

18 compliance effect the NRA's tone at the top?

19 A Well, that further enhanced that tone at the top as

20 a -- letting the organization and all the employees know the

21 importance of compliance effort.

22 Q What, if any, role does the Audit Committee of the

23 NRA's Board play in setting appropriate tone at the top?

24 A They are -- they are a compliance partner really with

25 myself and other members of the staff in that they are -- their

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1 efforts with regards to whistle blowing and reviewing

2 related-party transactions as well as -- they actually oversee

3 and hire the external auditors. And yeah, they are just a

4 complete partner with the -- with the organization.

5 Q Is it fair to say that there might be other things that

6 they do? Those are just some of the ones that come to mind at

7 the moment?

8 A Yes.

9 Q If you would be so kind as to please turn to the first

10 tab in your binder.

11 MS. EISENBERG: Mr. Stein, could you please advise

12 me of the next available DX-1. Actually, I have it.

13 Q I am showing the witness and the Court but not the jury

14 for the moment what's been marked as DX 1-0800 for

15 identification.

16 Do you have it in front of you?

17 A I have it on my binder.

18 Q Tab one. Okay. I'll wait.

19 While Mr. Stein is pulling it up, and thank you so much

20 for doing that, can you tell us in general terms whether or not

21 the NRA has a risk assessment?

22 A Yes, the NRA has a risk assessment.

23 Q What is the purpose of a risk assessment in the context

24 of the COSO Framework?

25 A The risk assessment gives the organization an

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1 opportunity to identify risk, prioritize resources associated

2 with those risks. It also really makes you sit down and in

3 thinking of risk, map those controls to insure that your risks

4 are minimized.

5 Q Is it the organization's practice to have a risk

6 assessment?

7 A Yes.

8 Q Did you recently participate in an update to the risk

9 assessment?

10 A I did. Our original risk assessment focused from a

11 loss exposure and insurance analysis perspective and that had

12 already been provided to our auditors, but I enhanced this to

13 focus in areas of financial and governance in more detail.

14 Q When did you do that?

15 A 2023.

16 Q Who, if anyone, else participated in the preparation of

17 the most recent risk assessment?

18 A Mr. Frazer did.

19 MS. EISENBERG: Mr. Stein, do we have the exhibit?

20 Your Honor, at this time I move to admit in

21 evidence this exhibit.

22 THE COURT: Is this the same document?

23 I mean, it's a different tab. Just make sure I

24 have the right one.

25 Can you do the first tab?

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1 MS. EISENBERG: And also the middle one. That's

2 called "Risk Assessment."

3 THE COURT: Oh, yeah. It just doesn't look like

4 the one that's in the book. I can't figure out which page

5 is what, but okay.

6 Are there any objections?

7 MR. THOMPSON: Yes, your Honor. Relevance, hearsay

8 and then also attempts to offer a lay expert opinion

9 particularly as to the risk assessment tab.

10 MS. EISENBERG: Your Honor, this is highly relevant

11 to the defense.

12 The NYAG defense of the case is the NRA has done

13 nothing to insure compliance.

14 THE COURT: Hang on. This is the actual document

15 used in the business now; is that right?

16 MS. EISENBERG: And that's the one that Ms. Rowling

17 prepared with input from Mr. Frazer.

18 THE COURT: And this is prepared and kept in the

19 ordinary course of business?

20 THE WITNESS: Yes.

21 THE COURT: It's admitted.

22 MR. THOMPSON: Just to note for the record that we

23 also object as to have been a late-produced document.

24 THE COURT: Understood. Overruled.

25 It was prepared in 2023; right.

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1 MS. EISENBERG: Yes, your Honor, and we offered an
 2 opportunity for the further deposition.
 3 THE COURT: Fine.
 4 MS. EISENBERG: Let's talk a little bit about some
 5 of the NRA's control activities, and we can take the exhibit
 6 down, Mr. Stein. Thank you.
 7 What is C-Track.
 8 A C-Track is a program that we -- we have used or we use
 9 to prepare our 990 which is our information return for the IRS.
 10 It is kind of -- you can think of it like a Turbo Tax
 11 for non-profits. It helps you to answer the questions. It then
 12 prompts you with what schedules you also need to fill out
 13 associated with those.
 14 As you've seen before this 990 is 100 pages long.
 15 Having that kind of checks and balances provides a good control.
 16 Q What do you mean by checks and balances?
 17 A Where the form itself will give you an error if you
 18 have not filled out based on your answers in certain areas.
 19 Q Does the NRA use C-Track?
 20 A Yes, we do.
 21 Q Has it used C-Track for several years now?
 22 A Yes. Since 2019.
 23 Q And to the extent you view it as part of the NRA's
 24 control activities, how so?
 25 A Well, it provides that good checks and balances. It's

Rowling - by Defendant - Direct/Ms. Eisenberg Page 3475

1 part of our process of creating the -- the 990 as well as it --
 2 it -- it's really part of our control environment or control
 3 processes.
 4 Q Let's talk about the accounts payable software that's
 5 in use at the NRA.
 6 What is PN3 for Payables?
 7 A PN3 is a software where all of our invoices are input
 8 electronically into the software. They are routed for
 9 approvals.
 10 Embedded within the software are control check points.
 11 So if an invoice is -- and those control check points tie
 12 directly to our policies.
 13 So if an invoice is over \$50,000, it requires two
 14 signatures of certain individuals. If I am the only person that
 15 approves it, it will not route. It will tell me there is an
 16 error. It has to go to the next person, and I have to select
 17 that person -- only certain individuals then are able -- I'm
 18 only able to select certain individuals as well in that approval
 19 process.
 20 Q Do you consider the NRA's choice to use the software as
 21 part and parcel of its control activities under the COSO
 22 Framework?
 23 A Yes.
 24 Q Let's talk a little bit about management reporting.
 25 What reports do managers at the NRA receive with regard

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1 to money going in and out within their department?
 2 A So monthly managers will receive electronically
 3 accounting reports of all their activities within their
 4 divisions, but the reports also provide -- drill down capability
 5 into the details. So not only do you see information on summary
 6 level, you see the information at the invoice level, for
 7 example, of an expense so that they can adequately track and
 8 manage their budgets.
 9 Q Has the NRA recently amended any of its internal
 10 policies?
 11 A Yes. The travel policy has been amended. The
 12 procedures that have been amended to travel procedures were
 13 added. We have added purchasing procedures.
 14 Basically, the procedure -- the policy is part of what
 15 the Board implements. Procedures help define for the users more
 16 detailed explanation to enhance those policies.
 17 Q I'd like to talk to you about enforcement of policies
 18 at the NRA.
 19 If a late expense report is submitted, what happens?
 20 A If an expense report is submitted after 60 days, it
 21 will be denied and not paid.
 22 Q What if someone submits an expense report but it is
 23 missing support to show the business purpose of the expense or
 24 to provide information about the nature of the expense?
 25 A Those will be rejected, sent back to the individual who

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1 submitted the expense report, and they either provide additional
 2 information we have requested or the -- or they have to remove
 3 the expense -- that portion from the expense report.
 4 Q What is the NRA's procedure for vendor contracts as it
 5 relates to the NRA's purchasing policy?
 6 A Vendor contracts must comply with the policy at this
 7 point. The policies require certain signatures if the
 8 contract's over a certain amount.
 9 So the whole goal is to insure that the vendor
 10 contracts follow the policy.
 11 Q Does the NRA expect its vendors to comply with the
 12 NRA's requirement with regard to those matters as well?
 13 A Yes.
 14 Q What would happen to a vendor if it didn't comply?
 15 A If they -- if they already had a contract and were
 16 refusing to submit support for an invoice that we have asked
 17 for, we would terminate the contract.
 18 Q And in fact, that's happened in the past; would that be
 19 fair?
 20 A Yes.
 21 Q What is the NRA's policy and procedure with regard to
 22 related-party transactions and other conflicts of interest?
 23 A So related-party transactions are -- you know, you want
 24 to identify them. If they exist, they would go before the Audit
 25 Committee, would need proper disclosure into financial statement

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1 or otherwise, if it's necessary. So the whole idea is to
 2 identify and evaluate and disclose.
 3 Q What about the whistleblower policy?
 4 Has the NRA's policy and procedure with respect to
 5 ensuring that whistleblower protections are widely disseminated
 6 and known by its staff employees, officers and directors?
 7 A Our whistle blowing policy is on our NRA website. It's
 8 on our intranet. It's on the timekeeping system. It's a log-in
 9 type system, and it is readily available to anyone to view.
 10 Q What is the NRA's policy and procedure with regard for
 11 identifying and recognizing potential private inurement?
 12 A Obviously, private inurement, you would try to
 13 basically stop from happening upfront. So you would identify it
 14 in a process of accounts payable process, whatever. You would
 15 identify it upfront, not pay it. If it's identified after the
 16 fact, you are going to evaluate it and seek reimbursement and
 17 disclose, if necessary.
 18 Q To the extent the NRA uses a corporate credit card, how
 19 would you compare the extent of such use today versus let's say
 20 in 2018?
 21 A So the use today is for very limited use.
 22 So our travel agency has a card where I log into a
 23 system. If I'm going to book my flight, it automatically
 24 charges that card.
 25 We have a card for general counsel's office when they

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1 have to submit charitable filings, their fees. These type of
 2 things, you have to pay on-line, so there is a card for that.
 3 And there is a card for our IT Department. Same types of
 4 things.
 5 They have areas where you can only pay by credit card.
 6 And then one other area that we have a card in is if we are
 7 going to have an event and we're room blocking hotel space like
 8 at our annual meeting, credit cards are used to secure that room
 9 block.
 10 In the past, not every employee, but a lot -- over 100
 11 employees had cards. It was a much bigger, bigger piece, and we
 12 just have eliminated that use.
 13 (Continued on the following page.)
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S. Rowling - by Defendants - Direct/Ms. Eisenberg Page 3480

1 Q That is no longer the case?
 2 A That's correct.
 3 Q Let's talk a little bit about information, which is
 4 part of the COSO cube. Can you please remind us how information
 5 sharing is important in that context?
 6 A Sure. I mean, one of the biggest things you want to
 7 make sure you do is share these policies and procedures with the
 8 staff so they know, and not just staff but board members and
 9 part of that effort is the compliance training.
 10 Staff also knows our compliance efforts, are policies
 11 are in the Employee Handbook; but these compliance trainings
 12 actually kind of reinforce all of the compliance efforts.
 13 Q Let's take a look at Tab 27, which is PX 2567, which is
 14 already in evidence. Do you recognize this exhibit,
 15 Ms. Rowling?
 16 A Yes.
 17 Q What is it?
 18 A This is the compliance seminar front page of the deck
 19 that was provided at the seminar in 2018.
 20 Q And to what degree, if any, do you find this deck to be
 21 informative?
 22 A They're very informative. They provide the users or
 23 attendees at these events with not only the policies, but
 24 examples and kind of a Q and A of what do you think and to be
 25 able to provide kind of a thought provoking interactive

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1 discussion and really sets the framework for -- for all of the
 2 compliance efforts.
 3 Q Does the NRA make efforts to track attendance at these
 4 seminars?
 5 A Yes.
 6 Q You could please turn to Tab 26, which is marked for
 7 identification as DX1-0243.
 8 What is this exhibit?
 9 A That is a sign-in sheet for the compliance training on
 10 July of 2018.
 11 Q Does your name appear on the sign-in sheet?
 12 A Yes, it does.
 13 Q You attended this seminar?
 14 A Yes, I did.
 15 MS. EISENBERG: Your Honor, at this time I move to
 16 admit DX1-0243 in evidence.
 17 THE COURT: It is admitted.
 18 (Whereupon, at this time Defendants' Exhibit
 19 DX1-0243 was admitted and received into evidence.)
 20 Q Ms. Rowling, let's take a look at Tab 29. This exhibit
 21 is not yet in evidence. It's been identified as DX1-0133.
 22 What is Tab 29?
 23 A It is the compliance training seminar slides from 2019
 24 February.
 25 Q Did you attend the seminar?

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1 A Yes, I did.

2 MS. EISENBERG: Your Honor, at this time I move

3 into evidence DX1-0133.

4 MR. THOMPSON: No objection.

5 THE COURT: It's admitted.

6 (Whereupon, at this time Defendants' Exhibit

7 DX1-0133 was admitted and received into evidence.)

8 Q Let's take a look at Tab 28, which is DX1-0242 for

9 identification. What is it?

10 A This is a sign-in sheet for the compliance meeting in

11 February of 2019.

12 Q Does your name appear on it?

13 A Yes, it does.

14 MS. EISENBERG: Your Honor, at this time the NRA

15 moves to admit DX1-0242 in evidence.

16 MR. THOMPSON: No objection.

17 THE COURT: It is admitted.

18 (Whereupon, at this time Defendants' Exhibit

19 DX1-0242 was admitted and received into evidence.)

20 Q Let's take a look at Tab 33, DX1-0496 for

21 identification.

22 What is it?

23 A This is the compliance seminar slides relating to the

24 seminar given in December of 2021.

25 Q Did you attend the seminar?

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1 A Yes, I did.

2 MS. EISENBERG: Your Honor, at this point NRA moves

3 to admit DX1-0496 in evidence.

4 MR. THOMPSON: No objection.

5 THE COURT: It is admitted.

6 (Whereupon, at this time Defendants' Exhibit

7 DX1-0496 was admitted and received into evidence.)

8 Q Let's take a look at Tab 32, DX1-0439 for

9 identification. What is it?

10 A It is the sign-in sheet for the December 2021

11 compliance training.

12 Q Does your name appear on it?

13 A Yes, it does.

14 MS. EISENBERG: Your Honor, at this point the NRA

15 moves to admit DX1-0439 in evidence.

16 MR. THOMPSON: No objection.

17 THE COURT: It is admitted.

18 (Whereupon, at this time Defendants' Exhibit

19 DX1-0439 was admitted and received into evidence.)

20 Q Let's take a look at Tab 36 in your binder, which is

21 DX1-0516 for identification.

22 What is it?

23 A Compliance training from September of 2022.

24 Q How if at all does -- I'm sorry -- did you attend this

25 seminar?

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1 A Yes, I did.

2 MS. EISENBERG: Your Honor, at this point the NRA

3 moves to admit in evidence DX1-0516.

4 MR. THOMPSON: No objection.

5 THE COURT: It is admitted.

6 Q How, if at all, does the front page of this deck or

7 PowerPoint presentation differ from the ones we looked at

8 before?

9 A The ones before had indicated they were for upper

10 management. That designation was removed and currently all

11 employees are required to attend.

12 Q What if you work at the Whittington Center in New

13 Mexico, are you supposed to travel to the headquarters to be a

14 part of the training or do they make arrangements to train folks

15 who are not in Virginia?

16 A They make arrangements in different ways. I

17 know arrangements have been made for remote sessions as well as

18 individuals traveling to actually give the seminar.

19 Q Who was travelled in order to give these seminars?

20 A Mr. Frazer traveled to give the seminar to our field

21 staff and Mr. Mensinger traveled to Whittington Center.

22 Q And are these -- I'm sorry. Is the current version of

23 the slide deck available online to the NRA's employees?

24 A Yes, it is.

25 Q Let's take a look at Tab 37. This has already been

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1 admitted in evidence as DX1-0547 remind us, please, what this

2 exhibit is?

3 A This is the compliance training for the board of

4 directors given September 2023.

5 Q Please describe a little about the training that you

6 attended for the board.

7 A Mr. Frazer gave this training to the board, and he

8 basically goes over governance requirements and the requirements

9 that are basically impact the board, themselves.

10 Q Understood. Moving on, let's take a look at Tabs 39

11 and 40, which are two images not yet in evidence, identified as

12 DX1-1068 and DX1-1069.

13 What are they?

14 A These are photographs taken at a compliance event

15 during compliance week in 2023.

16 Q Do you consider that event to be part of the

17 informational effort under the COSO framework?

18 A Yes.

19 Q Please describe that event.

20 A That event was held as an introduction and a -- an

21 introduction of our new managing director of compliance, as well

22 as to reinforce our compliance efforts within the organization.

23 Q Did you attend this event?

24 A I did.

25 MS. EISENBERG: Your Honor, at this point the NRA

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1 moves to admit DX1-1068 as well as 1069 in evidence.
 2 THE COURT: I thought -- wait, which tabs were you
 3 looking at?
 4 MS. EISENBERG: 39 and 40, 1068 and 1069.
 5 THE COURT: Okay, it is admitted.
 6 (Whereupon, at this time Defendants' Exhibits
 7 DX1-1068 and DX1-1069 was admitted and received into
 8 evidence.)
 9 Q Ms. Rowling, do you recognize some of the individuals
 10 depicted in these pictures?
 11 A Yes.
 12 Q Whom do you recognize?
 13 A Mr. LaPierre in the DX1-1068 and I don't know if I can
 14 see him in 69; but 1068 he's holding the microphone. Bob
 15 Mensinger is also standing in the front.
 16 Q Let's take a look at Tab 38 for identification,
 17 DX1-1067. What is it?
 18 A These are the slides that were presented at that
 19 compliance week seminar.
 20 Q And, again, you attended the seminar and saw these
 21 slides being used during that event?
 22 A Yes.
 23 MS. EISENBERG: Your Honor, move in evidence
 24 DX1-1067.
 25 MR. THOMPSON: No objection.

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1 A Monitoring activities provide the efforts of an
 2 independent kind of review of activities. Think of the external
 3 audit as a prime example of monitoring activity.
 4 Q Why do you need monitoring activity if you have
 5 thousands of procedures in place that say all the right things?
 6 A Because if you identify a risk, even if you have
 7 controls in place, you want to make sure and test those controls
 8 to -- to give you further confidence that everything that
 9 you're doing is right, and those monitoring controls provide
 10 that.
 11 Q Understood. And does the NRA hire external auditors?
 12 A Yes.
 13 Q What is the main thing that the external auditors is
 14 hired to do?
 15 A Well, they audit the financial statements.
 16 Q And what does it mean to audit the financial
 17 statements?
 18 A They -- they perform tests of our internal controls and
 19 then they give an opinion of whether the financial statements
 20 present fairly the -- in all material respects the financial
 21 position of the organization.
 22 Q Did Aronson perform special procedures in the last few
 23 years?
 24 A Yes, they did.
 25 Q For what purpose as far as you understand?

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1 THE COURT: Admitted.
 2 (Whereupon, at this time Defendants' Exhibit
 3 DX1-1067 was admitted and received into evidence.)
 4 Q Let's take a look at Tab 41 for identification,
 5 DX1-1070. What is it?
 6 A This is a picture of a banner that has -- was created
 7 for compliance week and just shows a commitment to integrity
 8 that is signed by employees.
 9 Q And did you observe this banner being used and signed
 10 during that event?
 11 A Yes, I did.
 12 MS. EISENBERG: Your Honor, at this point the NRA
 13 moves to admit DX1-1070 in evidence.
 14 MR. THOMPSON: No objection.
 15 THE COURT: It is admitted.
 16 (Whereupon, at this time Defendants' Exhibit
 17 DX1-1070 was admitted and received into evidence.)
 18 MS. EISENBERG: Let's display it for the jury.
 19 (Displayed)
 20 Q I'd like to switch gears a little bit and talk about
 21 monitoring activities. Did you say monitoring activities are
 22 sort of the COSO framework in some way?
 23 A Yes.
 24 Q How in your view are monitoring activities important in
 25 terms of maintaining compliance?

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1 A They prepared special procedures relating to actually
 2 the allegations from the New York AG. They wanted to ensure
 3 themselves that the allegations that were presented in the past
 4 were not still continuing.
 5 Q You already testified about Bob Mensinger being the
 6 compliance director. What about an internal auditor, does the
 7 NRA have anyone who performs the function of internal audit?
 8 A Yes. Mr. Mensinger has hired an internal auditor.
 9 Q Let's talk about the segregation of duties. Is that a
 10 concept that you've heard about?
 11 A Yes.
 12 Q Why is that important when you talk about compliance?
 13 A In a monitoring aspect, especially it is important
 14 given -- so there are processes of the organization that I'm a
 15 part of, but I shouldn't be the one to test that process because
 16 I'm a part of it.
 17 So, the separation of duties gives you that comfort
 18 that an independent source is still doing that monitoring or
 19 that testing.
 20 Q Understood. Switching gears a little bit again. If
 21 you can please turn to Tab 12, which is DX1-0837 for
 22 identification.
 23 What is it?
 24 A This is a memo that I wrote regarding my review of
 25 excess benefit transactions, potential excess benefit

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1 transactions relating to Mr. LaPierre.
 2 Q Who performed the review that's described in this
 3 memo?
 4 A I did.
 5 Q And if you can also flip to Tabs 13 through 17, and
 6 tell us what they are. For identification these are DX1-0835,
 7 0834, 0838, 0839, and 0836.
 8 Would you mind telling us what those tabs are, 13
 9 through 17?
 10 A They are attachments to the memo that I wrote that
 11 detail out the testing procedures that I took.
 12 Q To the extent the memo reaches certain conclusions, who
 13 is it that reached these conclusions?
 14 A I did.
 15 Q And who drafted this memo?
 16 A I did.
 17 Q And did anyone review it before it was finalized?
 18 A Yes, I reviewed it with you.
 19 Q Did you and I review it for clarity?
 20 A Yes, we reviewed this for clarity. There was no
 21 changes to the conclusions. Those were all -- those were all
 22 mine.
 23 Q And is it your practice as the CFO and treasurer of the
 24 organization to prepare such analyses and to memorialize them?
 25 MR. THOMPSON: Leading, your Honor.

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1 THE COURT: Overruled.
 2 Q You said yes?
 3 A Yes.
 4 Q And is it also the practice of the organization as a
 5 whole to prepare and memorialize such analyses when the need for
 6 them arises?
 7 A Yes.
 8 Q Please give us some examples of similar analyses that
 9 you have done?
 10 A So, I've done analyses like this relating to a review
 11 of expense reports that were submitted late by Mr. LaPierre, Mr.
 12 Coy; and I did that review and memorialized it in the same
 13 format.
 14 I reviewed and memorialized Josh Powell's expenses in
 15 the same format.
 16 MS. EISENBERG: Understood. Your Honor, at this
 17 point the NRA moves into evidence DX1-0837 as well as all
 18 the attachments.
 19 MR. THOMPSON: Renewing our business records
 20 argument, your Honor. She reviewed this with counsel, which
 21 goes to the litigation of this document and preserving our
 22 other objections.
 23 THE COURT: Well, we discussed this. I'm going to
 24 admit it.
 25 I'm just going to advise the jury that this is one

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1 of knows out-of-court statements that has a bit of a story
 2 to how can you use it.
 3 The analysis is Ms. Rowling's and it is being
 4 admitted to show the process that she went through, but
 5 there are a number of statements in here that reflect
 6 conversations with others where it has recitations of facts
 7 based upon what she was -- who she was talking to.
 8 Those are all in here just for the purpose of her
 9 describing her process, but that is not evidence that you
 10 can use for the truths of the matter asserted -- to use that
 11 phrase again. This is hearsay. This is things that were
 12 told to Ms. Rowling and that she then transcribed.
 13 So, you should not use it for the proof of the
 14 underlying facts stated by other people in this memo. The
 15 main source of your evidence will be Ms. Rowling's personal
 16 testimony about this process, and this document will just be
 17 evidence that the process took place and contemporaneous
 18 evidence of her notes, but only to that extent.
 19 So, any proof of the underlying facts here will
 20 have to come through other evidence. Okay.
 21 MS. EISENBERG: Thank you, your Honor.
 22 Let's display DX1-0837 for the jury. And for the
 23 record, the attachments that I understand your Honor to have
 24 admitted are DX1-0835, 0834, 0838, 0839 and 0836.
 25 THE COURT: Yeah, I didn't specifically make my

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1 comments to the attachments and we discussed those as well.
 2 I'm admitting those.
 3 Those, also, have a number of things that come from
 4 third parties or other documents that -- that these are
 5 documents she either looked at or used. They are not
 6 admitted for the truth of the matters asserted in them.
 7 This is really just to show the process. Okay.
 8 MS. EISENBERG: Thank you, your Honor.
 9 Q Ms. Rowling, directing your attention to the first page
 10 of DX1-0837 which is the top 12 of your binder. Specifically
 11 the paragraph that starts with the words "The NRA has."
 12 Do you have that in front of you?
 13 A Yes.
 14 Q And if can you please sort of help us understand what
 15 the purpose of your writing this paragraph was and what you
 16 intended to communicate by these words and sentences?
 17 A It really just -- you know, we identified excess
 18 benefits or potential excess benefits that were engaged in 2019
 19 or prior years. Those, those were reported on the IRS Form 990
 20 for 2019 through 2022, and another transaction which was going
 21 to be -- is going to be recorded on a 2023 990.
 22 They relate to Mr. LaPierre and he -- he has reported
 23 those and then reimbursed those transactions.
 24 Q Thank you. Directing your attention to the sentence
 25 that starts with the word "To ensure." Do you see that?

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1 A Yes.

2 Q What does it say? Would you please read that for us.

3 A "To ensure the NRA has properly reported and be

4 reimbursed for those transactions. I have performed a review of

5 these transactions."

6 Q And does the sentence fairly reflect the purpose for

7 which you conducted this review?

8 A Yes.

9 Q Let's take a look at the second to third page of this

10 exhibit under the heading that's numbered "2".

11 Directing your attention to the sentence next to number

12 2 where it states, "My review of these."

13 Do you see that?

14 A Yes.

15 Q And fair to say that that sentence states that your

16 review of these excess benefit transactions and potential excess

17 benefit transactions included the following list?

18 A Yes.

19 Q And did you go on to list the specific types of

20 categories that you reviewed?

21 A Yes.

22 Q Please tell us what they are by reference to pages 2

23 and 3 of this exhibit.

24 A Airfare, charter airfare, gifts, cosmetics, family

25 lodging, personal lodging and cellphone-related expenses, black

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1 car service, wardrobe and leased vehicles was mentioned although

2 no additional testing was done there.

3 Q Does your memo reflect your findings?

4 A Yes, it does.

5 Q Again, who if anyone other than yourself participated

6 in the formulation of your findings?

7 A No one.

8 Q What were your findings? If you can please tell us by

9 reference to the memo.

10 A I found that there were no errors, inconsistencies

11 within the testing of charter travel.

12 I did find two additional gifts within his expense

13 reports that were not reported. They were of minimal dollar

14 amount and given there were -- was an overpayment relating to

15 personal and black car usage, he's actually was still -- has an

16 overpaid position.

17 I did not note any errors relating to the calculations

18 for cosmetics or family lodging.

19 I did find an error in the wardrobe calculation where

20 the wrong applicable federal rate was used. Because of the

21 length of time these transactions occurred, the rate should have

22 been a long-term rate, and so a recalculation was done and

23 Mr. LaPierre provided an additional payment.

24 Q And by "the rate," are you referring to the interest

25 rate?

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1 A The interest rate that was charged, yes.

2 Q Was the interest rate calculation compounded?

3 A Yes.

4 Q And what does that mean?

5 A Compounding means you pay interest on interest. So,

6 when it happens over multiple years, you're going to pay your

7 principal plus your interest and then you're going to continue

8 to pay interest on that, on the total as everyday occurs.

9 Q How was it done here? Was it compounded?

10 A It was compounded.

11 Q I'm sorry, I think you already testified to that.

12 Let's go back to section 2, and I'd like to draw your

13 attention to references within section 2 to various attachments;

14 for example, at the end of subparagraph A and B and so on.

15 Fair to say that these references are to the

16 attachments that are included in your binders as Tabs 13 through

17 17?

18 A Yes.

19 Q We won't look at all of them, but let's take a look at

20 Attachment A, which is in evidence and as DX1-0835, and it

21 appears in Tab 13 of your binder.

22 Let's take a look at the first page. What does it say

23 in the top-right corner?

24 A Attachment A.

25 Q Please identify for us the handwritten notes on this

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1 page?

2 A So, the handwritten notes reference that I was testing

3 the -- what was reported on the 2019 990 within this group of

4 testing.

5 The checkmark means I tied out what was on the Excel

6 spreadsheet to an underlying invoice, and that tie-out includes

7 verifying the dates, the amounts and who was actually on the

8 flights.

9 The other checkmark with the slash through it means

10 that I further tied out the trip, itself, to expenses that

11 Mr. LaPierre had submitted and that further gave me evidence of

12 the business purpose. Because the expense report also had the

13 business purpose on there and it validated that the trip was

14 actually taken.

15 The T represents a trace to or matching to the IRS

16 website for the federal -- for the applicable federal rate.

17 That's an interest rate, and the R represents that I

18 recalculated that interest calculation and for the final

19 payment.

20 MS. EISENBERG: Thank you. Excuse me for just one

21 moment.

22 (Brief pause)

23 Q Would you be so kind as to please tell us the or kind

24 of walk us through the rest of this exhibit, which is Attachment

25 A, DX1-0835. What are some of the subsequent pages that appear

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1 as part of that attachment?

2 A The next pages are representative of what was disclosed

3 in the 990. Specifically, the page following the one on the

4 screen references Mr. LaPierre's excess benefit transactions.

5 Q And there's a checkmark that appears in the third page

6 on the left side of the page at the top. Who made that

7 checkmark?

8 A I did.

9 Q And what was that in reference to?

10 A That that was what I was testing in the next several

11 pages.

12 Q And would you mind reading for us the language that

13 appears in all caps starting with the words "From 2015" up

14 through the penultimate sentence.

15 A "From 2015 to 2019, the NRA estimates it paid on behalf

16 of Mr. LaPierre directly or indirectly travel expenses for

17 Mr. LaPierre in the aggregate amount of 299,000 and some change.

18 The NRA has determined to treat the payments as automatic excess

19 benefits under treasury regulations as described here.

20 Mr. LaPierre has repaid this excess benefit to the National

21 Rifle Association plus interest, and, therefore, the excess

22 benefit has been corrected."

23 Q And how does this passage relate to the memo that you

24 prepared? What's the relationship between the payments that are

25 described that you just read and the memo and the analysis that

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1 you prepared?

2 A My analysis was of those, the calculations that were

3 presented in that.

4 Q And moving on to the next page. Can you please tell us

5 what that appears to be?

6 MS. EISENBERG: Let's go to page 4 and 5 and

7 display them in landscape format, if that's possible.

8 (Displayed)

9 Q What appears on page 4, Ms. Rowling?

10 A These are the transactions that were identified by

11 Mr. LaPierre.

12 Q Who provided you with this spreadsheet?

13 A Mr. LaPierre did.

14 Q It appears there are check marks on the left margin of

15 the page. Do you see those?

16 A Yes.

17 Q Who made them?

18 A I did.

19 Q And what do they denote?

20 A They denote that I -- I tied out the underlying

21 information except for the business purpose to an actual

22 invoice.

23 Q Let's take a look at page 5. Here, we see two types of

24 checkmarks on the left side. Can you please tell us what that

25 means?

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1 A Sure. The regular checkmark, once again, is the

2 tie-out to the actual invoice, the matching to that invoice.

3 The checkmark with the slash is the tie-out to an

4 actual expense report justifying the trip.

5 Q Let's take a look at the next page, which is page 7 and

6 focus on the right side of the page.

7 I see a reference or I see a capital T and capital R in

8 handwritten note. Who made those?

9 A I did.

10 THE COURT: Do you mean page 7 or page 6? I think

11 they have page 6 up.

12 MS. EISENBERG: I'm sorry, your Honor, I couldn't

13 hear you.

14 THE COURT: They have page 6 up on the screen. Do

15 you mean page 6 or 7?

16 Now 7 is on the screen.

17 MS. EISENBERG: Thank you very much.

18 Q Directing your attention to the right side of the page,

19 I see a capital T and capital R in blue ink.

20 Do you see those?

21 A Yes.

22 Q Was that you who wrote that?

23 A Yes.

24 Q What does the T mean?

25 A The T means that I tied that interest rate, the

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1 1.93 percent to the IRS website.

2 Q And what does the R mean?

3 A That I recalculated the interest calculation.

4 Q And to the extent there are other check marks of the

5 type that you just discussed, are the Ts and Rs that appear on

6 this exhibit, do they all denote effectively what you just

7 described?

8 A Yes.

9 Q Let's take a look at exhibit -- I'm sorry. Let's take

10 a look at Tab 18, which is DX1-0855, for identification.

11 Please tell us what it is?

12 A This is a memo that I wrote describing the review

13 process of Mr. Schropp's expense report submitted in relation to

14 expenses that were paid through Ackerman McQueen.

15 Q When were they paid?

16 A 2016 to 2018.

17 Q Has there -- has this practice continued past 2018?

18 A No, it has not.

19 Q What is Tab 19, which is DX1-0856 for identification?

20 A These are attachments relating to that memo.

21 (Continued on next page)

22

23

24

25

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1 Q And the analysis that you performed, was it yourself
 2 who performed it? Were you assisted by others?
 3 A I performed it myself.
 4 Q And who drafted the memo that appears in Tab 18?
 5 A I drafted the memo.
 6 Q And is it your practice to perform such analyses when
 7 the need arises and to memorialize them similar to how you did
 8 that in DX 1-0855 through DX 1-0856?
 9 A Yes.
 10 MS. EISENBERG: The NRA moves to offer -- to admit
 11 in evidence 1-0855 and the attachments which are 0856.
 12 MR. THOMPSON: Preserving our objection.
 13 THE COURT: Well, I'm going to admit this with the
 14 same instruction. This memorialized her analysis, and you
 15 will hear her testimony.
 16 The underlying facts that are reported in here are
 17 not -- these are out-of-court statements, so they are not
 18 admissible for the truth of the matters asserted including
 19 things that she heard from Mr. Schropp and in reports here.
 20 So this again, is part to show the process and to
 21 show her contemporaneous notes of it, but not for the truth
 22 of the matter. So it's same as the last one.
 23 MS. EISENBERG: Thank you, your Honor.
 24 Q Let's display to the jury DX 1855 which is the memo
 25 itself.

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1 Can you please tell us by reference to the memo what
 2 your findings were with regard to your review?
 3 A My findings?
 4 Q Yes. And I guess for that purpose, it may be helpful
 5 to go to the second page.
 6 A I found that Mr. Schropp had traveled business and
 7 first class flights without proper approvals that were required
 8 under our policies.
 9 There were categories of missing receipts. There were
 10 also business -- lacking in business purpose and occasion as
 11 well as an expense submitted for a meal that was seemed
 12 excessive.
 13 Q Okay. And in the middle of the page where it states,
 14 "My Findings," do you see that sentence?
 15 A Yes.
 16 Q There is a reference to a report to the Audit Committee
 17 on November 30, 2023.
 18 Do you see that?
 19 A Yes.
 20 Q What does that refer to?
 21 MR. THOMPSON: Objection. Hearsay. And this was
 22 not provided any discovery on this.
 23 MS. EISENBERG: Your Honor, this document was
 24 produced through the NYAG on December 5, 2023. After which
 25 they were given the opportunity to depose the witness.

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1 THE COURT: Overruled. The objection to the
 2 question -- we will see how far you go into the next thing.
 3 Q To the extent the sentence refers to a report to the
 4 Audit Committee on November 30, 2023, what is that reference in
 5 reference to?
 6 A That reference, my -- that I presented these findings
 7 to the Audit Committee.
 8 Q And how would you characterize the status of your
 9 review with regard to Mr. Schropp's use of the Amex back in '16,
 10 '17 and '18?
 11 A That we are currently waiting on payment from Mr.
 12 Schropp.
 13 He is aware of the -- that the Audit Committee found
 14 that he needed to reimburse and that we performed the
 15 calculations, and he is aware of the amount.
 16 Q And just to be clear, is he being asked to repay the
 17 entirety of the expenses that he incurred using that method,
 18 only some or something else?
 19 A For business and first class flights, he doesn't have to
 20 pay back the whole flight. He is paying back a difference. He
 21 wouldn't pay back the coach flight portion, so there are
 22 calculations that had to be done. And then he would reimburse
 23 plus interest.
 24 Q What, if any, information did Mr. Schropp provide to
 25 you in connection with the review that you conducted?

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1 A He provided -- he basically created expense reports.
 2 He took -- he took every Amex statement and every transaction on
 3 the Amex statement, was then put into an expense report and
 4 attached receipts and identified business purpose.
 5 Q Let's take a look at Page 1 of the DX 1-0855 which is
 6 the exhibit right in front of you. There is a three part list
 7 at the top of the page preceded by the words, "He explained his
 8 process of the creation of the expense reports as follows."
 9 Do you see that?
 10 A Yes.
 11 Q And do these three points effectively refer to what you
 12 just described?
 13 A Yes.
 14 Q And do they fairly reflect your understanding as to
 15 what he had done in connection with your review of these
 16 expenses?
 17 THE COURT: What he told you he had done, you mean?
 18 Is that the question? Of what he told her he had done?
 19 MS. EISENBERG: Her understanding; right. Do those
 20 words fairly reflect her understanding?
 21 THE COURT: Okay. You can answer.
 22 A Yes.
 23 Q Let's take a look at the attachments which appear which
 24 have been admitted as DX 1-0856. I believe they are Attachments
 25 A through D. If you can please walk us through each and briefly

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1 describe what it is.

2 A So Attachment A was taking every -- every line item

3 from the Amex statement, putting it into Excel to come up with a

4 total so that then it could be compared to Attachment B which

5 was a list of every expense report line item that he had

6 submitted and to make sure that those two actually agreed so

7 that he had identified every single transaction.

8 Q Thank you. And if we proceed further to Page 11 of

9 this exhibit, that's the beginning of Attachment B.

10 Please tell us about attachment B, Ms. Rowling.

11 A So Attachment B was each line item from the expense

12 reports. The Attachment A was the line items from the Amex

13 statement.

14 Q What about Attachment C which appears on Page 21?

15 A Attachment C is kind of my first review of his expense

16 reports. I had some questions. I met with him again. I needed

17 further explanation. I gave him the opportunity to do further

18 research and then come back with additional explanations.

19 Q Thank you. And what about Attachment D which appears

20 on the last page?

21 A Attachment D was the final findings presented to the

22 Audit Committee.

23 MS. EISENBERG: Okay. Let's talk a little bit about

24 Josh Powell. We can take this down.

25 THE COURT: Counsel, we are pretty much out of time

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1 for the day.

2 MS. EISENBERG: Certainly, your Honor.

3 THE COURT: I'm assuming you are not going to

4 finish the whole thing in the next two minutes.

5 MS. EISENBERG: Yes, I still have a little bit.

6 THE COURT: Why don't we reconvene tomorrow morning

7 at 9:30. We will see you all then.

8 THE COURT OFFICER: All rise. Jury exiting.

9 (Whereupon, at this time the jury exits

10 the courtroom.)

11 THE COURT: And just for the witness' benefit,

12 again, during the break overnight, you are still on the

13 stand and shouldn't discuss your testimony with anyone

14 including counsel.

15 You can escort the witness out.

16 Thank you. See you tomorrow.

17 Before you all go, just to -- you can have a seat.

18 Just real briefly before we go too far into the week, I just

19 wanted to check in on one thing about the allocation of time

20 among the defendants.

21 I can certainly see there are at least let's put

22 thematic differences in terms of what the defendants are

23 probing, and I want to make sure I have some comfort that

24 each of the individual defendants have enough time allocated

25 to them during this period of time to be able to put their

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1 defenses in.

2 So I don't need to jump in and micromanage this

3 unless there is a problem, but I just wanted to air it and

4 say that I need to make sure, and I'll use counsel as the

5 proxy to help me make sure that there is -- that the process

6 is being done in a way that's fair. So that, you know, you

7 don't get stuck at the end with no time for evidence -- that

8 affirmative evidence that you want to put in because, I

9 mean, you know, the NRA's -- I'm not suggesting they have

10 gone over time because they just started, but if I don't

11 raise this until the end of next week, it's too late.

12 So you know, you don't have to react now, but I do

13 want to hear sooner rather than later if you need any

14 managing to make sure that occurs because, you know, left on

15 their own, the NRA could take the entire time and that would

16 not be fair.

17 MR. FARBER: Understood, your Honor.

18 Speaking for Mr. Phillips, I think as of now, we

19 are fine. We will raise an issue if one arises.

20 THE COURT: Yeah. Just don't wait till the end

21 when I can't do anything about it.

22 MR. FARBER: No. Understood, your Honor, but I

23 think the way things are proceeding from our perspective, I

24 don't see an issue.

25 THE COURT: All right. If you're happy, I'm happy.

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1 MR. FLEMING: Your Honor, I would just say we have

2 spoken not with great precision, but my understanding is

3 that I should have enough time I think the last day to get

4 our case in.

5 THE COURT: I hope you don't wait till the last day

6 to figure that out.

7 MR. FLEMING: Well, we would don't have many days

8 left, so somebody has to have the last day.

9 THE COURT: Objects in the mirror are closer than

10 they appear.

11 MR. CORRELL: Your Honor, I'm hopeful that there

12 will be enough time for Mr. LaPierre to put on his.

13 THE COURT: Well, the only point I'm making to you

14 is I need to hear about it in enough time that I can change

15 anything because the -- if the expected solution is, well,

16 we will just keep the jury the following week, that's not a

17 solution I'm willing to live with. So forewarned equals

18 forearmed.

19 Okay. All right. See you tomorrow.

20 (Whereupon, at this time the trial was continued

21 until February 7, 2024.)

22

23

24

25

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